

2019 ANALYSIS AND RECOMMENDATIONS

TEXAS

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.*

Tex. Penal Code Ann. § 20A.02(a)(7), (8) (Trafficking of persons) makes the sex trafficking of minors under 18 a separate form of human trafficking, punishable by enhanced penalties, without requiring proof of force, fraud, or coercion. Specifically, Tex. Penal Code Ann. § 20A.02(a)² states,

A person commits an offense if the person knowingly:

....

(7) traffics³ a child⁴ and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

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

² The text of Tex. Penal Code Ann. § 20A.02 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

³ Pursuant to Tex. Penal Code Ann. § 20A.01(4), “‘Traffic’ means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.”

⁴ Tex. Penal Code Ann. § 20A.01(1) defines a “child” as “a person younger than 18 years of age.”

- (A) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
 - (B) Section 21.11 (Indecency with a Child);
 - (C) Section 22.011 (Sexual Assault);
 - (D) Section 22.021 (Aggravated Sexual Assault);
 - (E) Section 43.02 (Prostitution);
 - (F) Section 43.03 (Promotion of Prostitution);
 - (F-1) Section 43.031 (Online Promotion of Prostitution);
 - (G) Section 43.04 (Aggravated Promotion of Prostitution);
 - (G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);
 - (H) Section 43.05 (Compelling Prostitution);
 - (I) Section 43.25 (Sexual Performance by a Child);
 - (J) Section 43.251 (Employment Harmful to Children); or
 - (K) Section 43.26 (Possession or Promotion of Child Pornography); or
- (8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct⁵ with a child trafficked in the manner described in Subdivision (7).

A first conviction under Tex. Penal Code Ann. § 20A.02(a) is generally punishable as a second degree felony by imprisonment for 2–20 years⁶ and a possible fine not to exceed \$10,000. Tex. Penal Code Ann.

⁵ Tex. Penal Code Ann. § 20A.01(3) states that the term “sexual conduct” has the same meaning used in Tex. Penal Code Ann. § 43.25. Pursuant to Tex. Penal Code Ann. § 43.25(a)(2), “‘Sexual conduct’ means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.”

⁶ Texas Penal Code Sec. 3.03(b) (Sentences for offenses arising out of same criminal episode) states,

If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

.....

(2) an offense:

(A) under . . . Section 21.02 [Continuous sexual abuse of a child or children] . . . committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3) an offense:

(A) under Section . . . 43.26 [Possession or promotion of child pornography], regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

.....

(5) an offense:

(A) under Section 20A.02 [Trafficking of persons], 20A.03 [Continuous trafficking of persons], or 43.05 [Compelling prostitution], regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section; or

§§ 20A.02(b)(1), 12.33. A first conviction under Tex. Penal Code Ann. § 20A.02(a)(7) or § 20A.02(a)(8), however, is punishable, without regard to the use of force, fraud, or coercion, as a first degree felony by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000, while subsequent convictions are punishable by life imprisonment and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32, 12.42(c)(2).⁷

Additionally, Tex. Penal Code Ann. § 20A.03 (Continuous trafficking of persons) states,

(a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] against one or more victims.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.

(6) an offense:

(A) under Section 22.04(a)(1) or (2) or Section 22.04(a–1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

The text of Tex. Penal Code Ann. § 3.03 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

⁷ Additional sentencing limitations may also be applicable. For example, a person convicted under Tex. Penal Code Ann. § 20A.02 (Trafficking of Persons) cannot be sentenced to community supervision. Tex. Code Crim. Proc. Ann. art. 42A.054(a)(5). Also, a person convicted under Tex. Penal Code Ann. § 20A.02 (Trafficking of Persons) or Tex. Penal Code Ann. § 20A.03 (Continuous Trafficking of Persons) is not eligible for release to intensive supervision parole. Tex. Gov’t Code Ann. § 499.027(b)(2)(Z)–(AA) (First version). Additionally, if the offender has a prior conviction for certain crimes, including Tex. Penal Code Ann. § 20A.02(a)(7) or (8), a second conviction is punishable by life imprisonment. Tex. Penal Code Ann. § 12.42(c)(2)(A).

A separate offense provides penalties for threatening to commit a trafficking or CSEC offense. Tex. Penal Code Ann. § 21.18(b) (Sexual Coercion) states,

A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 43 [including Prostitution, Promotion of prostitution, Aggravated promotion of prostitution, Compelling prostitution, Employment harmful to children, and Sexual performance by a child] or Section 20A.02(a)(3), (4), (7), or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or children], . . . 21.11 [Indecency with a child], . . . 22.011 [Sexual assault], or 22.021 [Aggravated sexual assault] to obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

- (1) intimate visual material;
- (2) an act involving sexual conduct causing arousal or gratification; or
- (3) a monetary benefit or other benefit of value.

A conviction under this statute is punishable as a state jail felony by imprisonment for up to 2 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. § 21.18(e), 12.35.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02:

- (1) is charged in the alternative;
- (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
- (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.

...

A conviction under Tex. Penal Code Ann. § 20A.03 is punishable as a first degree felony by imprisonment for either 25–99 years⁸ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000.⁹ Tex. Penal Code Ann. §§ 20A.03(e), 12.32.

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.*

Texas has several statutes specifically criminalizing CSEC, including the following:¹⁰

1. Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution) makes it a crime if a person knowingly “causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.” A conviction under Tex. Penal Code Ann. § 43.05(a)(2) is punishable as a first degree felony by imprisonment for either 5–99 years¹¹ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.05(b), 12.32.
2. Tex. Penal Code Ann. § 43.03 (Promotion of prostitution) criminalizes knowingly soliciting “another to engage in sexual conduct with another person for compensation.” It is a “felony of the first degree if the

⁸ See *supra* note 6.

⁹ Pursuant to Tex. Gov’t Code Ann. § 508.145(d)(1)–(3) (Eligibility for release on parole; computation of parole eligibility date),

- (1) This subsection applies only to an inmate who is serving a sentence for:
 - (A) an offense described by Article 42A.054(a), Code of Criminal Procedure, other than an offense under Section 19.03, Penal Code;
 - (B) an offense . . . under Article 42A.054(c) or (d), Code of Criminal Procedure;
 - (C) an offense under Section 20A.03 [Continuous trafficking of persons], Penal Code;
 - (D) an offense under Section 71.02 [Engaging in organized criminal activity] or 71.023 [Directing activities of criminal street gangs], Penal Code.
- (2) An inmate described by Subdivision (1) is not eligible for release on parole until the inmate’s actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.
- (3) Notwithstanding Subdivision (2), an inmate who is serving a sentence for an offense under Section 22.021 [Aggravated sexual assault], Penal Code, is not eligible for release on parole if the inmate is serving a sentence for an offense for which punishment was enhanced under Section 12.42(c)(4), Penal Code.

¹⁰ See *supra* note 7 for substantive provisions of Tex. Penal Code Ann. § 21.18 (Sexual coercion), which provides penalties for threatening to commit certain CSEC offenses.

¹¹ See *supra* note 6.

actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.” Tex. Penal Code Ann. § 43.03(a), (b)(2).¹² A first degree felony is punishable by imprisonment for either 5–99 years¹³ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. § 12.32.

3. Tex. Penal Code Ann. § 43.04(a) (Aggravated promotion of prostitution) is violated when a person “knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.” A conviction under Tex. Penal Code Ann. § 43.04(a) is punishable as a first degree felony by imprisonment for either 5–99 years¹⁴ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.04(b),¹⁵ 12.32.
4. Tex. Penal Code Ann. § 43.02(b) (Prostitution) makes it a crime if a person “knowingly offers or agrees to pay a fee¹⁶ to another person for the purpose of engaging in sexual conduct with that person or another.” A first conviction under this statute is generally punishable as a Class A misdemeanor by imprisonment in a county jail up to 1 year, a fine not to exceed \$4,000, or both. Tex. Penal Code Ann. §§ 43.02(c-1),¹⁷ 12.21. However, pursuant to Tex. Penal Code Ann. §§ 43.02(c-1)(2), a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000

if the person with whom the actor agrees to engage in sexual conduct is:

- (A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense
 - (B) represented to the actor as being younger than 18 years of age; or
 - (C) believed by the actor to be younger than 18 years of age.
5. Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor) states,

A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or children], 21.11 [Indecency with a child], 22.011 [Sexual assault], 22.021 [Aggravated sexual assault], 43.02 [Prostitution], 43.05(a)(2) [Compelling prostitution], or 43.25 [Sexual performance by a child] be committed, the person by any means requests, commands, or attempts to induce a minor¹⁸ or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense under one of those sections

¹² The text of Tex. Penal Code Ann. § 43.03 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1802 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹³ See *supra* note 6.

¹⁴ See *supra* note 6.

¹⁵ The text of Tex. Penal Code Ann. § 43.04 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1802 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹⁶ Tex. Penal Code Ann. § 43.01(1-b) defines “fee” as “the payment or offer of payment in the form of money, goods, services, or other benefit.”

The text of Tex. Penal Code Ann. § 43.01 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹⁷ The text of Tex. Penal Code Ann. § 42.03 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹⁸ Pursuant to Tex. Penal Code Ann. § 15.031(f), “In this section, ‘minor’ means an individual younger than 17 years of age.”

or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

Pursuant to Tex. Penal Code Ann. § 15.031(e), a conviction under Tex. Penal Code Ann. § 15.031(b) is punishable one category lower than committing the actual offense, but the punishment may be enhanced to the same category as the predicate offense if it is proven that the offender

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01 [Definitions];¹⁹ and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

6. Tex. Penal Code Ann. § 43.251(b) (Employment harmful to children) states, “A person commits an offense if the person employs, authorizes, or induces a child²⁰ to work: (1) in a sexually oriented commercial activity;²¹ or (2) in any place of business permitting, requesting, or requiring a child to work nude or topless.” Pursuant to Tex. Penal Code Ann. § 43.251(c) a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000, but if the child is a minor under the age of 14, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.251(c), 12.33, 12.32.

7. Tex. Penal Code Ann. § 21.02(b), (c), (g) (Continuous sexual abuse of young child or children) states,

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.

(c) For purposes of this section, “act of sexual abuse” means any act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

....

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a)(7) or (8); and

(8) compelling prostitution under Section 43.05(a)(2).

....

¹⁹ Tex. Penal Code Ann. § 71.01(d) defines “criminal street gang” as “three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.”

²⁰ Pursuant to Tex. Penal Code Ann. § 43.251(a)(1), “child” is defined as “a person younger than 18 years of age.”

²¹ Tex. Penal Code Ann. § 43.251(a)(5) defines “sexually oriented commercial activity” as “a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.”

- (g) It is an affirmative defense to prosecution under this section that the actor:
- (1) was not more than five years older than:
 - (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or
 - (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;
 - (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and
 - (3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:
 - (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
 - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

A conviction under this statute is punishable as a first degree felony by imprisonment for either 25–99 years²² and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 21.02(h), 12.32.

8. Tex. Penal Code Ann. § 43.031²³ (Online promotion of prostitutions) states,
- (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution.
 - (b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor:
 - (1) has been previously convicted of an offense under this section or Section 43.041 [Aggravated online promotion of prostitution]; or
 - (2) engages in conduct described by Subsection (a) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

A second degree felony is punishable by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.031(b)(2), 12.33.

9. Tex. Penal Code Ann. § 43.041²⁴ (Aggravated online promotion of prostitution) states,
- (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution.
 - (b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor:
 - (1) has been previously convicted of an offense under this section; or

²² See *supra* note 6.

²³ The text of Tex. Penal Code Ann. § 43.031 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

²⁴ The text of Tex. Penal Code Ann. § 43.041 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

(2) engages in conduct described in Subsection (a) involving two or more persons younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

A first degree felony is punishable by either 25–99 years²⁵ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.041(b)(2), 12.32.

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

1. Tex. Penal Code Ann. § 22.011(a)(2) (Sexual assault) states,

A person commits an offense if:

....

(2) regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly:

- (A) causes the penetration of the anus or sexual organ of a child²⁶ by any means;
- (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
- (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
- (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
- (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

A conviction under Tex. Penal Code Ann. § 22.011(a)(2) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000.²⁷ Tex. Penal Code Ann. §§ 22.011(f), 12.33.

²⁵ See *supra* note 6.

²⁶ Tex. Penal Code Ann. § 22.011(c)(1) defines “child” as “a person younger than 17 years of age.”

²⁷ Tex. Penal Code Ann. § 22.011(e)(2) provides,

It is an affirmative defense to prosecution under Subsection (a)(2):

....

(2) that:

- (A) the actor was not more than three years older than the victim and at the time of the offense:
 - (i) was not required under Chapter 62 [Sex offender registration program], Code of Criminal Procedure, to register for life as a sex offender; or
 - (ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and
- (B) the victim:
 - (i) was a child of 14 years of age or older; and
 - (ii) was not:
 - (a) a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01 [Bigamy]; or
 - (b) a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02 [Prohibited sexual conduct].

The text of Tex. Penal Code Ann. § 22.011 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 667 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2020).

2. Tex. Penal Code Ann. § 21.11(a), (b) (Indecency with a child) provides,

- (a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:
- (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
 - (2) with intent to arouse or gratify the sexual desire of any person:
 - (A) exposes the person’s anus or any part of the person’s genitals, knowing the child is present; or
 - (B) causes the child to expose the child’s anus or any part of the child’s genitals.
- (b) It is an affirmative defense to prosecution under this section that the actor:
- (1) was not more than three years older than the victim and of the opposite sex;
 - (2) did not use duress, force, or a threat against the victim at the time of the offense; and
 - (3) at the time of the offense:
 - (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
 - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

A conviction under Tex. Penal Code Ann. § 21.11(a)(1) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000, while a conviction under Tex. Penal Code Ann. § 21.11(a)(2) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 21.11(d), 12.33, 12.34.

3. Tex. Penal Code Ann. § 33.021(b), (c) (Online solicitation of a minor) states,

- (b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), (K) [Definitions], Code of Criminal Procedure [§§ 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 25.02 (Prohibited sexual conduct), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), 43.26 (Possession or promotion of child pornography), or (K) 20A.02(a)(7), (8) (Trafficking of persons)], the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:
- (1) communicates in a sexually explicit²⁸ manner with a minor;²⁹ or
 - (2) distributes sexually explicit material to a minor.
- (c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact,³⁰ sexual intercourse, or deviate sexual intercourse with the actor or another person.

If the victim is under 17 years of age, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.34. But, if the victim is younger than 14 years of age or the offender believes

²⁸ Pursuant to Tex. Penal Code Ann. § 33.021(a)(3), “‘Sexually explicit’ means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.” See *supra* note 5 for the definition of “sexual conduct” according to Tex. Penal Code Ann. § 43.25.

²⁹ Pursuant to Tex. Penal Code Ann. § 33.021(a)(1), “‘Minor’ means: (A) an individual who is younger than 17 years of age; or (B) an individual whom the actor believes to be younger than 17 years of age.”

³⁰ Pursuant to Tex. Penal Code Ann. § 33.021(a)(2), “sexual contact” has the same meaning as assigned in Section 21.01. Tex. Penal Code Ann. § 21.01(2) defines “sexual contact” as “any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.”

the victim to be younger than 14 years of age, however, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33. A conviction under Tex. Penal Code Ann. §§ 33.021(c) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33.

4. Tex. Penal Code Ann. § 22.021(a) (Aggravated sexual assault) states,

A person commits an offense:

(1) if the person:

....

(B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:

- (i) causes the penetration of the anus or sexual organ of a child³¹ by any means;
- (ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
- (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
- (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
- (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

....

(vi) with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance capable of impairing the victim’s ability to appraise the nature of the act or to resist the act; [or]

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense

....

A conviction under Tex. Penal Code Ann. § 22.021(a) is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 22.021(e), 12.32. The minimum term of imprisonment is increased to 25 years, however, if the victim is younger than 6 years of age or is 13 years of age or younger and “the actor commits the offense in a manner described by Subsection (a)(2)(A).” Tex. Penal Code Ann. § 22.021(f).

5. Tex. Penal Code Ann. § 43.25(b) (Sexual performance by a child) states,

A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct³² or a sexual performance.³³

³¹ Tex. Penal Code Ann. § 22.021(b)(1) defines “child” by referencing Tex. Penal Code Ann. § 22.011(c), which defines “child” as “a person younger than 17 years of age.” Tex. Penal Code Ann. § 22.011(c)(1).

³² Tex. Penal Code Ann. § 43.25(a)(2) defines “sexual conduct” as “sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.”

³³ Tex. Penal Code Ann. § 43.25(a)(1) defines “sexual performance” as “any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.” Tex. Penal Code Ann. § 43.25(a)(3) defines “performance” as “any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.”

A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.

A conviction under Tex. Penal Code Ann. § 43.25(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.33. If the victim is under the age of 14, however, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.32.

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

Tex. Penal Code Ann. § 43.02(d) (Prostitution) refers to Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) by stating that “[i]t is a defense to prosecution for an offense under subsection (a) that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02.”

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.

Sex trafficking enterprises may face prosecution under Texas’s laws related to organized criminal activity. Tex. Penal Code Ann. § 71.02(a)³⁴ (Engaging in organized criminal activity) states, in part,

A person commits an offense if, with the intent to establish, maintain, or participate in a combination³⁵ or in the profits of a combination or as a member of a criminal street gang,³⁶ the person commits or conspires to commit one or more of the following:

- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor
-
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
-
- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any offense under Subchapter B [Obscenity], Chapter 43 [Public indecency], depicting or involving conduct by or directed toward a child younger than 18 years of age;
-
- (12) any offense under Chapter 20A [Trafficking of persons];
-

³⁴ The text of Tex. Penal Code Ann. § 71.02 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 869 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

³⁵ Pursuant to Tex. Penal Code Ann. § 71.01(a),

“Combination” means three or more persons who collaborate in carrying on criminal activities, although:

- (1) participants may not know each other’s identity;
- (2) membership in the combination may change from time to time; and
- (3) participants may stand in a wholesaler-retailer or other arm’s-length relationship in illicit distribution operations.

³⁶ See *supra* note 19 for the definition of “criminal street gang.”

(19) any offense classified as a felony under the Tax Code.

Based on this definition of criminal activity, acts of commercial sexual exploitation of children and sex trafficking constitute predicate crimes under the racketeering law, making it available for combatting criminal enterprises that engage in domestic minor sex trafficking. Tex. Penal Code Ann. § 71.02(b) further states,

Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

- (1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:
 - (A) the victim of the offense is younger than six years of age;
 - (B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or
 - (C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; or
- (2) life or for any term of not more than 99 years or less than 30 years if the most serious offense is an offense under Section 20.06 (Continuous smuggling of persons) that is punishable under Subsection (g) of that section; or
- (3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1) or (2).

Texas also has a civil racketeering law targeted at human trafficking operations. Under Tex. Civ. Prac. & Rem. Code Ann. § 140A.002 (Civil racketeering):

A person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense under Chapter 20A, Penal Code (trafficking of persons), and the offense or an element of the offense:

- (1) occurs in more than one county in this state; or
- (2) is facilitated by the use of United States mail, e-mail, telephone, facsimile, or a wireless communication from one county in this state to another.

The state's remedies against an instance of racketeering under this statute are significant. Under Tex. Civ. Prac. & Rem. Code Ann. § 140.004 (Injunctive Relief; Other Remedies):

- (a) A court in which a proceeding is brought under this chapter may prevent, restrain, and remedy racketeering by issuing appropriate orders. The orders may include a temporary restraining order, a temporary or permanent injunction, the creation of a receivership, and the enforcement of a constructive trust in connection with any property or other interest, prejudgment writs of attachment under Chapter 61 for the purposes of freezing, preserving, and disgorging assets, or another order for a remedy or restraint the court considers proper.
- (b) Following a final determination of liability under this chapter, the court may issue an appropriate order, including an order that:
 - (1) requires a person to divest any direct or indirect interest in an enterprise;
 - (2) imposes reasonable restrictions on the future activities or investments of a person that affect the laws of this state, including prohibiting a person from engaging in the type of endeavor or enterprise that gave rise to the racketeering offense, to the extent permitted by the constitutions of this state and the United States;
 - (3) requires the dissolution or reorganization of an enterprise involved in the suit;

- (4) orders the recovery of reasonable fees, expenses, and costs incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, attorney’s fees, witness fees, and deposition fees;
 - (5) orders payment to the state of an amount equal to:
 - (A) the gain acquired or maintained through racketeering; or
 - (B) the amount for which a person is liable under this chapter;
 - (6) orders payment to the state of a civil penalty by a person or enterprise found liable for racketeering, in an amount not to exceed \$250,000 for each separately alleged and proven act of racketeering;
 - (7) orders payment of damages to the state for racketeering shown to have materially damaged the state; or
 - (8) orders that property attached under Chapter 61 be used to satisfy an award of the court, including damages, penalties, costs, and fees.
- (c) In determining the amount of a civil penalty ordered under Subsection (b)(6), the court shall consider:
- (1) the seriousness of the racketeering offense and the consequent financial or personal harm to the state or to any identified victim; and
 - (2) the duration of the racketeering activity.
- (d) If any property attached under Chapter 61 is not necessary to satisfy an award of the court after a finding of liability for racketeering of the person or enterprise having an interest in the property, the court may order that the property be disgorged to the state to the extent of the person’s or enterprise’s interest. To be disgorged, the property must be acquired or maintained by the person or enterprise through racketeering.
-
- (g) This chapter is not intended to provide the exclusive remedy for the activity addressed by this chapter. A proceeding under this chapter may be brought in addition to or in the alternative of any other civil or criminal action available under the laws of this state.
-

Furthermore, any property “used or intended to be used in the commission of” Tex. Penal Code Ann. § 71.02(a) (Engaging in organized criminal activity) is subject to the forfeiture provisions outlined in Tex. Code Crim. Proc. Ann. art. 59.02(a) (Forfeiture of contraband). Tex. Code Crim. Proc. Ann. art. 59.01(2)(B)(xi) (Definitions).

Lastly, additional penalties are provided under Tex. Penal Code Ann. § 71.022(a) (Coercing, inducing, or soliciting membership in a criminal street gang) which states,

A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

A first conviction under this statute is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine not to exceed \$10,000, while subsequent convictions are punishable as second degree felonies by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 71.022(b), (c), 12.34, 12.33.

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.*

Texas’s human trafficking law applies to buyers of commercial sex acts with minors. Following federal precedent, Tex. Penal Code Ann. § 20A.02(a)(7) (Trafficking of persons) applies to a buyer who knowingly “obtains”³⁷ and “causes” a child to engage in conduct prohibited by several CSEC offenses, including Tex. Penal Code Ann. §§ 43.02 (Prostitution), 21.02 (Continuous sexual abuse of a young child or children), and 43.251 (Employment harmful to children).³⁸

Additionally, Tex. Penal Code Ann. § 20A.02(a)(8) applies to a buyer who “engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).” Further, Tex. Penal Code Ann. § 20A.03 (Continuous trafficking of persons) could apply to a buyer if the buyer “during a period that is 30 or more days

³⁷ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

³⁸ See *supra* Component 1.1 and note 3 for full discussion of Tex. Penal Code Ann. § 20A.02(a)(7).

in duration engages two or more times in conduct that constitutes an offense under Section 20A.02 against one or more victims.”

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

Texas’s CSEC laws specifically include the crime of buying sex with a minor. Tex. Penal Code Ann. § 43.02(b) (Prostitution) makes it a crime if a person “knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.” A conviction under this statute is generally punishable as a Class A misdemeanor by imprisonment in a county jail up to 1 year, a fine not to exceed \$4,000, or both. Tex. Penal Code Ann. §§ 43.02(c-1),³⁹ 12.21. “[I]f the person with whom the actor agrees to engage in sexual conduct is younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense,” or is represented to the actor or believed by the actor to be under 18 years of age, a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.02(c-1)(2), 12.33. Pursuant to Tex. Gov’t Code § 126.002(b) (Authority to establish program; eligibility), however, a buyer convicted under Tex. Penal Code Ann. § 43.02 who has the consent of the prosecuting attorney and does not have a prior conviction under Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons), 43.02 (Prostitution), 43.03 (Promotion of prostitution), 43.04 (Aggravated promotion of prostitution), or 43.05 (Compelling prostitution), or certain other offenses, is eligible to participate in a commercially sexually exploited persons court program.⁴⁰

³⁹ See *supra* note 17.

⁴⁰ Tex. Gov’t Code § 126.001 (Commercially sexually exploited persons court program; procedures for certain defendants) states,

In this chapter, commercially sexually exploited persons court program” means a program that has the following essential characteristics:

- (1) the integration of services in the processing of cases in the judicial system;
- (2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;
- (3) early identification and prompt placement of eligible participants in the program;
- (4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;
- (5) a coordinated strategy to govern program responses to participant compliance;
- (6) monitoring and evaluation of program goals and effectiveness;
- (7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and
- (8) development of partnerships with public agencies and community organizations.

Tex. Gov’t Code § 126.001(b) further explains,

If a defendant successfully completes a commercially sexually exploited persons court program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081 [Application of Subchapter], Government Code, as if the defendant had received a discharge and dismissal under Article 42A.111 [Deferral of proceedings in cases appealed to county court], Code of Criminal Procedure, with respect to all records and files related to the defendant’s arrest for the offense for which the defendant entered the program if the defendant:

- (1) has not been previously convicted of a felony offense; and
- (2) is not convicted of any other felony offense before the second anniversary of the defendant’s successful completion of the program.

Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor) makes it illegal if a buyer “by any means requests, commands, or attempts to induce a minor⁴¹ or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense under” Tex. Penal Code Ann. §§ 20A.02(a)(8) (Trafficking of persons), 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 43.02 (Prostitution), 43.05(a)(2) (Compelling prostitution), or 43.25 (Sexual performance by a child). Pursuant to Tex. Penal Code Ann. § 15.031(e), a conviction under Tex. Penal Code Ann. § 15.031(b) is punishable one category lower than committing the actual offense, but the punishment may be enhanced to the same category as the predicate offense if it is proven that the offender

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01 [Definitions];⁴² and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

A buyer may also be convicted under Tex. Penal Code Ann. § 21.02(b)(1) (Continuous sexual abuse of young child or children) if the buyer is at least 17 years of age and commits “two or more acts of sexual abuse⁴³ [against a child under the age of 14], regardless of whether the acts of sexual abuse are committed against one or more victims” and these acts occur “during a period that is 30 or more days in duration.” A conviction under this statute is punishable as a first degree felony by imprisonment for either 25–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 21.02(h), 12.32.

Additionally, buyers may also be convicted under Tex. Penal Code Ann. § 22.021(a) (Aggravated sexual assault)⁴⁴ for engaging in specified sexual conduct with a child under 14 or, among other things, “threaten[ing] to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) [Trafficking of persons]” A conviction under Tex. Penal Code Ann. § 22.021(a) is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 22.021(e), 12.32. The minimum term of imprisonment is increased to 25 years, however, if the victim is younger than 6 years of age or is 13 years of age or younger and “the actor commits the offense” by, among other things, threatening “to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8).” Tex. Penal Code Ann. § 22.021(f).

Tex. Penal Code Ann. § 43.25(b) (Sexual performance by a child) may apply to certain buyers.⁴⁵ Tex. Penal Code Ann. § 43.25(b) makes it a crime if a person “induces a child younger than 18 years of age to engage in sexual conduct.”⁴⁶ A conviction under Tex. Penal Code Ann. § 43.25(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex.

⁴¹ See *supra* note 18.

⁴² See *supra* note 19.

⁴³ See *supra* Component 1.2 for the definition of “sexual abuse.”

⁴⁴ See *supra* Component 1.2 for the substantive provisions of Tex. Penal Code Ann. § 22.021(a).

⁴⁵ The Texas Court of Criminal Appeals has held that a school teacher “induced” a minor pursuant to Tex. Penal Code Ann. § 43.25(b) even though “she was not offered money, grades, or favors in exchange for consenting to oral sex.” *Dornbusch v. State*, 156 S.W.3d 859, 868 (Tex. Crim. App. 2005). The court determined that the teacher’s position of authority alone was enough to induce the minor. *Id.* Additionally, the Court stated, “Whether an offense has occurred under section 43.25(b) does not turn on who initially requests sex; it depends on whether an adult knowingly employed, induced, or authorized sexual conduct from a minor.” *Id.* at 871. The Court, however, declined to state whether § 43.25(b) would apply if a minor initiated the sexual conduct. *Id.* Therefore, buyers may be convicted under this statute if a court determines that the minor has been “induced” into engaging in sexual conduct by the buyer.

⁴⁶ See *supra* note 32 for the definition of “sexual conduct.”

Penal Code Ann. §§ 43.25(c), 12.33. If the victim is under the age of 14, however, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.32.

Lastly, although it is not entirely clear, Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution) may apply to a buyer who knowingly “causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.”⁴⁷ A conviction under Tex. Penal Code Ann. § 43.05(a)(2) is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.05(b), 12.32.

Several other sexual offenses may also be used to prosecute buyers of commercial sex acts with a minor but do not specifically prohibit the commercial sexual exploitation of a child, and do not refer to Tex. Penal Code Ann. § 20A.02 (Trafficking of persons).

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

Tex. Penal Code Ann. § 43.02 (Prostitution) imposes heightened penalties if an adult offers or agrees to purchase sex with a minor. A conviction under Tex. Penal Code Ann. § 43.02(b) is generally punishable as a Class A misdemeanor by imprisonment in a county jail up to 1 year, a fine not to exceed \$4,000, or both. Tex. Penal Code Ann. §§ 43.02(c-1),⁴⁸ 12.21. “[I]f the person with whom the actor agrees to engage in sexual conduct is younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense,” or is represented to the actor or believed by the actor to be under 18 years of age, a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.02(c-1)(2), 12.33.

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

A first conviction under Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons) is punishable as a first degree felony by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000, while subsequent convictions are punishable by life imprisonment. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32, 12.42(c)(2).⁴⁹ A conviction under Tex. Penal Code Ann. § 43.02(b) (Prostitution), “if the person with whom the actor agrees to engage in sexual conduct is younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense,” or is represented to the actor or believed by the actor to be under 18 years of age, is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.02(c-1)(2),⁵⁰ 12.33.

⁴⁷ Texas case law does not expressly state that Tex. Penal Code Ann. § 43.05(a)(2) (Compelling Prostitution) applies to buyers or patrons of prostitution. However, a Texas Court of Appeals has relied on an interpretation by the Oregon Court of Appeals regarding a similar Oregon compelling prostitution statute. *Waggoner v. State*, 897 S.W.2d 510, 512 (Tex. Crim. App. 1995) (citing *State v. Wood*, 579 P.2d 294, 296 (Or. Ct. App. 1978)). In a case decided after *Waggoner*, the Oregon Court of Appeals determined that its compelling prostitution statute did not apply to patrons or buyers. *State v. Vargas-Torres*, 242 P.3d 619, 626 (Or. Ct. App. 2010). Therefore, since Texas has previously relied on an opinion issued by an Oregon court interpreting a similar compelling prostitution statute, it is arguable that Texas courts may similarly restrict the applicability of Tex. Penal Code Ann. § 43.05(a)(2) against buyers, just as Oregon restricted the applicability of its prostitution statute against buyers in *Vargas-Torres*.

⁴⁸ See *supra* note 17.

⁴⁹ See *supra* note 7.

⁵⁰ See *supra* note 17.

Additionally, a buyer's conviction under Tex. Penal Code Ann. § 43.25(b) (Sexual performance by a child) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.33. If the victim is under the age of 14, however, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.32. A buyer's conviction under Tex. Penal Code Ann. § 21.02(b) (Continuous sexual abuse of young child or children) is punishable as a first degree felony by imprisonment for either 25–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 21.02(h), 12.32. Pursuant to Tex. Penal Code Ann. § 15.031(e), a conviction under Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor) is punishable one category lower than committing the actual offense, but the punishment may be enhanced to the same category as the predicate offense if certain requirements are satisfied.⁵¹

A buyer's conviction under Tex. Penal Code Ann. § 22.021(a) (Aggravated sexual assault)⁵² is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 22.021(e), 12.32. The minimum term of imprisonment is increased to 25 years, however, if the victim is younger than 6 years of age or is 13 years of age or younger and “the actor commits the offense in a manner described by Subsection (a)(2)(A).” Tex. Penal Code Ann. § 22.021(f). Lastly, a buyer convicted under Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution)⁵³ is guilty of a first degree felony punishable by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.05(b), 12.32.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵⁴ 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 offense⁵⁵ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,⁵⁶ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.⁵⁷

⁵¹ See *supra* Component 1.2 for the substantive provisions of Tex. Penal Code Ann. § 15.031(e).

⁵² See *supra* Component 1.2 for the substantive provisions of Tex. Penal Code Ann. § 22.021(a).

⁵³ See *supra* Component 2.2 for discussion on whether Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution) is applicable against buyers.

⁵⁴ 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.).

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ 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,

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.*

Tex. Penal Code Ann. § 33.021(b), (c) (Online solicitation of a minor) makes it a crime for a person to use the Internet or electronic communications to lure, entice, or recruit commercial sex acts with a minor, stating,

(b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), (K) [Definitions], Code of Criminal Procedure [§§ 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 25.02 (Prohibited sexual conduct), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), 43.26 (Possession or promotion of child pornography), or 20A.02(a)(7), (8) (Trafficking of persons)], the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

- (1) communicates in a sexually explicit⁵⁸ manner with a minor;⁵⁹ or
- (2) distributes sexually explicit material to a minor.

(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

If the victim is under 17 years of age, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.34. If the victim is younger than 14 years of age or the offender believes the victim to be younger than 14 years of age, however, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33. A conviction under Tex. Penal Code Ann. §§ 33.021(c) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33.

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

Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) prohibits the use of a mistake of age defense by a defendant charged under Tex. Penal Code Ann. § 20A.02(a)(8), which may include certain buyers.⁶⁰ Tex. Penal Code Ann. § 20A.02(b)(1) states, in part,

An offense under this section is a felony of the first degree if:

- (1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense

Tex. Penal Code Ann. § 43.02(b), (c-1)(2)⁶¹ (Prostitution) prohibits a mistake of age defense by providing that “knowingly offer[ing] or agree[ing] to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another,” is

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).

⁵⁸ *See supra* note 28.

⁵⁹ *See supra* note 29.

⁶⁰ *See supra* Component 2.1 for discussion on how Tex. Penal Code Ann. § 20A.02(a)(7), (8) may be applicable to buyers.

a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct is:

- (A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense;
- (B) represented to the actor as being younger than 18 years of age; or
- (C) believed by the actor to be younger than 18 years of age.

Further, Tex. Penal Code Ann. § 21.02(b)(2) (Continuous sexual abuse of young child or children) prohibits a defendant who is 17 years of age or older from asserting a mistake of age defense if the victim is under 14 years of age. Tex. Penal Code Ann. § 21.02(b)(2) states, “A person commits an offense . . . regardless of whether the actor knows the age of the victim at the time of the offense.”

Similarly, several other offenses, including Tex. Penal Code Ann. §§ 43.251(d) (Employment harmful to children), 21.11(a) (Indecency with a child), 22.011(a)(2) (Sexual assault), 22.021(a)(1)(B), (2)(B) (Aggravated sexual assault), and 43.25(h) (Sexual performance by a child), prohibit a mistake of age defense through use of the phrase “regardless of whether the person knows the age of the child at the time of the offense” or related language.

Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor), however, does not specifically eliminate 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.*

Texas’s trafficking law, Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons), does not stagger penalties based on a minor’s age; further, penalties under this offense are sufficiently high. A first conviction under Tex. Penal Code Ann. § 20A.02(a)(8) is a first degree felony punishable by imprisonment “for life or for any term of not more than 99 years or less than 5 years.” Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32, 12.42(c)(2).⁶²

Similarly, Tex. Penal Code Ann. § 43.02(b) (Prostitution), one of Texas’s buyer-applicable CSEC laws, does not stagger penalties based on a minor’s age and provides a sufficiently high penalty. If the victim is a minor, a conviction under Tex. Penal Code Ann. § 43.02(b) is a second degree felony punishable by imprisonment for 2–20 years. Tex. Penal Code Ann. §§ 43.02(c-1)(2),⁶³ 12.33.

However, some of Texas’s CSEC laws do stagger penalties based on a minor’s age. Tex. Penal Code Ann. § 15.031(f) (Criminal solicitation of a minor) defines “minor” as a person younger than 17 years of age. Pursuant to Tex. Penal Code Ann. § 15.031(e), a conviction under Tex. Penal Code Ann. § 15.031(b) is punishable one category lower than committing the actual offense, but the punishment may be enhanced to the same category as the predicate offense if certain requirements are satisfied. Thus, if the predicate offense has penalties staggered based on the victim’s age, then the penalties pursuant Tex. Penal Code Ann. § 15.031(e) will also be staggered based on age. Further, Tex. Penal Code Ann. § 21.02 (Continuous sexual abuse of young child or children) only applies if the victim is a minor under 14,⁶⁴ leaving minors between the ages of 14 and 17 unprotected. Convictions under Tex. Penal Code Ann. § 21.02(b), (c) are first degree felonies punishable by life or 25–99 years imprisonment. Tex. Penal Code Ann. §§ 21.02(h), 12.32.

⁶¹ See *supra* note 17.

⁶² See *supra* note 7.

⁶³ See *supra* note 17.

⁶⁴ Tex. Penal Code Ann. § 22.021 does include minors under the age of 17 in certain instances, but it is highly unlikely that these instances are applicable to buyers.

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.*

Pursuant to Tex. Penal Code Ann. §§ 12.32–34, all felony convictions are subject to a possible fine not to exceed \$10,000. Therefore, a buyer convicted under Tex. Penal Code Ann. §§ 20A.02(a)(8) (Trafficking of persons), 43.02(b) (Prostitution), 21.02(b) (Continuous sexual abuse of young child or children), 22.021(a) (Aggravated sexual assault), 43.25(b) (Sexual performance by a child), or 15.031(b) (Criminal solicitation of a minor) is subject to a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 43.02(c-1)(2),⁶⁵ 21.02(h), 22.021(e), 43.25(c).

Pursuant to Tex. Code Crim. Proc. Ann. art. 42.0372 (Mandatory restitution for child victims of trafficking of persons or compelling prostitution), buyers convicted under Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons) are required to make restitution to their victims. Tex. Code Crim. Proc. Ann. art. 42.0372 states,

- (a) The court shall order a defendant convicted of an offense under Section 20A.02 [Trafficking of persons] or 43.05(a)(2) [Compelling prostitution], Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.
- (b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.
- (c) A restitution order issued under subsection (a) may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.
- (d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim name in the order in the manner specified by the court.

Buyers convicted of other crimes may also be required to make restitution at the discretion of the court, pursuant to Tex. Code Crim. Proc. Ann. art. 42.037(a), (b), (r)⁶⁶ (Restitution), which states,

- (a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter J [Funds], Chapter 56B [Crime Victims' Compensation], to the extent that fund has paid compensation to or on behalf of the victim
- (b) (1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:
 - (A) to return the property to the owner of the property or someone designated by the owner; or
 - (B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:
 - (i) the value of the property on the date of the damage, loss, or destruction; or
 - (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.
- (2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:
 - (A) the victim for any expenses incurred by the victim as a result of the offense; or
 - (B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.

. . . .

⁶⁵ See *supra* note 17.

⁶⁶ The text of Tex. Code Crim. Proc. Ann. art. 42.037 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

(r) The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney's fees.

Additionally, buyers may be subject to criminal asset forfeiture. Pursuant to Tex. Code Crim. Proc. Ann. art. 59.02(a) “(a) Property that is contraband is subject to seizure and forfeiture under this chapter.” Tex. Code Crim. Proc. Ann. art. 59.01(2)⁶⁷ (Definitions) states,

“Contraband” means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

- (i) any first or second degree felony under the Penal Code;
- (ii) any felony under Section 15.031(b) [Criminal solicitation of a minor], 21.11 [Indecency with a child], or 38.04 [Evading arrest or detention], or Chapter 29 [Robbery], 30 [Burglary and criminal trespass], 31 [Theft], 32 [Fraud], 33 [Computer crimes] [which includes Tex. Penal Code Ann. § 33.021 (Online Solicitation of a Minor)], 33A [Telecommunications crimes], or 35 [Insurance fraud], Penal Code;
- (iii) any felony under Chapter 43 [Public indecency], Penal Code, except as provided in Paragraph (B);

....

(B) used or intended to be used in the commission of:

....

(iv) any felony under Chapter 20A [Trafficking of persons] or 34 [Money laundering], Penal Code;

....

(xii) any offense under . . . 43.04 [Aggravated promotion of prostitution], or 43.05 [Compelling prostitution], Penal Code; or

....

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under . . . Chapter 43 [Public indecency], Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of an offense under . . . Chapter 20A [Trafficking of Persons], Penal Code.

Tex. Code Crim. Proc. Ann. art. 59.03 (Seizure of contraband) governs the seizure of forfeitable property and states, in relevant part:

⁶⁷ The text of Tex. Code Crim. Proc. Ann. art. 59.01 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2613 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

- (a) Property subject to forfeiture under this chapter, other than property described by Article 59.12, may be seized by any peace officer under authority of a search warrant.
- (b) Seizure of property subject to forfeiture may be made without warrant if:
 - (1) the owner, operator, or agent in charge of the property knowingly consents;
 - (2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property knowingly consents;
 - (3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter; or
 - (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

Pursuant to Tex. Code Crim. Proc. Ann. art. 59.06(t)(1), (2)(A), (B)⁶⁸ (Disposition of forfeited property), the “gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency” from property the was forfeited and seized with respect to an offense under Tex. Penal Code §§ 43.04 (Aggravated promotion or prostitution) or 43.05 (Compelling prostitution) or under Chapter 20A (Trafficking of persons) shall be:

- (A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or
- (B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

Additionally, Tex. Code Crim. Proc. Ann. art. 18.18(a) (Disposition of gambling paraphernalia, prohibited weapon, criminal instrument, and other contraband) provides for the destruction or forfeiture of, among other things, any “obscene device or material” or “child pornography” for any offense that involves child sexual abuse material (CSAM).

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

Tex. Penal Code Ann. § 43.26(a) (Possession or promotion of child pornography) makes it illegal for a person to possess child sexual abuse material (CSAM). Tex. Penal Code Ann. § 43.26(a) states,

A person commits an offense if:

- (1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with o view, visual material⁶⁹ that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct,⁷⁰ including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8) [Trafficking of Persons]; and
- (2) the person knows that the material depicts the child as described by Subdivision (1).

⁶⁸ The text of Tex. Code Crim. Proc. Ann. art. 59.06 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2613 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

⁶⁹ Tex. Penal Code Ann. § 43.26(b)(3) defines “visual material” as

- (A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
- (B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

⁷⁰ Tex. Penal Code Ann. § 43.26(b)(2) defines “sexual conduct” as having “the meaning assigned by Section 43.25.” See *supra* note 5 for the applicable definition of “sexual conduct.”

A first conviction under Tex. Penal Code Ann. § 43.26(a) is punishable as a third degree felony by imprisonment for 2–10 years⁷¹ and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(d), 12.34. However, a second violation of Tex. Penal Code Ann. § 43.26(a) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(d), 12.33. And a third offense is punishable as a first degree felony with imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(d), 12.32. Also, a defendant convicted of multiple counts of possessing CSAM may serve more than ten years, if the sentencing court exercises its option to impose consecutive, rather than concurrent sentences. Under Tex. Penal Code Ann. § 3.03(b)(3) (Sentences for offenses arising out of the same criminal episode), “If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively” for violations of Tex. Penal Code Ann. § 43.26.

Under Tex. Code Crim. Proc. Ann. art. 42.037(r) (Restitution),

The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney’s fees.

In comparison, a federal conviction for possession of CSAM⁷² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁷³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁷⁴

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

Tex. Code Crim. Proc. Ann. art. 62.051(a) (Registration: general) states, “A person who has a reportable conviction or adjudication . . . shall register . . . with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days.” Pursuant to Tex. Code Crim. Proc.

⁷¹ See *supra* note 6.

⁷² 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).

⁷³ 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).

⁷⁴ 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).

Ann. art. 62.001(5)(A), (B), (B-1), (J), (K), (L)⁷⁵ (Definitions), the definition of “reportable conviction or adjudication” expressly includes convictions under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8) (Trafficking of persons), 20A.03 (Continuous trafficking of persons), 43.02(c-1)(2) (Prostitution), 21.02 (Continuous sexual abuse of young child or children), 22.021(a) (Aggravated sexual assault), 43.26 (Possession or promotion of child pornography), 43.25(b) (Sexual performance by a child), and 33.021(b), (c) (Online solicitation of a minor).

Convictions under Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor), however, are not included within the definition of “reportable conviction or adjudication” under Tex. Code Crim. Proc. Ann. art. 62.001(5), and, therefore, do not require registration.

Notably, Tex. Code Crim. Proc. Ann. art. 62.101(a)(2), (3) (Expiration of duty to register) imposes a lifetime registration requirement on offenders convicted under Tex. Penal Ann. Code §§ 20A.02(a)(7), (8); 43.05(a)(2); or 20A.03 “if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7) or (8)”

⁷⁵ The text of Tex. Code Crim. Proc. Ann. art. 62.001 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 20 and 1802 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

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.

Tex. Penal Code Ann. § 20A.02(b)(1) (Trafficking of persons) imposes enhanced penalties for the sex trafficking of a minor under Tex. Penal Code Ann. § 20A.02(a)(7), (8).⁷⁶ A first conviction under Tex. Penal Code Ann. § 20A.02(a) is generally punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.33. A first conviction under Tex. Penal Code Ann. § 20A.02(a)(7) or § 20A.02(a)(8), however, is punishable as a first degree felony by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000, while subsequent convictions are punishable by life imprisonment and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32, 12.42(c)(2).⁷⁷ Additionally, a trafficker who “during a period that is 30 or more days in duration, . . . engages two or more times in conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] against one or more victims,” may be convicted under Tex. Penal Code Ann. § 20A.03 (Continuous trafficking of persons).⁷⁸ A conviction under Tex. Penal Code Ann. § 20A.03 is punishable as a first degree felony by imprisonment for either 25–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000.⁷⁹ Tex. Penal Code Ann. §§ 20A.03(e), 12.32.

Several of Texas’s CSEC laws may also be used to convict traffickers. A trafficker’s conviction under Tex. Penal Code Ann. §§ 43.05(a)(2) (Compelling prostitution)⁸⁰ or 43.03 (Promotion of prostitution)⁸¹ is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.05(b), 43.03(b)(2),⁸² 12.32. Traffickers may also be convicted under Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor),⁸³ which, pursuant to Tex. Penal Code Ann. § 15.031(e), is punishable one category lower than committing the actual

⁷⁶ See *supra* Component 1.1 for the provisions of Tex. Penal Code Ann. § 20A.02(a)(7), (8).

⁷⁷ See *supra* note 7.

⁷⁸ See *supra* Component 1.1 for the provisions of Tex. Penal Code Ann. § 20A.03.

⁷⁹ See *supra* note 9.

⁸⁰ See *supra* Component 1.2 for the provisions of Tex. Penal Code Ann. § 43.05(a)(2).

⁸¹ See *supra* Component 1.2 for the provisions of Tex. Penal Code Ann. § 43.03.

⁸² See *supra* note 12.

⁸³ See *supra* Component 1.2 for the provisions of Tex. Penal Code Ann. § 15.031(b).

offense, but the punishment may be enhanced to the same category as the predicate offense if certain requirements are satisfied.⁸⁴

A trafficker who “employs, authorizes, or induces a child to work . . . in a sexually oriented commercial activity; or . . . in any place of business permitting, requesting, or requiring a child to work nude or topless” may be convicted under Tex. Penal Code Ann. § 43.251 (Employment harmful to children).⁸⁵ A conviction under Tex. Penal Code Ann. § 43.251(b) is punishable as either a first or second degree felony. Pursuant to Tex. Penal Code Ann. § 43.251(c), a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a fine not to exceed \$10,000, but if the child is a minor under the age of 14, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.251(c), 12.33, 12.32.

A trafficker’s conviction under Tex. Penal Code Ann. § 43.25(b) (Sexual performance by a child)⁸⁶ is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.33. If the victim is under the age of 14, however, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.32.

Additionally, traffickers may face prosecution under Texas’s laws related to organized criminal activity. Tex. Penal Code Ann. § 71.02(a)⁸⁷ (Engaging in organized criminal activity) states, in part,

A person commits an offense if, with the intent to establish, maintain, or participate in a combination⁸⁸ or in the profits of a combination or as a member of a criminal street gang,⁸⁹ the person commits or conspires to commit one or more of the following:

- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor
.....
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
.....
- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any offense under Subchapter B [Obscenity], Chapter 43 [Public indecency], depicting or involving conduct by or directed toward a child younger than 18 years of age;
.....
- (12) any offense under Chapter 20A [Trafficking of persons];
.....
- (19) any offense classified as a felony under the Tax Code.

Tex. Penal Code Ann. § 71.02(b) states,

Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

⁸⁴ See *supra* Component 1.2 for the substantive provisions of Tex. Penal Code Ann. § 15.031(e).

⁸⁵ See *supra* Component 1.2 for the provisions of Tex. Penal Code Ann. § 43.251.

⁸⁶ See *supra* Component 1.2 for the provisions of Tex. Penal Code Ann. § 43.25(b).

⁸⁷ See *supra* note 34.

⁸⁸ See *supra* note 35.

⁸⁹ See *supra* note 19.

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; or

....

(3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1).

A trafficker commits an offense under Tex. Penal Code Ann. § 43.04(a) (Aggravated promotion of prostitution) when “he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.” A conviction under Tex. Penal Code Ann. § 43.04(a) is punishable as a first degree felony by imprisonment for either 5–99 years⁹⁰ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.04(b),⁹¹ 12.32.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁹² 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 offense⁹³ 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.*

Tex. Penal Code Ann. § 43.25(b) (Sexual performance by a child) prohibits the creation of child sexual abuse material (CSAM) by making it a crime if a trafficker “employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct⁹⁴ or a sexual performance.”⁹⁵ A conviction under Tex. Penal Code Ann. § 43.25(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.33. If the victim is under the age of 14, however, a conviction is punishable as a first degree felony by imprisonment for either 5–99 years and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(c), 12.32. Tex. Penal Code Ann. § 43.25(d) further provides, “A person commits an offense if, knowing the character and content of the material, he produces,⁹⁶ directs, or promotes⁹⁷ a performance that includes sexual conduct by a child younger than 18 years of age.” A conviction under Tex. Penal Code Ann. § 43.25(d) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine up to \$10,000, but if the victim is under

⁹⁰ See *supra* note 6.

⁹¹ See *supra* note 15.

⁹² See *supra* note 54.

⁹³ See *supra* note 55.

⁹⁴ See *supra* note 32.

⁹⁵ See *supra* note 33.

⁹⁶ Pursuant to Tex. Penal Code Ann. § 43.25(a)(4), “‘Produce’ with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.”

⁹⁷ Tex. Penal Code Ann. § 43.25(a)(5) defines “promote” as “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.”

the age of 14, a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(e), 12.34, 12.33.

Additionally, Tex. Penal Code Ann. § 43.26 (Possession or promotion of child pornography) makes it a crime for a person to promote CSAM. Tex. Penal Code Ann. § 43.26(e), (f) states,

- (e) A person commits an offense if:
 - (1) the person knowingly or intentionally promotes⁹⁸ or possesses with intent to promote material described by Subsection (a)(1);⁹⁹ and
 - (2) the person knows that the material depicts the child as described by Subsection (a)(1).
- (f) A person who possesses visual material¹⁰⁰ that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.

A first conviction under Tex. Penal Code Ann. § 43.26(e) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(g), 12.33. However, if the individual “has been previously convicted” of Tex. Penal Code Ann. § 43.26(e), then the offense is a felony of the first degree punishable by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(g), 12.32.

Under Tex. Code Crim. Proc. Ann. art. 42.037(r) (Restitution),

The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney’s fees.

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 offense¹⁰¹ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM¹⁰² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.¹⁰³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.¹⁰⁴

⁹⁸ Tex. Penal Code Ann. § 43.26(b)(1) defines “promote” as having “the meaning assigned by Section 43.25.” See *supra* note 97 for the applicable definition of “promote.”

⁹⁹ See *supra* Component 2.9 for the substantive provisions of Tex. Penal Code Ann. § 43.26(a).

¹⁰⁰ See *supra* note 69.

¹⁰¹ See *supra* note 55.

¹⁰² 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).

¹⁰³ 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

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

Although not expressly commercial, Tex. Penal Code Ann. § 33.021(c) (Online solicitation of a minor) makes it illegal for a trafficker to use the Internet or electronic communications to lure, entice, or recruit sex acts with a minor. Tex. Penal Code Ann. § 33.021(c) provides,

A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor¹⁰⁵ to meet another person, including the actor, with the intent that the minor will engage in sexual contact,¹⁰⁶ sexual intercourse, or deviate sexual intercourse with the actor or another person.

A conviction under Tex. Penal Code Ann. §§ 33.021(c) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33. However, a “minor” is defined as an individual under 17 years of age only. Tex. Penal Code Ann. § 33.021(a).

Additionally, Tex. Penal Code Ann. § 33.021 (b) expressly includes CSEC and trafficking offenses by providing that an individual over the age of 17 commits online solicitation of a minor if the person “intentionally (1) communicates in a sexually explicit manner with a minor; or (2) distributes sexually explicit material to a minor” “over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service,” “with the intent to commit one of the following offenses: Tex. Penal Code Ann. §§ 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 25.02 (Prohibited sexual conduct), 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), 43.26 (Possession or promotion of child pornography), or 20A.02(a)(7), (8) (Trafficking of persons).

If the victim is under 17 years of age, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.34. But, if the victim is younger than 14 years of age or the offender believes the victim to be younger than 14 years of age, a conviction under Tex. Penal Code Ann. § 33.021(b) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 33.021(f), 12.33.

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

Pursuant to Tex. Penal Code Ann. §§ 12.32–34, all felony convictions are subject to a possible fine not to exceed \$10,000. Therefore, a trafficker convicted under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8)

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).

¹⁰⁴ 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).

¹⁰⁵ *See supra* note 29.

¹⁰⁶ *See supra* note 30.

(Trafficking of persons), 20A.03 (Continuous trafficking of persons), 43.03 (Promotion of Prostitution, where the prostituted person is a minor), 43.04 (Aggravated Promotion of Prostitution, where the prostituted person is a minor), 43.05(a)(2) (Compelling prostitution), 15.031(b) (Criminal solicitation of a minor), 43.251 (Employment harmful to children), 43.25(b) (Sexual performance by a child), 71.02 (Engaging in organized criminal activity), or 71.022(a) (Coercing, inducing, or soliciting membership in a criminal street gang) is subject to a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 20A.03(e), 43.05(b), 15.031(e), 43.251(c), 43.25(e), 71.02(b), 71.022(b).

Pursuant to Tex. Code Crim. Proc. Ann. art. 42.0372 (Mandatory restitution for child victims of trafficking of persons or compelling prostitution), traffickers convicted under Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons) or 43.05(a)(2) (Compelling prostitution) are required to make restitution to their victims. Tex. Code Crim. Proc. Ann. art. 42.0372 states,

- (a) The court shall order a defendant convicted of an offense under Section 20A.02 [Trafficking of persons] or 43.05(a)(2) [Compelling prostitution], Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.
- (b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.
- (c) A restitution order issued under subsection (a) may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.
- (d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim name in the order in the manner specified by the court.

Traffickers convicted of other crimes may also be required to make restitution at the discretion of the court, pursuant to Tex. Code Crim. Proc. Ann. art. 42.037¹⁰⁷ (Restitution), which states,

- (a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter J [Funds], Chapter 56B [Crime Victims' Compensation], to the extent that fund has paid compensation to or on behalf of the victim
- (b) (1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:
 - (A) to return the property to the owner of the property or someone designated by the owner; or
 - (B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:
 - (i) the value of the property on the date of the damage, loss, or destruction; or
 - (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.
- (2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:
 - (A) the victim for any expenses incurred by the victim as a result of the offense; or
 - (B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.
-
- (r) The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

¹⁰⁷ See *supra* note 66.

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney's fees.

Additionally, traffickers are subject to criminal asset forfeiture. Tex. Code Crim. Proc. Ann. art. 59.02(a) (Forfeiture of contraband) states, "Property that is contraband is subject to seizure and forfeiture under this chapter." Tex. Code Crim. Proc. Ann. art. 59.01(2)¹⁰⁸ (Definition) states,

- "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:
- (A) used in the commission of:
 - (i) any first or second degree felony under the Penal Code;
 - (ii) any felony under Section 15.031(b) [Criminal solicitation of a minor], 21.11 [Indecency with a child] . . . or Chapter. . . 33 [Computer crimes] [which includes Tex. Penal Code Ann. § 33.021 (Online Solicitation of a Minor)]
 - (iii) any felony under Chapter 43 [Public indecency], Penal Code, except as provided in Paragraph (b);
 -
 - (B) used or intended to be used in the commission of:
 - (iv) any felony under Chapter 20A [Trafficking of persons] or 34 [Money laundering], Penal Code;
 -
 - (xii) any offense under . . . 43.04 [Aggravated promotion of prostitution], or 43.05 [Compelling prostitution], Penal Code; or
 -
 - (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
 - (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
 - (E) used to facilitate or intended to be used to facilitate the commission of a felony under . . . Chapter 43 [Public indecency], Penal Code; or
 - (F) used to facilitate or intended to be used to facilitate the commission of an offense under . . . Chapter 20A [Trafficking of Persons], Penal Code.

Tex. Code Crim. Proc. Ann. art. 59.03 (Seizure of contraband) governs the seizure of forfeitable property and states, in relevant part:

- (a) Property subject to forfeiture under this chapter, other than property described by Article 59.12, may be seized by any peace officer under authority of a search warrant.
- (b) Seizure of property subject to forfeiture may be made without warrant if:
 - (1) the owner, operator, or agent in charge of the property knowingly consents;
 - (2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property knowingly consents;
 - (3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter; or
 - (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

¹⁰⁸ See *supra* note 67.

Pursuant to Tex. Code Crim. Proc. Ann. art. 59.06(t)(1), (2)(A), (B)¹⁰⁹ (Disposition of forfeited property), the “gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency” from property the was forfeited and seized with respect to an offense under Tex. Penal Code §§ 43.04 (Aggravated promotion or prostitution) or 43.05 (Compelling prostitution) or under Chapter 20A (Trafficking of persons) shall be:

- (A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or
- (B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

Tex. Code Crim. Proc. Ann. art. 18.18(a) (Disposition of gambling paraphernalia, prohibited weapon, criminal instrument, and other contraband) provides for the destruction or forfeiture of, among other things, any “obscene device or material” or “child pornography” for any offense that involves child sexual abuse material (CSAM).

Additionally, Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Suit to abate certain common nuisances; bond) authorizes a person to “bring a suit [to enjoin and abate a common nuisance] against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself.” Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(a), (c) (Common nuisance) states,

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

....

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code;

....

(19) trafficking of persons described by Section 20A.02, Penal Code;

....

(c) A person operating a web address or computer network in connection with an activity described by Subsection (a) . . . (6), (7), . . . (19) maintains a common nuisance.¹¹⁰

Under Tex. Civ. Prac. & Rem. Code Ann. § 125.002(f-1),

If the defendant required to execute the bond is a hotel, motel, or similar establishment that rents overnight lodging to the public and the alleged common nuisance is under Section 125.0015(a)(6) or (7) [Common nuisance], the bond must also be conditioned that the defendant will, in each of the defendant’s lodging units on the premises that are the subject of the suit, post in a conspicuous place near the room rate information required to be posted under Section 2155.001 [Room rate information], Occupations Code, an operating toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

¹⁰⁹ See *supra* note 68.

¹¹⁰ Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(d), (e) exempts certain organizations, including Internet service providers, and individuals engaged in lawful or authorized activity from liability.

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

Tex. Code Crim. Proc. Ann. art. 62.051(a) (Registration: general) states, “A person who has a reportable conviction or adjudication . . . shall register . . . with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days.” Pursuant to Tex. Code Crim. Proc. Ann. art. 62.001(5)(B), (B-1) (J), (K), (L)¹¹¹ (Definitions), the definition of “reportable conviction or adjudication” expressly includes convictions under Tex. Pen. Code Ann. §§ 20A.02(a)(7), (8) (Trafficking of persons), 20A.03 (Continuous trafficking of persons), 43.04 (Aggravated promotion of prostitution), 43.05 (Compelling prostitution), 43.02(c-1)(2) (Prostitution), 43.26 (Possession or promotion of child pornography), 43.25(b) (Sexual performance by a child), and 33.021(b), (c) (Online solicitation of a minor).

However, convictions under Tex. Penal Code Ann. §§ 15.031(b) (Criminal solicitation of a minor), 43.251 (Employment harmful to children), 71.02 (Engaging in organized criminal activity), and 71.022(a) (Coercing, inducing, or soliciting membership in a criminal street gang) are not included within the definition of “reportable conviction or adjudication” under Tex. Code Crim. Proc. Ann. art. 62.001(5), and, therefore, do not require registration.

Notably, Tex. Code Crim. Proc. art. 62.101(a)(2), (3) (Expiration of duty to register) imposes a lifetime registration requirement on offenders convicted under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8); 43.5(a)(2); or 20A.03 “if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code”

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.*

Tex. Fam. Code Ann. § 161.001(b)(1)(L)(xv), (xvi) (Involuntary termination of parent-child relationship) expressly includes convictions under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8) (Trafficking of persons) and 43.05(a)(2) (Compelling prostitution) as grounds for terminating parental rights. Specifically, Tex. Fam. Code Ann. § 161.001(b) states,

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

....

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections . . . :

....

(iv) Section 21.11 (indecenty with a child);

....

(vi) Section 22.011 (sexual assault);

....

(viii) Section 22.021 (aggravated sexual assault);

....

(xii) Section 43.25 (sexual performance by a child);

¹¹¹ See *supra* note 75.

- (xiii) Section 43.26 (possession or promotion of child pornography);
 - (xiv) Section 21.02 (continuous sexual abuse of young child or children);
 - (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
 - (xvi) Section 43.05(a)(2) (compelling prostitution);
 - . . . ; and
- (2) that termination is in the best interest of the child.

Additionally, Tex. Fam. Code Ann. § 262.2015(a), (b)(3)(N), (b)(3)(O) (Aggravated circumstances) allows the court to waive the requirement regarding making reasonable efforts to return a child to the child's parents and, instead, schedule a permanency hearing and a trial on the merits if the court determines that the child's "parent has engaged in conduct against the child that would constitute an offense under" Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons) or 43.05(a)(2) (Compelling prostitution), among other offenses.

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.*

Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons) makes it a crime if a person “receives a benefit from participating in a venture that involves an activity described by Subdivision (7).”¹¹² A first conviction under Tex. Penal Code Ann. § 20A.02(a) is generally punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.33. A first conviction under Tex. Penal Code Ann. § 20A.02(a)(8), however, is punishable as a first degree felony by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000, while subsequent convictions are punishable by life imprisonment and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32, 12.42(c)(2).¹¹³ Additionally, a facilitator who, “during a period that is 30 or more days in duration, . . . engages two or more times in conduct that constitutes an offense under Section 20A.02 against one or more victims,” may be convicted under Tex. Penal Code Ann. § 20A.03 (Continuous trafficking of persons).¹¹⁴ A conviction under Tex. Penal Code Ann. § 20A.03 is punishable as a first degree felony by imprisonment for 25–99 years and a possible fine not to exceed \$10,000, or life and a possible fine not to exceed \$10,000.¹¹⁵ Tex. Penal Code Ann. §§ 20A.03(e), 12.32.

Texas’s CSEC laws do not expressly prohibit conduct that is generally indicative of facilitators, except that a facilitator may be convicted under Tex. Penal Code Ann. § 43.25(d) (Sexual performance by a child) if the facilitator “promotes¹¹⁶ a performance¹¹⁷ that includes sexual conduct¹¹⁸ by a child younger than 18 years of age.” A conviction under Tex. Penal Code Ann. § 43.25(d) is punishable as a third degree felony by imprisonment for 2–10 years and a possible fine up to \$10,000, but if the victim is under the age of 14, a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(e), 12.34, 12.33.

In addition, Texas law criminalizes those who facilitate online promotion of prostitution. Tex. Penal Code Ann. § 43.031¹¹⁹ (Online promotion of prostitution) states,

- (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider,

¹¹² See *supra* Component 1.1 for the provisions of Tex. Penal Code Ann. § 20A.02(a)(7), (8).

¹¹³ See *supra* note 7.

¹¹⁴ See *supra* Component 1.1 for the provisions of Tex. Penal Code Ann. § 20A.03.

¹¹⁵ See *supra* note 9.

¹¹⁶ See *supra* note 97.

¹¹⁷ See *supra* note 33 for the definition of “performance.”

¹¹⁸ See *supra* note 32 for the definition of “sexual conduct.”

¹¹⁹ See *supra* note 23.

with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor:

(1) has been previously convicted of an offense under this section or Section 43.041 [Aggravated online promotion of prostitution]; or

(2) engages in conduct described by Subsection (a) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

A second degree felony is punishable by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.031(b)(2), 12.33.

Tex. Penal Code Ann. § 43.041¹²⁰ (Aggravated online promotion of prostitution) states,

(a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor:

(1) has been previously convicted of an offense under this section; or

(2) engages in conduct described in Subsection (a) involving two or more persons younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

A first degree felony is punishable by either 25–99 years¹²¹ and a possible fine not to exceed \$10,000 or life and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.041(b)(2), 12.32.

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.*

Pursuant to Tex. Penal Code Ann. §§ 12.32–.34, all felony convictions are subject to a possible fine not to exceed \$10,000. Therefore, a facilitator convicted under Tex. Penal Code Ann. §§ 20A.02(a)(8) (Trafficking of persons), 20A.03 (Continuous trafficking of persons), 43.25(d) (Sexual performance by a child), or 71.02(a) (Engaging in organized criminal activity) is subject to a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 20A.03(e), 43.25(e), 71.02(b).

Pursuant to Tex. Code Crim. Proc. Ann. art. 42.0372 (Mandatory restitution for child victims of trafficking of persons or compelling prostitution), facilitators convicted under Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) are required to make restitution to their victims. Tex. Code Crim. Proc. Ann. art. 42.0372 states,

(a) The court shall order a defendant convicted of an offense under Section 20A.02 [Trafficking of persons] or 43.05(a)(2) [Compelling prostitution], Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.

(b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.

¹²⁰ See *supra* note 24.

¹²¹ See *supra* note 6.

- (c) A restitution order issued under subsection (a) may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.
- (d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim name in the order in the manner specified by the court.

Facilitators convicted of other crimes may also be required to make restitution pursuant to Tex. Code Crim. Proc. Ann. art. 42.037¹²² (Restitution), which states

- (a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter J [Funds], Chapter 56B [Crime Victims' Compensation], to the extent that fund has paid compensation to or on behalf of the victim
- (b) (1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:
 - (A) to return the property to the owner of the property or someone designated by the owner; or
 - (B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:
 - (i) the value of the property on the date of the damage, loss, or destruction; or
 - (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.
- (2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:
 - (A) the victim for any expenses incurred by the victim as a result of the offense; or
 - (B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.
-
- (r) The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:
 - (1) medical services relating to physical, psychiatric, or psychological care;
 - (2) physical and occupational therapy or rehabilitation;
 - (3) necessary transportation, temporary housing, and child care expenses;
 - (4) lost income; and
 - (5) attorney's fees.

Additionally, facilitators are subject to criminal asset forfeiture. Tex. Code Crim. Proc. Ann. art. 59.02(a) (Forfeiture of contraband) states, "Property that is contraband is subject to seizure and forfeiture under this chapter." Tex. Code Crim. Proc. Ann. art. 59.01(2)¹²³ (Definitions) states,

- "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:
 - (A) used in the commission of:
 - (i) any first or second degree felony under the Penal Code;
 - (ii) any felony under Section 15.031(b) [Criminal solicitation of a minor], 21.11 [Indecency with a child], or 38.04 [Evading arrest or detention], or Chapter 29 [Robbery], 30 [Burglary and criminal trespass], 31 [Theft], 32 [Fraud], 33 [Computer crimes] [which includes Tex. Penal Code Ann. § 33.021 (Online Solicitation of a Minor)], 33A [Telecommunications crimes], or 35 [Insurance fraud], Penal Code;

¹²² See *supra* note 66.

¹²³ See *supra* note 67.

- (iii) any felony under Chapter 43 [Public indecency], Penal Code, except as provided in Paragraph (B);
-
- (B) used or intended to be used in the commission of:
 -
 - (iv) any felony under Chapter 20A [Trafficking of persons] or 34 [Money laundering], Penal Code;
 -
 - (xii) any offense under . . . 43.04 [Aggravated promotion of prostitution], or 43.05 [Compelling prostitution], Penal Code; or
 -
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
- (E) used to facilitate or intended to be used to facilitate the commission of a felony under . . . Chapter 43 [Public indecency], Penal Code; or
- (F) used to facilitate or intended to be used to facilitate the commission of an offense under . . . Chapter 20A [Trafficking of Persons], Penal Code.

Tex. Code Crim. Proc. Ann. art. 59.03 (Seizure of contraband) governs the seizure of forfeitable property and states, in relevant part:

- (a) Property subject to forfeiture under this chapter, other than property described by Article 59.12, may be seized by any peace officer under authority of a search warrant.
- (b) Seizure of property subject to forfeiture may be made without warrant if:
 - (1) the owner, operator, or agent in charge of the property knowingly consents;
 - (2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property knowingly consents;
 - (3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter; or
 - (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

Pursuant to Tex. Code Crim. Proc. Ann. art. 59.06(t)(1), (2)(A), (B)¹²⁴ (Disposition of forfeited property), the “gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency” from property the was forfeited and seized with respect to an offense under Tex. Penal Code §§ 43.04 (Aggravated promotion or prostitution) or 43.05 (Compelling prostitution) or under Chapter 20A (Trafficking of persons) shall be:

- (A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or
- (B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

Additionally, Tex. Civ. Prac. & Rem. Code Ann. § 98.0025 (Shareholder and member liability) renders

a shareholder or member of [a legal entity governed by Title 2, 3, or 7, Business Organizations Code] is jointly and severally liable with the entity to the person trafficked for damages arising

¹²⁴ See *supra* note 68.

from the trafficking of that person if the person demonstrates that the shareholder or member caused the entity to be used for the purpose of trafficking that person and did traffic that person for the direct personal benefit of the shareholder or member.

Also, Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Suit to abate certain common nuisances; bond) authorizes a person to “bring a suit [to enjoin and abate a common nuisance] against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself.” Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(a), (c) (Common nuisance) states,

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

....

(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) compelling prostitution as prohibited by the Penal Code;

....

(19) trafficking of persons described by Section 20A.02, Penal Code;

....

....

(c) A person operating a web address or computer network in connection with an activity described by Subsection (a) . . . (6), (7), . . . (19) maintains a common nuisance.¹²⁵

Under Tex. Civ. Prac. & Rem. Code Ann. § 125.002(f-1),

If the defendant required to execute the bond is a hotel, motel, or similar establishment that rents overnight lodging to the public and the alleged common nuisance is under Section 125.0015(a)(6) or (7) [Common Nuisance], the bond must also be conditioned that the defendant will, in each of the defendant’s lodging units on the premises that are the subject of the suit, post in a conspicuous place near the room rate information required to be posted under Section 2155.001 [Room Rate Information], Occupations Code, an operating toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

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

Texas has no specific provision prohibiting the promoting or selling of child sex tourism in Texas.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services in Texas that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor either in or outside of Texas.

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

Tex. Penal Code Ann. § 43.25(d) (Sexual performance by a child) makes it a crime if a person “knowing the character and content of the material, . . . promotes¹²⁶ a performance¹²⁷ that includes sexual conduct¹²⁸ by a child younger than 18 years of age.” A conviction under Tex. Penal Code Ann. § 43.25(d) is punishable as a third

¹²⁵ Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(d), (e) exempts certain organizations, including Internet service providers, and individuals engaged in lawful or authorized activity from liability.

¹²⁶ See *supra* note 97.

¹²⁷ See *supra* note 33 for the definition of “performance.”

¹²⁸ See *supra* note 32 for the definition of “sexual conduct.”

degree felony by imprisonment for 2–10 years and a possible fine up to \$10,000, but if the victim is under the age of 14, a conviction is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.25(e), 12.34, 12.33.

Additionally, Tex. Penal Code Ann. § 43.26(e), (f) (Possession or promotion of child pornography)¹²⁹ specifically prohibits the promotion¹³⁰ of child sexual abuse material (CSAM). A first conviction under Tex. Penal Code Ann. § 43.26(e) is punishable as a second degree felony by imprisonment for 2–20 years and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(g), 12.33. However, if the individual “has been previously convicted” of Tex. Penal Code Ann. § 43.26(e), then the offense is a felony of the first degree punishable by imprisonment “for life or for any term of not more than 99 years or less than 5 years” and a possible fine not to exceed \$10,000. Tex. Penal Code Ann. §§ 43.26(g), 12.32.

Under Tex. Code Crim. Proc. Ann. art. 42.037(r) (Restitution),

The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

- (1) medical services relating to physical, psychiatric, or psychological care;
- (2) physical and occupational therapy or rehabilitation;
- (3) necessary transportation, temporary housing, and child care expenses;
- (4) lost income; and
- (5) attorney’s fees.

¹²⁹ See *supra* Component 3.2 for the provisions of Tex. Penal Code Ann. § 43.26(e), (f).

¹³⁰ See *supra* note 97 for the applicable definition of “promote.”

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.¹³¹*

Texas’s human trafficking offense includes all commercial sexual exploitation of minors. Under Tex. Penal Code Ann. § 20A.02(a)(7), (8) (Trafficking of persons), when the victim is a minor, means of force, fraud, or coercion are not required. In addition, the human trafficking law applies to buyers; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking. Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons). Since buying sex with a minor is criminalized under the core sex trafficking offense, the definition of a child sex trafficking victims includes any commercially sexually exploited child regardless of whether a trafficker or controlling third party is identified.

- 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.*

Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons) and 20A.03 (Continuous trafficking of persons) are silent with regard to the availability of a defense based on the minor’s willingness to engage in the commercial sex act, meaning that a defendant may try asserting such a defense.¹³²

¹³¹ 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).

¹³² In discussing the issue regarding a minor’s consent, however, the Texas Supreme Court has stated,

In enacting the sexual assault statute, section 22.011 of the Texas Penal Code, the Legislature made it a crime to intentionally or knowingly have non-consensual sex with an adult, or sex under any circumstances with a child (a person under seventeen). There are defenses available if the child is at least fourteen, such

- 5.2.1 Recommendation: Amend Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons) and 20A.03 (Continuous trafficking of persons) to expressly prohibit a defense based on a minor’s willingness to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*¹³³

Tex. Penal Code Ann. § 43.02 (Prostitution) does not prohibit the criminalization of minors for prostitution offenses.¹³⁴ However, state law provides several avenues for commercially sexually exploited youth to avoid being adjudicated delinquent or criminally prosecuted for the crime of prostitution, including classification of the case as conduct indicating a need for supervision (CINS), deferred adjudication coupled with participation in the Trafficked Persons Program, or an affirmative defense.

Tex. Fam. Code Ann. § 51.03(b)(5) classifies prostitution as CINS rather than as delinquent conduct, stating,

Conduct indicating a need for supervision is:

....

(5) notwithstanding Subsection (a)(1) [delinquent conduct], conduct described by Section 43.02(a) [engaging in commercial sex] or (b) [soliciting commercial sex], Penal Code

....

However, the CINS process is inherently punitive in nature as it tracks closely with the delinquency process—although it differs in one important aspect; upon disposition of a CINS case, a child cannot be confined in a post-adjudication secure correctional facility. Tex. Fam. Code Ann. §§ 54.04(o), 52.01 – 54.04. Further, the juvenile court only has exclusive original jurisdiction over cases involving minors under 17 years of age, meaning an older minor may be criminally prosecuted for the crime of prostitution. Tex. Fam. Code Ann. §§ 51.04(a), 51.02(2).

as when the accused is no more than three years older than the child, or when the accused is the child’s spouse. In those instances, the child’s subjective agreement or assent becomes the main issue in determining whether or not a crime has been committed. There are no such defenses, however, when the child is under fourteen, irrespective of the child’s purported willingness. Thus, in Texas, “a child under fourteen cannot legally consent to sex.”

In re B.W., 313 S.W.3d 818, 821 (Tex. 2010) (citations omitted).

¹³³ For more information regarding recent federal legislation impacting this component see:

<http://go.sharedhope.org/stateimpactmemo>.

¹³⁴ In discussing the applicability of Tex. Penal Code Ann. § 43.02 (Prostitution) against minors under the age of 17, the Texas Supreme Court stated,

The statute proscribing prostitution is found in the Texas Penal Code, which does not generally apply to juveniles under the age of seventeen. Instead, the Legislature made a blanket adoption of the Penal Code into the Texas Family Code, which provides that the juvenile justice courts have jurisdiction in all cases involving delinquent conduct of children between the ages of ten and seventeen. The Family Code defines “[d]elinquent conduct” as “conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail.” One of the purposes of placing such jurisdiction in civil courts under the Family Code is to “provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions.”

In re B.W., 313 S.W.3d 818, 819–20 (Tex. 2010) (citations omitted).

If a court of joint jurisdiction¹³⁵ finds that a child under 17 years of age may be a victim of sex trafficking, the court can transfer the case to a juvenile court or alternative juvenile court. Tex. Fam. Code §§ 51.0413(a)–(b), 51.02(2). The court “may defer adjudication proceedings . . . until the child’s 18th birthday and require [the] child to participate in a program established under Section 152.0017, Human Resource Code” Tex. Fam. Code § 54.0326 (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program). Specifically, Tex. Fam. Code § 54.0326 provides,

- (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5 [Protection of the Child], in the manner authorized by Section 51.0413.
- (b) A juvenile court may defer adjudication proceedings under Section 54.03 until the child's 18th birthday and require a child to participate in a program established under Section 152.0017, Human Resources Code, if the child:
 - (1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and
 - (2) presents to the court an oral or written request to participate in the program.
- (c) Following a child's completion of the program, the court shall dismiss the case with prejudice at the time the child presents satisfactory evidence that the child successfully completed the program.

Finally, Tex. Penal Code Ann. § 43.02(d) provides “a defense to prosecution for an offense under subsection (a) [engaging in prostitution][if] the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] or 43.05 [Compelling Prostitution].”¹³⁶

- 5.3.1 Recommendation: Amend state law to ensure that all minors are protected from criminalization for prostitution offenses.¹³⁷

¹³⁵ Tex. Fam. Code § 51.0413 (Jurisdiction Over and Transfer of Combination of Proceedings), § 52.032 (Informal disposition guidelines), § 54.0326 (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program), and § 54.04012 (Trafficked Persons Program) provide for joint jurisdiction between dependency and juvenile court for conduct committed because a child was in need of supervision or a trafficking victim.

¹³⁶ Further, Tex. Penal Code Ann. § 20A.04 (Accomplice witness; testimony and immunity), which is found within Chapter 20A (Trafficking in Persons), states,

- (a) A party to an offense under this chapter may be required to provide evidence or testify about the offense.
- (b) A party to an offense under this chapter may not be prosecuted for any offense about which the party is required to provide evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury. For purposes of this subsection, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.
- (c) A conviction under this chapter may be had on the uncorroborated testimony of a party to the offense.

¹³⁷ 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).

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

I. Services through the Governor's Program for Victims of Child Sex Trafficking

Tex. Gov't Code § 772.0063 (Governor's Program for Victims of Child Sex Trafficking) establishes the Governor's Program for Victims of Child Sex Trafficking under which,

- (a) The governor shall establish and implement a program to provide comprehensive, individualized services to address the rehabilitation and treatment needs of child victims of an offense under [Tex. Penal Code Ann. § 20A.02(a)(7) or (8)].
- (b) The governor shall appoint a director of the program to serve at the pleasure of the governor.
- (c) The director of the program shall coordinate with state and local law enforcement agencies, state agencies, and service providers to identify victims of child sex trafficking who are eligible to receive services under the program.
- (d) For each victim of child sex trafficking identified by the director, the program shall immediately facilitate the assignment of a caseworker to the victim to coordinate with local service providers to create a customized package of services to fit the victim's immediate and long-term rehabilitation and treatment needs. Services provided under the program must address all aspects of the medical, psychiatric, psychological, safety, and housing needs of victims.

II. Services through child welfare

Pursuant to Tex. Fam. Code Ann. § 262.104(a) (Temporary possession of a child in emergency without a court order), a law enforcement officer or representative of the Department of Family and Protective Services (DFPS) may take possession of a juvenile sex trafficking victim without a court order if there was no time to get a temporary order. If the evidence shows that "the child has been the victim of . . . trafficking under 20A.02 or 20A.03 . . . on one or more occasions and that there is a substantial risk that the child will be the victim of . . . trafficking in the future," the court need not order the return of the child at the initial hearing. Tex. Fam. Code Ann. § 262.107(a)(1)(B) (Standard for decision at initial hearing after taking possession of child without a court order in emergency). Instead, Tex. Fam. Code Ann. § 262.012 (Placement in secure agency foster home) provides,

A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

- (1) the placement is in the best interest of the child; and
- (2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in 20A.02 or 20A.03.

Pursuant to Tex. Fam. Code Ann. § 262.201(a) (Full adversary hearing; findings of the court), if the child has not been returned to the child's parent, guardian, caretaker, or related individual, the court will hold a full adversary hearing within 14 days of the date the child was taken into custody. Ultimately, Tex. Fam. Code Ann. § 262.201(g) requires the court to return the child unless the court finds all of the following:

- (1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under 20A.02 or 20A.03 . . . , which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

- (2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Additionally, Tex. Fam. Code Ann. § 262.2015 (Aggravated circumstances) allows the court to waive the requirement to make reasonable efforts to return the child to the child's parents and to instead schedule a permanency hearing and a trial on the merits if the court finds that the child's "parent has engaged in conduct against the child that would constitute an offense under" Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons), 43.25 (Sexual performance by a child), 43.26 (Possession or promotion of child pornography), or 43.05(a)(2) (Compelling prostitution), among other offenses.

Accordingly, the court may once again order that the child be placed in a secure agency foster home. Tex. Fam. Code § 262.012.

Pursuant to Tex. Hum. Res. Code §. 42.0531(a) (Secure agency foster homes), "a municipality may contract with a child-placing agency to verify a secure agency foster home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking." Verified homes must provide an array of services including mental health, behavioral health, counseling, treatment for sexual assault, treatment for substance abuse, life skills, mentoring, 24 hour services, and "individualize services based on the trauma endured by a child." Tex. Human Res. Code §. 42.0531(c)(1).

Victims with specific and acute healthcare needs may also have access to a treatment program designed to "improve the quality and accessibility of care for victims of child sex trafficking" under Tex. Health & Safety Code § 50.0002¹³⁸ (Establishment; purpose). Pursuant to Tex. Health & Safety Code § 50.0003(a), (b)¹³⁹ (Designation of institution; operation of program),

- (a) The [Health and Safety Commission] shall designate a health-related institution of higher education to operate the program.
- (b) The designated institution shall improve quality and accessibility of care for victims of child sex trafficking by:
 - (1) dedicating a unit at the institution to provide or contract for inpatient care for victims of child sex trafficking;
 - (2) dedicating a unit a the institution to provide or contract for outpatient care for victims of child sex trafficking;
 -

III. Services through juvenile justice

A juvenile sex trafficking victim may be eligible for services, even if the child has allegedly engaged in delinquent or conduct indicating a need for supervision (CINS). Under Tex. Fam. Code Ann. § 51.0413(a) (Jurisdiction over and transfer of combination proceeding), the juvenile court will have simultaneous jurisdiction over a child who has been identified as abused or neglected and who has "engaged in delinquent conduct or conduct indicating a need of supervision and cause to believe that the child" is a victim of human

¹³⁸ The text of Tex. Health & Safety Code § 50.002 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹³⁹ The text of Tex. Health & Safety Code § 50.003 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

trafficking. If a court of joint jurisdiction finds that the child may be a victim of human trafficking, the court can transfer the case to “a juvenile court or alternative juvenile court.”¹⁴⁰ Tex. Fam. Code § 51.0413(a)–(b).

For children identified as trafficking victims, the court “may defer adjudication proceedings . . . until the child’s 18th birthday and require [the] child to participate in a program established under Section 152.0017, Human Resources Code” Tex. Fam. Code § 54.0326 (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program). Specifically, Tex. Fam. Code § 54.0326 states,

- (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5, in the manner authorized by Section 51.0413.
- (b) A juvenile court may defer adjudication proceedings under Section 54.03 until the child’s 18th birthday and require a child to participate in a program established under Section 152.0017, Human Resources Code, if the child:
 - (1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and
 - (2) presents to the court an oral or written request to participate in the program.

. . . .

Upon successful completion of the program, the child’s case is dismissed with prejudice. Tex. Fam. Code § 54.0326(c).

Further, the Child Sex Trafficking Prevention Unit within the criminal justice division, established by Tex. Gov’t Code § 772.0062, must facilitate inter-agency collaboration to prevent and respond to juvenile sex trafficking victims by placing them in “suitable short-term and long-term housing” The Child Sex Trafficking Prevention Unit must also “refer victims of child sex trafficking to available rehabilitation programs and other resources [and] provide support for child sex trafficking prosecutions.”

Summary

Specialized services are available under the Governor’s Program for Victims of Child Sex Trafficking. Additionally, state law provides several avenues for commercially sexually exploited youth to avoid being adjudicated delinquent or criminally prosecuted for the crime of prostitution;¹⁴¹ regardless of the avenue, however, minors still face a punitive response and are required to comply with numerous conditions in order for their charge to be dismissed under the Trafficked Persons Program.

- 5.4.1 Recommendation: Amend Texas’s response to direct child sex trafficking victims away from the juvenile justice system.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*¹⁴²

Child sex trafficking is identified as a type of abuse within Texas’s child protection statutes. Tex. Fam. Code Ann. § 261.001(1) (Definitions) defines “abuse,” in part, as follows:

¹⁴⁰ Tex. Fam. Code § 51.0413 (Jurisdiction over and transfer of combination of proceedings), § 52.032 (Informal disposition guidelines), § 54.0326 (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program), and § 54.04012 (Trafficked Persons Program) provides for joint jurisdiction between dependency and delinquency courts for conduct committed because a child was in need of supervision or trafficking victim.

¹⁴¹ See *supra* Component 5.3.

¹⁴² For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

“Abuse” includes the following acts or omissions by a person:

....

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01 [Definitions], Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02, Penal Code, or compelling prostitution under 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21 [Definitions], Penal Code, or pornographic;

....

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8) [Trafficking of persons], Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficking in a manner punishable as an offense under any of those sections

....

Tex. Fam. Code Ann. § 261.001(4)(A) defines “neglect,” in part, as follows:

“Neglect”:

(A) includes:

....

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

....

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child

(iii) the failure by the person responsible for a child’s care, custody, or welfare to permit the child to return to the child’s home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away

....

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 “person responsible for a child’s care, custody, or welfare” may be a barrier to a sex trafficked child accessing the protection of child welfare. Tex. Fam. Code Ann. § 261.301(c) (Investigation of report) explains that child protective services “is not required to investigate a report that alleges child abuse, neglect, or exploitation by a person other than a person responsible for a child’s care, custody, or welfare.” Instead, “the appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.” Tex. Fam. Code Ann. § 261.301(c). As used within Texas’s provisions

regarding the investigation and reporting of child abuse, Tex. Fam. Code Ann. § 261.001(5) (Definitions) defines “person responsible for a child’s care, custody, or welfare” as

- a person who traditionally is responsible for a child’s care, custody, or welfare, including:
 - (A) a parent, guardian, managing or possessory conservator, or foster parent of the child;
 - (B) a member of the child’s family or household as defined by Chapter 71 [Definitions];
 - (C) a person with whom the child’s parent cohabits;
 -

Accordingly, Texas law does not require child welfare to respond in non-familial trafficking cases, creating a potential barrier to protection for child sex trafficking victims whose parents are not at fault for the abuse, neglect, or exploitation.

5.6.1 Recommendation: Amend Tex. Fam. Code Ann. § 261.001 (Definitions) and Tex. Fam. Code Ann. § 261.301(c) (Investigation of report) to allow welfare to respond in all cases of juvenile sex trafficking irrespective of the child’s relationship to the perpetrator.

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

A domestic minor sex trafficking victim would qualify as a “victim” eligible to receive crime victims’ compensation and would be statutorily exempt from certain ineligibility criteria under the Crime Victims’ Compensation Act.¹⁴³ Some administrative regulations also establish exceptions that could allow domestic minor trafficking victims access to compensation.¹⁴⁴

Tex. Code Crim. Proc. Ann. art. 56B.103(a)¹⁴⁵ (Compensation for pecuniary loss) states, “The attorney general shall award compensation for pecuniary loss¹⁴⁶ arising from criminally injurious conduct¹⁴⁷ if the attorney general is satisfied by a preponderance of the evidence that the requirements of this chapter are met.”

¹⁴³ Tex. Code Crim. Proc. Ann. arts. 56B.

¹⁴⁴ While not statutory, the Texas Administrative Code provides some exceptions to the statutory ineligibility requirements that may allow domestic minor sex trafficking victims to access compensation. Although requiring “threat, coercion, or intimidation” even when a victim of sex trafficking is a minor, Texas Admin. Code R. 61.302(c) (Reduction, denial, or refund of an application or award) provides a specific exception for victims of trafficking of persons:

Applications arising out of the criminally injurious conduct of trafficking of persons will not be denied solely because the victim engaged in an activity prohibited by law due to threat, coercion, or intimidation as a part of criminally injurious conduct giving rise to the application.

Additionally, Texas Admin. Code R. 61.302(d) provides exceptions to the requirement to cooperate with law enforcement but does not provide a specific exception for domestic minor sex trafficking victims. Lastly, the Texas Admin. Code R. 61.202(4) (Timely filing an application) allows victims to assert a good cause exception to the timely filing requirements.

¹⁴⁵ The text of Tex. Code Crim. Proc. Ann. art. 56B.103 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁴⁶ Pursuant to Tex. Code Crim. Proc. Ann. art. 56B.003(10),

“Pecuniary loss” means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

- (A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;
- (B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:
 - (i) a disability resulting from the personal injury;
 - (ii) the receipt of medically indicated services related to the disability; or

Tex. Code Crim. Proc. Ann. art. 56B.052(c)¹⁴⁸ (Period for filing application) states, “If the victim is a child,¹⁴⁹ the application must be filed not later than the third anniversary of the date the claimant or victim is made aware of the offenses, but not after the child attains 21 years of age.”

Tex. Code Crim. Proc. Ann. art. 56B.003(14)(A)¹⁵⁰ (Definitions) defines “victim” as

an individual who:

- (i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in this state; and
- (ii) is a resident of this state or another state of the United States;

Further, Tex. Code Crim. Proc. Ann. art. 56B.106(c)¹⁵¹ (Limits on compensation) provides that, in addition to generally available forms of crime victims compensation, human trafficking victims who were victimized where they live are also eligible for \$2,000 for relocation expenses as well as \$1,800 for housing rental expenses.

Domestic minor sex trafficking victims are exempt from ineligibility resulting from their own participation in the conduct. Tex. Code Crim. Proc. Ann. art. 56B.057(b), (c)¹⁵² (Approval of application) states,

(b) The attorney general shall deny an application for compensation under this chapter if:

....

-
- (iii) participation in or attendance at investigative, prosecutorial, or judicial processes or any postconviction or postadjudication proceeding relating to criminally injurious conduct;
 - (C) care of a child or dependent, including specialized care for a child who is a victim;
 -
 - (G) reasonable replacement costs for clothing, bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation;
 - (H) reasonable and necessary costs for relocation and housing rental assistance payments . . . ;
 -

¹⁴⁷ Pursuant to Tex. Code Crim. Proc. Ann. art. 56B.003(a)(4),

“Criminally injurious conduct” means conduct that:

- (A) occurs or is attempted;
- (B) poses a substantial threat of personal injury or death;
- (C) is punishable by fine, imprisonment, or death, or would be punishable by fine, imprisonment, or death if the person engaging in the conduct possessed capacity to commit the conduct . . . ;
-

¹⁴⁸ The text of Tex. Code Crim. Proc. Ann. art. 56B.052 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁴⁹ Under Tex. Code Crim. Proc. Ann. art. 56B.003(a)(1), “‘Child’ means an individual younger than 18 years of age who: (A) is not married; or (B) has not had the disabilities of minority removed for general purposes under Chapter 31, Family Code.”

¹⁵⁰ The text of Tex. Code Crim. Proc. Ann. art. 56B.003 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 and House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019 and January 1, 2021, respectively).

¹⁵¹ The text of Tex. Code Crim. Proc. Ann. art. 56B.106 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁵² The text of Tex. Code Crim. Proc. Ann. art. 56B.057 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

- (3) the claimant or victim knowingly and willingly participated in the criminally injurious conduct;
- (4) the claimant or victim is the offender or an accomplice of the offender;
- (5) an award of compensation to the claimant or victim would benefit the offender or an accomplice of the offender;

. . . .

(c) Subsection (b)(3) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:

- (1) in violation of Section 20A.02(a)(7) [Trafficking in persons], Penal Code; or
- (2) trafficking of persons, other than an offense described by Subdivision (1), if the criminally injurious conduct the claimant or victim participated in was the result of force, fraud, or coercion.

Similarly, Tex. Code Crim. Proc. Ann. art. 56B.107¹⁵³ (Denial or reduction of award) states,

(a) The attorney general may deny or reduce an award otherwise payable:

- (1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;
- (2) if, as a result of the claimant’s or victim’s behavior, the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim;
- (3) to the extent that pecuniary loss is recouped from a collateral source; or
- (4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law, including a rule.

(b) Subsection (a)(4) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:

- (1) in violation of Section 20A.02(a)(7) [Trafficking in persons], Penal Code; or
- (2) trafficking of persons, other than an offense described by Subdivision (1), if the activity the claimant or victim engaged in was the result of force, fraud, or coercion.

Under Tex. Code Crim. Proc. Ann. art. 56B.106(a), (b) (Limits on compensation), if a claim is accepted, compensation may not exceed \$50,000, though an additional \$75,000 may be awarded for “extraordinary pecuniary loss if the personal injury to a victim is catastrophic and results in a total and permanent disability to the victim . . . for lost wages and reasonable and necessary costs of” certain additional items and expenses.

5.7.1 Recommendation: Amend the Crime Victims’ Compensation Act to provide an exception to all ineligibility criteria when the applicant is a victim of child sex trafficking.

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

Generally, several victim-friendly criminal justice procedures and protections are afforded specifically to victims of Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) and Texas’s CSEC laws. For example, Tex. Code Crim. Proc. Ann. art. 7B.001¹⁵⁴ (Application for protective order) states,

(a) The following persons may file an application for a protective order under this subchapter without regard to the relationship between the applicant and the alleged offender:

- (1) a person who is the victim of an offense under Section 21.02 [Continuous sexual abuse of young child or children] . . . , Penal Code;

¹⁵³ The text of Tex. Code Crim. Proc. Ann. art. 56B.107 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁵⁴ The text of Tex. Code Crim. Proc. Ann. art. 7B.001 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 1343 and 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019 and January 1, 2021, respectively).

- (2) a person who is the victim of an offense under Section 20A.02 [Trafficking of persons], 20A.03 [Continuous trafficking of persons], or Section 43.05 [Compelling prostitution], Penal Code;
 - (3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);
 - (4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or
 - (5) a prosecuting attorney acting on behalf of a person described by Subdivision (1), (2), (3), or (4).
- (a-1) Except as provided by Subsection (a-2), if an application has not yet been filed in the case under Subsection (a), the attorney representing the state shall promptly file an application for a protective order with respect to each victim of an offense listed in Subdivision (1) or (2) of that subsection following the offender's conviction of or placement on deferred adjudication community supervision for the offense.
- (a-2) The attorney representing the state may not file an application under Subsection (a-1) with respect to a victim who is at least 18 years of age if the victim requests the attorney representing the state not file the application.
- (b) An application for a protective order under this subchapter may be filed in:
- (1) a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:
 - (A) the county in which the applicant resides; or
 - (B) the county in which the alleged offender resides; or
 - (C) any county in which an element of the alleged offense occurred; or
 - (2) any court with jurisdiction over a protective order under Title 4, Family Code, involving the same parties named in the application.

Tex. Penal Code Ann. § 20A.04 (Accomplice witness; testimony and immunity) states,

- (a) A party to an offense under [Chapter 20A (Trafficking in Persons)] may be required to provide evidence or testify about the offense.
- (b) A party to an offense under this chapter may not be prosecuted for any offense about which the party is required to provide evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury. For purposes of this subsection, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.
- (c) A conviction under this chapter may be had on the uncorroborated testimony of a party to the offense.

Additionally, Tex. Code Crim. Proc. Ann. art. 38.07 (Testimony in corroboration of victim of sexual offense) states,

- (a) A conviction under Chapter 21 [Sexual offenses], Section 20A.02(a)(3), (4), (7), or (8) [Trafficking of persons], Section 22.011 [Sexual assault], or Section 22.021 [Aggravated sexual assault], Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.
- (b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:
 - (1) 17 years of age or younger;

....

Similarly, Tex. Code Crim. Proc. Ann. art. 38.071 (Testimony of child who is victim of offense) provides multiple protections to a child under 13 years of age who is a victim of specified crimes, including Tex. Penal Code Ann. § 20A.02(a)(7), (8). Specifically, Tex. Code Crim. Proc. Ann. art. 38.071, § 1 states,

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable¹⁵⁵ to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

-
- (6) Section 22.011 (Sexual Assault);
-
- (8) Section 22.021 (Aggravated Sexual Assault);
-
- (13) Section 43.25 (Sexual Performance by a Child);
- (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
- (15) Section 43.05(a)(2) (Compelling Prostitution)
- (16) Section 20A.02(a)(7) or (8) (Trafficking of Persons).

A child who falls within the provisions of Tex. Code Crim. Proc. Ann. art. 38.071, § 1 may be allowed to give testimony “in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact.” Tex. Code Crim. Proc. Ann. art. 38.071, § 3(a). Tex. Code Crim. Proc. Ann. art. 38.071, § 3(a) further provides that “only the judge, the court reporter, the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony,” and “[o]nly the attorneys and the judge may question the child.” Tex. Code Crim. Proc. Ann. art. 38.071, § 3(a) additionally states that the court should “attempt to ensure that the child cannot hear or see the defendant.”

Tex. Code Crim. Proc. Ann. art. 38.072, § 2(b) (Hearsay statement of certain abuse victim) also provides specific protections to victims of Tex. Penal Code Ann. § 20A.02(a)(7), (8) (Trafficking of persons). Tex. Code Crim. Proc. Ann. art. 38.072 permits the admissibility of out of court statements made by victims, under the age of 14, of Tex. Penal Code Ann. §§ 20A.02(a)(7), (8), 43.05(a)(2) (Compelling prostitution), 43.25 (Sexual performance by a child), chapter 21 (Sexual offenses), or chapter 22 (Assaultive offenses) of the Texas Penal Code.

Tex. Code Crim. Proc. Ann. art. 38.37, §§ 1, 2 (Evidence of extraneous offenses or acts) provides,

Sec. 1.

- (a) Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:
 - (1) if committed against a child under 17 years of age:
 - (A) Chapter 21 (Sexual Offenses);
 - (B) Chapter 22 (Assaultive Offenses); or
 - (C) Section 25.02 (Prohibited Sexual Conduct);

¹⁵⁵ Tex. Code Crim. Proc. Ann. art. 38.071, § 8 states,

(a) In making a determination of unavailability under this article, the court shall consider relevant factors including the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, and the time elapsed since the alleged offense, and whether the child is more likely than not to be unavailable to testify because:

- (1) of emotional or physical causes, including the confrontation with the defendant; or
- (2) the child would suffer undue psychological or physical harm through his involvement at the hearing or proceeding.

(b) A determination of unavailability under this article can be made after an earlier determination of availability. A determination of availability under this article can be made after an earlier determination of unavailability.

- (2) if committed against a person younger than 18 years of age:
 - (A) Section 43.25 (Sexual Performance by a Child);
 - (B) Section 20A.02(a)(7) or (8) [Trafficking of persons]; or
 - (C) Section 43.05(a)(2) (Compelling Prostitution)
- (b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:
 - (1) the state of mind of the defendant and the child; and
 - (2) the previous and subsequent relationship between the defendant and the child.

Sec. 2.

- (a) Subsection (b) applies only to the trial of a defendant for:
 - (1) an offense under any of the following provisions of the Penal Code:
 - (A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);
 - (B) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
 - (C) Section 21.11 (Indecency with a Child);
 - (D) Section 22.011(a)(2) (Sexual Assault of a Child);
 - (E) Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);
 - (F) Section 33.021 (Online Solicitation of a Minor);
 - (G) Section 43.25 (Sexual Performance by a Child); or
 - (H) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or
 - (2) an attempt or conspiracy to commit an offense described by Subdivision (1).
- (b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2–a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2–a. Before evidence described by Section 2 may be introduced, the trial judge must:

- (1) determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense beyond a reasonable doubt; and
- (2) conduct a hearing out of the presence of the jury for that purpose.

Tex. R. Evid. 412(a) (Evidence of previous sexual conduct in criminal cases) states, “In a prosecution for . . . aggravated sexual assault [Tex. Penal Code Ann. § 22.021], or attempt to commit . . . aggravated sexual assault, reputation or opinion evidence of the past sexual behavior of an alleged victim of such crime is not admissible.”¹⁵⁶ Tex. Evid. Rule 412(b) states that “evidence of specific instances of an alleged victim’s past sexual behavior is also not admissible” unless it meets certain criteria.¹⁵⁷

Tex. Code Crim. Proc. Ann. art. 42.0191 (Finding regarding victims of trafficking or other abuse) encourages trafficking victims to participate in the prosecution of the trafficker by ensuring the victim’s confidentiality. Specifically, Tex. Code Crim. Proc. Ann. art. 42.0191 states,

- (a) In the trial of an offense, on the motion of the attorney representing the state the judge shall make an affirmative finding of fact and enter the affirmative finding in the papers in the case if the judge determines that, regardless of whether the conduct at issue is the subject of the prosecution or part of the same criminal episode as the conduct that is the subject of the prosecution, a victim in the trial:
 - (1) is or has been a victim of a severe form of trafficking of persons, as defined by 22 U.S.C. Section 7102(8); or

¹⁵⁶ Tex. R. Evid. 412(a).

¹⁵⁷ Tex. R. Evid. 412(b).

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- (b) That part of the papers in the case containing an affirmative finding under this article:
- (1) must include specific information identifying the victim, as available;
 - (2) may not include information identifying the victim’s location; and
 - (3) is confidential, unless written consent for the release of the affirmative finding is obtained from the victim or, if the victim is younger than 18 years of age, the victim’s parent or guardian.

Further, Tex. Code Crim. Proc. Ann. art. 58.052(a)¹⁵⁸ (Address confidentiality program) permits child sex trafficking victims to participate in an address confidentiality program provided that the eligibility criteria enumerated in Tex. Code Crim. Proc. Ann. art. 58.054¹⁵⁹ (Eligibility) are satisfied.

Additionally, Tex. Gov’t Code Ann. § 23.101(a)(2)(C)(vi) (Primary priorities) states that courts should give preference to cases involving violations of Tex. Penal Code Ann. §§ 20A.02(a)(7), (8) and 20A.03 (Continuous trafficking of persons) when scheduling hearings and trials.

Pursuant to Tex. Code Crim. Proc. Ann. art. 38.45 (Evidence depicting or describing abuse of or sexual conduct by child or minor), victims depicted in child sexual abuse material (CSAM) are protected from the further public viewings of that material.

Victims of certain enumerated crimes, including trafficking, and those who have suffered personal injury receive protections under Subchapter B (Crime victims’ rights) of Chapter 56A (Rights of crime victims) of the Texas Code of Criminal Procedure. Specifically, Tex. Code Crim. Proc. Ann. art. 56A.051(a)¹⁶⁰ (General rights) states,

A victim,¹⁶¹ guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

- (1) the right to receive from a law enforcement agency adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;
- (2) the right to have the magistrate consider the safety of the victim or the victim’s family in setting the amount of bail for the defendant;
- (3) if requested, the right to be informed:
 - (A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled before the event; and
 - (B) by an appellate court of the court’s decisions, after the decisions are entered but before the decisions are made public;

¹⁵⁸ The text of Tex. Code Crim. Proc. Ann. art. 58.052 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁵⁹ The text of Tex. Code Crim. Proc. Ann. art. 58.054 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁶⁰ The text of Tex. Code Crim. Proc. Ann. art. 56A.051 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

¹⁶¹ Tex. Code Crim. Proc. Ann. art. 56A.001(7) (Definitions) defines “victim” as “a person who: (A) is the victim of the offense of . . . (iv) trafficking of persons; or . . . (B) has suffered personal injury or death as a result of the criminal conduct of another.”

The text of Tex. Code Crim. Proc. Ann. art. 56A.001 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4173 during the 2019 Regular Session of the 86th Texas Legislature (effective January 1, 2021).

....

(6) the right to receive information regarding compensation to victims of crime as provided by Chapter 56B [Crime victims' compensation], including information related to the costs that may be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter, the payment for a forensic medical examination under Article 56A.252 [Payment of costs of examination] for a victim of an alleged sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

....

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the defendant and relatives of the defendant, before testifying in any proceeding concerning the defendant; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the defendant and the defendant's relatives and witnesses, before and during court proceedings;

....

(13) for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004 [Family Violence], Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by the defendant's attorney, the court shall state on the record the reason for granting or denying the continuance; and

....

Other protections are also available to children involved in non-criminal court proceedings. Tex. Fam. Code Ann. § 104.004(a) (Remote televised broadcast of testimony of child), which applies to suits affecting the parent-child relationship, states,

If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties.

Additionally, Tex. Fam. Code Ann. § 104.002 (Prerecorded statement of child) states, under certain circumstances, "If a child 12 years of age or younger is alleged in a suit under [Tex. Fam. Code Title 5 (The parent-child relationship and the suit affecting the parent-child relationship)] to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence"

Furthermore, Tex. Fam. Code Ann. § 104.003(a) (Prerecorded videotaped testimony of child) permits the court, upon motion of a party, to "order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding." Lastly, under Tex. Fam. Code Ann. § 104.005(a) (Substitution for in-court testimony of child), "If the testimony of a child is taken as provided by this chapter, the child may not be compelled to testify in court during the proceeding."

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.*

Texas law allows child sex trafficking victims to seal certain juvenile¹⁶² records after a waiting period or upon completion of a trafficked persons program. The sealing order results in automatic vacatur of the underlying adjudication.

¹⁶² To the extent that a trafficking victim was criminally convicted, Tex. Gov't Code § 411.0728 (Procedure for certain victims of trafficking of persons or compelling prostitution) allows for an order of nondisclosure, stating,

Tex. Fam. Code Ann. § 58.255 (Sealing records without application: Conduct indicating need for supervision) sets out the requirements for sealing juvenile records related to conduct indicating a need for supervision, which includes prostitution. Tex. Fam. Code Ann. §§ 58.255, 51.03(b)(5). According to Tex. Fam. Code Ann. § 58.255(a),

A person who was referred to a juvenile court for conduct indicating a need for supervision is entitled to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person:

- (1) has records relating to conduct filed with the court clerk;
- (2) is at least 18 years of age;
- (3) has not been referred to the juvenile probation department for delinquent conduct;
- (4) has not as an adult been convicted of a felony; and
- (5) does not have any pending charges as an adult for a felony or misdemeanor punishable by confinement in jail.

(a) This section applies only to a person:

(1) who is convicted of or placed on deferred adjudication community supervision for an offense under:

(A) Section 481.120 [Delivery of marihuana], Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(B) Section 481.121 [Possession of marihuana], Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(C) Section 31.03 [Theft], Penal Code, if the offense is punishable under Subsection (e)(1) or (2); or

(D) Section 43.02 [Prostitution], Penal Code; and

(2) who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02 [Trafficking of persons], 20A.03 [Continuous trafficking of persons], or 43.05 [Compelling prostitution], Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A) provided assistance in the investigation or prosecution of the offense; or

(B) did not provide assistance due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who satisfies the requirements of Section 411.074(b) [Required conditions for receiving an order of nondisclosure] may petition the court that convicted the person or placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section on the grounds that the person committed the offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

....

(d) A person may petition the applicable court for an order of nondisclosure of criminal history record information under this section only on or after the first anniversary of the date the person:

(1) completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or

(2) received a dismissal and discharge under Article 42A.111 [Dismissal and discharge], Code of Criminal Procedure, if the person was placed on deferred adjudication community supervision.

The text of Tex. Gov't Code § 411.0728 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 and 1801 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

Tex. Fam. Code Ann. § 58.253 (Sealing records without application: Delinquent conduct) sets out the requirements for sealing juvenile delinquency records for misdemeanor offenses. According to Tex. Fam. Code Ann. § 58.253(b),

A person who was referred to a juvenile probation department for delinquent conduct is entitled to have all records related to the person's juvenile matters, including records relating to any matters involving conduct indicating a need for supervision, sealed without applying to the juvenile court if the person:

- (1) is at least 19 years of age;
- (2) . . . if adjudicated for delinquent conduct, was not adjudicated for delinquent conduct violating a penal law of the grade of felony;
- (3) does not have any pending delinquent conduct matters;
- (4) has not been transferred by a juvenile court to a criminal court for prosecution under Section 54.02;
- (5) has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail; and
- (6) does not have any pending charges as an adult for a felony or a misdemeanor by confinement in jail.

Additional records may be sealed by application under Tex. Fam. Code Ann. § 58.256¹⁶³ (Application for sealing records), which states,

(a) Notwithstanding Sections 58.253 and 58.255, a person may file an application for the sealing of records related to the person in the juvenile court served by the juvenile probation department to which the person was referred

. . . .
(c) Except as provided by Subsection (d), the juvenile court may order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

- (1) is at least 17 years of age, or is younger than 17 years of age and at least one year has elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;
- (2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;
- (3) was not transferred by a juvenile court to a criminal court for prosecution under Section 54.02;
- (4) has not as an adult been convicted of a felony; and
- (5) does not have any pending charges as an adult for a felony or misdemeanor punishable by confinement in jail.

(d) A court may not order the sealing of the records of a person who:

- (1) received a determinate sentence for engaging in:
 - (A) delinquent conduct that violated a penal law listed under Section 53.045 [Offenses eligible for determinate sentence]; or
 - (B) habitual felony conduct as described by Section 51.031 [Habitual felony conduct];
- (2) is currently required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
- (3) was committed to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011, unless the person has been discharged from the agency to which the person was committed.

. . . .

¹⁶³ The text of Tex. Fam. Code Ann. § 58.256 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 1760 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

Upon entry of a sealing order, Tex. Fam. Code Ann. § 58.258(c) (Order sealing records) provides, “all adjudications relating to the person are vacated and the proceedings are dismissed and treated for all purposes as though the proceedings have never occurred.” Accordingly, the sealing order results in automatic vacatur of the underlying delinquency adjudication.

Because Tex. Fam. Code Ann. § 58.253, § 58.255, and § 58.256 mandate a waiting period, however, a child sex trafficking victim may face collateral consequences associated with having a delinquency record during that time. Tex. Fam. Code Ann. § 54.04012(d) (Trafficked Persons Program) removes that waiting period but requires the victim to complete a trafficking persons program. It states, “Following a child’s successful completion of the program, the court may order the sealing of the records of the case in the manner provided by Subchapter C-1, Chapter 58 [Sealing and destruction of juvenile records].” Accordingly, records sealed under this provision appear to result in automatic vacatur based on the provisions of Tex. Fam. Code Ann. § 58.258(c). However, record sealing is non-mandatory under Tex. Fam. Code Ann. § 54.04012(d) and would not apply in cases where a survivor is unable or unwilling to complete the program.

Further, Tex. Fam. Code Ann. § 58.264(b) (Permissible destruction of records) permits the discretionary destruction of certain closed juvenile records if the person:

-
- (2) is at least 21 years of age, and:
 - (A) the most serious conduct for which the person was adjudicated was delinquent conduct for which the person was adjudicated was delinquent conduct that violated a penal law of the grade of misdemeanor; or
 - (B) the most serious conduct for which the person was referred was delinquent conduct and the person was not adjudicated as having engaged in the conduct; or
 - (3) is at least 31 years of age and the most serious conduct for which the person was adjudicated was delinquent conduct that violated a penal law of the grade of felony.

However, Tex. Fam. Code Ann. § 58.264(f) states, “This section does not authorize the destruction of the records of the juvenile court or clerk of court.”

- 5.9.1 Recommendation: Amend Tex. Fam. Code Ann. § 58.253 (Sealing records without application: Delinquent conduct) and § 58.256 (Application for sealing records) to allow child sex trafficking victims to seal juvenile records without a waiting period regardless of whether the child completed a trafficked persons program.

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.*

Victims whose offenders are convicted under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8) (Trafficking of persons) or 43.05(a)(2) (Compelling prostitution) are eligible to receive restitution under Tex. Code Crim. Proc. Ann. art. 42.0372(a) (Mandatory restitution for child victims of trafficking of persons or compelling prostitution), which states,

The court shall order a defendant convicted of an offense under Section 20A.02 [Trafficking of persons] or 43.05(a)(2) [Compelling prostitution], Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.

Victims whose offenders are convicted of other crimes may receive restitution at the discretion of the court, pursuant to Tex. Code Crim. Proc. Ann. art. 42.037¹⁶⁴ (Restitution), which states,

- (a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter J [Funds], Chapter 56B [Crime Victims' Compensation], to the extent that fund has paid compensation to or on behalf of the victim
- (b) (1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:
 - (A) to return the property to the owner of the property or someone designated by the owner; or
 - (B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:
 - (i) the value of the property on the date of the damage, loss, or destruction; or
 - (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.
- (2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:
 - (A) the victim for any expenses incurred by the victim as a result of the offense; or
 - (B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.
-
- (c) The court, in determining whether to order restitution and the amount of restitution, shall consider:
 - (1) the amount of the loss sustained by any victim and the amount paid to or on behalf of the victim by the compensation to victims of crime fund as a result of the offense; and
 - (2) other factors the court deems appropriate.
-
- (e) The court shall impose an order of restitution that is as fair as possible to the victim or to the compensation to victims of crime fund, as applicable. The imposition of the order may not unduly complicate or prolong the sentencing process.
- (f) (1) The court may not order restitution for a loss for which the victim has received or will receive compensation only from a source other than the compensation to victims of crime fund. The court may, in the interest of justice, order restitution to any person who has compensated the victim for the loss to the extent the person paid compensation. An order of restitution shall require that all restitution to a victim or to the compensation to victims of crime fund be made before any restitution to any other person is made under the order.
- (2) Any amount recovered by a victim from a person ordered to pay restitution in a federal or state civil proceeding is reduced by any amount previously paid to the victim by the person under an order of restitution.
-
- (m) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.
-
- (r) The court may order a defendant convicted of an offense under Section 43.26 [Possession or promotion of child pornography], Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:
 - (1) medical services relating to physical, psychiatric, or psychological care;
 - (2) physical and occupational therapy or rehabilitation;
 - (3) necessary transportation, temporary housing, and child care expenses;
 - (4) lost income; and

¹⁶⁴ See *supra* note 66.

(5) attorney's fees.

Victims of Tex. Penal Code Ann. § 20A.02(a)(7), (8) (Trafficking of persons) are provided with a civil cause of action under Tex. Civ. Prac. & Rem. Code Ann. § 98.002 (Liability), which states,

- (a) A defendant who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked, as provided by this chapter, for damages arising from the trafficking of that person by the defendant or venture.
- (b) It is not a defense to liability under this chapter that a defendant has been acquitted or has not been prosecuted or convicted under Chapter 20A [Trafficking of persons], Penal Code, or has been convicted of a different offense or of a different type or class of offense, for the conduct that is alleged to give rise to liability under this chapter.

Tex. Civ. Prac. & Rem. Code Ann. § 98.003 (Damages) further states that trafficking victims may receive “actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown,” reasonable attorney’s fees, court costs, and exemplary damages. These damages can be awarded in addition to any other remedy available by law. Tex. Civ. Prac. & Rem. Code Ann. § 98.004. Additionally, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 98.005 (Joint and several liability),

A person who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person and is found liable under this chapter or other law for any amount of damages arising from the trafficking is jointly liable with any other defendant for the entire amount of damages arising from the trafficking.

Victims of trafficking may also have a civil right of action under Tex. Civ. Prac. & Rem. Code Ann. § 98A.002¹⁶⁵ (Liability), which states,

- (a) A defendant is liable to a victim of compelled prostitution, as provided by this chapter, for damages arising from the compelled prostitution if the defendant:
 - (1) engages in compelling prostitution with respect to the victim;
 - (2) knowingly or intentionally engages in promotion of prostitution, online promotion of prostitution, aggravated promotion of prostitution, or aggravated online promotion of prostitution that results in compelling prostitution with respect to the victim; or
 - (3) purchases an advertisement that the defendant knows or reasonably should know constitutes promotion of prostitution or aggravated promotion of prostitution, and the publication of the advertisement results in compelling prostitution with respect to the victim.
- (b) It is not a defense to liability under this chapter that:
 - (1) the defendant:
 - (A) is related to the victim by affinity or consanguinity, has been in a consensual sexual relationship with the victim, or has resided with the victim in a household; or
 - (B) has paid or otherwise compensated the victim for prostitution; or
 - (2) the victim:
 - (A) voluntarily engaged in prostitution before or after the compelled prostitution occurred; or
 - (B) did not attempt to escape, flee, or otherwise terminate contact with the defendant at the time the compelled prostitution allegedly occurred.

Tex. Civ. Prac. & Rem. Code Ann. § 98A.003 (Damages) states:

¹⁶⁵ The text of Tex. Civ. Prac. & Rem. Code Ann. § 98A.002 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

- (a) claimant who prevails in a suit under this chapter shall be awarded:
 - (1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
 - (2) court costs; and
 - (3) reasonable attorney's fees.
- (b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

Finally, Tex. Civ. Prac. & Rem. Code Ann. § 98A.004 (Cause of Action Cumulative) provides:

The cause of action created by this chapter is cumulative of any other remedy provided by common law or statute, except that a person may not recover damages in a suit under this chapter in which the cause of action is based on a transaction or occurrence that is the basis for a suit under Chapter 98.

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.

Tex. Code Crim. Proc. Ann. art. 12.01(1)(B), (D), (G), (H), (I) (Felonies) eliminates statutes of limitations for prosecutions under Tex. Penal Code Ann. §§ 20A.02(a)(7), (8) (Trafficking of persons), 20A.03 (Continuous trafficking of persons), 22.021(a)(1)(B) (Aggravated sexual assault), 21.02 (Continuous sexual abuse of young child or children), and 43.05(a)(2) (Compelling prostitution).

Tex. Code Crim. Proc. art. 12.01(2)(G), (H) imposes a 10 year statute of limitations for prosecutions of Tex. Penal Code Ann. § 20A.02(a)(1)–(4) (Trafficking of persons). Pursuant to Tex. Code Crim. Proc. Ann. art. 12.01(6)(A), (B), (C), (D), however, if the victim was under the age of 18 at the time of the offense, prosecutions under Tex. Penal Code Ann. §§ 20A.02(a)(5), (6) (Trafficking in persons) or 22.04 (Injury to a child) may be brought within “ten years from the 18th birthday of the victim of the offense.”

Tex. Code Crim. Proc. Ann. art. 12.01(5)(A) imposes a 20-year statute of limitation for a prosecution of Tex. Penal Code Ann. § 43.25 (Sexual performance by a child), which is tolled until the victim's 18th birthday if the victim was younger than 17 years of age at the time of the offense. No statutes of limitations are expressly specified for prosecutions of Tex. Penal Code Ann. §§ 43.02 (Prostitution), 15.031(b) (Criminal solicitation of a minor), or 43.251(b) (Employment harmful to children), meaning that the 3 year statute of limitations provided under Tex. Code Crim. Proc. Ann. art. 12.01(8)¹⁶⁶ applies.

In civil suits concerning personal actions, Tex. Civ. Prac. & Rem. Code Ann. § 16.001(a)(1) (Effect of disability) tolls otherwise applicable statutes of limitations from running until a victim turns 18 years old. Generally, under Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Two-year limitations period), a victim must sue for personal injury or “action for injury resulting in death” within two years from the day the cause of action arises. However, Tex. Civ. Prac. & Rem. Code Ann. § 16.0045(a)¹⁶⁷ (Limitations period for claims arising from certain offenses) imposes a 30 year statute of limitations “if the injury arises as a result of conduct that violates” Tex. Penal Code Ann. §§ 22.011 (Sexual assault), 22.021 (Aggravated sexual assault of a child), 21.02 (Continuous sexual abuse of young child or children), 20A.02(a)(7)(A), (B), (C), (D), or (H) or 20A.02(a)(8), involving an activity described by Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or sexual conduct with a child trafficked in the manner described by Section 20A.02(a)(7)

¹⁶⁶ The text of Tex. Code Crim. Proc. Ann. art. 12.01 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1259 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹⁶⁷ The text of Tex. Civ. Prac. & Rem. Code Ann. § 16.0045 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 3809 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

(Certain sexual trafficking of a child), 43.05(a)(2) (Compelling prostitution by a child), or 21.11 (Indecency with a child).

Additionally, Tex. Civ. Prac. & Rem. Code Ann. § 16.0045(b) allows civil suits to be brought up to five years for conduct violating Tex. Penal Code Ann. §§ 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 20A.02 (Trafficking of persons) “other than conduct described by Subsection (a)(4)”; or 43.05(a)(1), (Compelling prostitution).

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.*

Texas law mandates training on human trafficking for law enforcement. Specifically, Tex. Occ. Code Ann. § 1701.258(a)¹⁶⁸ (Education and training programs on trafficking of persons) requires law enforcement officers to “complete a one-time basic education and training program on the trafficking of persons.” The program must be at least four hours long and “include a review of the substance of Sections 20A.02 [Trafficking of persons] and 43.05 [Compelling prostitution].” Tex. Occ. Code Ann. § 1701.258(a). Tex. Occ. Code Ann. § 1701.253(p)¹⁶⁹ (School curriculum) echoes this requirement, stating,

As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a). An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer’s basic training course.

Additionally, Tex. Occ. Code Ann. § 1701.258(b) states, “The [Commission on Law Enforcement Officer Standards and Education] shall make available to each officer a voluntary advanced education, instruction, and training program on the trafficking of persons and compelling prostitution prohibited under Sections 20A.02 and 43.05, Penal Code.”

Tex. Occ. Code Ann. § 1701.402(a) (Proficiency certificates) authorizes the Commission on Law Enforcement Officer Standards and Education to issue proficiency certificates to law enforcement officers who meet training, education, and experience requirements. Tex. Occ. Code Ann. § 1701.402(j) states, “As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).”

¹⁶⁸ The text of Tex. Occ. Code Ann. § 1701.258 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 292 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

¹⁶⁹ The text of Tex. Occ. Code Ann. § 1701.253 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 292 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

Texas also has a mandatory education and training program for officers regarding missing and exploited children. Tex. Occ. Code Ann. § 1701.402(k) (Proficiency certificates) provides,

As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

- (1) consist of at least four hours of training;
- (2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;
- (3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and
- (4) include a review of the substance of Chapters 20 and 43, Penal Code.

Tex. Hum. Res. Code § 242.009(b) requires juvenile correctional officers to receive training on human trafficking, sexual abuse, adolescent development, and trauma-informed care, among other things.

Tex. Gov't Code §§ 22.110(a), (b), (d) and 22.011 mandate judicial trainings regarding trafficking of persons.

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

Texas permits single-party consent to audiotaping. Although Tex. Penal Code Ann. § 16.02(b)(1) (Unlawful interception, use, or disclosure of wire, oral, or electronic communications) states that a person who “intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire, oral, or electronic communication” is guilty of an offense, a list of affirmative defenses permit single-party consent to audiotaping by both law enforcement and citizens. Tex. Penal Code Ann. § 16.02(c)(3), (4) states,

It is an affirmative defense to prosecution under Subsection (b) that:

-
- (3) a person acting under color of law intercepts:
 - (A) 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 prior consent to the interception;

....

 - (4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:
 - (A) the person is a party to the communication; or
 - (B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act.

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

Wiretapping is an available tool for investigating trafficking and select CSEC offenses. Tex. Penal Code Ann. § 16.02(c) (Unlawful interception, use, or disclosure of wire, oral, or electronic communications) states,

It is an affirmative defense to prosecution under Subsection (b) that:

-
- (3) a person acting under color of law intercepts:
 - (B) a wire, oral, or electronic communication, if the person is acting under the authority of Chapter 18A [Detection, interception, and use of wire, oral, and electronic communications], Code of Criminal Procedure; or

-
-
- (5) a person acting under color of law intercepts a wire, oral, or electronic communication if:
- (A) oral or written consent for the interception is given by a magistrate before the interception;
 - (B) an immediate life-threatening situation exists;
 - (C) the person is a member of a law enforcement unit specially trained to:
 - (i) respond to and deal with life-threatening situations; or
 - (ii) install interception devices; and
 - (D) the interception ceases immediately on termination of the life-threatening situation.

Tex. Code Crim. Proc. Ann. art. 18A, subchapter B (18A.051–18A.055) (Application for interception order) sets out the procedure for issuing an interception order.¹⁷⁰ Tex. Code Crim. Proc. Ann. art. 18A.101(2)¹⁷¹ (Offenses for which interception order may be issued) allows a prosecutor to apply for an interception order during an investigation of Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons), 20A.03 (Continuous trafficking of persons), 43.04 (Aggravated promotion of prostitution), 43.041 (Aggravated online promotion of prostitution), 43.05 (Compelling prostitution), or 43.26 (Possession or promotion of child pornography). Tex. Code Crim. Proc. Ann. art. 18A.101 states,

A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

-
- (2) an offense under any of the following provisions of the Penal Code:
-
 - (E) Chapter 20A [Trafficking of persons];
 -
 - (H) Section 43.04 [Aggravated promotion of prostitution];
 - (I) Section 43.041 [Aggravated online promotion of prostitution];
 - (J) Section 43.05 [Compelling prostitution]; or
 - (K) Section 43.26 [Possession or promotion of child pornography]; or
- (3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2).

Additionally, Tex. Code Crim. Proc. Ann. art. 18A.203(a) (Consent for emergency interception) authorizes the issuance of oral or written interception orders if it will “provide evidence of the commission of a felony, or of a threat, attempt, or conspiracy to commit a felony, in an immediate life-threatening situation.” This emergency consent expires “48 hours after the grant of consent” or upon “the conclusion of the emergency justifying the interception.” Tex. Code Crim. Proc. Ann. art. 18A.203(b).

Tex. Code Crim. Proc. Ann. art. 18A.357(a) (Communications received in evidence) further states that an intercepted communication and any resulting evidence “may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, this state, or a political subdivision of this state,” with a few exceptions, including if “the communication was intercepted in violation of this chapter, Section 16.02, Penal Code, [Unlawful interception, use, or disclosure of wire, oral, or electronic communications], or federal law.” Furthermore, “The contents of an intercepted communication and evidence derived from the communication may be received in a civil trial, hearing, or other proceeding only if the civil trial, hearing, or other proceeding

¹⁷⁰ Tex. Code Crim. Proc. art. 18A.001(15) (Definitions) defines “interception order” as “an order authorizing the interception of a wire, oral, or electronic communication.”

¹⁷¹ The text of Tex. Code Crim. Proc. Ann. art. 18A.101 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

arises out of a violation of a penal law.” Tex. Code Crim. Proc. art. 18A.357(b). Tex. Code Crim. Proc. Ann. art. 18A.351 (Disclosure or use of intercepted communications) also provides,

An investigative or law enforcement officer who, by any means authorized by this chapter, obtains knowledge of the contents of a wire, oral, or electronic communication or evidence derived from the communication may:

- (1) use the contents or evidence to the extent the use is appropriate to the proper performance of the officer’s official duties; or
- (2) disclose the contents or evidence to another investigative or law enforcement officer, including a law enforcement officer or agent of the United States or of another state, to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

Finally, Tex. Code Crim. Proc. art. 18A.352 (Disclosure under oath) states,

A person who receives, by any means authorized by this chapter, information concerning a wire, oral, or electronic communication or evidence derived from a communication intercepted in accordance with this chapter may disclose the contents of that communication or evidence while giving testimony under oath in any proceeding held under the authority of the United States, this state, or a political subdivision of this state.

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.*

Pursuant Tex. Penal Code Ann. § 15.031(b) (Criminal solicitation of a minor), a defendant may not assert a defense to prosecution based on the use of a law enforcement decoy posing as a minor so long as the defendant “believed” the decoy to be a minor. Tex. Penal Code Ann. § 15.031(b) states,

A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or children], 21.11 [Indecency with a child], 22.011 [Sexual assault], 22.021 [Aggravated sexual assault], 43.02 [Prostitution], 43.05(a)(2) [Compelling prostitution], or 43.25 [Sexual performance by a child] be committed, the person by any means requests, commands, or attempts to induce a minor [under 17] or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

Tex. Penal Code Ann. § 15.031(b) states that the offense occurs even when a “person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense” under one of the specified statutes.

Also, liability for Tex. Penal Code Ann. § 43.02(c-1)(2)¹⁷² (Prostitution) does not rest solely on the actual age of the victim; instead, Tex. Penal Code Ann. § 43.02(c-1)(2) renders an offender culpable for a heightened penalty if the “person with whom the actor agrees to engage in sexual conduct” is represented to the actor or believed by the actor to be under 18 years of age.

¹⁷² See *supra* note 17.

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

Pursuant to Tex. Penal Code Ann. § 33.021(a)(1) (Online solicitation of a minor), “‘Minor’ means: (A) an individual who is younger than 17 years of age; or (B) an individual whom the actor believes to be younger than 17 years of age.” Therefore, it is illegal for a person to “solicit[] a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse.” This appears to allow law enforcement officers the ability to use the Internet for investigations posing as a minor.

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

State law mandates certain reporting requirements related to sex trafficked children. Tex. Gov’t Code Ann. § 71.0353 (Trafficking of persons information) states that “a district or county court at law shall report the number of cases filed” for violations of Tex. Penal Code Ann. § 20A.02 (Trafficking of persons), § 43.02 (Prostitution), and § 43.05 (Compelling prostitution) and submit the report to the Office of Court Administration of the Texas Judicial System. Furthermore, Tex. Gov’t Code Ann. § 411.042(b)(2)¹⁷³ (Bureau of identification and records) states,

The bureau of identification and records shall:

....

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A) offenses in which family violence was involved;

(B) offenses under Sections 22.011 [Sexual assault] and 22.021 [Aggravated sexual assault], Penal Code; and

(C) offenses under Section 20A.02 [Trafficking of persons], 43.02(a) [Prostitution], 43.02(b), 43.03 [Promotion of prostitution], 43.031 [Online promotion of prostitution], 43.04 [Aggravated promotion of prostitution], 43.041 [Aggravated online promotion of prostitution], and 43.05 [Compelling prostitution], Penal Code.

Other reporting requirements apply more generally to situations involving runaway or missing children. Tex. Penal Code Ann. § 25.06(e) (Harboring runaway child) requires a law enforcement agency to immediately enter a record of a child escaped from juvenile detention or a runaway child into the National Crime Information Center (NCIC) when reported by a parent, guardian or legal custodian, peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility.

Tex. Code Crim. Proc. Ann. art. 63.002 (Missing children and missing persons information clearinghouse) establishes a missing children and missing persons information clearinghouse within the Department of Public Safety for use by all law enforcement agencies of the state as a “central repository of information on missing children, missing persons, and attempted child abductions.” Tex. Code Crim. Proc. Ann. art. 63.003(a). Pursuant to Tex. Code Crim. Proc. Ann. art. 63.003(b) (Function of Clearinghouse), the clearinghouse is required to

¹⁷³ The text of Tex. Gov’t Code Ann. § 411.042 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 20 during the 2019 Regular Session of the 86th Texas Legislature (effective September 1, 2019).

- (1) establish a system of intrastate communication of information relating to missing children¹⁷⁴ and missing persons;¹⁷⁵
- (2) provide a centralized file for the exchange of information on missing children, missing persons, and unidentified dead bodies within the state;
- (3) communicate with the national crime information center for the exchange of information on missing children and missing persons suspected of interstate travel;
- (4) collect, process, maintain, and disseminate accurate and complete information on missing children and missing persons;
- (5) provide a statewide toll-free telephone line for the reporting of missing children and missing persons and for receiving information on missing children and missing persons; and
- (6) provide and disseminate to legal custodians, law enforcement agencies, and the Texas Education Agency information that explains how to prevent child abduction and what to do if a child becomes missing; and
- (7) receive and maintain information on attempted child abductions in this state.

After a missing child is recovered, Tex. Fam. Code § 264.123(f) requires the Department of Family and Protective Services to interview the child to determine whether

while missing, the child was a victim of conduct that constitutes an offense under [Tex. Penal Code Ann. § 20A.02(a)(7)]. The department shall report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. The department shall make a report under this subsection not later than 24 hours after the time the disclosure is made.

The Department of Family and Protective Services must also gather information regarding “each child who, while in the department’s managing conservatorship, is a victim of conduct that constitutes an offense under” Tex. Penal Code Ann. § Section 20A.02(a)(7). Tex. Fam. Code § 264.123(g).

¹⁷⁴ Tex. Code Crim. Proc. Ann. art. 63.001(3) defines “missing child” as

a child whose whereabouts are unknown to the child’s legal custodian, the circumstances of whose absence indicate that:

- (A) the child did not voluntarily leave the care and control of the custodian, and the taking of the child was not authorized by law;
- (B) the child voluntarily left the care and control of the custodian without the custodian’s consent and without intent to return;
- (C) the child was taken or retained in violation of the terms of a court order for possession of or access to the child; or
- (D) the child was taken or retained without the permission of the custodian and with the effect of depriving the custodian of possession of or access to the child unless the taking or retention of the child was prompted by the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the actor.

Tex. Code Crim. Proc. Ann. art. 63.001(1-a) (Definitions) defines “child” as “a person under 18 years of age.”

¹⁷⁵ Tex. Code Crim. Proc. Ann. art. 63.001(2) defines a “missing person” as “a person 18 years old or older whose disappearance is possibly not voluntary.” Tex. Code Crim. Proc. Ann. art. 63.001(4) further explains,

“Missing child” or “missing person” also includes a person of any age who is missing and:

- (A) is under proven physical or mental disability or is senile, and because of one or more of these conditions is subject to immediate danger or is a danger to others;
- (B) is in the company of another person or is in a situation the circumstances of which indicate that the missing child’s or missing person’s safety is in doubt; or
- (C) is unemancipated as defined by the law of this state.

Tex. Code Crim. Proc. Ann. art. 63.009(a)(1), (2) (Law enforcement requirements) requires a law enforcement agency that receives a report of a missing child or a missing person to begin an investigation “to determine the present location of the child.” Tex. Code Crim. Proc. Ann. art. 63.009(a)(3) also requires law enforcement to enter the child’s name into the clearinghouse. Tex. Code Crim. Proc. Ann. art 63.0091 (Law enforcement requirements regarding reports of certain missing children) requires the Department of Public Safety to issue rules for law enforcement to require that missing children who are “under 14 years of age and otherwise determined by the local law enforcement agency or the Department of Public Safety to be at a high risk of human trafficking, sexual assault, exploitation, abuse or neglectful supervision” be indicated as high risk in the national crime information center missing person file. Pursuant to Tex. Code Crim. Proc. Ann. art 63.0092 (Option to designate missing child as high risk) regarding children who are 14 years of age or older but missing under the same circumstances, local law enforcement may also designate the missing child as “high risk” within the national crime information center missing person file. Tex. Code Crim. Proc. Ann. art. 63.013 (Information to clearinghouse) further requires each law enforcement agency to “provide to the missing children and missing persons information clearinghouse any information that would assist in the location or identification of any missing child who has been reported to the agency as missing.”

Lastly, Tex. Code Crim. Proc. Ann. art. 63.009(f) states, “Immediately after the return of a missing child or missing person or the identification of an unidentified body, the local law enforcement agency having jurisdiction of the investigation shall cancel the entry in the national crime information center database.”

Moreover, the school system is included as a critical component of finding missing children in Texas. Tex. Code Crim. Proc. Ann. art. 63.019 (School records system) requires schools to keep specific information for any child under 11 years of age who is enrolled in a school for the first time and uses this information in its efforts to locate missing children. Under Tex. Code Crim. Proc. Ann. art. 63.019(b), if required documents are not able to be produced within 30 day after the child’s enrollment (90 days if the child was not born in the United States), the school must notify the appropriate law enforcement agency so they can check the clearinghouse to determine if the child has been reported missing. Tex. Code Crim. Proc. Ann. art. 63.019(b) further states, “If the child has been reported missing, the law enforcement agency shall immediately notify other appropriate law enforcement agencies that the missing child has been located.” In addition, Tex. Code Crim. Proc. Ann. art. 63.008(a) (Missing children program) requires the Texas Education Agency to “develop and administer a program for the location of missing children who may be enrolled within the Texas school system, including nonpublic schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.” The program is coordinated with the information clearinghouse. Tex. Code Crim. Proc. Ann. art. 63.008(b). Also, Tex. Code Crim. Proc. Ann. art. 63.020 (Duty of schools and other entities to flag missing children’s record) outlines the responsibilities of the schools and day care facilities to flag a missing student’s (under 11 years of age) records upon receiving notice from a law enforcement agency that the child is missing.

Additionally, the Tex. Educ. Code § 38.004(a) requires the agency to develop policies that require schools to report “trafficking of a child” pursuant to Tex. Penal Code Ann. § 20A.02(a)(5) or (7) “in the manner required by Chapter 261, Family Code. Tex. Educ. Code § 38.004(a) also requires the agency to develop policies regarding the reporting “trafficking of a child” pursuant to Tex. Penal Code Ann. § 20A.02(a)(5), (6), (7), or (8), and such policies “must provide for cooperation with law enforcement child abuse investigations without the consent of the child’s parents if necessary, including investigations by the Department of Family and Protective Services.”

Texas also has a mandatory education and training program for officers regarding missing and exploited children. Tex. Occ. Code Ann. § 1701.402(k) (Proficiency certificates) provides,

As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

- (1) consist of at least four hours of training;
- (2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;
- (3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and
- (4) include a review of the substance of Chapters 20 and 43, Penal Code.

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