

2019 ANALYSIS AND RECOMMENDATIONS

OHIO

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) distinguishes between sex trafficking of adults and minors under 16 years of age by eliminating the requirement to prove force, fraud or coercion when the victim is a minor under 16. However, proof of force, fraud or coercion is required to establish a sex trafficking offense against a minor victim aged 16 or 17, unless the defendant was in a position of authority or trust to the minor victim, as provided in Ohio Rev. Code Ann. § 2907.03 (Sexual battery).² Ohio Rev. Code Ann. § 2905.32(A) states,

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

² Ohio Rev. Code Ann. § 2907.03(A) (Sexual battery) states in part,

No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

.....

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division

No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if any of the following applies:

- (1) The offender knows that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.³
- (2) The other person is less than sixteen years of age or is a person with a developmental disability whom the offender knows or has reasonable cause to believe is a person with a developmental disability, and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any of the following purposes:
 - (a) To engage in sexual activity for hire⁴;
 - (b) To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;

(D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

³ Ohio Rev. Code Ann. § 2905.31(B) (Involuntary servitude) states, “‘Material that is obscene, sexually oriented, or nudity oriented’ and ‘performance that is obscene, sexually oriented, or nudity oriented’ have the same meanings as in section 2929.01 [Definitions] of the Revised Code.” Ohio Rev. Code Ann. § 2929.01(CCC) (Penalties and sentencing general definitions) defines “material that is obscene, sexually oriented, or nudity oriented” as “any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.” Ohio Rev. Code Ann. § 2929.01(DDD) defines “performance that is obscene, sexually oriented, or nudity oriented” as “any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.”

⁴ “Sexual activity for hire,” “performance for hire,” and “model or participant for hire” are defined under Ohio Rev. Code Ann. § 2905.32 (F)(2) (Trafficking in persons) as

an implicit or explicit agreement to provide sexual activity, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material, whichever is applicable, in exchange for anything of value paid to any of the following:

- (a) The person engaging in such sexual activity, performance, or modeling participation;
- (b) Any person who recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains, or attempts to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the person described in division (F)(2)(a) of this section;
- (c) Any person associated with a person described in division (F)(2)(a) or (b) of this section.

(c) To be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.

(3) The other person is sixteen or seventeen years of age, either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any purpose described in divisions (A)(2)(a) to (c) of this section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.3⁵ of the Revised Code apply with respect to the offender and the other person.

Ohio Rev. Code Ann. § 2905.32(C) further provides, "In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section."

A violation of Ohio Rev. Code Ann. § 2905.32(A) committed prior to March 22, 2019 is punishable as a first degree felony,⁶ for which "the court shall sentence the offender to a definite prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years," and a possible fine up to \$20,000.⁷ Ohio Rev. Code Ann. §§ 2905.32(E),⁸

⁵ See *supra* note 2.

⁶ Pursuant to Ohio Rev. Code Ann. § 2929.13(A) (Guidance by degree of felony; monitoring of sexually oriented offenders by global positioning device), unless the criminal provision specifies that a prison term is presumptive or mandatory, the judge has discretion to sentence a felony offender according to the terms of Ohio Rev. Code Ann. § 2929.14 (Basic prison terms), § 2929.15 (Community control sanctions), § 2929.16 (Residential Sanctions), § 2929.17 (Nonresidential sanctions), or § 2929.18 (Financial sanctions; restitution; reimbursements) with the minimum sentence necessary to accomplish the purposes of rehabilitating the criminal and protecting the community from future crime. If the criminal provision specifies that imprisonment is mandatory, then the court must "impose any financial sanction pursuant to section 2929.18 of the Revised Code that is required for the offense and may impose any other financial sanction pursuant to that section" Ohio Rev. Code Ann. § 2929.13(A). If the statute specifies that there is a presumption of imprisonment then "it is presumed that a prison term is necessary in order to comply with the purposes and principles of" Ohio Rev. Code Ann. § 2929.11 (Purposes of felony sentencing; discrimination prohibited), but the court may depart from the presumption and community control sanctions if it evaluates the factors outlined in § 2929.12 (Seriousness and recidivism factors) and finds that community control sanctions would adequately punish the offender, protect the public, and maintain the seriousness of the offense. Ohio Rev. Code Ann. § 2929.13(D). In the absence of a mandatory term of imprisonment and when the court departs from the presumption of imprisonment, the judge may order community control sanctions like community service, house arrest, mediation between offender and victim, probation, curfew, time in a halfway house, or up to six months in a community-based correctional facility. Ohio Rev. Code Ann. §§ 2929.15(A), 2929.16(A)(1), (4), 2929.17(B), (C), (E), (I), (L). Ohio Rev. Code Ann. § 2929.12 provides the judge several factors to consider in determining whether it is appropriate to issue a community control sanction or a term of imprisonment. This report will explicitly note when imprisonment is presumptive or mandatory.

⁷ When an offender is an organization rather than a person, different fines apply to felonies and misdemeanors of various degrees under Ohio Rev. Code Ann. § 2929.31 (Organizational penalties). Additionally, Ohio Rev. Code Ann. § 2929.32(A)(1) (Additional fine for certain offenders; collection of fines; crime victims recovery fund) authorizes the court to order an offender to pay a fine up to \$1,000,000 if any of the following applies to the offense and the offender:

(a) There are three or more victims, as defined in section 2969.11 of the Revised Code, of the offense for which the offender is being sentenced.

(b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of the other offenses, there is a total of three or more victims, as defined in section 2969.11 of the Revised Code.

(c) The offense for which the offender is being sentenced is aggravated murder, murder, or a felony of the first degree that, if it had been committed prior to July 1, 1996, would have been an aggravated felony of the first degree.

2929.13(A), 2929.18(A)(3)(a).⁹ A violation of Ohio Rev. Code Ann. § 2905.32(A) committed on or after March 22, 2019 is punishable as a first degree felony, for which “the court shall sentence the offender to an indefinite prison term pursuant to [Ohio Rev. Code § 2929.14(A)(1)(a)], with a minimum term¹⁰ under that sentence of ten, eleven, twelve, thirteen, fourteen, or fifteen years,”¹¹ and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.13(A), 2929.18(A)(3)(a).¹²

⁸ The text of Ohio Rev. Code Ann. § 2905.32 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

⁹ If the crime is a “sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code,” the court may impose an additional fine of fifty to \$500.

¹⁰ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term, stating,

(B) When an offender is sentenced to a non-life felony indefinite prison term, there shall be a presumption that the person shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.

(C) The presumption established under division (B) of this section is a rebuttable presumption that the department of rehabilitation and correction may rebut as provided in this division. Unless the department rebuts the presumption, the offender shall be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier

Under Ohio Rev. Code Ann. § 2967.271(C), the presumption can only be rebutted if, during incarceration: (1) the offender committed institutional rule infractions that threatened the security or safety of others, or violated the law, and his or her behavior demonstrates a continued threat to society, (2) the offender was placed in extended restrictive housing during the previous year, or (3) the offender is currently classified as a security level 3–5 or at a higher security level.

If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). “The provisions of this division regarding the establishment of a rebuttable presumption, the department’s rebuttal of the presumption, and the department’s maintenance of an offender’s incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender’s incarceration.” Ohio Rev. Code Ann. § 2967.271(D)(2). However, “if the offender has not been released . . . prior to the expiration of the offender's maximum prison term imposed as part of the offender's non-life felony indefinite prison term, the offender shall be released upon the expiration of that maximum term.” Ohio Rev. Code Ann. § 2967.271(D)(2).

The text of Ohio Rev. Code Ann. § 2967.271 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

¹¹ Pursuant to Ohio Rev. Code Ann. § 2929.144(B), (C) (Determination of maximum prison term for qualifying felonies of the first or second degree),

(B)The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall determine the maximum prison term that is part of the sentence in accordance with the following:

(1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term shall be equal to the minimum term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code plus fifty per cent of that term.

(2) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served

- 1.1.1 Recommendation: Amend Ohio Rev. Code § 2905.32 (Trafficking in persons) to eliminate the requirement to either prove that the minor “was compelled to engage in sexual activity” or the existence of special circumstances under § 2907.03 (Sexual battery) when the minor victim is 16 or 17 years of age.

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 Ohio:

1. Ohio Rev. Code Ann. § 2907.21(A) (Compelling prostitution) states,

No person shall knowingly do any of the following:

- (1) Compel¹³ another to engage in sexual activity for hire;

consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced.

(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term shall be equal to the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus fifty per cent of the longest minimum term for the most serious qualifying felony being sentenced.

....

(C) The court imposing a prison term on an offender pursuant to division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree shall sentence the offender, as part of the sentence, to the maximum prison term determined under division (B) of this section. The court shall impose this maximum term at sentencing as part of the sentence it imposes under section 2929.14 of the Revised Code, and shall state the minimum term it imposes under division (A)(1)(a) or (2)(a) of that section, and this maximum term, in the sentencing entry.

The text of Ohio Rev. Code Ann. § 2929.144 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

¹² Under Ohio Rev. Code Ann. § 2905.32(D), “if an offender is convicted of or pleads guilty to a violation of [2905.32] and also . . . is convicted of or pleads guilty to any other . . . violation of Chapter 2907 of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.” Pursuant to Ohio Rev. Code Ann. § 2941.25(A) (Allied offenses of similar import - multiple counts), “Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.” By contrast, “[w]here the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.” Ohio Rev. Code Ann. § 2941.25(B). Consequently, with the exception of Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), an offender convicted under Ohio Rev. Code Ann. § 2905.32 for sex trafficking a minor could not be convicted under the commercial sexual exploitation of children (CSEC) offenses discussed below, including Ohio Rev. Code Ann. § 2907.21(A) (Compelling prostitution), § 2907.22(A) (Promoting prostitution), § 2907.23 (Procuring), § 2907.07(B)(2) (Importuning) where the same conduct and victim are involved.

¹³ Ohio Rev. Code Ann. § 2907.21(B) states,

For a prosecution under division (A)(1) of this section, the element “compel” does not require that the compulsion be openly displayed or physically exerted. The element “compel” has been established if the state proves that the victim’s will was overcome by force, fear, duress, or intimidation.

- (2) Induce, procure, encourage, solicit, request, or otherwise facilitate either of the following:
 - (a) A minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor;
 - (b) A person the offender believes to be a minor to engage in sexual activity for hire, whether or not the person is a minor.
- (3) (a) Pay or agree to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;
 - (b) Pay or agree to pay a person the offender believes to be a minor, either directly or through the person's agent, so that the person will engage in sexual activity, whether or not the person is a minor.
- (4) (a) Pay a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity pursuant to a prior agreement, whether or not the offender knows the age of the minor;
 - (b) Pay a person the offender believes to be a minor, either directly or through the person's agent, for the person having engaged in sexual activity pursuant to a prior agreement, whether or not the person is a minor.
- (5) (a) Allow a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the minor;
 - (b) Allow a person the offender believes to be a minor to engage in sexual activity for hire if the person allowing the person to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the person the offender believes to be a minor, whether or not the person is a minor.

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months¹⁴ and a possible fine up to \$10,000; if the crime is a “sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code,” the court may impose an additional fine of \$50–\$500. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b),¹⁵ 2929.18(A)(3)(c). If the victim is 16–17, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed prior to March 22, 2019 is punishable as a second degree felony by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2)(b), 2929.18(A)(3)(b). If the victim is 16–17, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁶ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b). If the victim is under 16, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed prior to March 22, 2019 is punishable as a first degree felony by imprisonment for a definite term of 3–11 years¹⁷ and a possible fine up to \$20,000. Ohio Rev.

¹⁴ Ohio Rev. Code Ann. § 2929.14(A)(3)(b) states, “the prison term shall be a definite term of nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.”

¹⁵ The text of Ohio Rev. Code Ann. § 2929.14 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

¹⁶ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender's behavior during incarceration or the offender's security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

¹⁷ Ohio Rev. Code Ann. § 2929.14(A)(1) states,

Code Ann. §§ 2907.21(C), 2929.14(A)(1)(b), 2929.18(A)(3)(a). If the victim is under 16, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed on or after March 22, 2019 is punishable as a first degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁸ of 3–11 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(1)(a), 2929.18(A)(3)(a).

If an offender convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,”¹⁹ however, enhanced penalties may apply under Ohio Rev. Code Ann. §

(a) For a felony of the first degree committed on or after [March 22, 2019], the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.

(b) For a felony of the first degree committed prior to [March 22, 2019], the prison term shall be a definite term of three, four, five, six, seven, eight, nine, ten, or eleven years.

¹⁸ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

¹⁹ As used in Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms), Ohio Rev. Code Ann. § 2929.01(AAA) (Definitions) defines “human trafficking” as:

means a scheme or plan to which all of the following apply:

(1) Its object is one or more of the following:

(a) To subject a victim or victims to involuntary servitude, as defined in section 2905.31 [Involuntary servitude] of the Revised Code, to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a person with a developmental disability, or victims who are less than sixteen years of age or are persons with development disabilities, for any purpose listed in divisions (A)(2)(a) of section 2905.32 of the Revised Code;

(c) To facilitate, encourage, or recruit a victim who is sixteen or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purpose listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code, if the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the person engaging in the conduct and the victim or victims.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

2941.1422 (Human trafficking specification)²⁰ and § 2929.14(B)(7) (Basic prison terms).²¹ Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c). If the victim is 16–17 years old, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed prior to March 22, 2019 is punishable as a second degree felony by mandatory imprisonment for a definite term of 3–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2)(b), (B)(7)(a)(ii), 2929.18(A)(3)(b). If the victim is 16–17 years old, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite term with a minimum term²² of 3–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b). If the victim is under 16 years old, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed prior to March 22, 2019 is punishable as a first degree felony by mandatory imprisonment for a definite term of 5–11 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(B)(7)(a)(i), 2929.18(A)(3)(a). If the victim

²⁰ Ohio Rev. Code Ann. § 2941.1422 provides,

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 [Basic prison terms] of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking

²¹ Ohio Rev. Code Ann. § 2929.14(B)(7)(a) states,

If an offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance] involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

- (i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than eleven years, except that if the offense is a felony of the first degree committed on or after [March 22, 2019], the court shall impose as the minimum prison term a mandatory term of not less than five years and not greater than eleven years;
- (ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A)(2)(b) or (3) of this section, except that if the offense is a felony of the second degree committed on or after [March 22, 2019], the court shall impose as the minimum prison term a mandatory term of not less than three years and not greater than eight years;
- (iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

²² Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

is under 16 years old, a violation of Ohio Rev. Code Ann. § 2907.21(A)(1) committed on or after March 22, 2019 is punishable as a first degree felony, for which the court shall impose an indefinite term with a minimum term²³ of 5–11 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(B)(7)(a)(i), 2929.18(A)(3)(a).

2. Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution) states,

No person shall knowingly:

- (1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel or any other enterprise a purpose of which is to facilitate engagement in sexual activity for hire;
- (2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;
- (3) Transport another, or cause another to be transported in order to facilitate the other person's engaging in sexual activity for hire;
- (4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

Ohio Rev. Code Ann. § 2907.22(B)²⁴ imposes enhanced penalties when the victim of the offense is a commercially sexually exploited child. In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). Where an offender convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties may apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

3. Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) states,

No person shall do any of the following to a child under eighteen years of age . . .

. . . .

- (5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

²³ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

²⁴ Ohio Rev. Code Ann. § 2907.22(B) states, in part,

Whoever violates this section is guilty of promoting prostitution. Except as otherwise provided in this division, promoting prostitution is a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the third degree

A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed prior to March 22, 2019 is punishable as a second degree felony punishable by imprisonment for a definite term of 2–8 years²⁵ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(b), 2929.18(A)(3)(b). A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term²⁶ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

4. Ohio Rev. Code Ann. § 2907.23 (Procuring) states,

- (A) No person, knowingly and for gain, shall do either of the following:
- (1) Entice or solicit another to patronize a prostitute or brothel;
 - (2) Procure a prostitute for another to patronize, or take or direct another at the other's request to any place for the purpose of patronizing a prostitute.
- (B) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.
- (C) Whoever violates this section is guilty of procuring. Except as otherwise provided in this division, procuring is a misdemeanor of the first degree. If the prostitute who is procured, patronized, or otherwise involved in a violation of division (A)(2) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates division (A)(2) of this section knows the prostitute's age, or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates division (B) of this section knows the prostitute's age, procuring is a felony of the fourth degree. If the prostitute who is procured, patronized, or otherwise involved in violation of division (A)(2) of this section is sixteen or seventeen years of age at the time of the violation or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is sixteen or seventeen years of age at the time of the violation, procuring is a felony of the fifth degree.

A first degree misdemeanor is punishable by imprisonment for up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2929.24(A)(1), 2929.28(A)(2)(a)(i). A fourth degree felony is punishable by imprisonment for a definite term of 6–18 months²⁷ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2929.14(A)(4), 2929.18(A)(3)(d). A fifth degree felony is punishable by imprisonment for a

²⁵ Ohio Rev. Stat. Ann. § 2929.14(A)(2) states,

- (a) For a felony of the second degree committed on or after [March 22, 2019], the prison term shall be an indefinite prison term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.
- (b) For a felony of the second degree committed prior to [March 22, 2019], the prison term shall be a definite term of two, three, four, five, six, seven, or eight years.

²⁶ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender's behavior during incarceration or the offender's security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, "the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender's maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

²⁷ Ohio Rev. Code Ann. § 2929.14(A)(4) states, "the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months."

definite term of 6–12 months²⁸ with “a presumption that a prison term shall be imposed” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e).

5. Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) states,

No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.07(B) is punishable as a fifth degree felony by imprisonment for a definite term of 6–12 months²⁹ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for a definite term of 6–18 months³⁰ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

6. Ohio Rev. Code Ann. § 2907.24(A) (Soliciting; after positive HIV test; driver’s license suspension) states,

....
(2) No person shall solicit another to engage with such other person in sexual activity for hire³¹ if the other person is sixteen or seventeen years of age and the offender knows that the other person is sixteen or seventeen years of age or is in reckless disregard.

(3) No person shall solicit another to engage with such other person in sexual activity for hire if either of the following applies:

(a) The other person is less than sixteen years of age, whether or not the offender knows the age of the other person.

....

If the victim is 16–17 years old, a violation of Ohio Rev. Code Ann. § 2907.24(A)(2) is punishable as a felony of the fifth degree by imprisonment for a definite term of 6–12 months³² with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the victim is under 16 years old, a violation of Ohio Rev. Code Ann. § 2907.24(A)(3) is punishable as a felony of the third degree by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

The following laws may be applicable to sexual exploitation of children although they do not specify commercial exchanges:

²⁸ Ohio Rev. Code Ann. § 2929.14(A)(5) states, “the prison term shall be a definite term of six, seven, eight, nine, ten, eleven, or twelve months.”

²⁹ See *supra* note 28.

³⁰ See *supra* note 27.

³¹ “Sexual activity for hire” is defined under Ohio Rev. Code Ann. § 2907.24(E)(2) (Soliciting; after positive HIV test; driver’s license suspension) as

An implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.

³² See *supra* note 28.

1. Ohio Rev. Code Ann. § 2907.07(A)–(D) (Importuning) states,

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) (1) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct³³ with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

....

(C) No person shall solicit another by means of a telecommunications device,³⁴ as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

A first conviction under Ohio Rev. Code Ann. § 2907.07(A), (C) carries a presumption in favor of a prison term and is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(A), (C) committed prior to March 22, 2019 is punishable as a second degree felony by mandatory imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2),³⁵ 2929.14(A)(2)(b), 2929.18(A)(3)(b). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(A), (C) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term

³³ Ohio Rev. Code Ann. § 2907.01(A) defines “sexual conduct” as

vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

³⁴ Ohio Rev. Code Ann. § 2913.01(Y) (Definitions) defines a “telecommunications device” as “any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.”

³⁵ The text of Ohio Rev. Code Ann. § 2907.07 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

with a minimum term³⁶ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

A first conviction under Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fifth degree felony by imprisonment for a definite term of 6–12 months³⁷ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for a definite term of 6–18 months³⁸ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

2. Ohio Rev. Code Ann. § 2907.02(A)(1)(b) (Rape) states,

No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

....

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) is a first degree felony punishable by mandatory imprisonment for 10 years to life and a possible fine up to \$20,000, unless the victim was under 10, in which the minimum increases to 15 years. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a), 2971.03(B)(1)(a)–(b). If the offender uses force, has a previous conviction, or causes harm to the victim the minimum increases to 25 years. Ohio Rev. Code Ann. § 2971.03(B)(1)(c). However, under Ohio Rev. Code Ann. § 2907.02(B),

If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division.

Additionally, if the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) or a similar offense in another jurisdiction, the victim is under 10, or the offender causes serious harm, a violation of Ohio Rev. Code Ann. § 2907.02(A)(1)(b) may be punishable as a first degree felony by life imprisonment without parole and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a). Other penalties are applicable to sexually violent predators pursuant to Ohio Rev. Code Ann. § 2971.03(A).

³⁶ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

³⁷ *See supra* note 28.

³⁸ *See supra* note 27.

3. Ohio Rev. Code Ann. § 2907.04(A) (Unlawful sexual conduct with a minor) states,

No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

A first conviction under Ohio Rev. Code Ann. § 2907.04(A) generally is punishable as a fourth degree felony by imprisonment for a definite term of 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. § 2907.04(B)(1), 2929.14(A)(4), 2929.18(A)(3)(d). If the offender is at least 10 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a third degree felony by imprisonment for a definite term of 12–60 months³⁹ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.04(B)(3), 2929.14(A)(3)(a), 2929.18(A)(3)(c). However, if the offender is less than 4 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a first degree misdemeanor by imprisonment for up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.04(B)(2), 2929.24(A)(1), 2929.28(A)(2)(a)(i). If the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02, § 2907.04, or § 2907.03, a violation of Ohio Rev. Code Ann. § 2907.04 committed prior to March 22, 2019 is punishable as a second degree felony by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.04(B)(4), 2929.14(A)(2)(b), 2929.18(A)(3)(b). If the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02, § 2907.04, or § 2907.03, a violation of Ohio Rev. Code Ann. § 2907.04 committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term⁴⁰ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.04(B)(4), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

4. Ohio Rev. Code Ann. § 2907.05(A)(4), (B) (Gross sexual imposition) states,

(A) No person shall have sexual contact⁴¹ with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

....

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

....

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A conviction under Ohio Rev. Code Ann. § 2907.05(A)(4) or (B) is punishable as a third degree felony with “a presumption that a prison term shall be imposed for the offense” by imprisonment for a definite term of

³⁹ Ohio Rev. Code Ann. § 2929.14(A)(3)(a) states, “the prison term shall be a definite term of twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.”

⁴⁰ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

⁴¹ Ohio Rev. Code Ann. § 2907.01(B) defines “sexual contact” as “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”

12–60 months and a possible fine up to \$10,000.⁴² Ohio Rev. Code Ann. §§ 2907.05(C)(2), 2929.14(A)(3)(a), 2929.18(A)(3)(c).

5. Ohio Rev. Code Ann. § 2907.06(A)(4) (Sexual imposition) states,

No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

....

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

A first conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a third degree misdemeanor by imprisonment up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. § 2907.06(C), 2929.24(A)(3), 2929.28(A)(2)(a)(iii). However, if an offender has certain prior convictions,⁴³ a conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a first degree misdemeanor by imprisonment up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.06(C), 2929.24(A)(1) 2929.28(A)(2)(a)(i).

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

Ohio Rev. Code Ann. § 2907.25(A) (Prostitution) does not refer to § 2905.32 (Trafficking in persons) to acknowledge the intersection of prostitution with trafficking victimization. However, Ohio’s delinquency statute does refer to the human trafficking statute. Ohio Rev. Code Ann. § 2152.021(F)(1)(b) (Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings) states,

At any time after the filing of a complaint alleging that a child is a delinquent child and before adjudication, the court may hold a hearing to determine whether to hold the complaint in abeyance pending the child’s successful completion of actions that constitute a method to divert the child from the juvenile court system if the child agrees to the hearing and either of the following applies: . . . The court has reason to believe that the child is a victim of a violation of section 2905.32 of the Revised Code,

⁴² Ohio Rev. Code Ann. § 2907.05(C) further states,

....

(2) . . . The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term, as described in division (C)(3) of this section, for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(3) A mandatory prison term required under division (C)(2) of this section shall be a definite term from the range of prison terms provided in (A)(3)(a) of section 2929.14 of the Revised Code for a felony of the third degree.

The text of Ohio Rev. Code Ann. § 2907.05 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

⁴³ These include convictions under Ohio Rev. Code Ann. § 2907.06, § 2907.02 (Rape), § 2907.03 (Sexual battery), § 2907.04 (Unlawful sexual conduct with minor), or § 2907.05 (Gross sexual imposition).

regardless of whether any person has been convicted of a violation of that section or of any other section for victimizing the child, and the act charged is related to the child's victimization.

Ohio Rev. Code Ann. § 2941.1422(A) (Human trafficking specification) also refers to human trafficking for sentencing purposes of certain CSEC statutes by stating,

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking

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.*

Ohio Rev. Code Ann. § 2923.32(A) (Engaging in pattern of corrupt activity; forfeiture) states,

(1) No person employed by, or associated with, any enterprise⁴⁴ shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity⁴⁵ or the collection of an unlawful debt.

(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

. . . .

Ohio Rev. Code Ann. § 2923.31(I) (Definitions) defines “corrupt activity” as

⁴⁴ Ohio Rev. Code Ann. § 2923.31(C) (Definitions) defines an “enterprise” as including “any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. ‘Enterprise’ includes illicit as well as licit enterprises.”

⁴⁵ Ohio Rev. Code Ann. § 2923.31(E) defines a “pattern of corrupt activity” as

two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.

engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as “racketeering activity” under the “Organized Crime Control Act of 1970,” 84 Stat. 941, 18 U.S.C. 1961 (1)(B), (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55 [Additional money laundering prohibitions], . . . 2907.321 [Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], 2907.323 [Illegal use of minor in nudity-oriented material or performance] . . .

. . .

. . . .

(c) Any violation of section 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution]

. . . .

(e) Any violation or combination of violations of section 2907.32 [Pandering obscenity] of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 [Definitions] of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds one thousand dollars;

(f) Any combination of violations described in division (I)(2)(c) of this section and violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(g) Any violation of section 2905.32 [Trafficking in persons] of the Revised Code to the extent the violation is not based solely on the same conduct that constitutes corrupt activity pursuant to division (I)(2)(c) of this section due to the conduct being in violation of section 2907.21 of the Revised Code.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

. . . .

It is important to note that a person cannot be convicted of both a human trafficking offense and compelling prostitution offense because the Ohio legislature merged these two offenses, labeling them “allied offenses of similar import” under its provisions on multiple counts. Ohio Rev. Code Ann. §§ 2905.32(D), 2941.25(A).⁴⁶

⁴⁶ Pursuant to Ohio Rev. Code Ann. § 2941.25(Allied offenses of similar import—multiple counts),

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

Additionally, Ohio law also specifies that a human trafficking offense can be considered a predicate act only to the extent that it is “not based solely on the same conduct that constitutes corrupt activity . . . due to the conduct being in violation of section 2907.21 of the Revised Code [Compelling prostitution].” Ohio Rev. Stat. Ann. § 2923.31(I)(2)(g). Thus, in determining whether there is a pattern of corrupt activity, there may only be one predicate act even where a person has engaged in conduct that constitutes both human trafficking and compelling prostitution with regard to the same victim.

A violation of Ohio Rev. Code Ann. § 2923.32(A) committed prior to March 22, 2019 generally is punishable as a second degree felony by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(2)(b),⁴⁷ 2929.18(A)(3)(b). A violation of Ohio Rev. Code Ann. § 2923.32(A) committed on or after March 22, 2019 generally is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term⁴⁸ of 2–8 years and a possible fine up to \$15,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(2)(a), 2929.18(A)(3)(b). However, where at least “one of the incidents of corrupt activity is a felony of the first, second, or third degree,” a violation of Ohio Rev. Code Ann. § 2923.32(A) committed prior to March 22, 2019 is punishable as a first degree felony by imprisonment for a definite term of 3–11 years⁴⁹ and a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(1)(b), 2929.18(A)(3)(a). Where at least “one of the incidents of corrupt activity is a felony of the first, second, or third degree,” a violation of Ohio Rev. Code Ann. § 2923.32(A) committed on or after March 22, 2019 is punishable as a first degree felony, for which the court shall impose an indefinite prison term with a minimum term⁵⁰ of 3–11 years and a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(1)(a), 2929.18(A)(3)(a). Further, if the offender committed the violation of Ohio Rev. Code Ann. § 2923.32 “in furtherance of human trafficking,” enhanced penalties may apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms).

Additionally, a conviction is subject to asset forfeiture. Ohio Rev. Code Ann. § 2923.32(B)(3) (Engaging in a pattern of corrupt activity) states,

In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation

⁴⁷ See *supra* note 15.

⁴⁸ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

⁴⁹ See *supra* note 17.

⁵⁰ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

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.*

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) does not apply to buyers of commercial sex with minors because Ohio Rev. Code Ann. § 2905.32(C) specifically states, “In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.”

- 2.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) to make the statute applicable to the actions of buyers of commercial sex with minors.

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

Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) includes the crime of buying sex with a minor by making it illegal for a person to “pay or agree to pay a minor, either directly or through the minor’s agent, so that the minor will engage in sexual activity” or to pay for having engaged in sexual activity with a minor “pursuant to a prior agreement.” A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3) or (4) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months⁵¹ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b),⁵² 2929.18(A)(3)(c).

Buyers also face charges under Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension), which makes it illegal to solicit minors for sexual activity for hire. If the victim is 16–17 years old, a violation is a felony of the fifth degree punishable by imprisonment for a definite term of 6–12 months⁵³ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the victim is under 16 years old, a violation

⁵¹ See *supra* note 14.

⁵² See *supra* note 15.

⁵³ See *supra* note 28.

of Ohio Rev. Code Ann. § 2907.24(A) is a felony of the third degree punishable by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

A buyer who solicits sex with a minor trafficking victim aged 16 or 17, also faces prosecution under Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) states,

No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.07(B) is punishable as a fifth degree felony by imprisonment for a definite term of 6–12 months⁵⁴ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for a definite term of 6–18 months⁵⁵ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

Buyers could also be prosecuted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

....

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed prior to March 22, 2019 is punishable as a second degree felony punishable by imprisonment for a definite term of 2–8 years⁵⁶ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(b), 2929.18(A)(3)(b). A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term⁵⁷ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(a), 2929.18(A)(3)(b). Several of Ohio’s sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.⁵⁸

⁵⁴ See *supra* note 28.

⁵⁵ See *supra* note 27.

⁵⁶ See *supra* note 25.

⁵⁷ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

⁵⁸ See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

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

Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension) distinguishes between solicitation of an adult and solicitation of a minor. Additionally, under Ohio Rev. Code Ann. § 2907.21(A)(2)–(4) (Compelling prostitution), Ohio makes it a separate crime to solicit or pay a minor to engage in sexual activity for hire.⁵⁹ Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) also makes it a crime to solicit sex with a minor trafficking victim aged 16 or 17.

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

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b),⁶⁰ 2929.18(A)(3)(c).

A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) committed prior to March 22, 2019 is punishable as a second degree felony punishable by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(b), 2929.18(A)(3)(b). A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term⁶¹ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

A first conviction under Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) is punishable as a fifth degree felony by imprisonment for a definite term of 6–12 months⁶² with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense, a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for a definite term of 6–18 months⁶³ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

If the victim is 16–17 years old, a violation of Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension) is a felony of the fifth degree punishable by imprisonment for a definite term of 6–12 months⁶⁴ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the victim is under 16 years old, a violation of Ohio Rev. Code Ann. § 2907.24(A) is a felony of the third degree punishable by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

⁵⁹ See *supra* Component 2.2 for the penalties applicable to a conviction under Ohio Rev. Code Ann. § 2907.21.

⁶⁰ See *supra* note 15.

⁶¹ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

⁶² See *supra* note 28.

⁶³ See *supra* note 27.

⁶⁴ See *supra* note 28.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁶⁵ 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 offense⁶⁶ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,⁶⁷ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.⁶⁸

2.4.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution), § 2919.22(B)(5) (Endangering children), and § 2907.07(B)(2) (Importuning) to raise the penalties to reflect the seriousness of these offenses.

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.*

Ohio law prohibits buyers from soliciting minors under the age of 16 via electronic communications. Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) states,

(C) No person shall solicit another by means of a telecommunications device,⁶⁹ as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

.....

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

⁶⁵ 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.).

⁶⁶ 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).

⁶⁷ 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).

⁶⁸ 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).

⁶⁹ Ohio Rev. Code Ann. § 2913.01(Y) (Definitions) defines a “telecommunications device” as “any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.”

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

....

However, Ohio Rev. Code Ann. § 2907.07(C), (D) does not specify that the sexual activity be commercial in nature.

Ohio Rev. Code Ann. § 2907.07(B)(2) applies when the person solicited is 16–17 years of age; it states,

No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

However, Ohio Rev. Code Ann. § 2907(B)(2) does not specify that the sexual activity be commercial in nature nor expressly prohibit the use of electronic communications.

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

Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension) establishes that an age mistake defense is not permitted for buyers when the person solicited is “less than sixteen years of age, whether or not the offender knows the age of the person.” Ohio Rev. Code Ann. § 2907.24(3)(a). However, a mistake of age defense is not prohibited when the minor victim is 16 or 17 years of age and the buyer must know “that the other person is sixteen or seventeen years of age or is reckless in that regard.” Ohio Rev. Code Ann. § 2907.24(2).

Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) prohibits the use of an age mistake defense by stating that the conduct prohibited under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) is illegal “whether or not the offender knows the age” of such person. Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) does not expressly prohibit a mistake of age defense and requires the offender to know or be “reckless in . . . regard” to the minor’s age. Ohio Rev. Code Ann. § 2907.07(B), (C), (D).

2.6.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.07 (Importuning) to expressly prohibit 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.*

One of Ohio’s buyer-applicable CSEC laws, Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension), staggers penalties based on a minor’s age and does not provide sufficiently high penalties. If the victim is 16–17, a conviction under Ohio Rev. Code Ann. § 2907.24 is a felony of the fifth degree punishable by imprisonment for a definite term of 6–12 months⁷⁰ with “a presumption in favor of a prison term.” Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5).⁷¹ If the victim is under 16, a conviction under Ohio Rev. Code Ann. § 2907.24(A) is a felony of the third degree punishable by imprisonment for a definite term of 9–36 months. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b).

In contrast, Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) does not stagger penalties based on a minor’s age, but penalties still are not sufficiently high. Regardless of the age of the minor-victim, a

⁷⁰ See *supra* note 28.

⁷¹ See *supra* note 15.

conviction under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b).

2.7.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension) and § 2907.21 (Compelling prostitution) to provide sufficient base penalties for all minors under 18.

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

Buyers may be required to pay fines. Buyers convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) may be ordered to pay a fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.18(A)(3)(b). Buyers convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) for the first time may be ordered to pay possible fines up to \$10,000, where the victim is under 13, or up to \$2,500, where the victim is 13–15 or is a 16 or 17 year old victim of trafficking. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(c), (e). Buyers with certain prior convictions convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) may be required to pay a possible fine up to \$15,000, where the victim is under 13, or up to \$5,000, where the victim is 13–15. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(b), (d). Buyers convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) may be ordered to pay possible fines up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.18(A)(3)(b).

If the victim is 16–17 years old, a violation of Ohio Rev. Code Ann. § 2907.24 (Soliciting; after positive HIV test; driver’s license suspension) is a felony of the fifth degree punishable by a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.18(A)(3)(e). If the victim is under 16, a violation of Ohio Rev. Code Ann. § 2907.24(A) is a felony of the third degree punishable by a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.18(A)(3)(c).

Buyers convicted of a felony offense under human trafficking or CSEC laws also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1), which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section . . .

(1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense . . .

Furthermore, a buyer found guilty of a felony human trafficking offense may be subject to an additional fine no greater than \$500 to be credited to the victim address confidentiality fund. Ohio Rev. Code Ann. § 2929.18(B)(11)(e)–(f)⁷² states,

In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for any of the following offenses that is a felony may impose a fine of not less than seventy nor

⁷² The text of Ohio Rev. Code Ann. § 2929.18 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

more than five hundred dollars, which shall be transmitted to the treasurer of state to be credited to the address confidentiality program fund created by section 111.48 of the Revised Code:

....

- (e) Trafficking in persons;
- (f) A violation of section . . . 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor or impaired person in nudity-oriented material or performance] involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code, if the offender also is convicted of a specification of the type described in section 2941.1422 [Mandatory prison term-furtherance of human trafficking] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking.

Buyers convicted of an offense⁷³ such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), or § 2907.07 may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A)(1)⁷⁴ (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that the following property is subject to forfeiture:

- (a) Contraband involved in an offense;
- (b) Proceeds derived from or acquired through the commission of an offense;
- (c) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:
 - (i) A felony;
 - (ii) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;
 - (iii) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.

Seizure of this property is governed by Ohio Rev. Code Ann. § 2981.06 (Seizure of forfeited or other property—disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. § 2981.04 or a civil process in Ohio Rev. Code Ann. § 2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types.

⁷³ Ohio Rev. Code Ann. § 2981.01(B)(10) (Purposes of forfeitures; definitions) defines an “offense” as

any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal criminal prosecution or delinquent child proceeding began at the time the forfeiture is initiated. Except as otherwise specified, an offense for which property may be forfeited includes any felony and any misdemeanor. The commission of an “offense” includes the commission of a delinquent act.

⁷⁴ The text of Ohio Rev. Code Ann. § 2981.02 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 497 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

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

Ohio criminalizes buying and possessing child sexual abuse material (CSAM). Ohio Rev. Code Ann. § 2907.321(A)(5)⁷⁵ (Pandering obscenity involving a minor) makes it illegal to “[b]uy, procure, possess, or control any obscene material, that has a minor . . . as one of its participants,” while Ohio Rev. Code Ann. § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor) makes it illegal for a person to “[k]nowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.” A first conviction under Ohio Rev. Code Ann. § 2907.321(A)(5) or § 2907.322(A)(5) is punishable as a fourth degree felony by imprisonment for a definite term of 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(4),⁷⁶ 2929.18(A)(3)(d). A subsequent conviction under either statute is punishable as a third degree felony by imprisonment for a definite term of 12–60 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(3)(a), 2929.18(A)(3)(c).

Ohio Rev. Code Ann. § 2907.323(A)(3)⁷⁷ (Illegal use of minor in nudity-oriented material or performance) also bans possessing or viewing “any material or performance that shows a minor . . . who is not the person’s child or ward in a state of nudity” without proper purpose. A first conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) is punishable as a fifth degree felony by imprisonment for a definite term of 6–12 months and a possible fine up to \$2,500, while a conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) after a prior conviction under Ohio Rev. Code Ann. § 2907.321, § 2907.322, or § 2907.323 is punishable as a fourth degree felony by imprisonment for a definite term of 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(4), (5), 2929.18(A)(3)(d).

In comparison, a federal conviction for possession of CSAM⁷⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁷⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁸⁰

- 2.9.1 Recommendation: Increase the penalties for violations of Ohio Rev. Code Ann. § 2907.323(A)(3) (Illegal use of minor in nudity-oriented material or performance) and § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor).

⁷⁵ The text of Ohio Rev. Code Ann. § 2907.321 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

⁷⁶ See *supra* note 15.

⁷⁷ The text of Ohio Rev. Code Ann. § 2907.323 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

⁷⁸ 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).

⁷⁹ 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).

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

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

Buyers are required to register as sex offenders if convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A)⁸¹ (Definitions) defines a “sexually oriented offense” as,

any of the following violations or offenses committed by a person, regardless of the person’s age:

- (1) A violation of section 2907.02 [Rape], 2907.03 [Sexual battery], 2907.05 [Gross sexual imposition], 2907.06 [Sexual imposition], 2907.07 [Importuning], 2907.08 [Voyeurism], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], 2907.32 [Pandering obscenity], 2907.321 [Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], or 2907.323 [Illegal use of minor in nudity-oriented material or performance] of the Revised Code;
- (2) A violation of section 2907.04 [Unlawful sexual conduct with minor] of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 [Repealed] of the Revised Code;
- (3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02 , 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

....

(11) A violation of section 2905.32 [Human trafficking] of the Revised Code when any of the following applies:

- (a) The violation is a violation of division (A)(1) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented;
- (b) The violation is a violation of division (A)(2) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is less than sixteen years of age or is a person with a developmental disability whom the offender knows or has reasonable cause to believe is a person with a developmental disability for any purpose listed in divisions (A)(2)(a) to (c) of that section.
- (c) The violation is a violation of division (A)(3) of that section, the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is sixteen or seventeen years of age for any purpose listed in divisions

⁸¹ The text of Ohio Rev. Code Ann. § 2950.01 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 92 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 20, 2019).

(A)(2)(a) to (c) of that section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the Revised Code apply with respect to the offender and the other person.

.....

(13) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), or (12) of this section;

(14) A violation of division (A)(3) of section 2907.24 of the Revised Code;

(15) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of this section.

Legal Components:

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

Legal Analysis:

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

A violation of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons)⁸² committed prior to March 22, 2019 is punishable as a first degree felony, for which “the court shall sentence the offender to a definite prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years,” and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E),⁸³ 2929.13(A), 2929.18(A)(3)(a). A violation of Ohio Rev. Code Ann. § 2905.32 committed on or after March 22, 2019 is punishable as a first degree felony, for which “the court shall sentence the offender to an indefinite prison term pursuant to [Ohio Rev. Code § 2929.14(A)(1)(a)], with a minimum term⁸⁴ under that sentence of ten, eleven, twelve, thirteen, fourteen, or fifteen years,” and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.13(A), 2929.18(A)(3)(a).

Traffickers who knowingly “[i]nduce, procure, encourage, solicit, request, or otherwise facilitate . . . [a] minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution). A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months⁸⁵ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b),⁸⁶ 2929.18(A)(3)(c). However, if a trafficker convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,” enhanced penalties may apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C).

Pursuant to Ohio Rev. Code Ann. § 2907.23(A), (B) (Procuring), a trafficker may be convicted for procuring a prostitute, procuring a patron, directing patrons or knowingly permitting premises to be used for prostitution. If the minor, who has been procured for commercial sexual activity, is under 16 years of age, a conviction may result in a felony of the fourth degree, which is punishable by imprisonment for a definite term of 6–18

⁸² See *supra* Component 1.1 for the provisions of Ohio Rev. Code Ann. § 2905.32.

⁸³ See *supra* note 8.

⁸⁴ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

⁸⁵ See *supra* note 14.

⁸⁶ See *supra* note 15.

months⁸⁷ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.14(A)(4), 2929.18(A)(3)(d). If the minor is 16 or 17 years of age at the time of the violation, a conviction may result in a felony of the fifth degree, which is punishable by imprisonment for a definite term of 6–12 months⁸⁸ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). These penalties apply even if the trafficker did not know the minor’s age.

Traffickers also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).⁸⁹ Where the victim is a minor, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a trafficker convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties may apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). Ohio Rev. Code Ann. § 2907.22(B). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Because Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Chapter 2907 of the Revised Code are allied offenses, a trafficker may not be convicted under Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.22(A) (Promoting prostitution) or § 2907.23(A), (B) (Procuring) if also convicted under Ohio Rev. Code Ann. § 2905.32 for the same conduct involving the same victim. Ohio Rev. Code Ann. § 2905.32(D).

Traffickers also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A) states,

- (1) No person shall conduct or attempt to conduct a transaction⁹⁰ knowing that the property⁹¹ involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity.⁹²
- (2) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity⁹³ with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions] of the Revised Code or federal law.
- (3) No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity.

⁸⁷ See *supra* note 27.

⁸⁸ See *supra* note 28.

⁸⁹ See *supra* Component 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

⁹⁰ Ohio Rev. Code Ann. § 1315.51(L) (Definitions) defines a “transaction” to include “a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of a payment instrument, use of a safe deposit box, or any other acquisition or disposition of property.”

⁹¹ Ohio Rev. Code Ann. § 1315.51(I) defines “property” as “anything of value and includes an interest in property, including a benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.”

⁹² Ohio Rev. Code Ann. § 1315.51(B) provides that “[c]orrupt activity” has the same meaning as in section 2923 of the Revised Code.” See *supra* Component 3.1 for the definition of “corrupt activity” provided in Ohio Rev. Code Ann. § 2923.31(I).

⁹³ Ohio Rev. Code Ann. § 1315.51(O) defines “unlawful activity” as “an act that is a criminal offense in the state in which the act is committed and, if the act is committed in a state other than this state, would be a criminal offense if committed in this state.”

(4) No person shall conduct or structure or attempt to conduct or structure a transaction that involves the proceeds of corrupt activity that is of a value greater than ten thousand dollars if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity.

(5) No person shall conduct or attempt to conduct a transaction that involves what has been represented to the person by a law enforcement officer or another person at the direction of or with the approval of a law enforcement officer to be the proceeds of corrupt activity or property used to conduct or facilitate corrupt activity with the intent to promote, manage, establish, carry on, or facilitate promotion, management, establishment, or carrying on of corrupt activity, to conceal or disguise the nature, location, source, ownership, or control of the property believed to be the proceeds of corrupt activity, or to avoid a transaction reporting requirement under section 1315.53 of the Revised Code or federal law.

A conviction under Ohio Rev. Code Ann. § 1315.55(A) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

In addition, a trafficker may be convicted for advertising a sexual activity of a minor for hire. Ohio Rev. Code Ann. § 2907.19(B), (C) (Advertising sexual activity for hire) states,

(B) No person shall knowingly purchase or otherwise obtain advertising space for an advertisement for sexual activity for hire that includes a depiction of a minor.

(C) Whoever violates this section is guilty of commercial sexual exploitation of a minor, a felony of the third degree.⁹⁴

As a third degree felony, Ohio Rev. Code Ann. § 2907.19(B) is punishable by imprisonment for a definite term of 9–36 months and a possible fine up to \$7,500. Ohio Rev. Code Ann. §§ 2907.19, 1315.55(B), 2929.14(A)(3)(b).

Finally, pursuant to Ohio Rev. Code Ann. § 2929.18(B)(11)(e), a sentencing court may impose an additional fine not greater than \$500 on any offender who commits the felony offense of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons). Furthermore, a sentencing court may impose the same additional fine on any person who commits an offense under Ohio Rev. Code Ann. § 2905.01 (Kidnapping), § 2905.02 (Abduction), § 2907.21 (Compelling prostitution), § 2907.22 (Promoting prostitution), § 2923.32 (Engaging in pattern of corrupt behavior), § 2907.323(A)(1), (2) (Illegal use of minor in nudity-oriented material or performance) involving a minor, or § 2912.22(B)(1)–(5) (Endangering child), so long as the person committing the offense does so with knowledge that the offense is being committed in furtherance of human trafficking. All fines under Ohio Rev. Code Ann. § 2929.18(B)(11)(e) shall be credited to the address confidentiality program fund. Ohio Rev. Code Ann. § 2929.18(B)(11)(f).⁹⁵

⁹⁴ Ohio Rev. Code Ann. § 2907.19(D) further states that

(1) In any prosecution under this section, it is not a defense that the offender did not know the age of the person depicted in the advertisement, relied on an oral or written representation of the age of the person depicted in the advertisement, or relied on the apparent age of the person depicted in the advertisement.

(2) In any prosecution under this section, it is an affirmative defense that the offender, prior to purchasing advertising space for the advertisement, made a reasonable bona fide attempt to ascertain the true age of the person depicted in the advertisement by requiring the person depicted in the advertisement to produce a driver's license, marriage license, birth certificate, or other government issued or school issued document that identifies the age of the person, provided the offender retains and produces a copy or other record of the driver's license, marriage license, birth certificate, or other document used to ascertain the age of the person depicted in the advertisement.

⁹⁵ See *supra* note 72.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁹⁶ 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 offense⁹⁷ against a minor. 18 U.S.C. § 3559(e)(1).

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

Both the creation and distribution of child sexual abuse material (CSAM) are criminalized under Ohio law. Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6)⁹⁸ (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

- (1) Create, reproduce, or publish any obscene material that has a minor . . . as one of its participants or portrayed observers;
- (2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor . . . as one of its participants or portrayed observers;
- (3) Create, direct, or produce an obscene performance that has a minor . . . as one of its participants;
- (4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor . . . as one of its participants;
-
- (6) Bring or cause to be brought into this state any obscene material that has a minor . . . as one of its participants or portrayed observers.

When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) committed prior to March 22, 2019 is punishable as a second degree felony by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2)(b),⁹⁹ 2929.18(A)(3)(b). When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁰⁰ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

Similarly, Ohio Rev. Code Ann. § 2907.322(A)¹⁰¹ (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

⁹⁶ See *supra* note 65.

⁹⁷ See *supra* note 66.

⁹⁸ See *supra* note 75.

⁹⁹ See *supra* note 15.

¹⁰⁰ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

¹⁰¹ The text of Ohio Rev. Code Ann. § 2907.322 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 201 during the 2017–2018 132nd General Assembly of the Ohio Legislature (effective March 22, 2019).

- (1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor . . . participating or engaging in sexual activity, masturbation, or bestiality;
- (2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (3) Create, direct, or produce a performance that shows a minor . . . participating or engaging in sexual activity, masturbation, or bestiality;
- (4) Advertise for presentation, present, or participate in presenting a performance that shows a minor . . . participating or engaging in sexual activity, masturbation, or bestiality;
-
- (6) Bring or cause to be brought into this state any material that shows a minor . . . participating or engaging in sexual activity, masturbation, or bestiality;
- (7) Bring, cause to be brought, or finance the bringing of any minor . . . into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.322(A)(1), (2), (3), (4), (6), or (7) committed prior to March 22, 2019 is punishable as a second degree felony by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b). When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.322(A)(1), (2), (3), (4), (6), or (7) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁰² of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

Additionally, Ohio Rev. Code Ann. § 2907.323(A)(1)¹⁰³ (Illegal use of minor in nudity-oriented material or performance) states,

No person shall do any of the following:

- (1) Photograph any minor . . . who is not the person’s child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor . . . in a state of nudity, unless both of the following apply:
 - (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;
 - (b) The minor’s . . . parents, guardian, or custodian consents in writing to the photographing of the minor . . . , to the use of the minor . . . in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

When the victim is a minor, a conviction under Ohio Rev. Code Ann. § 2907.323(A)(1) committed prior to March 22, 2019 is punishable as a second degree felony by imprisonment for a definite term of 2–8

¹⁰² Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

¹⁰³ *See supra* note 77.

years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(2), 2929.18(A)(3)(b).¹⁰⁴ When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.323(A)(1) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁰⁵ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

Traffickers may also be convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

. . . .

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed prior to March 22, 2019 is punishable as a second degree felony punishable by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(b), 2929.18(A)(3)(b). A violation of Ohio Rev. Code Ann. § 2919.22(B)(5) committed on or after March 22, 2019 is punishable as a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁰⁶ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

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 offense¹⁰⁷ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM¹⁰⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed

¹⁰⁴ Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) may be applicable to impose enhanced penalties upon conviction. See *supra* note 19 for the text of the provision and Component 1.2 for an explanation of its applicability.

¹⁰⁵ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

¹⁰⁶ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

¹⁰⁷ See *supra* note 66.

¹⁰⁸ 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).

\$250,000.¹⁰⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.¹¹⁰

3.2.1 Recommendation: Amend Ohio’s CSAM laws to increase the penalty to reflect the seriousness of the offense.

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.*

Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning)¹¹¹ prohibits using the Internet or electronic communications to solicit a child under 16 to engage in sexual activity. Because Ohio Rev. Code Ann. § 2907.07(C), (D) requires the offender, not a third party, to engage in sexual activity with the minor, its applicability is limited to traffickers who act for this purpose.

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

Financial penalties for traffickers include fines, asset forfeiture, and victim restitution. Traffickers convicted under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) may be ordered to pay up to \$20,000, while those convicted under § 2919.22(B)(5) (Endangering children) may be ordered to pay a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.22(B), 2929.18(A)(3)(b). Traffickers convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000, while traffickers convicted under Ohio Rev. Code Ann. § 2907.23(A), (B) (Procuring) face a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2907.23(C), 2929.18(A)(3)(c), (d). If convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions), a trafficker may be ordered to pay a possible fine of the greater of \$75,000 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), (b), 1315.99(C), 1315.55(B). Finally, a trafficker convicted under Ohio Rev. Code Ann. § 2907.19 (Advertising sexual activity for hire) is subject to fines up to \$7,500.

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements) requires traffickers convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1), which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section . . .

(1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. If the court imposes restitution, the court shall order that

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

¹¹⁰ 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).

¹¹¹ *See supra* Component 2.5 for the provisions of Ohio Rev. Code Ann. § 2907.07(C), (D).

the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Ohio Rev. Code Ann. § 2929.18(B)(11) (Financial sanctions –felony) mandates that if a trafficker is convicted of a felony offense under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons), a sentencing court may impose an additional fine of up to \$500 to be credited to the victim address confidentiality program fund. Additionally, a sentencing court impose the same fine under § 2929.18(B)(11)(f)¹¹² if a trafficker commits:

A violation of section . . . 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor or impaired person in nudity-oriented material or performance] involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code, if the offender also is convicted of a specification of the type described in section 2941.1422 [Mandatory prison term-furtherance of human trafficking] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking.

Traffickers convicted of an offense such as of Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), and § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A)(1)¹¹³ (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds¹¹⁴ of any offense¹¹⁵ or any instrumentality “used, or intended to be used, in the commission . . . of . . . [a] felony; [a] misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties; [or an] attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.”

Seizure of this property is governed by Ohio Rev. Code Ann. § 2981.06 (Seizure of forfeited or other property – disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

¹¹² See *supra* note 72.

¹¹³ See *supra* note 74.

¹¹⁴ Ohio Rev. Code Ann. § 2981.01(B)(11) states,

“Proceeds” means both of the following:

(a) In cases involving unlawful goods, services, or activities, “proceeds” means any property derived directly or indirectly from an offense. “Proceeds” may include, but is not limited to, money or any other means of exchange. “Proceeds” is not limited to the net gain or profit realized from the offense . . .

(b) In cases involving lawful goods or services that are sold or provided in an unlawful manner, “proceeds” means the amount of money or other means of exchange acquired through the illegal transactions resulting in the forfeiture, less the direct costs lawfully incurred in providing the goods or services. The lawful costs deduction does not include any part of the overhead expenses of, or income taxes paid by, the entity providing the goods or services. The alleged offender or delinquent child has the burden to prove that any costs are lawfully incurred.

¹¹⁵ See *supra* note 73 for the definition of “offense.”

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. § 2981.04 or a civil process in Ohio Rev. Code Ann. § 2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types.

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

Traffickers will be required to register as Tier I sex offenders/child-victim offenders if convicted under Ohio Rev. Code Ann. § 2907.22 (Promoting prostitution), Ohio Rev. Code Ann. § 2950.01(E)(1)(a). If convicted under Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2905.32 (Trafficking in persons), § 2907.321 (Pandering obscenity involving minor), or § 2907.322 (Pandering sexually oriented matter involving a minor), traffickers will have to register as Tier II sex offenders/child-victim offenders. Ohio Rev. Code Ann. § 2950.01(F)(1)(a), (F)(1)(g).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A) (Definitions)¹¹⁶ defines a sexually oriented offense to include convictions under Ohio Rev. Code Ann. § 2905.32, § 2907.21, § 2907.22, § 2907.321, and § 2907.322.

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.*

While convictions for certain enumerated crimes constitute grounds for the termination of parental rights, Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) is not included among those crimes. Ohio Admin. Code § 5101:2-42-95(A)(1)(a) (Obtaining permanent custody: termination of parental rights) states,

Unless the public children services agency (PCSA) or private child placing agency (PCPA) has compelling reasons for not pursuing a request for permanent custody of a child, the agency, pursuant to section 2151.413 [Motion requesting permanent custody] of the Revised Code, shall petition the court that issued the current order of disposition to request permanent custody of a child when any of the following conditions are present:

(1) A court of competent jurisdiction has determined that the parent from whom the child was removed has:

(a) Been convicted of or pleaded guilty to one of the following:

....

(iii) An offense under division (B)(2) of section 2919.22 (endangering children) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(iv) An offense under section 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (sexual corruption of a minor), 2907.05 (gross sexual imposition), or 2907.06 (sexual imposition) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(v) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (A)(1)(a)(i) or (A)(1)(a)(iv) of this rule.

While human trafficking is not an offense that constitutes termination of parental rights and award of custody to one parent for purposes of obtaining parental custody, the court is required to consider convictions for human

¹¹⁶ See *supra* Component 2.10 for the text of Ohio Rev. Code Ann. § 2950.01(A).

trafficking or conspiracy to commit human trafficking as evidence in determination of whether to enter a finding of custodial termination against both parents. Ohio Rev. Code Ann. § 2151.414 (E) (Hearing on motion requesting permanent custody) states,

If the court determines, by clear and convincing evidence . . . that one or more of the following exists as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

....

(7) The parent has been convicted or plead guilty to one of the following:

....

(e) An offense under section 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], or 2907.22 [Promoting prostitution] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(e) of this section.

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.*

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) does not criminalize assisting, enabling, or financially benefitting from domestic minor sex trafficking, but may apply to facilitators who knowingly “harbor” or “transport . . . a minor under the age of 16 “[t]o engage in sexual activity for hire . . . [t]o engage in performance for hire that is obscene, sexually oriented, or nudity oriented . . . [or] [t]o be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.” A violation of Ohio Rev. Code Ann. § 2905.32 committed prior to March 22, 2019 is punishable as a first degree felony, for which “the court shall sentence the offender to a definite prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years,” and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E),¹¹⁷ 2929.13(A), 2929.18(A)(3)(a). A violation of Ohio Rev. Code Ann. § 2905.32 committed on or after March 22, 2019 is punishable as a first degree felony, for which “the court shall sentence the offender to an indefinite prison term pursuant to [Ohio Rev. Code § 2929.14(A)(1)(a)], with a minimum term¹¹⁸ under that sentence of ten, eleven, twelve, thirteen, fourteen, or fifteen years,” and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.13(A), 2929.18(A)(3)(a).¹¹⁹

Pursuant to Ohio Rev. Code Ann. § 2907.23(A), (B) (Procuring), a facilitator may be convicted for procuring a patron, directing patrons or knowingly permitting premises to be used for prostitution. If the minor procured for commercial sexual activity is under 16 years of age, a violation is a felony of the fourth degree punishable by imprisonment for a definite term of 6–18 months¹²⁰ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.14(A)(4),¹²¹ 2929.18(A)(3)(d). If the minor is 16 or 17, a violation is a felony of the fifth degree punishable by imprisonment for a definite term of 6–12 months¹²² with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). These penalties apply even if the facilitator did not know the age of the minor.

¹¹⁷ See *supra* note 8.

¹¹⁸ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

¹¹⁹ See *supra* Component 1.1 for the provisions of Ohio Rev. Code Ann. § 2929.18 (Financial sanctions; restitution; reimbursements).

¹²⁰ See *supra* note 27.

¹²¹ See *supra* note 15.

¹²² See *supra* note 28.

Facilitators who knowingly “[i]nduce, procure, . . . or otherwise facilitate . . . a minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution).¹²³ A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months¹²⁴ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). However, if the facilitator convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) committed the offense “in furtherance of human trafficking,” enhanced penalties may apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification)¹²⁵ and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Facilitators also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).¹²⁶ Where the victim is a minor,¹²⁷ a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a facilitator convicted under Ohio Rev. Code Ann. § 2907.22(A) committed the offense “in furtherance of human trafficking,” enhanced penalties may apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Pursuant to Ohio Rev. Code Ann. § 2921.32(A) (Obstructing justice), no person will “hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime.” If the crime is trafficking in persons, a violation of Ohio Rev. Code Ann. § 2921.32 committed prior to March 22, 2019 is a felony of the second degree punishable by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2921.32(C)(6), 2929.14(A)(2)(b), 2929.18(A)(3)(b). If the crime is trafficking in persons, a violation of Ohio Rev. Code Ann. § 2921.32 committed on or after March 22, 2019 is a felony of the second degree, for which the court shall impose an indefinite prison term with a minimum term¹²⁸ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2921.32(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

Facilitators also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A).¹²⁹ A conviction under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) is punishable as a third degree felony by imprisonment for a definite term of 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

4.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) to include assisting, enabling, or financially benefitting from domestic minor sex trafficking.

¹²³ See *supra* Component 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2907.21.

¹²⁴ See *supra* note 14.

¹²⁵ See *supra* Component 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2941.1422.

¹²⁶ See *supra* Component 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

¹²⁷ See *supra* note 24 for the text of Ohio Rev. Code Ann. § 2907.22(B).

¹²⁸ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, see *supra* note 11.

¹²⁹ See *supra* Component 3.1 for the provisions of Ohio Rev. Code Ann. § 1315.55.

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 may be required to pay fines. Facilitators convicted under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) may be ordered to pay a possible fine up to \$20,000, while facilitators convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2907.22(B), 2929.18(A)(3)(c). Persons convicted under Ohio Rev. Code Ann. § 2923.32 (Engaging in a pattern of corrupt activity; forfeiture) face a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused,” and may be ordered to pay court and investigation costs, while those convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) may be ordered to pay a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), 1315.99(C), 1315.55(B).

Ohio Rev. Code Ann. § 2929.18(B)(11) further allows sentencing courts to impose an additional fine no greater than \$500 on facilitators found guilty of a felony offense under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons), which shall be credited to the victim address confidentiality program fund. Ohio Rev. Code Ann. § 111.48 (Address confidentiality program fund). Under Ohio Rev. Code Ann. § 2929.18(B)(11)(f),¹³⁰ a sentencing court may also impose the same fine on facilitators who commit a:

A violation of section . . . 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor or impaired person in nudity-oriented material or performance] involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code, if the offender also is convicted of a specification of the type described in section 2941.1422 [Mandatory prison term-furtherance of human trafficking] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking.

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements)¹³¹ requires facilitators convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for a “victim’s economic loss.”

Facilitators convicted of an offense¹³² such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2), or § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A)(1)¹³³ (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds¹³⁴ of any offense¹³⁵ and any instrumentality “used, or intended to be used, in the commission . . . of . . . [a] felony; [a] misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties; [or an] attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.”

¹³⁰ See *supra* note 72.

¹³¹ See *supra* Component 3.4 for the provisions of Ohio Rev. Code Ann. § 2929.18(B)(8)(a).

¹³² See *supra* note 73.

¹³³ See *supra* note 74.

¹³⁴ See *supra* note 114 for the definition of “proceeds.”

¹³⁵ See *supra* note 73 for the definition of “offense.”

Seizure of this property is governed by Ohio Rev. Code Ann. § 2981.06 (Seizure of forfeited or other property—disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. § 2981.04 or a civil process in Ohio Rev. Code Ann. § 2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types. Additionally, Ohio Rev. Code Ann. § 2923.32(B)(3)¹³⁶ expressly requires facilitators convicted of engaging in a pattern of corrupt activity to forfeit property “used in the course of,” or “derived from,” a violation of Ohio Rev. Code Ann. § 2923.32.

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

Ohio does not specifically prohibit child sex tourism.

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

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

Ohio law criminalizes the promotion and sale of child sexual abuse material (CSAM). Ohio Rev. Code Ann. § 2907.321(A)(2), (4)¹³⁷ (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

....

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor . . . as one of its participants or portrayed observers;

....

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor . . . as one of its participants.

When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.321(A)(2), (4) committed prior to March 22, 2019 is a second degree felony punishable by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2)(b),¹³⁸ 2929.18(A)(3)(b). When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.321(A)(2), (4) committed on or after March 22, 2019 is a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹³⁹ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

¹³⁶ See *supra* Component 3.4 for the provisions of Ohio Rev. Code Ann. § 2923.32(B)(3).

¹³⁷ See *supra* note 75.

¹³⁸ See *supra* note 15.

¹³⁹ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. See *supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and

Similarly, Ohio Rev. Code Ann. § 2907.322(A)(2), (4)¹⁴⁰ (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

....

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

....

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor . . . participating or engaging in sexual activity, masturbation, or bestiality;

When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.322(A)(2), (4) committed prior to March 22, 2019 is a second degree felony punishable by imprisonment for a definite term of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b). When the victim is a minor, a violation of Ohio Rev. Code Ann. § 2907.322(A)(2), (4) committed on or after March 22, 2019 is a second degree felony, for which the court shall impose an indefinite prison term with a minimum term¹⁴¹ of 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2)(a), 2929.18(A)(3)(b).

4.4.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.321(A)(2), (4) (Pandering obscenity involving a minor) to increase the penalty to reflect the seriousness of the offense.

shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

¹⁴⁰ *See supra* note 101.

¹⁴¹ Ohio Rev. Code Ann. § 2967.271(B), (C) (Presumptions related to sentence to non-life felony indefinite prison term) creates a presumption in favor of release upon expiration of the minimum prison term. That presumption can only be rebutted based on the offender’s behavior during incarceration or the offender’s security level at the time the department seeks to rebut the presumption. *See supra* note 10. If the presumption is rebutted, “the additional period of incarceration shall be a reasonable period determined by the department, shall be specified by the department, and shall not exceed the offender’s maximum prison term. Ohio Rev. Code Ann. § 2967.271(D)(1). For more information on calculating maximum prison terms, *see supra* note 11.

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.¹⁴²*

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons), Ohio’s core sex trafficking statute does not include all commercially sexually exploited children. While the means of force, fraud, or coercion are not required for victims under 16 years of age, child victims who are 16 or 17 years of age are not protected under Ohio Rev. Code Ann. § 2905.32. However, Ohio Rev. Stat. Ann. § 2905.32 creates an exception to the requirement when the offender is in a position of authority or trust to the minor victim, as provided by in Ohio Rev. Code Ann. § 2905.32.¹⁴³

Additionally, Ohio Rev. Code Ann. § 2905.32 does not hold buyers criminally liable; thus, a trafficker or controlling third party must be identified for a sexually exploited child to receive services, protection, and care as a victim of trafficking and CSEC offenses.

- 5.1.1 **Recommendation:** Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) so that all commercially sexually exploited children under 18 years of age are identifiable as victims and eligible for protections pursuant to their victim status.

¹⁴² See generally **SHARED HOPE INTERNATIONAL**, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

¹⁴³ See *supra* note 2.

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) does not prohibit a defense based on a minor’s willingness to engage in a commercial sex act.

5.2.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) to prohibit a defendant from asserting a defense based on a minor’s willingness to engage in a commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*¹⁴⁴

Ohio Rev. Code Ann. § 2907.25(A) (Prostitution; after positive HIV test) does not prohibit the criminalization of minors for prostitution offenses. Ohio Rev. Code Ann. § 2907.25(A) states, “No person shall engage in sexual activity for hire.” A conviction under Ohio Rev. Code Ann. § 2907.25 is punishable as a third degree misdemeanor by imprisonment for up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. §§ 2907.25(C)(1), 2929.24(A)(3), 2929.28(A)(2)(a)(iii).

5.3.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.25 (Prostitution; after positive HIV test) to eliminate liability for prostitution offenses for all minors under 18.¹⁴⁵

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

Ohio law established a discretionary diversion program for commercially sexually exploited children, which allows for the avoidance of delinquency adjudications, provision of services, and expungement of juvenile records upon successful completion. Pursuant to Ohio Rev. Code Ann. § 2152.021(F) (Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings),

(1) At any time after the filing of a complaint alleging that a child is a delinquent child¹⁴⁶ and before adjudication, the court may hold a hearing to determine whether to hold the complaint in abeyance

¹⁴⁴ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

¹⁴⁵ See generally SHARED HOPE INTERNATIONAL, “Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims” (2018), https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

¹⁴⁶ Ohio Rev. Code Ann. § 2151.011(B)(12) (Definitions) defines “delinquent child” by referring to Ohio Rev. Code Ann. § 2152.02(E) (Delinquent children—juvenile traffic offender definitions), which states,

“Delinquent child” includes any of the following:

- (1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;
- (2) Any child who violates any lawful order of the court made under this chapter [Delinquent children; juvenile traffic offenders], including a child who violates a court order regarding the child’s prior adjudication as an unruly child for being an habitual truant;
- (3) Any child who violates any lawful order of the court made under Chapter 2151 [Juvenile court] of the Revised Code other than an order issued under section 2151.87 [Prohibiting child from possessing, using, purchasing or receiving cigarettes or other tobacco products] of the Revised Code;
- (4) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211 [Underage purchase of firearm or handgun], or division (C)(1) or (D) of section 2925.55 [Unlawful purchase of pseudoephedrine product] of the Revised Code.

pending the child's successful completion of actions that constitute a method to divert the child from the juvenile court system if the child agrees to the hearing and either of the following applies:

(a) The act charged would be a violation of section 2907.24 [Soliciting; after positive HIV test; driver's license suspension], 2907.241 [Loitering to engage in solicitation], or 2907.25 [Prostitution] of the Revised Code if the child were an adult.

(b) The court has reason to believe that the child is a victim of a violation of section 2905.32 [Trafficking in Persons] of the Revised Code, regardless of whether any person has been convicted of a violation of that section or of any other section for victimizing the child, and the act charged is related to the child's victimization.

(2) The prosecuting attorney has the right to participate in any hearing held under division (F)(1) of this section, to object to holding the complaint that is the subject of the hearing in abeyance, and to make recommendations related to diversion actions. No statement made by a child at a hearing held under division (F)(1) of this section is admissible in any subsequent proceeding against the child.

(3) If either division (F)(1)(a) or (b) of this section applies, the court shall promptly appoint a guardian ad litem for the child. The court shall not appoint the child's attorney as guardian ad litem. If the court decides to hold the complaint in abeyance, the guardian ad litem shall make recommendations that are in the best interest of the child to the court.

(4) If after a hearing the court decides to hold the complaint in abeyance, the court may make any orders regarding placement, services, supervision, diversion actions, and conditions of abeyance, including, but not limited to, engagement in trauma-based behavioral health services or education activities, that the court considers appropriate and in the best interest of the child. The court may hold the complaint in abeyance for up to ninety days while the child engages in diversion actions. If the child violates the conditions of abeyance or does not complete the diversion actions to the court's satisfaction within ninety days, the court may extend the period of abeyance for not more than two additional ninety-day periods.

(5) If the court holds the complaint in abeyance and the child complies with the conditions of abeyance and completes the diversion actions to the court's satisfaction, the court shall dismiss the complaint and order that the records pertaining to the case be expunged immediately. If the child fails to complete the diversion actions to the court's satisfaction, the court shall proceed upon the complaint.

Although a court may order specialized services in conjunction with diversion pursuant to Ohio Rev. Code Ann. § 2152.021(F)(4), child sex trafficking victims must endure a juvenile justice response in order to access such services.

Summary

Ohio law does not require the availability of specialized services for all child sex trafficking victims. However, minor victims who are referred to and participate in the state's Safe Harbor diversion program may receive services and care that is appropriate to address their trafficking victimization.

5.4.1 Recommendation: Amend Ohio's response to direct child sex trafficking victims away from the juvenile justice system and to specialized services.¹⁴⁷

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*¹⁴⁸

The definition of an "abused child" does not include child victims of sex trafficking. Ohio Rev. Code Ann. § 2151.031 (Abused child defined) states,

¹⁴⁷ The recommendation in this section is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹⁴⁸ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907 [Sex offenses] of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 [Endangering children] of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

....

While Ohio’s CSEC laws are located throughout chapter 2907 entitled “Sex Offenses,” Ohio Rev. Code Ann. § 2905.32 (Trafficking in Persons) is not. Thus, while commercially sexually exploited children are considered abused children under Ohio Rev. Code Ann. § 2151.031(A), child victims of sex trafficking are not provided the same protections and services.

Ohio Rev. Code Ann. § 2151.03(A) (Neglected child defined; failure to provide medical or surgical care for religious reasons; duty to report child abuse) defines a “neglected child” as one,

....

(2) Who lacks adequate parental care because of the faults or habits of the child’s parents, guardian, or custodian;

(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child’s health, morals, or wellbeing;

....

(6) Who, because of the omission of the child’s parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare;

(7) Who is subjected to out-of-home care child neglect.

5.5.1 Recommendation: Amend Ohio Rev. Code Ann. § 2151.031 (Abused child defined) to include minors victimized under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons).

5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

The definition of an abused child¹⁴⁹ under Ohio Rev. Code Ann. § 2151.031(A) (Abused child defined), which applies to victims of commercial sexual exploitation of children (CSEC) offenses, does not specify

¹⁴⁹ Ohio Rev. Code Ann. § 2151.031 (Abused child defined), states:

As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

that the abusive conduct be committed by a parent, guardian or custodian and provides that “the court need not find that any person has been convicted of the offense in order to find that the child is an abused child.” Abuse by a parent, guardian or custodian appears to be separately addressed under Ohio Rev. Code Ann. § 2151.031(D) which applies to a child who “[b]ecause of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.”

Moreover, Ohio Rev. Code Ann. § 5153.16(A) (Duties of agency) states,

Except as provided in section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.166 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:

(1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

....

(3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;

(4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service

Therefore, child victims of commercial sexual exploitation are eligible to receive child welfare protection and services 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).*

Ohio Rev. Code Ann. § 2743.52(A), (B) (Attorney general to determine reparations awards; OVI findings not lawful evidence) provides for victim compensation, stating,

(A) The attorney general shall make awards of reparations for economic loss arising from criminally injurious conduct,¹⁵⁰ if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(B) A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(E) Is subjected to out-of-home care child abuse.

¹⁵⁰ “Criminally injurious conduct” is defined under Ohio Rev. Code Ann. § 2743.51(C) (Reparation award to victim of crime definitions” as,

(1) For the purpose of any person described in (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state

(2) For purposes of any person described in division (A)(2) of this section, any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted

....

(C) A decision of the attorney general, an order of a court of claims panel of commissioners, or the judgment of a judge of the court of claims concerning an OVI violation shall not be used as the basis for any civil or criminal action and shall not be admissible as evidence in any civil or criminal proceeding.

A victim of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws should fall within the definition of a victim and a “claimant”¹⁵¹ used within Ohio’s laws regarding crime victims’ compensation.

Although Ohio Rev. Code Ann. § 2743.60 (Grounds for denial of claim or reduction of award; limit on aggregate awarded) contains certain ineligibility criteria that could bar victims from receiving compensation, such criteria do not pertain to minor victims of sex trafficking. “Nothing in [2743.60] shall be construed to prohibit an award to a claimant whose claim is based on the claimant’s being a victim of a violation of section 2905.32 of the Revised Code if the claimant was less than eighteen years of age when the criminally injurious conduct occurred.” Ohio Rev. Code Ann. § 2743.60(J).

However, the statute contains certain ineligibility criteria that could bar victims of Ohio’s other CSEC laws from receiving compensation. Ohio Rev. Code Ann. § 2743.60(B)(1)(a) (Grounds for denial of claim or reduction of award; limit on aggregate awarded) prohibits a victim from receiving compensation where the victim was “an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice,” while Ohio Rev. Code Ann. § 2743.60(A) prohibits an award where the victim fails to report the crime to law enforcement. Additionally, Ohio Rev. Code Ann. § 2743.60(C) authorizes the denial or reduction of a claim for compensation where the victim did not fully cooperate with law enforcement.

A claim also may be denied or reduced based on a finding of the victim’s contributory misconduct. Ohio Rev. Code Ann. § 2743.60(F). Ohio Rev. Code Ann. § 2743.51(M) (Definitions) defines “contributory misconduct” as “any conduct of the claimant . . . that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.”

Additionally, Ohio Rev. Code Ann. § 2743.56(B) (Applications for award of reparations) removes the time limit for filing an application for an award, stating, “All applications for an award of reparations may be filed at any time after the occurrence of the criminally injurious conduct.”

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

Some victim-friendly criminal justice procedures or protections may be afforded to victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws.

Ohio Rev. Code Ann. § 2945.481(A), (B) (Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom) permits a victim of certain offenses, including Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.321 (Pandering obscenity involving a minor), § 2905.32 (Trafficking in persons), or § 2907.322 (Pandering sexually oriented material involving a minor), who is under 13 to provide testimony via a deposition, which may be videotaped. Similarly, under Ohio Rev. Code

¹⁵¹ Ohio Rev. Code Ann. § 2743.51(A)(1)(a) (Reparation award to victim of crime definitions) defines a “claimant” as

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

- (a) A victim who was one of the following at the time of the criminally injurious conduct:
 - (i) A resident of the United States;
 - (ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country.

Ann. § 2945.481(C)–(E), under specified circumstances, the judge may permit victims of the same crimes who are under 13 years old to give testimony via closed-circuit television or videotaped testimony.

As an additional protective measure, Ohio Rev. Code Ann. § 111.42 (Address confidentiality for victims of certain personal crimes) permits a person identified as a victim of human trafficking to receive a confidential address designated by the secretary of state, but several ineligibility criteria could hinder access. Ohio Rev. Code Ann. § 111.42 states,

(A) A person to whom all of the following applies may apply to the secretary of state with the assistance of an application assistant to become a participant in the address confidentiality program, in which an address designated by the secretary of state serves as the person's address or the address of the minor, incompetent, or ward on whose behalf the person is applying:

- (1) The applicant is an adult who is applying on behalf of the person's self or is a parent or guardian applying on behalf of a minor, incompetent, or ward.
- (2) The applicant or the minor, incompetent, or ward, as applicable, resides, works, or attends a school or an institution of higher education in this state.
- (3) The applicant or the minor, incompetent, or ward, as applicable, is changing residence.
- (4) The applicant fears for the safety of the applicant, a member of the applicant's household, or the minor, incompetent, or ward on whose behalf the application is made because the applicant, household member, minor, incompetent, or ward is a victim of . . . human trafficking, trafficking in persons, rape, or sexual battery.
- (5) The applicant or the minor, incompetent, or ward, as applicable, is not a tier I sex offender/child-victim offender, a tier II sex offender/child-victim offender, or a tier III sex offender/child-victim offender.

(B) . . . The application shall contain all of the following:

- (1) A notarized statement by the applicant that the applicant fears for the safety of . . . the minor . . . because . . . the minor is a victim of . . . human trafficking, trafficking in persons, rape, or sexual battery.

. . . .

Additionally, Ohio Rev. Code Ann. § 2937.11(D) (Conduct of preliminary hearing) provides,

(1) (a) In a case involving an alleged violation of section 2905.32 of the Revised Code, upon motion of the prosecution, the testimony of the victim at the preliminary hearing may be taken in a place or room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, to be viewed by the accused and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the victim had it been given in the room in which the preliminary hearing is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the preliminary hearing.

(2) For purposes of division (D)(1) of this section, a judge or magistrate may order the testimony of a victim to be taken at a place or room outside the room in which the preliminary hearing is being conducted if the judge or magistrate determines that the victim is unavailable to testify in the room in the physical presence of the accused due to one or more of the following:

- (a) The inability of the victim to communicate about the alleged offense because of extreme fear, severe trauma, or another similar reason;
- (b) The substantial likelihood that the victim will suffer serious emotional trauma from so testifying;
- (c) The victim is at a hospital for care and treatment for any physical, mental, or emotional injury suffered by reason of the alleged offense.

While Ohio has “rape shield” provisions for victims of Ohio Rev. Code Ann. § 2907.02(D) (Rape) or § 2907.05(E) (Gross sexual imposition), which prohibit the admission of evidence of the victim's sexual history unless such evidence is needed to show “the origin of semen, pregnancy, or disease, or the victims past sexual

history with the offender,”¹⁵² these protections are not available to victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws unless their offenders are prosecuted under Ohio Rev. Code Ann. § 2907.02 or § 2907.05. As an added protection, victims of Ohio Rev. Code Ann. § 2907.05 or § 2907.02 may receive court-appointed counsel. Ohio Rev. Code Ann. §§ 2907.05(G), 2907.02(F). Moreover, Ohio Rev. Code Ann. § 2907.26(A)–(C) (Rules of evidence in prostitution cases) states,

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it, is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of sections 2907.21 to 2907.25 of the Revised Code, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

Victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws will be afforded those rights generally afforded to crime victims. Under Ohio Rev. Code Ann. § 2930.04 (Information to be given to victim by investigating law enforcement agency), a victim is entitled to information regarding counseling, housing, victim compensation, information about protection orders, and contact information for law enforcement. Pursuant to Ohio Rev. Code Ann. § 2930.07 (Concealment of victim’s or representative’s address, telephone number and similar identifying facts), in certain circumstances the court may keep the victim’s personal information confidential. Under Ohio Rev. Code Ann. § 2930.10 (Minimization of unwanted contact between prosecution and defense sides), the court shall minimize contact between the victim and the offender and provide a separate waiting area for the victim in order to protect the victim.

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.*¹⁵³

Ohio law allows child sex trafficking victims to expunge juvenile records for prostitution-related offenses without a waiting period, and an adjudication will be vacated automatically upon record expungement. Thus, both protections are available to a victim immediately and within a single proceeding.

Pursuant to Ohio Rev. Code Ann. § 2151.358(E) (Expungement of records),

a person who has been adjudicated a delinquent child for having committed an act that would be a violation of section 2907.24 [Soliciting; after positive HIV test; driver’s license suspension], 2907.241 [Loitering to engage in solicitation], or 2907.25 [Prostitution] of the Revised Code if the child were an adult may apply to the adjudicating court for the expungement of the record of adjudication if the person’s participation in the act was a result of the person having been a victim of human trafficking. The application shall be made in the same manner as an application for expungement under section 2953.38 of the Revised Code, and all of the provisions of that section shall apply to the expungement procedure.

Accordingly, Ohio Rev. Code Ann. § 2953.38(B) (Expungement of certain crimes for victims of human trafficking) governs the procedure for expunging juvenile records related to trafficking victimization. Under Ohio Rev. Code Ann. § 2953.38(B), an application for expungement may be filed immediately. Ohio Rev. Code Ann. § 2953.38(F) further provides that if the court finds

¹⁵² Additionally, this evidence is admissible “only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.” Ohio Rev. Code Ann. §§ 2907.02(D), 2907.05(E).

¹⁵³ The analysis in this section is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

the applicant has demonstrated by a preponderance of the evidence that the applicant’s participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking, and, if the offense that is the subject of the application is a felony of the first or second degree, after consideration of the factors required under division (E)(2) of this section, it finds that the interests of the applicant in having the record of conviction of that offense expunged are not outweighed by any legitimate needs of the government to maintain that record of conviction, the court shall grant the application and order that the record of conviction be expunged.

Upon record expungement, Ohio Rev. Code Ann. § 2953.38(G)(2) states that “[t]he proceedings in the case that is the subject of an order of expungement issued under subdivision (F) of this section shall be considered not to have occurred and the conviction of the person who is the subject of the proceedings shall be expunged.” Accordingly, a delinquency adjudication would likewise be vacated automatically upon granting an application for expungement under Ohio Rev. Code Ann. § 2151.358(E).

However, Ohio Rev. Code Ann. § 2151.358(E) applies only to violations of Ohio’s prostitution-related offenses, foreclosing the law’s applicability to other offenses related to trafficking victimization.

Ohio law provides other avenues to record expungement as well. In cases where the court holds a complaint of delinquency in abeyance because the complaint alleges prostitution-related offenses or the court believes the minor is a victim of trafficking under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons), all records pertaining to the case would be expunged immediately upon successful completion of diversionary actions. Ohio Rev. Code Ann. § 2152.021(F)(1)–(6) (Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings).

For non-prostitution related records, Ohio Rev. Code Ann. § 2151.356(B)(1)(e) (Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders) orders the juvenile court to seal the records of a child adjudicated an unruly child who has turned 18 and is “not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child,” while Ohio Rev. Code Ann. § 2151.356(C)(1) authorizes the court, in its discretion, to seal the records of a child adjudicated a delinquent child, if “the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.” The court may consider whether to seal the records within 2 years from the later of “[t]he termination of any order made by the court” related to the adjudication or “[t]he unconditional discharge of the person from the department of youth services” or another facility to which the child was committed. Ohio Rev. Code Ann. § 2151.356(C)(1)(a), (b). “[F]ive years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever is earlier,” those records may be expunged. Ohio Rev. Code Ann. § 2151.358(A).

Because these laws mandate waiting periods, however, a child sex trafficking victim may face collateral consequences associated with having a juvenile record for a non-prostitution related offense.

- 5.9.1 Recommendation: Amend Ohio Rev. Code Ann. § 2151.358(E) (Expungement of records) to allow child sex trafficking victims to expunge juvenile records, and thereby vacate delinquency adjudications, for other offenses arising from trafficking victimization.¹⁵⁴

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.*

Ohio Rev. Code Ann. § 5101.87 creates a human trafficking victims’ fund, “consisting of money seized in connection with a violation of section 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], or 2907.22 [Promoting prostitution] of the Revised Code or acquired from the sale of personal effects, tools, or other property seized because the personal effects, tools, or other property were used in the commission of a

¹⁵⁴ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

violation of section 2905.32, 2907.21, or 2907.22 of the Revised Code or derived from the proceeds of the commission of a violation of section 2905.32, 2907.21, or 2907.22 of the Revised Code and deposited pursuant to section 2981.12 of the Revised Code and such other money as may be appropriated or contributed to the fund. Money in the fund shall be used for the sole purpose of treating, caring for, rehabilitating, educating, housing, and providing assistance for victims of trafficking in persons. The director of job and family services shall administer the fund.” Furthermore, all money seized in connection to violations of Ohio Rev. Code Ann. § 2905.32, § 2907.21, or § 2907.22 will be deposited into the human trafficking fund. Ohio Rev. Code Ann. § 2981.12(A)(8).

Under Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements), victims whose offenders are convicted of committing an offense in furtherance of human trafficking under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) shall receive restitution. Ohio Rev. Code Ann. § 2929.18(B)(8)(a)¹⁵⁵ states,

If an offender who is convicted of or pleads guilty to a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in a pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance] involving a minor, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

- (i) The gross income or value to the offender of the victim’s labor or services;
- (ii) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the “Federal Fair Labor Standards Act of 1938,” 52 Stat. 1060, 20 U.S.C. 207, and state labor laws.

Victims whose offenders are convicted of other crimes also may receive restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section

- (1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Additionally, pursuant to Ohio Rev. Code Ann. § 2307.51(A), “[a] victim of a violation of section 2905.32 of the Revised Code has and may commence a civil cause of action for compensatory and punitive damages against the trafficker for harm that resulted from the violation . . .” regardless of whether the trafficker was prosecuted or convicted. This is addition to any other cause of action. Ohio Rev. Code Ann. § 2307.51(B).

¹⁵⁵ See *supra* note 72.

Victims whose offenders are convicted of engaging in a pattern of corrupt activity under Ohio Rev. Code Ann. § 2923.32 may also be able to pursue civil remedies under Ohio Rev. Code Ann. § 2923.34(A), (E) (Civil proceedings for relief from violation; civil penalty) which states,

(A) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern of corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation of division (A)(1) or (2) of section 1707.042 [Prohibited acts relating to control bids] or division (B), (C)(4), (D), (E), or (F) of section 1707.44 [Prohibited acts] of the Revised Code, of 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2314, or any other offense involving fraud in the sale of securities.

....

(E) In a civil proceeding under division (A) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section . . . shall have a cause of action for triple the actual damages the person sustained . . . Damages under this division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

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.*

Ohio Rev. Code Ann. § 2901.13(A)(1)(a) (Limitations of criminal prosecutions) imposes a 6-year statute of limitations for prosecution of most felonies, including most of Ohio’s CSEC laws. However, Ohio Rev. Code Ann. § 2901.13(A)(3)(a) provides a 20 year statute of limitations that is applicable to prosecutions of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and § 2907.21 (Compelling prostitution). Additionally, if the victim of a crime included in Ohio Rev. Code Ann. tit. 29 (Crimes—procedure) was a minor at the time of the offense, Ohio Rev. Code Ann. § 2901.13(J) states,

The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age . . . shall not begin to run until either of the following occurs:

- (1) The victim of the offense reaches the age of majority.
- (2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

Ohio Rev. Code Ann. § 2305.111(C) (Actions for assault or battery; victims of childhood sexual abuse) provides a civil statute of limitations for actions brought by victims of childhood sexual abuse, by stating,

An action for assault or battery brought by a victim of childhood sexual abuse¹⁵⁶ based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a

¹⁵⁶ Subsection (A)(1) states, “‘Childhood sexual abuse’ means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age” The violations listed in (A)(1)(a) and (b) include Ohio Rev. Code Ann. § 2907.02 (Rape), certain subsections of § 2907.03 (Sexual battery), and § 2907.05 (Gross sexual imposition) through § 2907.06 (Sexual imposition), if certain conditions apply.

cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the August 3, 2006 has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

- 5.11.1 Recommendation: Eliminate the statute of limitations in criminal actions for child sex trafficking and CSEC offenses and amend Ohio Rev. Code Ann. § 2305.111 (Actions for assault or battery; victims of childhood sexual abuse) to include CSEC crimes to extend the statute of limitations for civil actions.

Legal Components:

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

Legal Analysis:

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

Pursuant to Ohio Rev. Code Ann. § 109.745(A) (Training for investigating and handling crime of trafficking in persons),

The attorney general shall provide training for peace officers in investigating and handling violations of section 2905.32 of the Revised Code. The training shall include all of the following:

- (1) Identifying violations of section 2905.32 [Trafficking in persons] of the Revised Code;
- (2) Methods used in identifying victims of violations of section 2905.32 of the Revised Code who are citizens of the United States or a foreign country, including preliminary interviewing techniques and appropriate questioning methods;
- (3) Methods for prosecuting persons who violate section 2905.32 [Trafficking in persons] of the Revised Code;
- (4) Methods of increasing effective collaboration with nongovernmental organizations and other social service organizations in the course of a criminal action regarding a violation of section 2905.32 of the Revised Code;
- (5) Methods for protecting the rights of victims of violations of section 2905.32 [Trafficking in persons] of the Revised Code, including the need to consider human rights and the specific needs of women and children who are victims of violations of that section and to treat victims as victims rather than as criminals;
- (6) Methods for promoting the safety of victims of violations of section 2905.32 [Trafficking in persons] of the Revised Code, including the training of peace officers to quickly recognize victims of a violation of any of those sections who are citizens of the United States or citizens of a foreign country.

Ohio Rev. Code Ann. § 109.741 (Training in missing children, missing persons, child abuse and neglect cases) further requires the attorney general to adopt rules regarding “the training of peace officers in the handling of missing children, missing persons, and child abuse and neglect cases.”

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

Ohio permits single party consent to audiotaping. Ohio Rev. Code Ann. § 2933.52(A)(1) (Interception of wire, oral or electronic communications) makes it a crime for a person to purposely “[i]ntercept, attempt to intercept,

or procure another person to intercept or attempt to intercept a wire, oral, or electronic communication.” According to Ohio Rev. Code Ann. § 2933.52(B)(3), (4), the prohibition does not apply to, among other things,

- (3) A law enforcement officer who intercepts a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer;
- (4) A person who is not a law enforcement officer and who intercepts a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or this state or for the purpose of committing any other injurious act.

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

Wiretapping may be used to investigate certain designated offenses, including Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws. Ohio Rev. Code Ann. § 2933.52(B). Ohio Rev. Code Ann. § 2933.52(B)(1) (Interception of wire, oral or electronic communications) permits wiretapping conducted pursuant to an interception warrant. Ohio Rev. Code Ann. § 2933.54(A) (Conditions for issuance of warrant; denial; termination; finding of objective) authorizes a court to issue an interception warrant if

the judge determines, on the basis of the facts submitted by the person who made the application and all affiants, that all of the following exist:

- (1) The application and affidavits comply with section 2933.53 [Application for interception warrant] of the Revised Code.
- (2) There is probable cause to believe that a particular person is committing, has committed, or is about to commit a designated offense.
- (3) There is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications.
- (4) Normal investigative procedures with respect to the designated offense have been tried and have failed or normal investigative procedures with respect to the designated offense reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ in order to obtain evidence.
- (5) Except as provided in division (G)(1) of section 2933.53 of the Revised Code, there is probable cause to believe that the communication facilities from which the communications are to be intercepted, or the place at which oral communications are to be intercepted, are being used or are about to be used in connection with the commission of the designated offense or are leased to, listed in the name of, or commonly used by a person who is the subject of the interception warrant.
- (6) The investigative officer has received training that satisfies the minimum standards established by the attorney general and the Ohio peace officer training commission under section 2933.64 [Training in wiretapping and electronic surveillance] of the Revised Code in order to intercept the wire, oral, or electronic communication and is able to execute the interception sought.

Ohio Rev. Code Ann. § 2933.51(I) (Definitions) defines a “designated offense” as any of,

- (1) A felony violation of section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions], 1315.55 [Additional money laundering prohibitions], . . . 2905.01 [Kidnapping], 2905.02 [Abduction], . . . 2905.32 [Trafficking in persons], 2907.02 [Rape], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], . . . 2923.32 [Engaging in pattern of corrupt activity; forfeiture], . . . of the Revised Code;
-
- (4) Complicity in the commission of a felony violation of a section listed in division (I)(1), (2), or (3) of this section;

(5) An attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in division (I)(1), (2), or (3) of this section, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

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.*

Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) (Compelling prostitution) does not expressly prohibit a defense to the use of a law enforcement decoy posing as a minor to investigate attempts to buy or sell commercial sex acts with a child. However, Ohio Rev. Code Ann. § 2907.21(A)(2)(b) prohibits the compelling of prostitution with “a person the offender believes to be a minor . . . whether or not the person is a minor,” indicating that a person who compels a decoy, who the buyer believes to be a minor, to engage in commercial sex activity violates Ohio Rev. Code Ann. § 2907.21. Additionally, Ohio Rev. Code Ann. § 2907.21(A)(3)(b) states,

No person shall knowingly . . . pay or agree to pay a person the offender believes to be a minor, either directly or through the person’s agent, so that the person will engage in sexual activity, whether or not the person is a minor.

Therefore, finding that a buyer commits an offense under both Ohio Rev. Code Ann. § 2907.21(A)(2)(b) and § 2907.21(A)(3)(b), even if the person the offender believes to be a minor is not actually a minor, a defense to the use of a law enforcement decoy may be impermissible.

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

While Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws do not expressly authorize law enforcement to use the Internet or electronic communications to investigate those crimes, Ohio Rev. Code Ann. § 2907.07 (Importuning) permits law enforcement officers to use the Internet or electronic communications to investigate solicitation of sex with a minor. Ohio Rev. Code Ann. § 2907.07(C)(2), (D)(2) make it illegal for a person to solicit “a law enforcement officer posing as a person who is less than [13 or 16] years of age, and the offender believes that the other person is less than [13 or 16] years of age or is reckless in that regard.”

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

Ohio Rev. Code Ann. § 2901.30(B) (Missing child report; notice to child’s school; notice of return) directs a law enforcement agency to take the report of a missing child¹⁵⁷ and act promptly to locate the missing child. The law enforcement agency must gather information about the missing child and enter “it into the national crime information center computer,” notify the child’s school to mark the child’s records, and notify other law enforcement agencies within its jurisdiction. Ohio Rev. Code Ann. § 2901.30(C)–(E). Ohio Rev. Code Ann. § 2901.30(H) states,

¹⁵⁷ Ohio Rev. Code Ann. § 2901.30(A)(3) defines “missing children” or a “missing child” as

- (a) A minor who has run away from or who otherwise is missing from the home of, or the care, custody, and control of, the minor’s parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person having responsibility for the care of the minor;
- (b) A minor who is missing and about whom there is reason to believe the minor could be the victim of a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.03 [Unlawful restraint], or 2919.23 [Interference with custody] of the Revised Code or of a violation of section 2905.04 [Repealed] of the Revised Code as it existed prior to July 1, 1996.

A missing child's parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other persons responsible for the care of a missing child, immediately shall notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if the missing child was the victim of an offense listed in division (A)(3)(b)¹⁵⁸ of this section, or otherwise has been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of the missing child's parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person responsible for the missing child's care, has been released if the missing child was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located, the law enforcement agency involved promptly shall integrate the fact that the minor no longer is a missing child into the national crime information center computer and shall inform any school that was notified under division (D) of this section that the minor is no longer a missing child.

¹⁵⁸ See *supra* note 157 for the provisions of Ohio Rev. Code Ann. § 2901.30(A)(3)(b).

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