

## 2019 ANALYSIS AND RECOMMENDATIONS

### NEVADA

#### 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.*

Nevada specifically criminalizes domestic minor sex trafficking<sup>2</sup> without requiring proof of force, fraud, or coercion, pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(a)<sup>3</sup> (Pandering and sex trafficking: definition; penalties; exception),<sup>4</sup> which states,

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

<sup>2</sup> Nevada’s statutes entitled “Trafficking in Persons,” Nev. Rev. Stat. Ann. § 200.467 (Trafficking in persons for financial gain; penalties) and § 200.468 (Trafficking in persons for illegal purposes; penalty) deal with human smuggling and the transportation of individuals into Nevada who “do not have the legal right to enter or remain in the United States.” Additionally, Nevada has several involuntary servitude laws that are not specific to sex trafficking. Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) penalizes “[a] person who knowingly subjects, or attempts to subject, another person to forced labor or services,” but “labor and services” is not defined to clearly apply to sex trafficking of minors. Nev. Rev. Stat. Ann. § 200.4631 states,

A person who has physical custody of a minor, allows a minor to reside in his or her residence, . . . or provides care for any length of time to a minor and who knowingly:

- (a) Obtains labor or services from the minor by . . . engaging in a pattern of conduct that results in . . . sexual abuse of the minor or sexual assault of the minor pursuant to NRS 200.366 [Sexual assault: definition; penalties]; or

A person:

(a) Is guilty of sex trafficking if the person:

- (1) Induces,<sup>5</sup> causes, recruits, harbors, transports,<sup>6</sup> provides, obtains or maintains a child to engage in prostitution,<sup>7</sup> or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct<sup>8</sup> or prostitution;
- (2) Induces, recruits, harbors, transports, provides, obtains or maintains a person by any means, knowing, or in reckless disregard of the fact, that threats, violence, force, intimidation, fraud, duress or coercion will be used to cause the person to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
- (3) By threats, violence, force, intimidation, fraud, duress, coercion, by any device or scheme, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, induces, causes, compels or procures a person to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
- (4) Takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him or her or any other person; or
- (5) Receives anything of value with the specific intent of facilitating a violation of this paragraph.

A person who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception), which states,

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(b) Benefits, financially or by receiving anything of value other than sexual gratification from the labor or services obtained by the conduct specified in paragraph (a), is guilty of holding a minor in involuntary servitude.

Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), penalizes a person who

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or
2. Benefits, financially or by receiving anything of value, from participating in a violation of NRS 200.463 [Involuntary servitude; penalties] or section 2 of this act . . .

<sup>3</sup> The text of Nev. Rev. Stat. Ann. § 201.300 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 120 during the 80th Session of the Nevada Legislature (effective October 1, 2019).

<sup>4</sup> Under Nev. Rev. Stat. Ann. § 201.350,

It shall not be a defense to a prosecution for any of the acts prohibited in NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . that any part of such act or acts shall have been committed outside this state, and the offense shall in such case be deemed and alleged to have been committed, and the offender tried and punished, in any county in which the prostitution was consummated, or any overt act in furtherance of the offense shall have been committed.

<sup>5</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(3), “‘Induce’ means to persuade, encourage, inveigle or entice.”

<sup>6</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(7), “‘Transports’ means to transport or cause to be transported, by any means of conveyance, into, through or across this State, or to aid or assist in obtaining such transportation.”

<sup>7</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(5), “‘Prostitution’ means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.”

<sup>8</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(4), (6), “‘Sexual conduct’ means engaging “in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.”

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

Additionally, Nev. Rev. Stat. Ann. § 201.300(2) states, “A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.”

Nevada law also creates separate penalties for conspiracy to commit certain crimes, including Nev. Rev. Stat. Ann. § 201.300 and § 201.301 (Facilitating sex trafficking).<sup>9</sup> Nev. Rev. Stat. Ann. § 199.480(1)<sup>10</sup> (Penalties).<sup>11</sup>

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

The following laws criminalize CSEC in Nevada:

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<sup>9</sup> Nev. Rev. Stat. Ann. § 201.301(1) (Facilitating sex trafficking) states,

A person is guilty of facilitating sex trafficking if the person:

(a) Facilitates, arranges, provides or pays for the transportation of a person to or within this State with the intent of:

- (1) Inducing the person to engage in prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception];
- (2) Inducing the person to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300; or
- (3) If the person is a child, using the person for any act that is prohibited by NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance] or 200.720 [Promotion of sexual performance of minor unlawful];

(b) Sells travel services that facilitate the travel of another person to this State with the knowledge that the other person is traveling to this State for the purpose of:

- (1) Engaging in sexual conduct with a person who has been induced to engage in sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300;
- (2) Soliciting a child who has been induced to engage in sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300;
- (3) Engaging in any act involving a child that is prohibited by NRS 200.710 or 200.720; or

....

When the victim is a minor, facilitating sex trafficking is punishable as a category B felony by imprisonment for 3–10 years. Nev. Rev. Stat. Ann. § 201.301(2)(b).

<sup>10</sup> The text of Nev. Rev. Stat. Ann. § 199.480 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 60 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>11</sup> Pursuant to Nev. Rev. Stat. Ann. § 199.480(1) (Penalties), “whenever two or more persons conspire to commit . . . sex trafficking in violation of NRS 201.300, facilitating sex trafficking in violation of NRS 201.301 . . . each person is guilty of a category B felony and shall be punished . . . by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years . . . .”

1. Pursuant to Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), it is a crime to “engage in prostitution or solicitation therefor, except in a licensed house of prostitution.”<sup>12</sup> Nev. Rev. Stat. Ann. § 201.354(1). If a child under 18 is solicited, a first violation is a category D felony punishable by imprisonment for 1–4 years and a fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(a),<sup>13</sup> 193.130(2)(d). A second violation of Nev. Rev. Stat. Ann. § 201.354(6)(b) with a child is a category C felony and is punishable 1–5 years and a possible fine up to \$10,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(b), 193.130(2)(c). “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category B felony, punishable by imprisonment for 1–6 years and a fine up to \$15,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. § 201.354(6)(c).
2. Pursuant to Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: criminal penalty), a person is guilty of a misdemeanor when the person

employs, or causes to be employed, exhibits or has in his or her custody for exhibition or employment, any minor, and every parent, relative, guardian, employer or other person having the care, custody or control of any minor, who in any way procures or consents to the employment of the minor:

. . . .

2. In any indecent or immoral exhibition or practice;

. . . .

A violation is punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. § 193.150(1). Alternatively, the court may sentence an offender to community service. Nev. Rev. Stat. Ann. § 193.150(2).

3. Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance . . . .” Additionally, Nev. Rev. Stat. Ann. § 200.710(2) states that it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance . . . .” When the minor is 14 or older, a violation is punishable by a possible fine not to exceed \$100,000 and life imprisonment with possibility of parole beginning after the offender has served 5 five years. Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, violations are punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Although not specific to commercial sex offenses, the following offenses may also apply to commercial sexual exploitation of children cases:

1. Pursuant to Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: penalties), “statutory sexual seduction” is a crime. Nev. Rev. Stat. Ann. § 200.364(10) (Definitions), defines “statutory sexual seduction” as

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<sup>12</sup> The state allows counties to control the licensing of houses of prostitution if the county population is less than 700,000. Pursuant to Nev. Rev. Stat. Ann. § 244.345(8) (Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution), “In a county whose population is 700,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.”

<sup>13</sup> The text of Nev. Rev. Stat. Ann. § 201.354 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 7 and 368 during the 80th Session of the Nevada Legislature (effective July 1, 2019 and October 1, 2019, respectively).

ordinary sexual intercourse, anal intercourse, or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and is at least 4 years younger than the perpetrator.

If the offender is 21 or older, Nev. Rev. Stat. Ann. § 200.368 is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 200.368(1), 193.130(2)(c). If the offender is under 21, a violation is a gross misdemeanor punishable by up to 364 days of imprisonment in the county jail, a fine not to exceed \$2,000, or both. Nev. Rev. Stat. Ann. §§ 200.368(2), 193.140.

2. Pursuant to Nev. Rev. Stat. Ann. § 201.230(1) (Lewdness with child; penalties), a person is guilty of lewdness with a child if that person

(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child; or

(b) Is under the age of 18 years and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child.

A violation against a child under the age of 14 is a category A felony punishable by a possible fine not to exceed \$10,000 and life imprisonment with eligibility for parole beginning when the offender has served 10 years. Nev. Rev. Stat. Ann. § 201.230(2). A violation against a child who is 14 or 15 years old is a category B felony, punishable by imprisonment for 1-10 years and a fine up to \$10,000.

However, if the person has been previously convicted of “lewdness with a child pursuant to this section or any other sexual offense against a child” or a crime in another jurisdiction that could be classified as one of these crimes in Nevada, the crime is a category A felony punishable by life imprisonment without the possibility of parole. Nev. Rev. Stat. Ann. § 201.230(3).

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

Nevada’s prostitution statute, Nev. Rev. Stat. Ann. § 201.354(11)<sup>14</sup> (Engaging in prostitution or solicitation for prostitution: Penalty; exception), refers to Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception), thereby acknowledging the intersection of prostitution with trafficking victimization. Nev. Rev. Stat. Ann. § 201.354(11) states,

If, at any time before the trial of a prostitute charged with a violation of subsection 1, the prosecuting attorney has a reason to believe that the prostitute is a victim of sex trafficking, the prosecuting attorney shall dismiss the charge. As used in this subsection, “sex trafficking” means a violation of subsection 2 of NRS 201.300.

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.*

Pursuant to Nev. Rev. Stat. Ann. § 207.400(1) (Unlawful acts; penalties), Nevada’s racketeering law,

It is unlawful for a person:

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<sup>14</sup> See *supra* note 13.

- (a) Who has with criminal intent received any proceeds derived, directly or indirectly, from racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of:
  - (1) Any title to or any right, interest or equity in real property; or
  - (2) Any interest in or the establishment or operation of any enterprise.<sup>15</sup>
- (b) Through racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
- (c) Who is employed by or associated with any enterprise to conduct or participate, directly or indirectly, in:
  - (1) The affairs of the enterprise through racketeering activity; or
  - (2) Racketeering activity through the affairs of the enterprise.
- (d) Intentionally to organize, manage, direct, supervise or finance a criminal syndicate.
- (e) Knowingly to incite or induce others to engage in violence or intimidation to promote or further the criminal objectives of the criminal syndicate.
- (f) To furnish advice, assistance or direction in the conduct, financing or management of the affairs of the criminal syndicate with the intent to promote or further the criminal objectives of the syndicate.
- (g) Intentionally to promote or further the criminal objectives of a criminal syndicate by inducing the commission of an act or the omission of an act by a public officer or employee which violates his or her official duty.
- (h) To transport property, to attempt to transport property or to provide property to another person knowing that the other person intends to use the property to further racketeering activity.
- (i) Who knows that property represents proceeds of, or is directly or indirectly derived from, any unlawful activity<sup>16</sup> to conduct or attempt to conduct any transaction involving the property:
  - (1) With the intent to further racketeering activity; or
  - (2) With the knowledge that the transaction conceals the location, source, ownership or control of the property.
- (j) To conspire to violate any of the provisions of this section.

Pursuant to Nev. Rev. Stat. Ann. § 207.390, “racketeering activity” is defined as

engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

Furthermore, under Nev. Rev. Stat. Ann. § 207.360<sup>17</sup> (“Crime related to racketeering” defined),

"Crime related to racketeering" means the commission of, attempt to commit or conspiracy to commit any of the following crimes:

- .....
- 5. Kidnapping;

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<sup>15</sup> “Enterprise” is defined as “1. Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and 2. Any union, association or other group of persons associated in fact although not a legal entity. The term includes illicit as well as licit enterprises and governmental as well as other entities.” Nev. Rev. Stat. Ann. § 207.380.

<sup>16</sup> “Unlawful activity” is defined in Nev. Rev. Stat. Ann. § 207.400(3) by referring to Nev. Stat. Ann. § 207.195, which defines the term in part as “any crime related to racketeering as defined in NRS 207.360 or any offense punishable as a felony pursuant to state or federal statute.” Nev. Rev. Stat. Ann. §§ 207.400(3), 207.195(5)(c).

<sup>17</sup> The text of Nev. Rev. Stat. Ann. § 207.360 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

6. Sexual assault;

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11. Statutory sexual seduction;

....

31. Any violation of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . ;

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36. Involuntary servitude in violation of any provision of NRS 200.463 [Involuntary servitude; penalties] or 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty] or a violation of any provision of NRS 200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty]; or 37. Trafficking in persons in violation of any provision of NRS 200.467 [Trafficking in persons for financial gain; penalties] or 200.468 [Trafficking in persons for illegal purposes; penalty].

Based on this definition of racketeering, acts of commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making it available for combatting criminal enterprises that engage in domestic minor sex trafficking. A violation of Nev. Rev. Stat. Ann. § 207.400 is a category B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2). Under Nev. Rev. Stat. Ann. § 207.410 (Alternate fine for unlawful acts), a fine may be imposed not exceeding the greater of 3 times “1. Any gross pecuniary value the convicted person gained; or 2. Any gross loss the convicted person caused, including property damage and personal injury, but excluding any pain and suffering.”

Additionally, for a conviction under Nev. Rev. Stat. Ann. § 207.400, the offender will face mandatory criminal forfeiture. Pursuant to Nev. Rev. Stat. Ann. § 207.420(1) (Criminal forfeiture: Property subject to forfeiture; substitution for unreachable property),

If the indictment or information filed regarding a violation of NRS 207.400 alleges that real or personal property was derived from, realized through, or used or intended for use in the course of the unlawful act and the extent of that property:

(a) The jury; or

(b) If the trial is without a jury, the court, shall upon a conviction, determine at a separate hearing the extent of the property to be forfeited. If the indictment or information does not include such an allegation, the property is not subject to criminal forfeiture.

Discretionary civil forfeiture is also available. Nev. Rev. Stat. Ann. § 207.400.

**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.*

Nevada’s sex trafficking statute applies to buyers of sex with minors through the term “causes” and, following federal precedent, through the term “obtains.” Under Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Pandering: definition; penalties; exception), “A person . . . [i]s guilty of sex trafficking if the person . . . [i]nduces,<sup>18</sup> causes, recruits, harbors, transports,<sup>19</sup> provides, obtains<sup>20</sup> or maintains a child to engage in prostitution,<sup>21</sup> or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct<sup>22</sup> or prostitution.”

<sup>18</sup> See *supra* note 5.

<sup>19</sup> See *supra* note 6.

<sup>20</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.

<sup>21</sup> See *supra* note 7.

<sup>22</sup> See *supra* note 8.



2.1.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception) to clarify that buyer conduct is included as a violation of Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception).

2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*<sup>23</sup>

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) criminalizes buying sex with minors under 18. Nev. Rev. Stat. Ann. § 201.354(1) states, “It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” When the person solicited is under 18, the crime is a category D felony for a first violation, punishable by imprisonment for 1–4 years and a fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(a),<sup>24</sup> 193.130(2)(d). A second violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category C felony and is punishable 1–5 years and a possible fine up to \$10,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(b), 193.130(2)(c). “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category B felony, punishable by imprisonment for 1–6 years and a fine up to \$15,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. § 201.354(6)(c).

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

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) has different penalties for the solicitation of an adult and the solicitation of a minor. If the person solicited was 18 or older, the crime is a misdemeanor. Nev. Rev. Stat. Ann. § 201.354(4)(a).<sup>25</sup> If the person solicited was under 18, the crime is a category D felony for a first violation, a category C felony for a second violation, and a category B felony for a third or subsequent violation. Nev. Rev. Stat. Ann. § 201.354(6)(a)–(c).

Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty), which states, “It is unlawful to: . . . (b) Offer or agree to engage in, engage in or aid and abet any act of prostitution,” does not differentiate penalties based on the age of the person solicited. Each violation is a misdemeanor with increased penalties based on the number of charges within the previous 3 years. Nev. Rev. Stat. Ann. § 207.030(2).

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

Under Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception),

A person . . . [w]ho is found guilty of sex trafficking . . . [a] child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state

<sup>23</sup> In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to buyers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix A for a list of some county and city ordinances applicable to buyers.

<sup>24</sup> See *supra* note 13.

<sup>25</sup> See *supra* note 13.

prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

In addition, pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of a violation of Nev. Rev. Stat. Ann. § 201.300(2) and “physical force or violence or the immediate threat of physical force or violence is used upon the child, the court may . . . impose a fine of not more than \$500,000.” There are also heightened penalties for acts of conspiracy. Nev. Rev. Stat. Ann. § 201.352(2).

Furthermore, pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception), “[a] court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.”

For a violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), when the person solicited was under 18, a first violation is a category D felony punishable by imprisonment for 1–4 years and a fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(a),<sup>26</sup> § 193.130(2)(d). A second violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category C felony and is punishable 1–5 years and a possible fine up to \$10,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(b), 193.130(2)(c). “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category B felony, punishable by imprisonment for 1–6 years and a fine up to \$15,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. § 201.354(6)(c).

A violation of Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty) is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 193.150(1). Second violations occurring within 3 years of a first violation will result in imprisonment in the county jail between 30 days and 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b). A third or subsequent violation “occurring within 3 years after the first violation” are punishable by imprisonment in the county jail for 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>27</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>28</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>29</sup> a

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<sup>26</sup> See *supra* note 13.

<sup>27</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>28</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>29</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).

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>30</sup>

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

Although Nevada does not have a statute specifically criminalizing using the Internet or other electronic communication to purchase commercial sex acts, such action can fall under Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560,

1. Except as otherwise provided in subsection 3,<sup>31</sup> a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:

....

....

(b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.

....

4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct<sup>32</sup> with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

A buyer is prohibited from asserting a mistake of age defense to charges of sex trafficking a minor under Nev. Rev. Stat. Ann. § 201.300(5) (Pandering and sex trafficking: definition; penalties; exception), which states,

In a prosecution for sex trafficking a child pursuant to subsection 2, it is not a defense that the defendant did not have knowledge of the victim's age, nor is reasonable mistake of age a valid defense to a prosecution conducted pursuant to subsection 2.

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<sup>30</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).

<sup>31</sup> Nev. Rev. Stat. Ann. § 201.560(3) states, “The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.”

<sup>32</sup> For the purpose of Nev. Rev. Stat. Ann. § 201.560, “sexual conduct” is defined by referring to Nev. Rev. Stat. § 201.520, which defines the term as “1. Ordinary sexual intercourse 2. Anal intercourse; 3. Fellatio, cunnilingus or other oral-genital contact; 4. Physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person; 5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; 6. Masturbation or the lewd exhibition of unclothed genitals; 7. Sado-masochistic abuse; or 8. Any lewd or lascivious act upon or with the body, or any part or member thereof, of another person.” Nev. Rev. Stat. Ann. §§ 201.520, 201.560(6)(f).

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is silent on the availability of a defense based on age mistake.

2.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) to prevent a buyer from exercising a mistake of age defense.

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

Nevada's trafficking law staggers penalties based on a minor's age, but penalties are sufficiently high even when the victim is an older minor. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception) states,

A person . . . [w]ho is found guilty of sex trafficking . . . [a] child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

In contrast, Nevada's buyer-applicable CSEC offense does not stagger penalties based on a minor's age, but penalties are not sufficiently high for a first conviction. If the victim is a minor, a first conviction under Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is a category D felony punishable by imprisonment for 1–4 years. Nev. Rev. Stat. Ann. §§ 201.354(6)(a),<sup>33</sup> 193.130(2)(d).

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 convicted of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14 years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2). In addition, under Nev. Rev. Stat. Ann. § 201.35 (Additional fine for pandering child and conspiring to pander child), the court may impose a fine of not more than \$500,000 for a violation of Nev. Rev. Stat. Ann. § 201.300 if the victim is a child at the time of the offense and “physical force or violence or the immediate threat of physical force or violence is used upon the child.”

Financial penalties are also available under Nevada's solicitation law. When the person solicited was under 18, a first violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is a category D felony punishable by a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(6)(a),<sup>34</sup> 193.130(2)(d). A second violation of Nev. Rev. Stat. Ann. § 201.354 when the person solicited was a child is a category C felony punishable by a possible fine up to \$10,000, and a third or subsequent violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category B felony punishable by a possible fine up to \$15,000. Nev. Rev. Stat. Ann. § 201.354(6)(b)–(c). A violation of Nev. Rev. Stat. Ann. § 207.030(1)(b)

<sup>33</sup> See *supra* note 13.

<sup>34</sup> See *supra* note 13.

(Prohibited acts; penalty) is a misdemeanor punishable by a possible fine not to exceed \$1,000 for the first violation and a fine of \$250–\$1,000 for subsequent violations occurring within 3 years of the first violation. Nev. Rev. Stat. Ann. §§ 207.030(2), 193.150(1).

A buyer may also be ordered to pay restitution for violations of Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception), pursuant to Nev. Rev. Stat. Ann. § 201.325(2)<sup>35</sup> (Power of court to order restitution), which states,<sup>36</sup>

Restitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of NRS 201.300 . . . .

Generally, a court must award restitution where appropriate. Nev. Rev. Stat. Ann. § 176.033<sup>37</sup> (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence). Specifically, Nev. Rev. Stat. Ann. § 176.033 states, “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .”

Buyers are subject to asset forfeiture for violations of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception). Pursuant to Nev. Rev. Stat. Ann. § 201.351(1) (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . are subject to forfeiture pursuant to NRS 179.121 [Forfeiture of personal property and conveyances used in the commission of crime] and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121, inclusive.”

Nev. Rev. Stat. Ann. § 179.121(a), (e) establishes forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes,” including Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: Definitions; penalties; exception). Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime) also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

In addition, pursuant to Nev. Rev. Stat. Ann. § 200.760 (Forfeiture) and § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime), buyers face civil asset forfeiture for possession of child sexual abuse material (CSAM) or forfeiture of proceeds attributable to commission of a felony. Pursuant

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<sup>35</sup> The text of Nev. Rev. Stat. Ann. § 201.325 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

<sup>36</sup> Pursuant to Nev. Rev. Stat. Ann. § 200.4631(4), “‘victim’ means any person: (a) Against whom a violation of any provision of [Nev. Rev. Stat. Ann. § 201.300 [Pandering and sex trafficking: definition; penalties; exception]] has been committed; or (b) Who is the surviving child of such a person.”

<sup>37</sup> The text of Nev. Rev. Stat. Ann. § 176.033 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 236 during the 80th Session of the Nevada Legislature (effective July 1, 2020).

to Nev. Rev. Stat. Ann. § 200.760, “[a]ll assets derived from or relating to any violation of NRS . . . 200.710 to 200.730 [including 200.727(1) (Use of Internet to control visual representation depicting sexual conduct of person under 16 years of age; penalties) and 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties)], inclusive . . . are subject to forfeiture. A proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.119, inclusive.”

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

Pursuant to Nev. Rev. Stat. Ann. § 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties), a person is guilty of a felony “who knowingly and willfully has in his or her possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal<sup>38</sup> or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct.”<sup>39</sup> A first violation is a category B felony punishable by imprisonment for 1–6 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 200.730(1). Second and subsequent violations are category A felonies punishable by imprisonment for 1 year to life imprisonment, with the possibility of parole, and a possible fine of \$5,000. Nev. Rev. Stat. Ann. § 200.730(2).

Additionally, pursuant to Nev. Rev. Stat. Ann. § 200.727(1) (Use of Internet to control visual representation depicting sexual conduct of person under 16 years of age; penalties),

Any person who, knowingly, willfully and with the specific intent to view any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating sexual conduct,<sup>40</sup> uses the Internet to control such a film, photograph or other visual presentation is guilty of:

- (a) For the first offense, a category C felony and shall be punished as provided in NRS 193.130 [Categories and punishment of felonies].
- (b) For any subsequent offense, a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

As a category C felony, the first violation is punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 193.130(2)(c).

Additionally, asset forfeiture exists for a violation of this provision. Nev. Rev. Stat. Ann. § 200.760. Pursuant to Nev. Rev. Stat. Ann. § 200.760 (Forfeiture), “All assets derived from or relating to any violation of . . . 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive . . . are subject to forfeiture.”

Domestic minor sex trafficking victims under 16 who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action against buyers. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving

<sup>38</sup> “Sexual portrayal” is defined as “the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.” Nev. Rev. Stat. Ann. § 200.700(4)

<sup>39</sup> “Sexual conduct” is defined as “sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person’s body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.” Nev. Rev. Stat. Ann. § 200.700(3).

<sup>40</sup> Nev. Rev. Stat. Ann. § 200.727(2) states, “As used in this section, ‘sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>41</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

In comparison, a federal conviction for possession of child sexual abuse material (CSAM)<sup>42</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>43</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>44</sup>

- 2.9.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties) to increase the penalty to reflect the seriousness of the offense.

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

Any person convicted of “a crime against a child” or deemed a “sex offender” must register. Nev. Rev. Stat. Ann. § 179D.441(1). Under Nev. Rev. Stat. Ann. § 179D.0357<sup>45</sup> (“Crime against a child” defined), a

“Crime against a child” means any of the following offenses if the victim of the offense was less than 18 years of age when the offense was committed:

...

- 3. Involuntary servitude of a child ... unless the offender is the parent or guardian of the victim.

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<sup>41</sup> Nev. Rev. Stat. Ann. § 41.1396(5)(b) states, “‘Sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

<sup>42</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>43</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>44</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>45</sup> The text of Nev. Rev. Stat. Ann. § 179D.0357 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

- 4. An offense involving sex trafficking pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking; definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty] . . . .
- 5. An attempt to commit an offense listed in this section.
- . . . .

A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined].” Nev. Rev. Stat. Ann. § 179D.095(1) (“Sex offender” defined). Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1) a “sexual offense” is defined to include the following offenses:

- . . . .
- (c) Statutory sexual seduction pursuant to NRS 200.368.
- . . . .
- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance, Promotion of sexual performance of minor unlawful, Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty, Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age, Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties] , inclusive.
- (i) Incest pursuant to NRS 201.180.
- . . . .
- (l) Lewdness with a child pursuant to NRS 201.230.
- . . . .
- (n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540(p) Luring a child . . . if punished as a felony.
- (q) Sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking; definition; penalties; exception].
- (r) Any other offense that has an element involving a sexual act or sexual conduct with another.
- . . . .

Therefore, a buyer could potentially be required to register as a sex offender either for a conviction of sex trafficking pursuant to Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking; definition; penalties; exception) or for a conviction under Nev. Rev. Stat. Ann. § 201.354(6)<sup>46</sup> (Engaging in prostitution or solicitation for prostitution: Penalty; exception) or § 207.030(b) (Prohibited acts; penalty) since both of these offenses that have “an element involving a sexual act or sexual conduct with another.” Nev. Rev. Stat. Ann. § 179D.097(1).

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2) (“Sexual offense” defined),

Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:

- (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
- (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some buyers who are not more than 4 years older than the victim may not be required to register as a “sex

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<sup>46</sup> See *supra* note 13.



offender” under Nev. Rev. Stat. Ann. § 179D.097, but would be required to register for having committed a “crime against a child” under Nev. Rev. Stat. Ann. § 179D.0357.

Pursuant to Nev. Rev. Stat. Ann. § 179D.115<sup>47</sup> (“Tier II offender” defined),

“Tier II offender” means an offender convicted of a crime against a child or a sex offender, other than a Tier III offender, whose crime against a child is punishable by imprisonment for more than 1 year or whose sexual offense:

1. If committed against a child, constitutes:
  - (a) Luring a child pursuant to NRS 201.560 [Definitions; exception; penalties], if punishable as a felony;
  - (b) Abuse of a child pursuant to NRS 200.508 [Abuse, neglect or endangerment of child: penalties; definitions], if the abuse involved sexual abuse or sexual exploitation;
  - (c) An offense involving pandering sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking: Definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty] . . . ;
  - (d) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730,<sup>48</sup> inclusive; or
  - (e) Any other offense that is comparable to or more severe than the offenses described in 34 U.S.C. § 20911(3);
2. Involves an attempt or conspiracy to commit any offense described in subsection 1;
3. If committed in another jurisdiction, is an offense that, if committed in this State, would be an offense listed in this section. This subsection includes, without limitation, an offense prosecuted in:
  - (a) A tribal court; or
  - (b) A court of the United States or the Armed Forces of the United States; or
4. Is committed after the person becomes a Tier I offender if any of the person's sexual offenses constitute an offense punishable by imprisonment for more than 1 year.

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<sup>47</sup> The text of Nev. Rev. Stat. Ann. § 179D.115 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

<sup>48</sup> Nev. Rev. Stat. Ann. §§ 200.710 (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), 200.720 (Promotion of sexual performance of minor unlawful), 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), 200.727 (Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; penalties), and 200.730 (Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties).

**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.<sup>49</sup>

A trafficker<sup>50</sup> who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b) (Pandering and sex trafficking: definition; penalties; exception), which states,

....

2. A child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

3. A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.

Furthermore, pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of an offense and “physical force or violence or the immediate threat of physical force or violence is used upon the child,” a trafficker who is convicted of Nev. Rev. Stat. Ann. § 201.300(2) may be fined \$500,000. There are also heightened penalties for acts of conspiracy. Nev. Rev. Stat. Ann. § 201.352(2).

<sup>49</sup> See *supra* Components 1.1 and 1.2 for full discussion of the substantive provisions of the Nevada statutes listed. In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to traffickers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix A for some county and city ordinances applicable to traffickers.

<sup>50</sup> See *supra* note 2 for Nevada’s involuntary servitude laws.

In addition, conspiracy to commit certain crimes, including “sex trafficking in violation of NRS 201.300” renders traffickers subject to penalties pursuant to Nev. Rev. Stat. Ann. § 199.480(1) (Penalties).<sup>51</sup>

When the minor victim is under 14 years of age, a violation of Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance) is a Category A felony punishable by imprisonment for life with possibility of parole after 10 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2). When the minor victim is 14 years of age or older, a violation of Nev. Rev. Stat. Ann. § 200.710(1) is a Category A felony punishable by imprisonment for life, with parole eligibility after serving 5 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2).

Similarly, Nev. Rev. Stat. Ann. § 609.210(2) (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) is a misdemeanor punishable by up to 6 months in prison, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 609.210, 193.150(1).

A trafficker could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195(1), (2)<sup>52</sup> (Use of monetary instrument proceeding or derived from unlawful activity), which states,

(1) If a monetary instrument or other property represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:

(a) To conduct or attempt to conduct a financial transaction involving the monetary instrument or other property:

- (1) With the intent to further any unlawful activity;
- (2) With the knowledge that the transaction conceals the location, source, ownership or control of the monetary instrument or other property; or
- (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.

(b) To transport or attempt to transport the monetary instrument or other property:

- (1) With the intent to further any unlawful activity;

....

(2) It is unlawful for any person to conduct or attempt to conduct a financial transaction concerning any monetary instrument or other property that has a value of \$5,000 or more with the knowledge that the monetary instrument or other property is directly or indirectly derived from any unlawful activity.

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class C felony punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 207.195(4), 193.130(2)(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>53</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>54</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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<sup>51</sup> See *supra* note 11.

<sup>52</sup> The text of Nev. Rev. Stat. Ann. § 207.195 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 15 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>53</sup> See *supra* note 27.

<sup>54</sup> See *supra* note 28.

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

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct<sup>55</sup>. . . .” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725.

Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance.” Additionally, under Nev. Rev. Stat. Ann. § 200.710(2), it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance.”

Violations of any of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>56</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted<sup>57</sup> the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>58</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child sexual abuse material (CSAM)<sup>59</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>60</sup> Subsequent convictions, however, are punishable by imprisonment up to

<sup>55</sup> See *supra* note 39.

<sup>56</sup> See *supra* note 41.

<sup>57</sup> “Promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. §§ 41.1396(5)(a), 200.700(2).

<sup>58</sup> See *supra* note 28.

<sup>59</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>60</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

40 years and a fine not to exceed \$250,000.<sup>61</sup>

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

Although Nevada law does not specifically criminalize using the Internet or other electronic communication to sell commercial sex acts, the crime can fall within Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560,

1. Except as otherwise provided in subsection 3,<sup>62</sup> a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:
  - (a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from the child's home or from any location known to the child's parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:
    - (1) Without the express consent of the parent or guardian or other person legally responsible for the child; and
    - (2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or
  - (b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.

....
4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:
  - (a) With the intent to engage in sexual conduct<sup>63</sup> with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

Traffickers convicted of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14 years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2).

Pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of the offense and "physical force or violence or the immediate threat of physical force or violence is used upon the child," a trafficker who is convicted of Nev. Rev. Stat. Ann. §

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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>61</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>62</sup> *See supra* note 31.

<sup>63</sup> *See supra* note 39.

201.300(2) may be fined \$500,000. There are also heightened penalties for acts of conspiracy. Nev. Rev. Stat. Ann. § 201.352(2).

Convictions under Nev. Rev. Stat. Ann. § 207.030(b), (c) (Prohibited acts; penalty) or Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) can result in fines not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030, 609.210(2)(a), 193.150(1). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 that occur within 3 years of the first violation can result in fines of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b), (c).

Traffickers may be subject to civil, discretionary asset forfeiture pursuant to Nev. Rev. Stat. Ann. § 179.121 if they commit pandering/sex trafficking offenses in violation of Nev. Rev. Stat. Ann. § 201.300. Nev. Rev. Stat. Ann. § 179.121(e) provides for forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in” violations of Nev. Rev. Stat. Ann. § 201.300. Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime)<sup>64</sup> also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), “[a]ny proceeds attributable to the commission or attempted commission of any felony,” are subject to forfeiture. “Proceeds” is defined as “any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.” Nev. Rev. Stat. Ann. § 179.1161. “Property” includes the following: “1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.” Nev. Rev. Stat. Ann. § 179.1162.

Seizure of forfeitable property is governed by Nev. Rev. Stat. Ann. § 179.1165, which provides for seizure upon process issued by a magistrate or without process if

- (a) The seizure is incident to:
  - (1) An arrest;
  - (2) A search pursuant to a search warrant; or
  - (3) An inspection pursuant to a warrant for an administrative inspection;
- (b) The property is the subject of a final judgment in a proceeding for forfeiture;
- (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

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<sup>64</sup> Pursuant to Nev. Rev. Stat. Ann. § 179.1164 (Property subject to seizure and forfeiture; exceptions),

- 1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:
    - (a) Any proceeds attributable to the commission or attempted commission of any felony.
    - (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857.
  - 2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.
  - 3. Unless the owner of real property or a mobile home:
    - (a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or
    - (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254,
- . . . .

(d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

Following an order of forfeiture, the seizing agency may retain the property for official use, “sell any of it which is neither required to be destroyed nor harmful to the public”, or “remove it for disposition in accordance with [other statutes].” Nev. Rev. Stat. Ann. § 179.1175.

In addition to any other penalty, pursuant to Nev. Rev. Stat. Ann. § 201.325(1)<sup>65</sup> (Power of court to order restitution), the court may order a trafficker convicted under Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception) to pay restitution to the victim.<sup>66</sup> Nev. Rev. Stat. Ann. § 201.325(2) states,

Restitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of 201.300 (Pandering and sex trafficking: definition; penalties; exception) . . . .

Generally, traffickers are subject to a mandatory order of restitution where appropriate. Nev. Rev. Stat. Ann. § 176.033<sup>67</sup> (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence). Pursuant to Nev. Rev. Stat. Ann. § 176.033, “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .”

Finally, a trafficker may face a possible fine up to \$10,000 for a violation of Nev. Rev. Stat. Ann. § 207.195 (Use of monetary instrument proceeding or derived from unlawful activity). Nev. Rev. Stat. Ann. §§ 207.195(4),<sup>68</sup> 193.130(2)(c).

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

A trafficker convicted of a “crime against a child” or deemed a “sex offender” must register. Nev. Rev. Stat. Ann. § 179D.441(1). Pursuant to Nev. Rev. Stat. Ann. § 179D.0357<sup>69</sup> (“Crime against a child” defined), a “crime against a child” includes

“Crime against a child” means any of the following offenses if the victim of the offense was less than 18 years of age when the offense was committed:

- . . . .
4. An offense involving sex trafficking pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty] . . . .
5. An attempt to commit an offense listed in this section.

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<sup>65</sup> See *supra* note 35.

<sup>66</sup> See *supra* note 36.

<sup>67</sup> See *supra* note 37.

<sup>68</sup> See *supra* note 52.

<sup>69</sup> See *supra* note 45.

A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined].” Nev. Rev. Stat. Ann. § 179D.095(1) (“Sex offender” defined). Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1), a “sexual offense” is defined to include the following offenses:

- . . . .
- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive.
- . . . .
- (n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
- . . . .
- (p) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (q) Sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].
- (r) Any other offense that has an element involving a sexual act or sexual conduct with another.
- . . . .

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2),

Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:

- (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
- (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some traffickers who are 4 or fewer years older than the victim may not be required to register. However, traffickers who commit “[a]n offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340” would still be required to register for committing a “crime against a child.”

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.*

A conviction under the trafficking law may indirectly serve as grounds for terminating parental rights based on laws relating to reunification and sex offender registration. Pursuant to Nev. Rev. Stat. Ann. § 128.105(1) (Grounds for terminating parental rights: considerations; required findings),

The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

- (a) The best interests of the child would be served by the termination of parental rights; and
- (b) The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 [Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe



return to home possible; determining whether reasonable efforts have been made] or demonstrated at least one of the following:

- (1) Abandonment of the child;
- (2) Neglect of the child;
- (3) Unfitness of the parent;
- (4) Failure of parental adjustment;
- (5) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;
- (6) Only token efforts by the parent or parents:
  - (I) To support or communicate with the child;
  - (II) To prevent neglect of the child;
  - (III) To avoid being an unfit parent; or
  - (IV) To eliminate the risk of serious physical, mental or emotional injury to the child;or
- (7) With respect to termination of the parental rights of one parent, the abandonment by that parent.

Nev. Rev. Stat. Ann. § 432B.393(3) (Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; determining whether reasonable efforts have been made) provides that an agency is not required to make reasonable efforts to reunify a parent and child, if the court finds that

- (a) A parent or other person responsible for the child's welfare has:
  - (1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;
  - (2) Caused the abuse or neglect of the child, or of another child of the parent or other person responsible for the child's welfare, which resulted in substantial bodily harm to the abused or neglected child;
  - (3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; . . . .
  - . . . .
  - . . . .
- (g) The child, a sibling of the child or another child in the household has been sexually abused or has been subjected to neglect by pervasive instances of failure to protect the child from sexual abuse; or
- (h) A parent of the child is required to register as a sex offender pursuant to the provisions of chapter 179D of NRS or the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. Sections 16901 et seq.

Because child sex trafficking is included as an offense requiring sex offender registration under Nev. Rev. Stat. Ann. § 179D.097(1)(q) ("Sexual offense" defined), a conviction under the trafficking law may form the basis for a finding made pursuant to Nev. Rev. Stat. Ann. § 432B.393(3), which in turn may serve as grounds from terminating parental rights under Nev. Rev. Stat. Ann. § 128.105(1)(b).

Further, Nev. Rev. Stat. Ann. § 128.106 (Specific considerations in determining neglect by or unfitness of parent) states,

In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

- . . . .
2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.

3. Conduct that violates any provision of NRS 200.463 [Involuntary servitude; penalties], 200.4631 [Involuntary servitude of minors; penalties], 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty] or 200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty].<sup>70</sup>

....

6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.

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<sup>70</sup> See *supra* Component 1.1.

**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.<sup>71</sup>*

Nevada’s core sex trafficking offense, Nev. Rev. Stat. Ann. § 201.300(2)(a)(5)<sup>72</sup> (Pandering and sex trafficking: definition; penalties; exception), specifically applies to facilitators who financially benefit from the crime, stating, “A person . . . [i]s guilty of sex trafficking if the person . . . [r]eceives anything of value with the specific intent of facilitating a violation of this paragraph.” Additionally, Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) reaches the actions of facilitators who otherwise “[i]nduce[], cause[], recruit[], harbor[], transport[], provide[], obtain[] or maintain[] a child to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution.” A person who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2), which states that a person who commits sex trafficking,

- (I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.
- (II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.
- (III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

....

Further, Nevada law prohibits the facilitation of sex trafficking under Nev. Rev. Stat. Ann. § 201.301(1) (Facilitating sex trafficking), which states,

- A person is guilty of facilitating sex trafficking if the person:
  - (a) Facilitates, arranges, provides or pays for the transportation of a person to or within this State with the intent of:
    - (1) Inducing the person to engage in prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300;

<sup>71</sup> In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to facilitators of domestic minor sex trafficking. Some counties also allow for the operation of licensed houses of prostitution. *See infra* Appendix A for a list of some county and city ordinances applicable to facilitators.

<sup>72</sup> *See supra* note 3.

- ....
- (3) If the person is a child, using the person for any act that is prohibited by NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance] or 200.720 [Promotion of sexual performance of minor unlawful];

Facilitating sex trafficking is punishable as a category B felony by imprisonment for 3–10 years. Nev. Rev. Stat. Ann. § 201.301(2)(b).

In addition, pursuant to Nev. Rev. Stat. Ann. § 201.352<sup>73</sup> (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of a violation of Nev. Rev. Stat. Ann. § 201.300(2) § 201.301(1) and “physical force or violence or the immediate threat of physical force or violence is used upon the child, the court may . . . impose a fine of not more than \$500,000.” There are also heightened penalties for acts of conspiracy. Nev. Rev. Stat. Ann. § 201.352(2).

Finally, a facilitator could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195(1), (2)<sup>74</sup> (Use of monetary instrument proceeding or derived from unlawful activity), which states,

(1) If a monetary instrument or other property represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:

(a) To conduct or attempt to conduct a financial transaction involving the monetary instrument or other property:

- (1) With the intent to further any unlawful activity;
- (2) With the knowledge that the transaction conceals the location, source, ownership or control of the monetary instrument or other property; or
- (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.

(b) To transport or attempt to transport the monetary instrument or other property:

- (1) With the intent to further any unlawful activity;

....

(2) It is unlawful for any person to conduct or attempt to conduct a financial transaction concerning any monetary instrument or other property that has a value of \$5,000 or more with the knowledge that the monetary instrument or other property is directly or indirectly derived from any unlawful activity.

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class C felony punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 207.195(4), 193.130(2)(c).

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

Facilitators convicted of child sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14 years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2).

In addition, pursuant to Nev. Rev. Stat. Ann. § 201.352<sup>75</sup> (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of a violation of Nev. Rev. Stat. Ann. § 201.300(2) § 201.301(1) (Facilitating sex trafficking) and “physical force or violence or the immediate threat of physical

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<sup>73</sup> The text of Nev. Rev. Stat. Ann. § 201.352 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 60 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>74</sup> See *supra* note 52.

<sup>75</sup> See *supra* note 75.

force or violence is used upon the child, the court may . . . impose a fine of not more than \$500,000.” There are also heightened penalties for acts of conspiracy. Nev. Rev. Stat. Ann. § 201.352(2).

Persons convicted under Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) and § 201.430 (Unlawful advertising of prostitution; penalties) can receive a fine not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 201.430(4)(a). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 or § 201.430 that occur within 3 years of the first violation can result in fines between \$250–\$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(b), (c), 201.430(4)(b), (c). Lastly, a violation of Nev. Rev. Stat. Ann. § 201.390(1) (Property or principal business streets not to be rented for purposes of prostitution) can result in a fine of not more than \$500. Nev. Rev. Stat. Ann. § 201.390(2).

Facilitators are subject to asset forfeiture for violations of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception). Pursuant to Nev. Rev. Stat. Ann. § 201.351(1)<sup>76</sup> (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 . . . are subject to forfeiture pursuant to NRS 179.121 (Forfeiture of personal property and conveyances used in the commission of crime) and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121, inclusive.”

Furthermore, Nev. Rev. Stat. Ann. § 179.121(e) establishes forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes,” including Nev. Rev. Stat. Ann. § 201.300. Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime)<sup>77</sup> also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), “[a]ny proceeds attributable to the commission or attempted commission of any felony,” are subject to forfeiture. “Proceeds” is defined as “any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.” Nev. Rev. Stat. Ann. § 179.1161. “Property” includes the following: “1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.” Nev. Rev. Stat. Ann. § 179.1162.

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<sup>76</sup> The text of Nev. Rev. Stat. Ann. § 201.351 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

<sup>77</sup> Pursuant to Nev. Rev. Stat. Ann. § 179.1164 (Property subject to seizure and forfeiture; exceptions),

1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:
  - (a) Any proceeds attributable to the commission or attempted commission of any felony.
  - (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857.
2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.
3. Unless the owner of real property or a mobile home:
  - (a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or
  - (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254,. . . .

Seizure of forfeitable property is governed by Nev. Rev. Stat. Ann. § 179.1165, which provides for seizure upon process issued by a magistrate or without process if

- (a) The seizure is incident to:
  - (1) An arrest;
  - (2) A search pursuant to a search warrant; or
  - (3) An inspection pursuant to a warrant for an administrative inspection;
- (b) The property is the subject of a final judgment in a proceeding for forfeiture;
- (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

Following an order of forfeiture, the seizing agency may retain the property for official use, sell any of it which is neither required to be destroyed nor harmful to the public, or remove it for disposition in accordance with other statutes. Nev. Rev. Stat. Ann. § 179.1175.

Moreover, a facilitator is subject to a mandatory restitution order where appropriate. Nev. Rev. Stat. Ann. § 176.033<sup>78</sup> (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence). Specifically, Nev. Rev. Stat. Ann. § 176.033 states, “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .”

In addition to any other penalty, pursuant to Nev. Rev. Stat. Ann. § 201.325(1)<sup>79</sup> (Power of court to order restitution), the court may order a facilitator convicted under Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception) to pay restitution to the victim.<sup>80</sup> Nev. Rev. Stat. Ann. § 201.325(2) states,

Restitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . .

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

Nevada law prohibits the sale and facilitation of child sex tourism. Nev. Rev. Stat. Ann. § 201.301(1) (Facilitating sex trafficking) states,

A person is guilty of facilitating sex trafficking if the person:

- (a) Facilitates, arranges, provides or pays for the transportation of a person to or within this State with the intent of:
  - (1) Inducing the person to engage in prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception];

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<sup>78</sup> See *supra* note 37.

<sup>79</sup> See *supra* note 35.

<sup>80</sup> See *supra* note 36.

- (2) Inducing the person to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300; or
- (3) If the person is a child, using the person for any act that is prohibited by NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance] or 200.720 [Promotion of sexual performance of minor unlawful];
- (b) Sells travel services that facilitate the travel of another person to this State with the knowledge that the other person is traveling to this State for the purpose of:
  - (1) Engaging in sexual conduct with a person who has been induced to engage in sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300;
  - (2) Soliciting a child who has been induced to engage in sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300;
  - (3) Engaging in any act involving a child that is prohibited by NRS 200.710 or 200.720; or
- (c) Travels to or within this State by any means with the intent of engaging in:
  - (1) Sexual conduct with a person who has been induced to engage in sexual conduct or prostitution in violation of subparagraph (1), (2) or (3) of paragraph (a) of subsection 2 of NRS 201.300, with the knowledge that such person has been induced to engage in such sexual conduct or prostitution; or
  - (2) Any act involving a child that is prohibited by NRS 200.710 or 200.720.

When the victim is a minor, facilitating sex trafficking is punishable as a category B felony by imprisonment for 3–10 years. Nev. Rev. Stat. Ann. § 201.301(2)(b).

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

Pursuant to Nev. Rev. Stat. Ann. § 200.720 (Promotion of sexual performance of minor unlawful), it is a category A felony to “knowingly promote[] a performance of a minor: 1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct;<sup>81</sup> or 2. Where the minor is the subject of a sexual portrayal.”<sup>82</sup> For the purpose of this statute, “promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. § 200.700(2). When the minor is 14 or older, a violation is punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, the crime is punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct . . . .” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725. Violations of either of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

<sup>81</sup> See *supra* note 39.

<sup>82</sup> See *supra* note 38.

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>83</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted<sup>84</sup> the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

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<sup>83</sup> See *supra* note 41.

<sup>84</sup> See *supra* note 57.



***Legal Components:***

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

***Legal Analysis:***

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.<sup>85</sup>*

Nevada’s human trafficking offense includes all commercial sexual exploitation of minors. Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception), when the victim is a minor, means of force, fraud, or coercion are not required. In addition, the human trafficking law applies to buyers; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking. Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Pandering: definition; penalties; exception). Finally, in establishing the crime of sex trafficking, third party control is not required. Consequently, Nevada’s human trafficking offenses include any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker.

- 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.*

Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: Definitions; penalties; exception) expressly prohibits a defendant from raising a defense based on the willingness of the minor to engage in the commercial sex act. Nev. Rev. Stat. Ann. § 201.300(4) states, “Consent of a victim of pandering or sex trafficking to an act of prostitution is not a defense to a prosecution for any of the acts prohibited by this section.”

<sup>85</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).

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

State law prohibits the criminalization of minors for prostitution and solicitation offenses. Pursuant to Enacted Senate Bill 293, § 16(1),<sup>87</sup> “A child<sup>88</sup> must not be adjudicated as delinquent or in need of supervision for engaging in prostitution or solicitation for prostitution pursuant to NRS 201.354 [Engaging in prostitution or solicitation for prostitution: Penalty; exception] or paragraph (b) of subsection 1 of NRS 207.030 [Prohibited acts; penalty].”<sup>89</sup>

Non-criminalization for other offenses hinges on a finding of victimization. Enacted Senate Bill 293, § 16(2), (3) states,

2. A child must not be placed in a state or local facility for the detention of children if:
  - (a) The child is alleged to have violated:
    - (1) The provisions of NRS 197.190 [Obstructing public officer], 207.200 [Unlawful trespass upon land; warning against trespassing] or 463.350 [Gaming or employment in gaming prohibited for persons under 21]; or
    - (2) A county or municipal ordinance imposing a curfew on a child or prohibiting jaywalking or loitering for the purpose of solicitation for prostitution; and
  - (b) There is reasonable cause to believe that the child is a commercially sexually exploited child.
3. If a court finds that a child committed an act described in subsection 2 and that clear and convincing evidence exists that the child committed the act in connection with commercial sexual exploitation,<sup>90</sup> the court shall not adjudicate the child as a delinquent child or a child in need of supervision based on that act. Upon such a finding, the court shall report the commercial sexual exploitation of the child to an agency which provides child welfare services.

Nev. Rev. Stat. Ann. § 201.303 (Rebuttable presumption that pandering, sex trafficking or facilitating sex trafficking committed under duress) may provide some relief to minors who are charged with trafficking offenses; it states,

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

<sup>87</sup> Enacted Senate Bill 293, § 16 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective July 1, 2022).

<sup>88</sup> Nev. Rev. Stat. Ann. § 62A.030(1) (“Child” defined) defines “child” as

- (a) A person who is less than 18 years of age;
- (b) A person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age; or
- (c) A person who is otherwise subject to the jurisdiction of the juvenile court as a juvenile sex offender pursuant to the provisions of NRS 62F.205 to 62F.360, inclusive.

<sup>89</sup> Further, Nev. Rev. Stat. Ann. § 201.354(11) (Engaging in prostitution or solicitation for prostitution: Penalty; exception) states,

If, at any time before the trial of a prostitute charged with a violation of subsection 1, the prosecuting attorney has reason to believe that the prostitute is a victim of sex trafficking, the prosecuting attorney shall dismiss the charge. As used in this subsection, “sex trafficking” means a violation of subsection 2 of NRS 201.300.

*See supra* note 13.

<sup>90</sup> Enacted Senate Bill 293, § 16(5)(a) defines “commercial sexual exploitation” as “the sex trafficking of a child in violation of NRS 201.300 or the sexual abuse or sexual exploitation of a child for the financial benefit of any person in exchange for anything of value, including, without limitation, monetary or nonmonetary benefits given or received by any person.”

If a violation of 201.300 [Pandering and sex trafficking: definition; penalties; exception] or 201.301 [Facilitating sex trafficking; penalty] is committed by a person who is:

1. Less than 18 years of age at the time of the commission of the violation;
  2. Prosecuted in a criminal proceeding as an adult; and
  3. A victim of sex trafficking or facilitating sex trafficking,
- there is a rebuttable presumption that the person who committed the violation acted under duress.

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**

Enacted Senate Bill 293, § 1(2)(d)<sup>91</sup> tasks the coordinator of services for commercially sexually exploited children with “develop[ing] a plan to establish the infrastructure to provide treatment, housing and services to commercially sexually exploited children . . .” Under Enacted Senate Bill 293, § 1(3),

The plan developed pursuant to paragraph (d) of subsection 2 must include, without limitation, plans to:

- (a) Provide specialized, evidence-based forms of housing, including, without limitation and where feasible and appropriate, home-based housing to meet the needs of each commercially sexually exploited child<sup>92</sup> in this State. All housing provided pursuant to this paragraph must:
  - (1) To the extent appropriate, allow residents freedom of movement inside and outside the house;
  - (2) Be secured from intrusion;
  - (3) To the extent appropriate, allow residents privacy and autonomy;
  - (4) Provide a therapeutic environment to address the needs of commercially sexually exploited children;
  - (5) Coordinate with persons and entities that provide services to residents; and
  - (6) Be operated by persons who have training concerning the specific needs of commercially sexually exploited children and practices for interacting with victims of trauma.
- (b) Recruit providers of housing that meet the requirements of paragraph (a).
- (c) Provide services to providers of housing for commercially sexually exploited children designed to increase the success of placements of such children.
- (d) Provide legal representation to commercially sexually exploited children.
- (e) Ensure that any secured placement for commercially sexually exploited children:
  - (1) Provides therapeutic treatment to assist the child in safely transitioning to a home-based placement; and
  - (2) Is temporary, subject to judicial review not later than 72 hours after the initiation of the placement and utilized only when necessary to:
    - (I) Return the child to a parent or legal guardian or to another jurisdiction; or
    - (II) Protect the child from further victimization or threats by a perpetrator of commercial sexual exploitation or a person acting on behalf of such a perpetrator.

The coordinator of services for commercially sexually exploited children must submit this plan to the Legislative Committee on Child Welfare and Juvenile Justice no later than October 1, 2020. Enacted Senate Bill 293, § 16.5(2).<sup>93</sup>

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<sup>91</sup> Enacted Senate Bill 293, § 1 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective June 7, 2019).

<sup>92</sup> Enacted Senate Bill 293, § 1(4) defines “commercially sexually exploited child” as “any child who is sex trafficked in violation of NRS 201.300, a victim of sexual abuse or sexually exploited for the financial benefit of any person or in exchange for anything of value, including, without limitation, monetary or nonmonetary benefits given or received by any person.”

<sup>93</sup> Enacted Senate Bill 293, § 16.5 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective June 7, 2019).

In addition, Nevada law prohibits the criminalization of minors for prostitution offenses as well as other specified offenses committed pursuant to trafficking victimization.<sup>94</sup> Instead, Enacted Senate Bill 293, § 16(4)<sup>95</sup> requires a juvenile justice agency to refer the child to a child serving agency; it states, “A juvenile justice agency that has reasonable cause to believe that a child in its custody is or has been a commercially sexually exploited child shall report the commercial sexual exploitation of the child to an agency which provides child welfare services.”

Similarly, Enacted Assembly Bill 151, § 12(1)<sup>96</sup> states, “any person who know or has reasonable cause to believe that a child is a commercially sexually exploited child may report the commercial sexual exploitation of the child to an agency which provides child welfare services.” Further, subsection (2) states,

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<sup>94</sup> See *supra* Component 5.3 for full discussion of the state’s non-criminalization laws. Further, state law retains a diversion statute, which provides a specialized service response. Nev. Rev. Stat. Ann. § 62C.240(1) (Court referral for court supervision pursuant to supervision and consent decree of child alleged to have engaged in prostitution or solicitation of prostitution; violation of supervision and consent decree or order; dismissal of petition) states,

If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:

- (a) Except as otherwise provided in paragraph (b), shall:
  - (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and
  - (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.
- (b) If the child originated from a jurisdiction outside this State, may return the child to the jurisdiction from which the child originated.

Pursuant to Nev. Rev. Stat. Ann. § 62C.240(2)–(3),

- 2. . . . the juvenile court may issue any order authorized by chapter 62E [Disposition of cases by juvenile court] of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.
- 3. If a child is alleged to have violated the provisions of a supervision and consent decree under this section or an order issued pursuant to this section:
  - (a) The district attorney must not file a petition alleging that the child has violated the decree or order and the allegation must be placed before the court pursuant to a motion or a request for judicial review. This paragraph does not prohibit the district attorney from filing a petition alleging that the child has committed a delinquent act.
  - (b) The juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.

Upon successful completion of any terms set out in the supervision and consent decree, Nev. Rev. Stat. Ann. § 62C.240(4) provides for the dismissal of charges, stating,

Except as otherwise provided in this subsection, if a child is placed under the supervision of the juvenile court pursuant to a supervision and consent decree under this section, the juvenile court shall dismiss the petition upon the successful completion of the terms and conditions of the supervision and consent decree or at the time the child reaches 18 years of age, whichever is earlier. A child who has reached 18 years of age may consent to remain under the supervision of the juvenile court for the purpose of receiving services provided under the supervision and consent decree.

<sup>95</sup> See *supra* note 87.

<sup>96</sup> Enacted Assembly Bill 151, § 12 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective October 1, 2019).

any person who is required to make a report pursuant to 432B.220 [Persons required to make report] and who, in his or her professional capacity, knows or has reasonable cause to believe that a child is a commercially sexually exploited child shall:

- (a) Report the commercial sexual exploitation of the child to an agency which provides child welfare services; and
- (b) Make such report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child is a commercially sexually exploited child.

Under Enacted Assembly Bill 151, § 13,<sup>97</sup>

1. Upon the receipt of a report pursuant to [Enacted Assembly Bill 151, § 12], an agency which provides child welfare services:
  - (a) Shall conduct an initial screening to determine whether there is reasonable cause to believe that the child is a victim of commercial sexual exploitation;
  - (b) Shall make a report to the appropriate law enforcement agency for the purpose of identifying the perpetrator of the commercial sexual exploitation;
  - (c) If the child resides in another jurisdiction, may initiate contact with an agency which provides child welfare services in the jurisdiction in which the child resides to provide notification of the circumstances surrounding the child's removal from the jurisdiction or placement in another location; and
  - (d) May conduct an assessment pursuant to chapter 432B [Protection of Children from Abuse and Neglect] of NRS.
2. If an agency which provides child welfare services conducts an assessment pursuant to chapter 432B of NRS and no abuse or neglect of a child is identified, the agency may:
  - (a) Conduct an assessment of the family of the child to determine which services, if any, the family needs or refer the family to a person or an organization that has entered into a written agreement with the agency to make such an assessment; and
  - (b) If appropriate, provide to the child and his or her family counseling, training or other services relating to commercial sexual exploitation or refer the child and his or her family to a person or an organization that has entered into an agreement with the agency to provide those services.
3. If an agency which provides child welfare services has entered into an agreement with a person or an organization to provide services to a child or his or her family and the person or organization will provide such services pursuant to subsection 2, the agency shall require the person or organization to notify the agency if:
  - (a) The child or his or her family refuses or fails to participate in such services; or
  - (b) The person or organization determines that there is a serious risk to the health or safety of the child.

....

## Summary

Nevada law prohibits the criminalization of juvenile sex trafficking victims for prostitution and other offenses committed pursuant to their victimization, provides for a mandatory referral to a child serving agency, allows for the provision of services relating to commercial sexual exploitation, and mandates development of a comprehensive, specialized service response.

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<sup>97</sup> Enacted Assembly Bill 151, § 13 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective October 1, 2019).

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>98</sup>

Child sex trafficking is not expressly identified as a type of abuse and neglect within Nevada’s child protection statutes. Pursuant to Nev. Rev. Stat. Ann. § 432B.020(1)(b) (“Abuse or neglect of a child” defined), “abuse or neglect of a child” includes “sexual abuse or sexual exploitation . . . of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.” Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined) states,

“Sexual exploitation” includes forcing, allowing<sup>99</sup> or encouraging a child:

1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
  - a. Filming, photographing or recording on videotape; or
  - b. Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child’s genitals or any sexual conduct with a child, as defined in NRS 200.700 [Definitions].

Nev. Rev. Stat. Ann. § 432B.100 (“Sexual abuse” defined) states,

“Sexual abuse” includes acts upon a child constituting:

1. Incest under NRS 201.180;
2. Lewdness with a child under NRS 201.230;
3. Sado-masochistic abuse under NRS 201.262;
4. Sexual assault under NRS 200.366;
5. Statutory sexual seduction under NRS 200.368;
6. Open or gross lewdness under NRS 201.210; and
7. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child under NRS 200.5083.

As a result of the inclusion of “sexual exploitation” and “sexual abuse” within the definition of “abuse or neglect of a child,” child sex trafficking victims may be considered abused or neglected.

- 5.5.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined) and § 432B.100 (“Sexual abuse” defined) to expressly include victims of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) to ensure juvenile sex trafficking victims are identified as an abused or neglected child pursuant to Nev. Rev. Stat. Ann. § 432B.020(1)(b) (“Abuse or neglect of a child” defined).

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.*

Nev. Rev. Stat. Ann. § 432B.130 (Persons responsible for child’s welfare) states,

A person is responsible for a child’s welfare under the provisions of this chapter if the person is the child’s parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the

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<sup>98</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>99</sup> “‘Allow’ means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.” Nev. Rev. Stat. Ann. § 432B.020(3).

day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

This definition is not broad enough to allow for child welfare intervention into non-familial trafficking cases.

5.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 432B.130 (Persons responsible for child’s welfare) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.

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

Domestic minor sex trafficking victims are entitled to compensation. For “compensation for certain victims of criminal acts,” pursuant to Nev. Rev. Stat. Ann. § 217.070(1)<sup>100</sup> (“Victim” defined) a “victim” is defined as

- [A] person who suffers direct or threatened physical, financial or psychological harm as a result of the commission of a crime, including, without limitation:
- (a) A person who is injured or killed as the direct result of a criminal act;
  - (b) A minor who was involved in the production of pornography in violation of NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance], 200.720 [Promotion of sexual performance of minor unlawful], 200.725 [Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty] or 200.730 [Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties];
  - (c) A minor who was sexually abused, as “sexual abuse” is defined in NRS 432B.100 [“Sexual abuse” defined];
  - ....
  - (h) A person who is trafficked in violation of subsection 2 of NRS 201.300 [Pandering: definition; penalties; exception];
  - (i) A person who is subjected to facilitating sex trafficking in violation of subsection 1 of NRS 201.301 [Facilitating sex trafficking]; or
  - (j) A person who is an immediate family member of a victim who:
    - (1) Is a minor;
    - (2) Is physically or mentally incompetent; or
    - (3) Was killed.
  - ....

Under Nev. Rev. Stat. Ann. § 217.180(2)<sup>101</sup> (Order for compensation; considerations), “If the case involves a victim of domestic violence, sexual assault, facilitating sex trafficking or sex trafficking,<sup>102</sup> the compensation

<sup>100</sup> The text of Nev. Rev. Stat. Ann. § 217.070 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bills 60, 534, and 236 and Senate Bill 225 during the 80th Session of the Nevada Legislature (effective July 1, 2019, July 1, 2019, and July 1, 2020, respectively).

<sup>101</sup> The text of Nev. Rev. Stat. Ann. § 217.180 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 534 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>102</sup> Pursuant to Nev. Rev. Stat. Ann. § 217.180(5),

- (a) “Domestic violence” means an act described in NRS 33.018.
- (b) “Facilitating sex trafficking” means a violation of NRS 201.301.
- ....
- (d) “Sex trafficking” means a violation of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].
- (e) “Sexual assault” has the meaning ascribed to it in NRS 200.366.

officer shall not consider the wrongful act, provocation or any other behavior of the victim that directly or indirectly contributed to the injury or death of the victim.” In addition, Nev. Rev. Stat. Ann. § 217.180(4) states that “[a]n order for compensation may be made whether or not a person is prosecuted or convicted of an offense arising from the act on which the claim for compensation is based.”

Pursuant to Nev. Rev. Stat. Ann. § 217.210(1)<sup>103</sup> (Limitations on time for making order for payment of compensation; exception),

Except as otherwise provided in subsection 2, an order for the payment of compensation must not be made unless the application is made within 1 year after the date of the personal injury or death on which the claim is based, unless waived by the Director or a person designated by the Director for good cause shown and the personal injury or death was the result of an incident or offense that was reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within 5 days of the time when a report could reasonably have been made.

However, these time limits “do not apply to a minor who is sexually abused or who is involved in the production of pornography,” and “[s]uch a minor must apply for compensation before reaching 21 years of age.” Nev. Rev. Stat. Ann. § 217.210(2).

Additional ineligibility factors could preclude a domestic minor sex trafficking victim from receiving compensation. Pursuant to Nev. Rev. Stat. Ann. § 217.100(1)<sup>104</sup> (Application for compensation; medical reports), claims must be filed “not more than 24 months after the injury or death for which the compensation is claimed.” Further, if the compensation board considers the domestic minor sex trafficking victim’s act of prostitution an act that makes the victim “a coconspirator, codefendant, accomplice . . . of the offender whose crime caused the victim’s injuries,” the victim will not receive compensation. Nev. Rev. Stat. Ann. § 217.220(1)(b) (Award of compensation prohibited under certain circumstances; exceptions). Additionally, the victim will not receive compensation if the victim “[f]ails to cooperate with law enforcement agencies.” Nev. Rev. Stat. Ann. § 217.220(1)(e).

- 5.7.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 217.220(1)(e) (Award of compensation prohibited under certain circumstances; exceptions) and Nev. Rev. Stat. Ann. § 217.100(1) (Application for compensation; medial reports) to establish an exception for victims of domestic minor sex trafficking.

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

Nevada provides some victim-friendly procedures and protections for victims of sex trafficking as defined by Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception).<sup>105</sup> First, under Nev. Rev. Stat. Ann. § 174.227(1)<sup>106</sup> (Videotaped depositions; Order of court; notice to parties; cross-examination; use),

A court on its own motion or on the motion of the district attorney may, for good cause shown, order the taking of a videotaped deposition of  
(a) A victim of sexual abuse as that term is defined in NRS 432B.100 ["Sexual abuse" defined];

<sup>103</sup> The text of Nev. Rev. Stat. Ann. § 217.210 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bills 60 and 534 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>104</sup> The text of Nev. Rev. Stat. Ann. § 217.100 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 534 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

<sup>105</sup> See *supra* Component 1.1 for substantive provisions of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception).

<sup>106</sup> The text of Nev. Rev. Stat. Ann. § 174.227 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 60 during the 80th Session of the Nevada Legislature (effective July 1, 2019).



- (b) A prospective witness in any criminal prosecution if the witness is less than 14 years of age;
- (c) A victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception]. There is a rebuttable presumption that good cause exists where the district attorney seeks to take the deposition of a person alleged to be the victim of sex trafficking; or
- (d) A victim of facilitating sex trafficking as that term is defined in subsection 1 of NRS 201.301 [Facilitating sex trafficking].

“Except as limited by NRS 174.228 [Videotaped depositions: use], the court may allow the videotaped deposition to be used at any proceeding in addition to or in lieu of the direct testimony of the deponent.” Nev. Rev. Stat. Ann. § 174.227(4). However, pursuant to Nev. Rev. Stat. Ann. § 174.228,<sup>107</sup>

A court may allow a videotaped deposition to be used instead of the deponent's testimony at trial only if:

1. In the case of a victim of sexual abuse, as that term is defined in NRS 432B.100:
  - (a) Before the deposition is taken, a hearing is held by a justice of the peace or district judge who finds that:
    - (1) The use of the videotaped deposition in lieu of testimony at trial is necessary to protect the welfare of the victim; and
    - (2) The presence of the accused at trial would inflict trauma, more than minimal in degree, upon the victim; and
  - (b) At the time a party seeks to use the deposition, the court determines that the conditions set forth in subparagraphs (1) and (2) of paragraph (a) continue to exist. The court may hold a hearing before the use of the deposition to make its determination.
2. In the case of a victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300 or a victim of facilitating sex trafficking as that term is defined in subsection 1 of NRS 201.301:
  - (a) Before the deposition is taken, a hearing is held by a justice of the peace or district judge and the justice or judge finds that cause exists pursuant to paragraph (c) of subsection 1 of NRS 174.227; and
  - (b) Before allowing the videotaped deposition to be used at trial, the court finds that the victim is unavailable as a witness.
3. In all cases:
  - (a) A justice of the peace or district judge presides over the taking of the deposition;
  - (b) The accused is able to hear and see the proceedings;
  - (c) The accused is represented by counsel who, if physically separated from the accused, is able to communicate orally with the accused by electronic means;
  - (d) The accused is given an adequate opportunity to cross-examine the deponent subject to the protection of the deponent deemed necessary by the court; and
  - (e) The deponent testifies under oath.

Victims of human trafficking can apply for an issuance of a fictitious address, pursuant to Nev. Rev. Stat. Ann. § 217.462(1) (Fictitious address or victim of domestic violence, human trafficking, sexual assault or stalking: Eligibility; application to Division; penalty for providing false information), which states, “An adult person, a parent or guardian acting on behalf of a child, or a guardian acting on behalf of an incompetent person may apply to the Division to have a fictitious address designated by the Division serve as the address of the adult, child or incompetent person.”

Furthermore, under Nev. Rev. Stat. Ann. § 217.468(2) (Fictitious address for victims of domestic violence, human trafficking, sexual assault or stalking: Cancellation),

<sup>107</sup> The text of Nev. Rev. Stat. Ann. § 174.228 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 60 during the 80th Session of the Nevada Legislature (effective July 1, 2019).

The Division shall not cancel the fictitious address of a participant if, before the fictitious address of the participant is cancelled, the participant shows to the satisfaction of the Division that the participant remains in imminent danger of becoming a victim of domestic violence, human trafficking, sexual assault or stalking.

There are situations when a domestic minor sex trafficking victim will not be afforded the protections of Nevada's rape shield laws. Pursuant to Nev. Rev. Stat. Ann. § 50.090 (Evidence of previous sexual conduct of victim of sexual assault or statutory sexual seduction inadmissible to challenge victim's credibility; exceptions), the protections only apply to "any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime . . ." Similarly, the protections in Nev. Rev. Stat. Ann. § 48.069 (Previous sexual conduct of victim of sexual assault: Procedure for admission of evidence to prove victim's consent) only apply to a "prosecution for sexual assault or for attempt to commit or conspiracy to commit a sexual assault."

Pursuant to Nev. Rev. Stat. Ann. § 128.091 (Evidence of previous sexual conduct inadmissible to challenge child's credibility; exceptions),

In any proceeding held pursuant to this chapter 432B of NRS [Protection Of Children From Abuse And Neglect], a party may not present evidence of any previous sexual conduct of a child to challenge the child's credibility as a witness unless the attorney for the child has first presented evidence or the child has testified concerning such conduct, or the absence of such conduct, on direct examination by the district attorney or the attorney for the child, in which case the scope of the cross-examination of the child or rebuttal must be limited to the evidence presented by the child's attorney or the child.

Child witnesses, defined as "a child under the age of 14 years who has been or will be called to testify in a proceeding," may testify via an "alternative method." Nev. Rev. Stat. Ann. §§ 50.530, 50.560, 50.520. Pursuant to Nev. Rev. Stat. Ann. § 50.520 ("Alternative method" defined),

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

1. Having the child testify in person in an open forum;
2. Having the child testify in the presence and full view of the finder of fact and presiding officer; and
3. Allowing all of the parties to be present, to participate and to view and be viewed by the child.

A child witness is allowed to testify via an alternative method in a criminal proceeding only if the court "finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact" either due to "testify[ing] in the open forum" of the court or "be[ing] confronted face-to-face by the defendant." Nev. Rev. Stat. Ann. § 50.580(1)(a), (b). Pursuant to Nev. Rev. Stat. Ann. § 50.590 (Factors for determining whether to permit alternative method), the court will consider the following factors when determining whether to allow a child to testify by an alternative method:

1. [Whether] [a]lternative methods [are] reasonably available;
2. [Whether there are] [a]vailable means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is

- not used; and
- 7. Any other relevant factor.

Pursuant to Nev. Rev. Stat. Ann. § 51.385(1), (2) (Admissibility; notice of unavailability or inability of child to testify),

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:
  - (a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and
  - (b) The child testifies at the proceeding or is unavailable or unable to testify.
2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:
  - (a) The statement was spontaneous;
  - (b) The child was subjected to repetitive questioning;
  - (c) The child had a motive to fabricate;
  - (d) The child used terminology unexpected of a child of similar age; and
  - (e) The child was in a stable mental state.

Within the chapter on Sexual Assault and Seduction, additional protections are provided for victims<sup>108</sup> of Nev. Rev. Stat. Ann. § 200.366 (Sexual assault: Definitions; penalties), Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: Penalties), and sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception). Specifically, the information in records or reports and the identities of sexual assault and sexual seduction victims are kept confidential, including through the use of pseudonyms on their files. Nev. Rev. Stat. Ann. §§ 200.3771, 200.3772, 200.3773.<sup>109</sup>

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<sup>108</sup> Nev. Rev. Stat. Ann. § 200.364(11) (Definitions) defines “[v]ictim” as “a person who is a victim of a sexual offense . . . or sex trafficking.” In turn, “sexual offense” is defined to include sexual assault and statutory sexual seduction, and “[s]ex trafficking” is defined as “a violation of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].” Nev. Rev. Stat. Ann. § 200.364(6), (8).

<sup>109</sup> Nev. Rev. Stat. Ann. § 200.377 (Victims of certain sexual offenses: Legislative findings and declarations) states,

The Legislature finds and declares that:

1. This State has a compelling interest in assuring that the victim of a sexual offense . . . or sex trafficking:
  - (a) Reports the sexual offense . . . or sex trafficking to the appropriate authorities;
  - (b) Cooperates in the investigation and prosecution of the sexual offense . . . or sex trafficking; and
  - (c) Testifies at the criminal trial of the person charged with committing the sexual offense . . . or sex trafficking.
2. The fear of public identification and invasion of privacy are fundamental concerns for the victims of sexual offenses, offenses involving a pupil or child or sex trafficking. If these concerns are not addressed and the victims are left unprotected, the victims may refrain from reporting and prosecuting sexual offenses, offenses involving a pupil or child or sex trafficking.
3. A victim of a sexual offense . . . or sex trafficking may be harassed, intimidated and psychologically harmed by a public report that identifies the victim. A sexual offense . . . or sex trafficking is, in many ways, a unique, distinctive and intrusive personal trauma. The consequences of identification are often additional psychological trauma and the public disclosure of private personal experiences.
4. Recent public criminal trials have focused attention on these issues and have dramatized the need for basic protections for the victims of sexual offenses, offenses involving a pupil or child or sex trafficking.
5. The public has no overriding need to know the individual identity of the victim of a sexual offense . . . or sex trafficking.

Nev. Rev. Stat. Ann. Chapter 201 (Crimes against public decency and good morals) allows expert testimony regarding the grooming of child victims in prosecutions for pandering or sex trafficking pursuant to NRS 201.300.

1. The prostitution subculture, including, without limitation, the effect of physical, emotional or mental abuse on the beliefs, behavior and perception of the alleged victim of the pandering or sex trafficking that is offered by the prosecution or defense is admissible for any relevant purpose, including, without limitation, to demonstrate:
  - (a) The dynamics of and the manipulation and psychological control measures used in the relationship between a prostitute and a person who engages in pandering or sex trafficking in violation of NRS 201.300; and
  - (b) The normal behavior and language used in the prostitution subculture.
2. The effect of pandering or sex trafficking may not be offered against a defendant pursuant to subsection 1 to prove the occurrence of an act which forms the basis of a criminal charge against the defendant.

Under Nev. Rev. Stat. Ann. § 171.196(6) (Preliminary examination: Waiver; time for conducting; postponement; introduction of evidence and cross-examination of witnesses by defendant) and § 172.135(2) (Evidence receivable before grand jury), hearsay statements made by an alleged victim of a sexual offense or child abuse are allowed in preliminary examinations and before grand juries when the victim is under 16 years of age. Nev. Rev. Stat. Ann §§ 179D.097, 200.508.

Nev. Rev. Stat. Ann. Chapter 50 (Witnesses) provides that “a court may not order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.”

Nev. Rev. Stat. Ann. § 62D.415 (Use of instrument of restraint on child during proceeding) disallows placing a child in restraints during a trial unless the judge determines that they are necessary to prevent the child from “(a) Inflicting physical harm on himself or herself or another person; or (b) Escaping from the courtroom.”<sup>110</sup>

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.*

Nevada law provides a mechanism for minors to vacate delinquency adjudications and seal related records for certain offenses committed as a result of the minor’s trafficking victimization without mandating a waiting period.

Regarding vacatur, Enacted Senate Bill 368, §4<sup>111</sup> states,

1. If a child has been adjudicated delinquent for an unlawful act listed in subsection 2, the child may petition the juvenile court for an order:
  - (a) Vacating the adjudication; and
  - (b) Sealing all records relating to the adjudication.
2. A child may file a petition pursuant to subsection 1 if the child was adjudicated delinquent for an unlawful act in violation of:
  - (a) NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the child was not alleged to be a customer of a prostitute;

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6. The purpose of NRS 200.3771 to 200.3774, inclusive, is to protect the victims of sexual offenses, offenses involving a pupil or child or sex trafficking from harassment, intimidation, psychological trauma and the unwarranted invasion of their privacy by prohibiting the disclosure of their identities to the public.

<sup>110</sup> See *supra* note 2 and Component 3.5.

<sup>111</sup> Enacted Senate Bill 368, § 4 cited here and elsewhere in this report was enacted during the 80th Session of the Nevada Legislature (effective October 1, 2019).

- (b) NRS 207.200, for unlawful trespass;
  - (c) Paragraph (b) of subsection 1 of NRS 463.350, for loitering; or
  - (d) A county, city or town ordinance, for loitering for the purpose of solicitation or prostitution.
3. The juvenile court may grant a petition filed pursuant to subsection 1 if:
- (a) The petitioner was adjudicated delinquent for an unlawful act described in subsection 2;
  - (b) The participation of the petitioner in the unlawful act was the result of the petitioner having been a victim of:
    - (1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7107 et seq. . . .
    - . . . .
    - (c) The petitioner files a petition pursuant to subsection 1 with due diligence after the petitioner has ceased being a victim of trafficking . . . or has sought services for victims of such trafficking . . .
    - . . . .
5. If the court grants a petition filed pursuant to subsection 1, the court shall:
- (a) Vacate the adjudication and dismiss the accusatory pleading; and
  - (b) Order sealed all records relating to the adjudication.
  - . . . .

Otherwise, juvenile records may be sealed 3 years after an adjudication or upon the minor turning 21. Unless the child falls under the exception in Nev. Rev. Stat. Ann. § 62H.150 (Limitations on sealing records related to certain delinquent acts),<sup>112</sup> once a child reaches 21 years of age, “all records relating to the child must be sealed automatically.” Nev. Rev. Stat. Ann. § 62H.140. If the child is less than 21, a child or the “child’s probation or parole officer on behalf of the child” may petition to seal records “(a) not earlier than 3 years after the child was last adjudicated in need of supervision, adjudicated delinquent, or placed under the supervision of the juvenile court pursuant to NRS 62C.230 [Court referral for informal supervision or court supervision pursuant to supervision and consent decree; effect of successful completion of supervision and consent decree]; and (b) If, at the time the petition is filed, the child does not have any delinquent or criminal charges pending.” Nev. Rev. Stat. Ann. § 62H.130(1). After a hearing on the petition, the court “may enter an order sealing all records relating to the child if the child is less than 18 years of age” and “the juvenile court shall enter an order sealing all records relating to the child if the child is 18 years of age or older, provided that the juvenile court finds that: during the applicable 3 year period, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and the child has been rehabilitated to the satisfaction of the juvenile court.” Nev. Rev. Stat. Ann. § 62H.130(4).

However, sealed records may be inspected under Nev. Rev. Stat. Ann. § 62H.170(2) (Effect of sealing records; inspection of sealed records in certain circumstances) as follows:

- . . . .
- (c) A prosecuting attorney or a defendant in a criminal action petitions the juvenile court to permit the inspection of the records to obtain information relating to the persons, including the defendant, who were involved in the acts detailed in the records;
- (d) The person who is the subject of the records has committed an act which subjects the person to the jurisdiction of the juvenile court and which may form the basis of a civil action and a person who, in good faith, intends to bring or has brought the civil action, or any other person who is a party to the civil action, petitions the juvenile court to permit the inspection of the records to obtain information relating to the person who is the subject of the records; or
- (e) The juvenile court determines that the inspection of the records is necessary to:
  - (1) Perform bona fide outcome and recidivism studies, which may include, without limitation, using personal identifying information from sealed juvenile records to perform criminal background checks on persons who were adjudicated pursuant to this title;
  - . . . .

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<sup>112</sup> A child’s records may not be sealed until the child is 30 years old if the child committed a sexual assault, battery with intent to commit sexual assault, or lewdness with a child. Nev. Rev. Stat. 62H.150.

Further, subsection (3) states that, “Upon its own order, any court of this State may inspect records that are sealed if the records relate to a person who is less than 21 years of age and who is to be sentenced by the court in a criminal proceeding.” Accordingly, a child sex trafficking victim may face collateral consequences associated with having an accessible delinquency record.

#### 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.*

A court must consider restitution in all cases, and is required to order it where appropriate. Nev. Rev. Stat. Ann. § 176.033<sup>113</sup> (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence). Specifically, “If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .” Nev. Rev. Stat. Ann. § 176.033. Additionally, “The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant makes full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable.” Nev. Rev. Stat. Ann. § 176A.430(1) (Restitution).

Specifically, pursuant to Nev. Rev. Stat. Ann. § 201.325(1)<sup>114</sup> (Power of court to order restitution), a court may order convicted buyers, traffickers, and/or facilitators to pay restitution to victims of Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception), in addition to any other penalty. Nev. Rev. Stat. Ann. § 201.325(2) further provides,

Restitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of [Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) . . .

Pursuant to Nev. Rev. Stat. Ann. § 41.1399(1) (Action by victim of human trafficking; venue; damages and other relief; attorney’s fees and costs; statute of limitations; joinder of parties; limitation on defenses), “[a]ny person who is a victim of human trafficking<sup>115</sup> may bring a civil action against any person who caused, was responsible for or profited from the human trafficking.”<sup>116</sup> Nev. Rev. Stat. Ann. § 41.1399 (10)(b)<sup>117</sup> states, “It is not necessary that the defendant be investigated, arrested, prosecuted or convicted for a violation of any

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<sup>113</sup> See *supra* note 37.

<sup>114</sup> See *supra* note 35.

<sup>115</sup> Pursuant to Nev. Rev. Stat. Ann. § 41.1399(10)(a), “a victim of human trafficking is a person against whom a violation of any provision of NRS 200.463 to 200.468, inclusive [Involuntary servitude; purchase or sale of person; trafficking in persons], 201.300 [Pandering and sex trafficking: definition; penalties; exception] or 201.320 [Living from earnings of prostitute; penalty] . . . , or 18 U.S.C. Section 1589 [Forced Labor], 1590 [Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor] or 1591 [Sex trafficking of children or by force, fraud, or coercion] has been committed.”

<sup>116</sup> Under Nev. Rev. Stat. Ann. § 41.1399(9), “[t]he consent of a victim is not a defense to a cause of action brought under this section.”

<sup>117</sup> The text of Nev. Rev. Stat. Ann. § 41.1399 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 166 during the 80th Session of the Nevada Legislature (effective June 5, 2019).

provision of NRS 200.463 to 200.468, inclusive, 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . or 18 U.S.C. Section 1589 [Forced labor], 1590 [Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor] or 1591 [Sex trafficking of children or by force, fraud, or coercion] to be found liable in an action brought under this section.”

Under Nev. Rev. Stat. Ann. § 41.1399(3), “[t]he court may award such injunctive relief as the court deems appropriate.” Furthermore, a victim who prevails in an action brought under Nev. Rev. Stat. Ann. § 41.1399, “may recover actual damages, compensatory damages, punitive damages or any other appropriate relief.” Nev. Rev. Stat. Ann. § 41.1399(4). In addition, if a victim recovers actual damages, the court may also award attorney's fees and costs or, when the defendant's act were willful and malicious, treble damages to the plaintiff. Nev. Rev. Stat. Ann. § 41.1399(4).

Minor victims, under the age of 16, who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney's fees and costs; protection of victim's identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:
  - (a) Promoted the film, photograph or other visual presentation;
  - (b) Possessed the film, photograph or other visual presentation; or
  - (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff's actual damages, which shall be deemed to be at least \$150,000, plus attorney's fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

*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.*

In Nevada, most felonies have a 3 year statute of limitations.<sup>118</sup> Nev. Rev. Stat. Ann. § 171.085(3) (Limitations for felonies). However, certain enumerated felonies, including sex trafficking, have a 4 year statute of limitations. Nev. Rev. Stat. Ann. § 171.085(1). Gross misdemeanors generally have a 2 year statute of limitations, and misdemeanors have a 1 year statute of limitations. Nev. Rev. Stat. Ann. § 171.090 (Limitations for gross and simple misdemeanors). If a sexual assault victim or victim of sex trafficking files a written report with a law enforcement officer during the statute of limitation period, then the statute of limitations is eliminated for that case, and an offender may be charged at any time. Nev. Rev. Stat. Ann. § 171.083(1) (No limitation for sexual assault or sex trafficking if written report filed with law enforcement officer during period of limitation; effect of disability on period of limitation). Similarly, if a kidnapping victim files a written report with a law enforcement officer, the statute of limitations is extended for 5 years. Nev. Rev. Stat. Ann. § 171.084(1) (Limitation for kidnapping or attempted murder extended if written report filed with law enforcement officer during period of limitation). The statute of limitations is also extended if the crime is “committed in a secret manner.” Nev. Rev. Stat. Ann. § 171.095(1) (Limitations for offenses committed in secret manner, offenses constituting sexual abuse or sex trafficking of child and offenses regarding personal identifying information). Pursuant to Nev. Rev. Stat. Ann. § 171.095(1)(b) (Limitations for offenses committed in secret manner and offenses constituting sexual abuse of child),

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<sup>118</sup> Nev. Rev. Stat. Ann. § 171.080 (No statute of limitation for murder or terrorism) only eliminates the statute of limitations for actions related to murder or terrorism.

An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100 or sex trafficking of a child as defined in NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], before the victim is:

- (1) Thirty-six years old if the victim discovers or reasonably should have discovered that he or she was a victim of the sexual abuse or sex trafficking by the date on which the victim reaches that age; or
- (2) Forty-three years old if the victim does not discover and reasonably should not have discovered that he or she was a victim of the sexual abuse or sex trafficking by the date on which the victim reaches 36 years of age.

For a civil action brought by victims of human trafficking under Nev. Rev. Stat. Ann. § 41.1399(5) (Action by victim of human trafficking; venue; damages and other relief; attorney’s fees and costs; statute of limitations; joinder of parties; limitation on defenses), the statute of limitations does not commence until:

- (a) The plaintiff discovers or reasonably should have discovered that he or she is a victim of human trafficking and that the defendant caused, was responsible for or profited from the human trafficking;
- (b) The plaintiff reaches 18 years of age; or
- (c) If the injury to the plaintiff results from two or more acts relating to the human trafficking, the final act in the series of acts has occurred, whichever is later.

Furthermore, the statute of limitations “is tolled for any period during which the plaintiff was under a disability” which is when “the plaintiff is insane, a person with an intellectual disability, mentally incompetent or in a medically comatose or vegetative state.” Nev. Rev. Stat. Ann. § 41.13991(6). Additionally, Nev. Rev. Stat. Ann. § 41.13991(7) provides,

[a] defendant in an action brought under this section is estopped from asserting that the action was not brought within the statute of limitations if the defendant, or any person acting on behalf of the defendant, has induced the plaintiff to delay bringing an action under this section by subjecting the plaintiff to duress, threats, intimidation, manipulation or fraud or any other conduct inducing the plaintiff to delay bringing an action under this section.

For civil actions, a plaintiff must generally bring within 3 years “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” Nev. Rev. Stat. Ann. § 11.190(3)(a) (Periods of limitation). Actions for injuries to a person must generally be brought within 2 years, except as provided in Nev. Rev. Stat. Ann. § 11.215 (Action for damages for injury arising from sexual abuse of minor; exception for actions involving injury arising from appearance of minor in pornography). Nev. Rev. Stat. Ann. § 11.190(4)(e). The statute of limitations will not begin running until the plaintiff reaches the age of 18. Nev. Rev. Stat. Ann. § 11.250(1) (Disabilities preventing running of statute). Pursuant to Nev. Rev. Stat. Ann. § 11.215(1), an action for injuries arising from the sexual abuse of a person under 18 “must be commenced within 20 years after the plaintiff: (a) Reaches 18 years of age; or (b) Discovers or reasonably should have discovered that his or her injury was caused by sexual abuse, whichever occurs later.” A claim under Nev. Rev. Stat. Ann. § 41.1396 (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses) must be brought “within 20 years after the occurrence of the following, whichever is later: (a) The court enters a verdict in a related criminal case; or (b) The victim reaches the age of 18 years.” Nev. Rev. Stat. Ann. § 11.215(2).

- 5.11.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 171.083 (No limitation for sexual assault or sex trafficking if written report filed with law enforcement officer during period of limitation; effect of disability on period of limitation) to allow prosecutions for CSEC and sex trafficking offenses to be commenced at any time, regardless of whether the victim filed a report with law enforcement during the statute of limitations period.



**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.*

Nevada requires that all Category I peace officers<sup>119</sup> complete a program designed to train them in detecting, investigating, and responding to the sexual abuse or sexual exploitation of minors. Nev. Rev. Stat. Ann. § 432B.610(1)(a). Additionally, an officer who is regularly assigned to investigate “cases of sexual abuse or sexual exploitation of children under the age of 18 years must be certified to carry out those duties by the Peace Officers’ Standards and Training Commission.” Nev. Rev. Stat. Ann. § 432B.620(1). This training must be completed annually and covers “a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.” Nev. Rev. Stat. Ann. § 432B.620(2). Additionally, pursuant to Nev. Rev. Stat. Ann. § 432B.620 (Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children; regulations), “[i]f a law enforcement agency does not have a peace officer who is certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to Nev. Rev. Stat. Ann. § 432B.610 [Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children; regulations], it may consult with a peace officer of another law enforcement agency who is so certified.” Nev. Rev. Stat. Ann. § 432B.620(3).

Further, Nev. Rev. Stat. Ann. § 289.510(1)(c)(2)(VI)<sup>120</sup> (Peace Officers’ Standards and Training Commission: Powers and duties; regulations) “require[s] that all peace officers annually complete not less than 12 hours of continuing education in courses that address . . . human trafficking . . . .”

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

Nevada case law requires both parties to consent to audiotaping over the telephone, but allows single-party consent to in-person conversations.<sup>121</sup> Pursuant to Nev. Rev. Stat. Ann. § 200.620(1) (Interception and

<sup>119</sup> For a complete list of Category I peace officers see Nev. Rev. Stat. Ann. § 432B.610(2).

<sup>120</sup> The text of Nev. Rev. Stat. Ann. § 289.510 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 478 during the 80th Session of the Nevada Legislature (effective October 1, 2019).

<sup>121</sup> In *Lane v. Allstate Ins. Co.*, 969 P.2d 938, 940 (Nev. 1998), the Supreme Court of Nevada held that, although the “plain language” of Nev. Rev. Stat. Ann. § 200.620 seemed to allow for single party consent, the stronger language of ““unless authorized to do so by one of the persons engaging in the conversation”” showed the legislature’s intent “that intrusion upon Nevadans’ privacy by nonconsensual recording of telephone conversations was a greater intrusion than the recording of conversations in person.” Additionally, in *Summer v. State*, 718 P.2d 676, 680 (Nev. 1986), the Supreme Court of Nevada held that the “body bugging” of a police informant was permissible under Nev. Rev. Stat. Ann. § 200.650 (Unauthorized, surreptitious intrusion of privacy by listening device prohibited), which

attempted interception of wire communication prohibited; exceptions), applicable to audiotaping in general, “it is unlawful for any person to intercept or attempt to intercept any wire communication unless: (a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and (b) An emergency situation exists and it is impractical to obtain a court order . . . .”<sup>122</sup>

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

Wiretapping may be authorized to investigate cases of domestic minor sex trafficking. Pursuant to Nev. Rev. Stat. Ann. § 179.460(1) (Cases in which interception of wire or oral communications may be authorized) an application to authorize “the interception of wire, electric or oral communications” can be made “for the investigation of the offense as to which the application is made, when the interception may provide evidence of the commission of murder, kidnapping, robbery, extortion, bribery, escape of an offender in the custody of the Department of Corrections, destruction of public property by explosives, a sexual offense against a child, sex trafficking . . . .” Pursuant to Nev. Rev. Stat. Ann. § 179.460(3),

As used in this section, “sexual offense against a child” includes any act upon a child constituting:

- (a) Incest pursuant to NRS 201.180;
- (b) Lewdness with a child pursuant to NRS 201.230;
- (c) Sado-masochistic abuse pursuant to NRS 201.262;
- (d) Sexual assault pursuant to NRS 200.366;
- (e) Statutory sexual seduction pursuant to NRS 200.368;
- (f) Open or gross lewdness pursuant to NRS 201.210; or
- (g) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

An emergency exception is allowed to audio recording when one party consents and “[a]n emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 [Definitions] to 179.515 [Interception of Wire or Oral Communication].” Nev. Rev. Stat. Ann. § 200.620(1)(b). After making the emergency interception, within 72 hours, the supreme court or district judge must ratify the interception, and the applicant for ratification must show that: “(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and (b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.” Nev. Rev. Stat. Ann. § 200.620(3). As a result, the emergency recording may only be made for cases authorized in non-emergency situations, and thus do not include domestic minor sex trafficking cases.

6.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 179.460(3) (Cases in which interception of wire or oral communications may be authorized) to include Nevada’s CSEC laws within the definition of a “sexual offense against a child.”

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states, “a person shall not intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording . . . any private conversation engaged in by the other persons, or disclose the existence, content, substance, purport, effect or meaning of any conversation so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation.”

<sup>122</sup> Nev. Rev. Stat. Ann. § 200.620(3) further states,

Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the Supreme Court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:

- (a) An emergency situation existed and it was impractical to obtain a court order before the interception; and
- (b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

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.*

Nev. Rev. Stat. Ann. § 201.354(2)<sup>123</sup> (Engaging in prostitution or solicitation for prostitution: Penalty; exception), a buyer-applicable CSEC law, expressly permits the use of law enforcement decoys, stating,

Any person who violates subsection 1 by soliciting for prostitution:

- (a) A peace officer who is posing as a child; or
  - (b) A person who is assisting a peace officer by posing as a child,
- is guilty of soliciting a child for prostitution.

Further, a decoy may be used under the non-commercial sex offense, Nev. Stat. Ann. § 201.560(1) (Definitions; exceptions; penalties), which provides,

a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with: . . . (b) Another person whom he or she believes to be a child less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.<sup>124</sup>

However, a defendant may still be able to assert a defense based on a law enforcement decoy posing as a minor to investigate other offenses, including the trafficking law, through reverse sting operations, which are the most likely situations in which a defendant would try to use such a defense.

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

Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties) allows law enforcement to utilize the internet or electronic communications to investigate domestic minor sex trafficking. Nev. Rev. Stat. Ann. § 201.560(4) makes it a crime for a person “through the use of a computer, system or network: (a) with the intent to engage in sexual conduct with the child, [or] person believed to be a child . . . to engage in sexual conduct.”<sup>125</sup> Through the inclusion of the term “believed to be a child,” the statute appears to permit law enforcement to pose as minors and investigate cases of domestic minor sex trafficking online.

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

Nevada imposes certain reporting requirements concerning missing and exploited children.<sup>126</sup> An “exploited child” is defined as “a person under the age of 18 years who has been: (a) Used in the production of

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<sup>123</sup> See *supra* note 13.

<sup>124</sup> See *supra* note 39.

<sup>125</sup> See *supra* note 39.

<sup>126</sup> Pursuant to Nev. Rev. Stat. Ann. § 432.157 (Office of Advocate for Missing or Exploited Children),

1. The Office of Advocate for Missing or Exploited Children is hereby created within the Office of the Attorney General. The Advocate for Missing or Exploited Children may be known as the Children's Advocate.
2. The Attorney General shall appoint the Children's Advocate. The Children's Advocate is in the unclassified service of the State.
3. The Children's Advocate:
  - (a) Must be an attorney licensed to practice law in this state;
  - (b) Shall advise and represent the Clearinghouse on all matters concerning missing or exploited children in this state; and
  - (c) Shall advocate the best interests of missing or exploited children before any public or private body.
4. The Children's Advocate may:
  - (a) Appear as an amicus curiae on behalf of missing or exploited children in any court in this state;

pornography in violation of the provisions of NRS 200.710; (b) Subjected to sexual exploitation as defined in NRS 432B.110 [“Sexual exploitation” defined];<sup>127</sup> or (c) Employed or exhibited in any injurious, immoral or dangerous business or occupation in violation of the provisions of NRS 609.210.” Nev. Rev. Stat. Ann. 432.150(3).

Pursuant to Nev. Rev. Stat. Ann. § 432.200(1) (Duties of law enforcement agency receiving report of missing child; request for and use of identifying information; notification that child is found or returned),

A law enforcement agency shall accept every report of a missing child which is submitted to the agency, including, but not limited to, a report made by telephone. Upon receipt of such a report, the agency shall immediately conduct a preliminary investigation and classify the cause of the disappearance of the child as “runaway,” “abducted by the parent of the child,” “abducted by a stranger” or “cause of disappearance unknown,” and shall:

(a) Transmit all available information about the child to the Clearinghouse within 36 hours after the report is received;<sup>128</sup>

(b) Immediately notify such persons and make such inquiries concerning the missing child as the agency deems necessary;

....

(d) Enter into the National Crime Information Center’s Missing Person File, as miscellaneous information, any person reasonably believed to have unlawfully abducted or detained the missing child, or aided or abetted the unlawful abduction or detention.

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(b) If requested, advise a political subdivision of this state concerning its duty to protect missing or exploited children;

(c) Recommend legislation concerning missing or exploited children; and

(d) Investigate and prosecute any alleged crime involving the exploitation of children, including, without limitation, sex trafficking in violation of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], a violation of subsection 1 of NRS 201.301 [Facilitating sex trafficking] . . .

5. Upon request by the Children's Advocate, a district attorney or local law enforcement agency in this state shall provide all information and assistance necessary to assist the Children's Advocate in carrying out the provisions of this section.

6. The Children's Advocate may apply for any available grants and accept gifts, grants, bequests, appropriations or donations to assist the Children's Advocate in carrying out his or her duties pursuant to this section. Any money received by the Children's Advocate must be deposited in the Special Account for the Support of the Office of Advocate for Missing or Exploited Children, which is hereby created in the State General Fund.

7. Interest and income earned on money in the Special Account must be credited to the Special Account.

8. Money in the Special Account may only be used for the support of the Office of Advocate for Missing or Exploited Children and its activities pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], subsection 1 of NRS 201.301 [Facilitating sex trafficking], . . . and 432.150 to 432.220, inclusive . . .

9. Money in the Special Account must remain in the Special Account and must not revert to the State General Fund at the end of any fiscal year.

The text of Nev. Rev. Stat. Ann. § 432.157 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bills 166 and 60 during the 80th Session of the Nevada Legislature (effective June 5, 2019 and July 1, 2019, respectively).

<sup>127</sup> Pursuant to Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined), “sexual exploitation” is defined as “forcing, allowing or encouraging a child: 1. To solicit for or engage in prostitution; 2. To view a pornographic film or literature; and 3. To engage in: (a) Filming, photographing or recording on videotape; or (b) Posing, modeling, depiction or a life performance before an audience, which involves the exhibition of a child’s genitals or any sexual conduct with a child as defined in NRS 200.700.”

<sup>128</sup> “A law enforcement agency, upon receiving and verifying a report of a missing child, shall immediately transmit the full contents of the report by the fastest means available to the Clearinghouse.” Nev. Rev. Stat. Ann. § 432.205.

If the child is located, the law enforcement agency must transmit this information to the national Crime Information Center and Clearinghouse. Nev. Rev. Stat. Ann. § 432.200(4).

Pursuant to Nev. Rev. Stat. Ann. § 432B.165 (Authority of agency which provides child welfare services and other entities to provide information to assist in locating a missing child; information not confidential), child welfare agencies must promptly report missing children who have been in agency custody. Nev. Rev. Stat. Ann. § 432B.165 states,

An agency which provides child welfare services that receives information concerning a child who has been placed in the custody of the agency who is missing, including, without limitation, a child who has run away or has been abducted, shall report the information to the appropriate law enforcement agency as soon as practicable, but not later than 24 hours after receiving such information, for investigation pursuant to NRS 432.200.

And, pursuant to Nev. Rev. Stat. Ann. § 432B.190(3) (Regulations to be adopted by Division of Child and Family Services.), the Division of Child and Family Services must adopt procedures for

- (a) Expeditiously locating any missing child who has been placed in the custody of an agency which provides child welfare services;
- (b) Determining the primary factors that contributed to a child who has been placed in the custody of an agency which provides child welfare services running away or otherwise being absent from foster care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements; and
- (c) Determining the experiences of a child who has been placed in the custody of an agency which provides child welfare services during any period the child was missing, including, without limitation, determining whether the child may be a victim of sexual abuse or sexual exploitation.

## APPENDIX A

- **Carson City:** Pursuant to Carson City, Nev., Mun. Code § 8.04.110<sup>129</sup> (Prostitution and related offenses),

It is unlawful, anywhere in Carson City, for any person:

1. To commit prostitution, or to offer to secure another for the purpose of prostitution, or for other lewd or indecent act or to induce, entice or procure a person who is in any thoroughfare or public or private place, to commit any such acts, or who, in any way, aids or abets or participates in the doing of any of the acts enumerated in this section;
2. To keep, set up, maintain, or operate, lease or rent, any place, structure, building or conveyance for the purpose of prostitution;
3. To occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for such purpose; or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution;
4. To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution; or to permit any person to remain there for such purpose;
5. To transport or direct any other person to any place within Carson City, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person;
6. To advertise or publicly solicit in Carson City the availability of transportation from Carson City to some other place for the express or obvious purpose of prostitution even if such activities are not prohibited in such other place.

A violation of this ordinance is punishable by imprisonment in the city jail for up to 6 months, a fine not to exceed \$1,000, or both. Carson City, Nev., Mun. Code § 8.04.130 (Penalties).

- **Churchill County:** Pursuant to Churchill Cnty., Nev., Code § 5.20.040<sup>130</sup> (Prostitution unlawful unless licensed),

A. It is unlawful for any person to keep, own or operate any house of prostitution within the county, except as provided in this chapter.

B. It is unlawful to practice prostitution,<sup>131</sup> to allow acts of prostitution or sex for hire services, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the county, except on a premises licensed under this chapter. “Out dates”<sup>132</sup> or “outcalls”<sup>133</sup> are prohibited. This chapter does not authorize operation of an escort service.

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<sup>129</sup> All Carson City, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Carson City, Nev., Mun. Code (Codified through Ord. No. 2010-15, passed December 16, 2010 (Supp. No. 41, 3-11)), *available at* <http://library.municode.com/index.aspx?clientID=16249&stateID=28&statename=Nevada>.

<sup>130</sup> All Churchill County, Nevada, Code provisions, unless otherwise noted, are taken from Churchill Cnty., Nev., Code (Current through bill 2011-B passed April 20, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=351](http://www.sterlingcodifiers.com/codebook/index.php?book_id=351).

<sup>131</sup> Churchill Cnty., Nev., Code § 5.20.010(B) (Applicability; definitions) defines “prostitution” as “[t]he performing of any of the following acts for hire by a prostitute with a patron, for a fee: engaging in sexual intercourse; oral-genital contact; or any touching of the sexual organs or any intimate part of the body of another person for the purpose of arousing or gratifying the sexual desire of either person. The term prostitution does not comprehend any sexually related act or activity defined as a crime pursuant to the Nevada Revised Statutes.”

<sup>132</sup> Churchill Cnty., Code § 5.20.010(B) defines “out date” as “[a]ny arrangement or arrangements whereby a prostitute and a patron meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

....

Pursuant to Churchill Cnty., Nev., Code § 5.20.200(D)(6) (Work permit registration required), brothels may not employ persons under 21 years of age.

A violation of Churchill Cnty., Nev., Code § 5.20.040 or Churchill Cnty., Nev., Code § 5.20.200 is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Churchill Cnty., Nev., Code § 5.20.060 (Violation; criminal penalty)

- **Clark County:** Under Clark Cnty., Nev., Code § 12.08.015<sup>134</sup> (Prostitution unlawful), “It is unlawful for any person to commit an act of prostitution.”<sup>135</sup> Pursuant to Clark Cnty., Nev., Code § 12.08.020 (Accosting and soliciting unlawful), “It is unlawful for any person to accost, solicit or invite another in any public place<sup>136</sup> or in or from any building or vehicle by word, gesture, publication or any other means to commit, offer, agree to afford an opportunity to commit an act of prostitution.” Clark Cnty., Nev., Code § 12.08.060 (Resorting unlawful) makes it illegal for a person to “resort to any public place for the purpose of inducing, enticing, soliciting for or procuring another to commit an act of prostitution.”

It is also unlawful under Clark Cnty., Nev., Code § 12.08.025 (Maintaining a place of prostitution unlawful) “for any person to own, lease, operate, maintain, reside in, visit or entice or attempt to entice another to reside in or visit any building or place with knowledge that acts of prostitution occurs [sic] therein.” Clark Cnty., Nev., Code § 12.08.050 (Allowing premises to be used for prostitution unlawful) makes it illegal for any person or business enterprise to knowingly lease or rent a building or portion of a building for use in an act of prostitution.

Under Clark Cnty., Nev., Code § 12.08.030 (Loitering for the purpose of soliciting unlawful),

It is unlawful for any person to remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute.

Clark Cnty., Nev., Code § 12.08.040 (Aiding and abetting unlawful) states,

It is unlawful for any person to knowingly aid or abet any act of prostitution or to:

- (a) Secure or offer to secure another for the purpose of committing an act of prostitution; or
  - (b) Knowingly transport a person into or within the county with the purpose to promote that person’s engaging in prostitution, or procuring or paying for transportation with that purpose;
- or

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<sup>133</sup> Churchill Cnty., Nev., Code § 5.20.010 (B) defines “outcall” as “[a]ny arrangement or arrangements whereby a prostitute and a patron agree to meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

<sup>134</sup> All Clark County, Nevada, Code provisions, unless otherwise noted, are taken from Clark Cnty, Nev., Code (Codified through Ordinance No. 3959, passed June 7, 2011 (Supplement No. 90, 6-11)), *available at* <http://library.municode.com/index.aspx?clientID=16214&stateID=28&statername=Nevada>.

<sup>135</sup> Clark Cnty., Nev., Code § 12.08.010(a) (Definitions) defines prostitution as “engaging in sexual intercourse, oral-genital contact, anal-genital contact, oral-anal contact, or sado-masochistic abuse as defined in NRS 201.262, or any touching of the sexual organs or female breast of a person for monetary consideration, whether by credit, cash or check except between persons who are legally married to each other.”

<sup>136</sup> Clark Cnty., Nev., Code § 12.08.010(e) defines public place as, “any place of business, public building, or other building open to the general public, street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.”

- (c) Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or knowingly permit another to remain there for any such purpose; or
- (d) Direct another to any place for the purpose of committing an act of prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Clark Cnty., Nev., Code § 12.08.090(a) (Penalties).

- **Las Vegas:** Las Vegas, Nevada is a city incorporated in Clark County, Nevada. Pursuant to Las Vegas, Nev., Mun. Code § 10.36.020<sup>137</sup> (Acts of prostitution or pandering),
  - (A) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
    - (1) Commit, engage in, institute, solicit, offer or agree to commit an act of prostitution;<sup>138</sup>
    - (2) Attempt to commit, engage in, or institute an act of prostitution; or
    - (3) Intentionally facilitate, allow, permit, encourage, procure, negotiate or provide a fee<sup>139</sup> for an act of prostitution.
  - (B) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
    - (1) Secure or offer to secure another person for the purpose of committing a violation of Subsection (A) of this Section;
    - (2) Knowingly transport, offer to transport, or seek transport for a person into or within the City for the purpose of committing a violation of Subsection (A) of this Section, or to procure or pay for transportation for that purpose;
    - (3) Knowingly receive, offer or agree to receive another into any motor vehicle, place or building for the purpose of committing a violation of Subsection (A) of this Section;
    - (4) Direct another to any motor vehicle or place for the purpose of committing a violation of Subsection (A) of this Section;
    - (5) Attempt to detect the presence or identity of a Police Officer, Peace Officer, or other law enforcement officer for the purpose of attempting to avoid or escape criminal liability for violating, or attempting to violate this Chapter, by:
      - (a) Exposing or touching or seeking to expose or touch an intimate body part of another or one's self, or asking, soliciting, encouraging or attempting to procure another to do the same; or
      - (b) Inquiring, in any manner, as to whether another person is a Peace Officer, Police Officer, or other law enforcement officer;
    - (6) Possess or acquire a prescription or non-prescription controlled substance for the purposes of facilitating a violation of this Chapter or a benefit therefrom, including acquiring or possessing such substance to:
      - (a) Complete a barter, trade or exchange;
      - (b) Enhance sexual performance or sexual gratification; or
      - (c) Incapacitate another so as to steal a thing of value from such other person; or

<sup>137</sup> All Las Vegas, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Las Vegas, Nev., Mun. Code (Codified through Ordinance No. 6149, passed May 4, 2011 (Supp. No. 7)), available at <http://library.municode.com/index.aspx?clientID=14787&stateID=28&statename=Nevada>.

<sup>138</sup> Las Vegas, Nev., Mun. Code § 10.36.010 (Definitions) defines prostitution as, “an act, by any person, for a fee, of engaging in an act of lewdness, sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of another person, clothed or unclothed, for the purpose of arousing or gratifying the sexual desire of either person or a third person.”

<sup>139</sup> Las Vegas, Nev., Mun. Code § 10.36.010 defines fee, regardless of whether it is “quantified”, as “anything of monetary value, service, consideration, trade, barter, exchange, accommodation, or other compensation, whether agreed to, received, offered, solicited, promised, suggested, or expected by any party to a transaction.”



- (7) Knowingly, in any other way, aid, abet or participate in an act of prostitution or pandering.
- (C) It is not a defense to a charge of offering or agreeing to an act of prostitution that there was an absence of an intent to institute, commit, engage in, procure, facilitate or carry through with an act of prostitution.

Under Las Vegas, Nev., Mun. Code § 10.36.030 (Loitering for prostitution), It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to do the following:

- (A) Remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020<sup>140</sup>; or
- (B) Remain or wander about in or upon private property after having been warned against trespassing on such property and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020.<sup>141</sup>

A first violation of Las Vegas, Nev., Mun. Code § 10.36.020 or Las Vegas, Nev., Mun. Code § 10.36.030 is a misdemeanor, punishable by up to six months imprisonment, a \$1000 fine, or both. Las Vegas, Nev., Mun. Code §§ 10.36.050(A) (Violation—penalty), 1.24.010 (Designated). A second offense of either ordinance committed within 3 years of the first offense of either ordinance is punishable by at least 30 days in jail and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(1). Any subsequent offense of either ordinance committed within 3 years of a second offense of either ordinance is punishable by imprisonment of at least 6 months and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(2).

- **Douglas County:** Pursuant to Douglas Cnty., Nev., Code, § 9.20.020<sup>142</sup> (Solicitation of prostitution—Unlawful),

- A. It is unlawful in Douglas County for any person to accost, solicit<sup>143</sup> or invite another in any public place, or in or from any building or vehicle by word, gesture or any other means to commit, offer, agree, or afford an opportunity to commit an act of prostitution.<sup>144</sup>
- B. It is unlawful for any person to resort to an [sic] public place for the purpose of inducing, enticing, procuring or soliciting another to commit an act of prostitution.

Under Douglas Cnty., Nev., Code, § 9.20.030 (Loitering for the purposes of prostitution—unlawful),

- A. It is unlawful for any person to loiter in or near any public place, quasi-public place or thoroughfare in a manner and under circumstances manifesting the purpose of inducing, enticing or soliciting another to commit an act of prostitution.
- B. Among the circumstances which may be considered in determining whether the purpose is manifested is that the person repeatedly beckons to, stops, attempts to stop or repeatedly engages

<sup>140</sup> Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of prostitution or pandering).

<sup>141</sup> Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of Prostitution or Pandering).

<sup>142</sup> All Douglas County, Nevada, Code provisions, unless otherwise indicated, are taken from Douglas Cnty., Nev., Code, available at [http://www.douglascountynv.gov/sites/County\\_Code/](http://www.douglascountynv.gov/sites/County_Code/) (last visited Aug. 31, 2011).

<sup>143</sup> Douglas Cnty., Nev., Code § 9.20.010(B) (Definitions) defines solicitation of an act of prostitution as, “asking, appealing, entreating, inviting, imploring, luring, pleading, tempting, or otherwise importuning another to commit an act of prostitution.”

<sup>144</sup> Douglas Cnty., Nev., Code § 9.20.010(A) defines prostitution as, “engaging in any sexual activity, including but not limited to, sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, or other infamous crime against nature, or other sexual activity or conduct of a deviate nature, for compensation of any kind.”

persons passing in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture, or any combination of this chapter.

C. No arrest shall be made for violation of this subsection unless the arresting party first affords the person an opportunity to explain his or her conduct. No one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Douglas Cnty., Nev., Code § 9.20.040 (Abetting prostitution—unlawful),

A. It is unlawful for any person to knowingly in any manner aid or abet any act of prostitution, which includes, but is not limited to:

1. Securing or offering to secure another for the purpose of committing an act of prostitution; or
2. Knowingly transport a person into or within the county with the purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
3. Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or to knowingly permit another to remain there for any such purpose; or
4. Direct another to any place in the county for the purpose of committing an act of prostitution.

B. It is unlawful for any person, partnership, firm, association or corporation to knowingly lease or rent any hotel, motel, building, house, apartment, office, room, premises or portion thereof to any person, partnership, firm, association or corporation to be used as, or for the purpose of using the premises for a place of prostitution or to knowingly suffer or permit the same to be used for prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Douglas Cnty., Nev., Code §§ 9.20.050 (Penalties), 1.08.010(A) (Designated).

- **Elko County:** Pursuant to Elko Cnty., Nev., Code § 7-1-6(A)<sup>145</sup> (Prostitution), prostitution is unlawful in unincorporated areas of the county. The “unincorporated area” of the county does not include, “those areas of Elko County that are incorporated pursuant to the laws of the state: the cities of Elko, Carlin and Wells.” Elko Cnty., Nev., Code § 7-1-6(F). A violation of this ordinance is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not exceeding \$500.00, or both. Elko Cnty., Nev., Code § 7-1-6(B).

- **Carlin, Elko County:** Carlin is a city incorporated in Elko County, Nevada. Pursuant to Carlin, Nev., City Code § 5-9-4<sup>146</sup> (Prostitution; unlawful under certain conditions),

(A) It is unlawful for any person, firm or corporation to keep or operate any house of prostitution, house of ill fame or bawdyhouse of any description within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].

(B) It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].

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<sup>145</sup> Unless otherwise stated, all Elko County, Nevada, Code provisions are taken from Elko Cnty., Nev., Code (codified through Ord. No. 06-2010, passed August 5, 2010), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=569](http://www.sterlingcodifiers.com/codebook/index.php?book_id=569).

<sup>146</sup> Unless otherwise stated, all Carlin, Nevada Code provisions are taken from Carlin., Nev., City Code (codified through Ord. No. 234, passed December 8, 2010), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=677](http://www.sterlingcodifiers.com/codebook/index.php?book_id=677).

No prostitute below the age of 21 can be given a work card. Carlin, Nev., City Code § 5-9-14(C)(8) (Prostitute Registration and work card).

A violation of Carlin, Nev., City Code § 5-9-4 or Carlin, Nev., City Code § 5-9-14 is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. Carlin, Nev., City Code § 1-4-1 (General Penalty).

- **Elko, Elko County:** Elko is a city incorporated in Elko County, Nevada. Pursuant to Elko, Nev., City Code § 4-9-3<sup>147</sup> (Unlawful under certain conditions),

A. It is unlawful for any person, firm or corporation to keep, own or operate any house of prostitution<sup>148</sup>, house of ill fame or bawdy house of any description within the city, except as herein provided in [Elko, Nev., Mun. Code, Title 4, Chapter 9, Prostitution].

B. It is unlawful for any owner or bartender/manager of a licensed brothel<sup>149</sup> to allow any person to practice prostitution or to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except within the premises of a licensed brothel and within the boundaries of the restricted commercial district as set forth in the city zoning code. There will be no “out dates.” That is, prostitutes shall not be hired from a brothel for the purpose of prostitution to accompany a customer outside the brothel from which the prostitute is employed. All soliciting of prostitution and acts of prostitution must take place inside the premises of a licensed brothel.

C. In the trial of any case arising under the provisions of subsection A or B of this section, evidence of general reputation shall be competent evidence as to the question of the ill fame of any house of prostitution and to the question of the ill fame of any person alleged to be practicing prostitution.

Pursuant to Elko, Nev., City Code § 4-9-13(D)(7) (Work permit registration requirements), no prostitute can be younger than 21 years of age.

A violation of Elko, Nev., City Code § 4-9-3 or Elko, Nev., City Code § 4-9-13 is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not exceeding \$1,000, or both. Elko, Nev., City Code § 4-9-20 (Criminal penalty).

- **West Wendover, Elko County:** West Wendover is a city incorporated in Elko County, Nevada. Pursuant to West Wendover, Nev., City Code § 4-2-7<sup>150</sup> (Prostitution),

. . . .  
B. Prostitution<sup>151</sup> Prohibited: It shall be unlawful for any person to engage in prostitution or solicitation within the city.

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<sup>147</sup> Unless otherwise stated, all Elko, Nevada Code provisions are taken from Elko, Nev., City Code (codified through Ord. No. 735, passed May 10, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=316](http://www.sterlingcodifiers.com/codebook/index.php?book_id=316)[http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=569](http://www.sterlingcodifiers.com/codebook/index.php?book_id=569).

<sup>148</sup> Elko, Nev., City Code § 4-9-4 (Definitions) defines a house of prostitution as, “any building in which sexual acts are provided or performed for a fee.”

<sup>149</sup> Elko, Nev., City Code § 4-9-4 defines a brothel as, “a duly licensed house of prostitution operated in accordance with the provisions of [Elko, Nev., Mun. Code Title 4 Ch. 9 Prostitution].”

<sup>150</sup> Unless otherwise stated, all West Wendover, Nevada Code provisions are taken from West Wendover, Nev., City Code (codified through Ord. No. 2011-05, passed July 5, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=393](http://www.sterlingcodifiers.com/codebook/index.php?book_id=393).

<sup>151</sup> West Wendover, Nev., City Code § 4-2-7(A) defines prostitution as “[t]he act or practice of offering the body for sexual relations for hire, by males or females.”

C. House Of Ill Fame Prohibited: It shall be unlawful for any person to establish, maintain or operate a house of ill fame or repute or any other business employing any male or female for the purpose of prostitution within the city.

....

Violation of this ordinance is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. West Wendover, Nev., City Code §§ 4-2-7(D), 1-4-1(A) (General Penalty).

- **Humboldt County:**

- **Winnemucca, Humboldt County:** Winnemucca is a city incorporated in Humboldt County, Nevada. Pursuant to Winnemucca, Nev., Mun. Code § 9.12.030<sup>152</sup> (Prostitution and pandering—exceptions),

A. Except as provided in subsection C of this section, it is unlawful for any person:

1. To aid, offer or agree to commit any lewd or indecent act or any act of prostitution;
2. To offer to secure or secure another for the purpose of committing any act of prostitution, fornication, assignation or any other lewd or indecent act with any other person
3. To be in or near any thoroughfare or public place for the purpose of inducing, enticing or procuring another to commit an act of lewdness, fornication or unlawful sexual intercourse;
4. Knowingly to receive, offer or agree to receive any person into any place or building for the purpose of assignation or of performing any act of lewdness or fornication or knowingly to permit any person to remain there for any such purposes;
5. In any way to aid, abet or participate in the doing of any of these acts prohibited by this subsection.

....

C. Notwithstanding the provisions of subsections A and B of this section, prostitution may be engaged in within any structure or building which is situated in Block 40 or Block 41 of the Riverside Addition to the city, provided that such premises has been issued a valid city brothel business license and each employee or independent contractor therein holds a valid city brothel work and valid health card, if applicable.

A violation of this ordinance is a misdemeanor punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Winnemucca, Nev., Mun. Code §§ 9.12.050 (Prostitution and Pandering—exceptions), 1.16.020 (Punishment for misdemeanors).

- **Lincoln County:** Pursuant to Lincoln Cnty., Nev., Code § 7-2-1<sup>153</sup> (Prostitution prohibited),

It shall be unlawful, as an act of prostitution, for any person within the county to engage in sexual intercourse for any money or thing of value with a person to whom he or she is not married, or to solicit a person to whom he or she is not married to have sexual intercourse for any money or thing of value with the person so soliciting.

Under Lincoln Cnty., Nev., Code, § 7-2-2 (Sexual intercourse for hire and lewd acts),

It shall be unlawful for any person to:

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<sup>152</sup> All Winnemucca, Nevada, Code provisions, unless otherwise noted, are taken from Winnemucca, Nev., Mun. Code (Codified through Ordinance 767, enacted October 6, 2009 (Supplement No. 6), available at <http://library.municode.com/index.aspx?clientID=16703&stateID=28&statename=Nevada>.

<sup>153</sup> All Lincoln County, Nevada, Code provisions, unless otherwise noted, are taken from Lincoln Cnty., Nev., Code (Codified through Ordinance 2010-03, enacted August 2, 2010), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=612](http://www.sterlingcodifiers.com/codebook/index.php?book_id=612).

- A. Receive money or other thing of value in exchange for another person committing a lewd act or an act of sexual intercourse.
- B. Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse.
- C. Commit or offer or agree to commit any lewd act.
- D. Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire.
- E. Induce, entice or procure, or attempt to induce, entice or procure another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire.
- F. Knowingly transport any person to any place for the purpose of committing a lewd act or any act of sexual intercourse for hire.
- G. Knowingly transport any person to any place for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse.
- H. Knowingly receive, or offer or agree to receive, any person into any place or building for the purpose of performing a lewd act, or an act of sexual intercourse for hire, or to knowingly permit any person to remain in any place or building for such purpose.
- I. Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections A through H of this section.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Lincoln Cnty., Nev., Code §§ 7-2-5 (Violation a misdemeanor), 1-4-1(B) (General penalty).

Lincoln Cnty., Nev., Code § 7-2-4 (Exception) creates an exception to these ordinances for activities “in a licensed house of prostitution pursuant to Nevada Revised Statutes section 201.354 et seq. (2003 Code).”<sup>154</sup> However, Lincoln County no longer licenses houses of prostitution.<sup>155</sup>

- **Lyon County:** Pursuant to Lyon Cnty. Nev., Code § 5.03.04<sup>156</sup> (Prostitution permitted; compliance with provisions),

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<sup>154</sup> Under Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: penalty; exception),

- 1. It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.  
.....
- 3. A prostitute who violates subsection 1 is guilty of a misdemeanor . . . .  
.....
- 6. A customer who violates this section by soliciting a child for prostitution:
  - (a) For a first offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130 [.] and by a fine of not more than \$5,000.
  - (b) For a second offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.
  - (c) For a third or subsequent offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$15,000. The court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.  
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See *supra* note 13.

<sup>155</sup> See *Kuban v. McGinsey*, 65 P.2d 623, 624 (Nev. 1980).

<sup>156</sup> All Lyon County, Nevada, Code provisions, unless otherwise noted, are taken from Lyon Cnty., Nev., Code (Codified through Ordinance 551, enacted May 19, 2011), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=536](http://www.sterlingcodifiers.com/codebook/index.php?book_id=536).

A. Prostitution Permitted: The operation of a house of prostitution within the County in accordance with the provisions of this Chapter does not constitute a public nuisance or an offense to public decency.

B. Compliance with Provisions:

1. Chapter Provisions:

a. It is unlawful for any person to keep or operate any house of prostitution, house of ill fame or bawdy house of any description within the County except as provided in this Chapter.

b. It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the County except as provided in this Chapter.

2. Zoning: No licenses shall be issued without the prospective licensee first obtaining proper zoning for the proposed operation.

Violation of this ordinance is a misdemeanor. Lyon Cnty. Nev., Code § 1.04.01 (General penalty). Pursuant to Lyon Cnty., Nev., Code § 1.04.01 (General Penalty), misdemeanors are “punishable as provided in the [Nevada Revised Statutes] for misdemeanor violations.” The Nevada Revised Statutes punish misdemeanors by either imprisonment for not more than 6 months, a fine not exceeding \$1,000, or both or a period of community service. Nev. Rev. Stat. 193.150 (Punishment of misdemeanors).

- **Nye County:** Pursuant to Nye Cnty., Nev., Code § 9.20.160<sup>157</sup> (General prohibitions),

It is unlawful:

A. For any person under the age of twenty one (21) years to enter or be a patron of any house of prostitution;

B. For a licensee of any licensed house of prostitution, or for any employee of such licensee, to compel, entice, encourage, permit or suffer any person under the age of twenty one (21) years to enter or be a patron of any licensed house of prostitution;

D. For any person to engage in prostitution<sup>158</sup> or solicitation<sup>159</sup> therefor, except in a house of prostitution<sup>160</sup> licensed under this chapter.

A violation of this ordinance is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Nye Cnty., Nev., Code §§ 9.20.250 (Violation; penalty), 1.01.180 (General penalty).

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<sup>157</sup> All Nye County, Nevada, Code provisions, unless otherwise noted, are taken from Nye Cnty., Nev., Code (Codified through Ordinance 434, enacted 2012), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=648](http://www.sterlingcodifiers.com/codebook/index.php?book_id=648)

<sup>158</sup> Nye Cnty., Nev., Code § 9.20.020 (Definitions) states prostitution occurs when a “male or female person who for a fee engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.”

<sup>159</sup> Nye Cnty., Nev., Code § 9.20.020 states that solicitation occurs when a person, “Induces, persuades, encourages, inveigles or compels a person to engage in ‘sexual conduct’ as defined in this section” or “Offers to engage in ‘sexual conduct’ as defined in this section.” Nye Cnty., Nev., Code § 9.20.020 defines sexual conduct as “Any of the acts defined in the definition of prostitution in this section.” The acts listed in the definition of prostitution are “sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.” Nye Cnty., Nev., Code § 9.20.020.

<sup>160</sup> Nye Cnty., Nev., Code § 9.20.020 defines a house of prostitution as “Any house, building, trailer (with or without wheels), vehicle, tent or other structure or “premises” as defined in this section wherein or whereon acts of prostitution are committed, or offered to be committed.”

- **Pershing County:** Under Pershing Cnty., Nev., Code § 9.08.020<sup>161</sup> (Prostitution), “Any person who engages in or accepts an offer to engage in any act of prostitution shall be guilty of prostitution under this chapter.”

Pursuant to Pershing Cnty., Nev., Code 9.08.030 (Solicitation),

- A. Any person who solicits, engages in, or accepts an offer to engage in any act of prostitution shall be guilty of solicitation under the provisions of this Chapter.
- B. Any person who solicits, engages in, or accepts an offer to engage in any lewd or dissolute conduct shall be guilty of solicitation under the provisions of this Chapter.
- C. Any person who directs any person to any place for the purpose of committing any lewd or indecent act, or any act of prostitution or fornication shall be guilty of solicitation under the provisions of this Chapter.
- D. Any peace officer while functioning in the scope of his duty shall be exempt from the provisions of this Section.

Pershing Cnty., Nev., Code § 9.08.010 (Pandering), makes it illegal for

- A. Any person who shall induce, persuade, encourage, inveigle, entice, force, or cause another person, including a spouse, to become a prostitute or an inmate of a house of prostitution shall be guilty of pandering.
- B. Any person who shall knowingly accept, receive, levy or appropriate any money or valuable thing without consideration from the proceeds of any person engaged in prostitution or detain any person for purposes of prostitution because of any debt, shall be guilty of pandering.
- C. Any person who shall knowingly transport any other person for the purpose of prostitution shall be guilty of pandering.
- D. Any person who is a pimp, panderer, or procurer or who commits any such acts or who lives in a house of prostitution shall be guilty of pandering.

Pursuant to Pershing Cnty., Nev., Code § 9.08.040 (Houses of ill fame),

- A. Any person who shall keep or rent any house, trailer, vehicle, boat or other place for the purpose of carrying on prostitution shall be guilty of keeping a house of ill fame under the provisions of this Chapter.
- B. In the trial of all cases arising under the provisions of subsection A of this Section, evidence of general reputation shall be deemed competent evidence as to the question of the ill fame of any house alleged to be so kept.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the County jail for up to 6 months, a fine not to exceed \$1,000, or both. Pershing Cnty., Nev., Code, §§ 9.080.050 (Criminal penalties), 1.08.010 (Violations; penalty).

- **Washoe County:** Pursuant to Washoe Cnty., Nev., Code, § 50.238<sup>162</sup> (Unlawful acts),

It is unlawful in any unincorporated area of the county for any person to:

- 1. Commit prostitution, or to offer to secure another for the purpose of prostitution or for any other lewd or indecent act, or to induce, entice or procure a person who is in any thoroughfare or public or private place to commit any such acts, or who in any way aids or abets or

<sup>161</sup> All Pershing County, Nevada, Code provisions, unless otherwise noted, are taken from Pershing Cnty., Nev., Code (Codified through Ordinance 279 enacted February 3, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=640](http://www.sterlingcodifiers.com/codebook/index.php?book_id=640).

<sup>162</sup> All Washoe County, Nevada, Code provisions, unless otherwise noted, are taken from Washoe Cnty., Nev., Code *available at* <http://cityofsparks.us/municode/index> (last visited Aug. 31, 2011).

participates in the doing of any of the acts enumerated in sections 50.238 to 50.242<sup>163</sup>, inclusive.

2. Keep, set up, maintain or operate, lease or rent any place, structure, building or conveyance for the purpose of prostitution.

3. Occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for, such purpose, or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution.

4. Receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, or to permit any person to remain there for such purpose.

5. Transport or direct any other person to any place within the county, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person.

A violation is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine between \$100 and \$1,000, or both. Washoe Cnty., Nev., Code § 50.242 (Penalty).

- **Sparks, Washoe County:** Sparks is a city incorporated in Washoe County, Nevada. Pursuant to Sparks, Nev., Mun. Code § 9.24.030<sup>164</sup> (Prostitution—solicitation),

A. It is unlawful for any person to loiter in or near any public place or thoroughfare in a manner and under circumstances manifesting the purpose of offering or soliciting to commit an act of prostitution<sup>165</sup>, or offering to procure another to commit an act of prostitution.

B. Among the circumstances which may be considered in determining whether such purpose is manifested are that such person repeatedly beckons to, stops, attempts to stop or engages persons passing by in conversation, repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture.

C. No arrest shall be made for a violation of this section unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Sparks, Nev., Mun. Code § 9.24.020 (Prostitution), “It is unlawful for any person in the city to commit, offer to commit, or agree to commit an act of prostitution. This section does not apply to the customer of a prostitute.”

A violation of this ordinance is a misdemeanor, punishable by up to 6 months imprisonment, a \$1,000 fine, or both. Sparks, Nev., Mun. Code §§ 9.75.010 (Violation—penalty), 1.12.010 (Violation—penalty).

- **White Pine County:** Pursuant to White Pine Cnty., Nev., Code § 10.36.010<sup>166</sup> (Prohibited),

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<sup>163</sup> Washoe Cnty., Nev., Code § 50.240 (Evidence) and Washoe Cnty., Nev., Code § 50.242 (Penalty) do not contain any criminal violations.

<sup>164</sup> All Sparks, Nevada, Code provisions, unless otherwise noted, are taken from Sparks, Nev., Mun. Code, *available at* <http://cityofsparks.us/municode/index> (last visited Sep. 8, 2011).

<sup>165</sup> Sparks, Nev., Mun. Code § 9.24.010 defines prostitution as, “engaging in sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, an infamous crime against nature, or other sexual activity for compensation of any kind.”

<sup>166</sup> All White Pine County, Nevada, Code provisions, unless otherwise noted, are taken from White Pine Cnty., Nev., Code (Codified through Ordinance 437 enacted February 24, 2010), *available at* <http://www.sterlingcodifiers.com/NV/White%20Pine%20County/index.htm>.



It is unlawful, as an act of prostitution, for any person, within the unincorporated areas of the county of White Pine, state of Nevada, to engage in sexual intercourse, for any money or thing of value, with a person to whom he or she is not married, or to solicit a person, to whom he or she is not married, to have sexual intercourse, for any money or thing of value, with the person so soliciting.

Under White Pine Cnty., Nev., Code § 10.36.020 (Sexual intercourse for hire and lewd acts prohibited),

In the unincorporated areas of the county of White Pine, state of Nevada, it is unlawful for any person to:

- (1) Receive money or other thing of value in exchange for another person committing an act of sexual intercourse or an act of moral perversion;
- (2) Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse;
- (3) Commit or offer or agree to commit any act of moral perversion;
- (4) Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (5) Induce, entice or procure, or attempt to induce, entice or procure, another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (6) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of committing a lewd act or an act of sexual intercourse for hire or moral perversion;
- (7) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse;
- (8) Knowingly receive, or offer to agree to receive, any person into any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of performing a lewd act, or an act of sexual intercourse for hire or of moral perversion, or to knowingly permit any person to remain in any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for any such purpose;
- (9) Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections (1) through (8) above.

White Pine Cnty., Nev., Code § 10.36.030 (Operation of a house of prostitution prohibited) makes it illegal for

a person in the unincorporated areas of the county of White Pine, state of Nevada, to keep, set up, maintain, operate, lease or rent any person or place, structure, building or conveyance for the purpose of having therein sexual intercourse for any money or thing of value between persons not married to each other, knowing that said persons are not married to each other.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. White Pine Cnty., Nev., Code §§ 10.36.040 (Penalty), 1.01.140 (Violations—penalty).

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