

2019 ANALYSIS AND RECOMMENDATIONS

VERMONT

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.*

Vermont’s human trafficking law distinguishes between trafficking adults and children. When children are trafficked, the elements of force, fraud, or coercion are not required. Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) states in part,

No person shall knowingly:

- (1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;²
- (2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion³

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

² Vt. Stat. Ann. tit. 13, § 2651(3) (Definitions) defines a “commercial sex act” as “any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.”

³ Vt. Stat. Ann. tit. 13, § 2651(2) defines “coercion” as,

- (A) threat of serious harm, including physical or financial harm, to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm to or physical restraint of any person;

for the purpose of having the person engage in a commercial sex act;
(3) compel a person through force, fraud, or coercion to engage in a commercial sex act;
(4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.⁴

....

A conviction under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) is punishable as a felony⁵ by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b).

Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking) imposes a heightened penalty if the victim of human trafficking is under the age of 18. Vt. Stat. Ann. tit. 13, § 2653(a) states,

A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

- (1) the offense involves a victim of human trafficking⁶ who is a child under the age of 18;
- (2) the person has previously been convicted of a violation of section 2652 of this title;
- (3) the victim of human trafficking suffers serious bodily injury or death; or
- (4) the actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

A conviction under Vt. Stat. Ann. tit. 13, § 2653(a) is punishable as a felony by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). An attempt to commit either human trafficking or aggravated human trafficking is punishable to the same extent as the completed offense. Vt. Stat. Ann. tit 13, § 9(a).

Additionally, Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking) states,

No person shall knowingly:

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- (C) the abuse or threatened abuse of law or the legal process;
 - (D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;
 - (E) providing a drug, including alcohol, to another person with the intent to impair the person’s judgment or maintain a state of chemical dependence;
 - (F) wrongfully taking, obtaining, or withholding any property of another person;
 - (G) blackmail;
 - (H) asserting control over the finances of another person;
 - (I) debt bondage; or
 - (J) withholding or threatening to withhold food or medication.

⁴ Vt. Stat. Ann. tit. 13, § 2651(12) defines “venture” as “any group of two or more individuals associated in fact, whether or not a legal entity.”

⁵ Pursuant to Vt. Stat. Ann. tit. 13, § 1 (Felonies and misdemeanors defined), “Any other provision of law notwithstanding any offense whose maximum term of imprisonment is more than two years, for life or which may be punished by death is a felony. Any other offense is a misdemeanor.”

⁶ Vt. Stat. Ann. tit. 13, § 2651(13) defines “victim of human trafficking” as “a victim of a violation of section 2652 [Human trafficking] of this title.”

- (1) permit a place, structure, or building owned by the person or under the person’s control to be used for the purpose of human trafficking;⁷
- (2) receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or
- (3) permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

A conviction under Vt. Stat. Ann. tit. 13, § 2654(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2654(b).

Lastly, Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) makes it illegal for a person to “knowingly solicit a commercial sex act⁸ from a victim of human trafficking.” A conviction under Vt. Stat. Ann. tit. 13, § 2655(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2655(b).

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

The following laws criminalize CSEC in Vermont:

1. Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance) states,

No person shall, with knowledge of the character and content, promote⁹ a sexual performance¹⁰ by a child¹¹ or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.” A first conviction under Vt. Stat. Ann. tit. 13, § 2822(a) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

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

1. Pursuant to Vt. Stat. Ann. tit. 13, § 2828 (Luring a child),

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage

⁷ Vt. Stat. Ann. tit. 13, § 2651(6) defines “human trafficking” as the following: “(A) to subject a person to a violation of section 2652 [Human trafficking] of this title; or (B) ‘severe form of trafficking’ as defined by 22 U.S.C. § 7105.”

⁸ See *supra* note 2.

⁹ Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.”

¹⁰ Vt. Stat. Ann. tit. 13, § 2821(4) defines “sexual performance” as “any performance or any part of a performance, which includes sexual conduct by a child.” Vt. Stat. Ann. tit. 13, § 2821(3) defines “performance” as “(A) an event which is photographed, filmed or visually recorded; or (B) a play, dance or other visual presentation or exhibition before an audience.”

¹¹ Vt. Stat. Ann. tit. 13, § 2821(1) defines “child” as “any person under the age of 16 years.”

in a sexual act as defined in section 3251 [Definitions] of this title¹² or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.¹³

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(e).

2. Vt. Stat. Ann. tit. 13, § 2602(a) (Lewd or lascivious conduct with child) provides,

(1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.

(2) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A first conviction under Vt. Stat. Ann. tit. 13, § 2602(a) is punishable as a felony by imprisonment for 2–15 years and a possible fine not to exceed \$5,000, a second conviction is punishable by imprisonment for 5 years to life and a possible fine not to exceed \$25,000, and subsequent convictions are punishable by imprisonment for 10 years to life and a possible fine not to exceed \$25,000. Vt. Stat. Ann. tit. 13, §§ 1, 2602(b). Additionally, sentences for second and subsequent convictions “shall be served and may not be suspended, deferred, or served as a supervised sentence” and the offender “shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or 10-year term of imprisonment.” Vt. Stat. Ann. tit. 13, § 2602(c). The court may, however, depart from the 5 and 10-year minimums required for second and subsequent convictions and may “impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety.” Vt. Stat. Ann. tit. 13, § 2602(c)(1), (2). Lastly, “A person convicted of violating subdivision (b)(2) or (3) of this section shall be sentenced under section 3271 [Indeterminate life sentence]¹⁴ of this title” and “[a]ny prior conviction for sexual assault or aggravated sexual assault shall be considered a prior offense for purposes of sentencing enhancement.” Vt. Stat. Ann. tit. 13, § 2602(d), (e).

3. Vt. Stat. Ann. tit. 13, § 3252(c) (Sexual assault) prohibits the following:

No person shall engage in a sexual act¹⁵ with a child who is under the age of 16, except:

¹² Vt. Stat. Ann. tit. 13, § 3251(1) (Definitions) defines “sexual act” as “conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another.”

¹³ See *infra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2602 (Lewd or lascivious conduct with child).

¹⁴ Vt. Stat. Ann. tit. 13, § 3271(b)–(d) (Indeterminate life sentence) states,

(b) If a person is sentenced under this section, the person’s maximum sentence shall be imprisonment for life.

(c) If a person sentenced under this section receives a sentence that is wholly or partially suspended, sex offender conditions and treatment shall be a condition of the person’s probation agreement.

(d) If a person sentenced under this section receives a sentence for an unsuspended term of incarceration, the person shall not be released until the person successfully completes all sex offender treatment and programming required by the department of corrections, unless the department determines that the person poses a sufficiently low risk of reoffense to protect the community or that a program can be implemented which adequately supervises the person and addresses any risk the person may pose to the community.

¹⁵ See *supra* note 12.

- (1) where the persons are married to each other and the sexual act is consensual; or
- (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 3252(c) is punishable as a felony by imprisonment up to 20 years and a possible fine not to exceed \$10,000. Vt. Stat. Ann. tit. 13, §§ 1, 3252(f)(2).

4. Vt. Stat. Ann. tit. 13, § 3253(a) (Aggravated sexual assault of a child) states,

A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 [Sexual assault] of this title and at least one of the following circumstances exists:

....

- (2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.
- (3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.
- (4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

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A conviction under Vt. Stat. Ann. tit. 13, § 3253a(a) is punishable as a felony by imprisonment for 25 years to life and a possible fine not to exceed \$50,000. Vt. Stat. Ann. tit. 13, §§ 1, 3253a(b). Vt. Stat. Ann. tit. 13, § 3253a(b) further states, “The 25-year term of imprisonment . . . shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.”

5. Vt. Stat. Ann. tit. 13, § 2823 (Consenting to a sexual performance) states,

No person who is the parent, legal guardian, or custodian of a child¹⁶ may, with knowledge of the character and content, consent to the participation of that child in a sexual performance¹⁷ or a performance including a lewd exhibition of the genitals by that child.

A first conviction under Vt. Stat. Ann. tit. 13, § 2823 is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

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

While Vermont’s prostitution statute Vt. Stat. Ann. tit. 13, § 2632 (Prostitution) does not refer to the human trafficking statute when the person charged is minor. However, the human trafficking statute does not allow minors to be prosecuted under the prostitution statute. Pursuant to Vt. Stat. Ann. tit. 13, § 2652(c)(1)(B) (Human trafficking),

¹⁶ See *supra* note 11.

¹⁷ See *supra* note 10.

Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under 33 V.S.A. chapter 52 [Delinquency provisions] or referred to the department for children and families for treatment under 33 V.S.A. chapter 53[Children in need of care or supervision].

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.*

Vermont has not enacted a racketeering or gang crimes statute.

1.4.1 Recommendation: Enact a racketeering statute that includes CSEC and trafficking offenses as predicate crimes for use in prosecuting sex trafficking enterprises.

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.*
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Legal Analysis:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*

Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) contains language applicable to buyers of commercial sex acts with a minor following federal precedent,¹⁸ as the statute criminalizes conduct that includes “obtaining by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act.” To the extent that buyers may be convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) for obtaining commercial sex with a minor, buyers may also be convicted under § 2653(a)¹⁹ (Aggravated human trafficking).

¹⁸ 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.

¹⁹ See *supra* Component 1.1 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2653(a).

Additionally, Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation), which is codified in the human trafficking chapter (Chapter 60, Human Trafficking), makes it illegal for a person to “knowingly solicit a commercial sex act²⁰ from a victim of human trafficking.”

2.1.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) to clarify buyer culpability anytime a buyer engages in commercial sex with a minor victim of sex trafficking, regardless of actual knowledge of such.

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

Vermont’s CSEC law does not criminalize the act of buying sex with a minor.

2.2.1 Recommendation: Enact a CSEC law that specifically criminalizes buying sex with a minor.

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

Vermont’s prostitution statute, Vt. Stat. Ann. tit. 13, § 2632(a)(6) (Prostitution), is age-neutral and does not differentiate between soliciting sex with an adult and soliciting sex with a minor. Instead, Vt. Stat. Ann. tit. 13, § 2632(a)(6) only makes it illegal for a person to “[p]rocure or solicit or offer to procure or solicit a person for the purpose of prostitution, lewdness or assignation.” Similarly, Vt. Stat. Ann. tit. 13, § 2655 (Solicitation) is also age-neutral and does not distinguish between soliciting commercial sex from an adult victim of human trafficking and a minor victim of human trafficking. Vt. Stat. Ann. tit. 13, § 2655(a) states only that “[n]o person shall knowingly solicit a commercial sex act from a victim of human trafficking.” The definition of “victim of human trafficking” in Vt. Stat. Ann. tit. 13, § 2651(13) (Definitions) refers to Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), which does differentiate between minors and adults.

2.3.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2632 (Prostitution) and § 2655 (Solicitation) to differentiate soliciting sex acts with a minor and soliciting sex acts with an adult by providing heightened penalties when the victim is a minor under 18.

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

Buyers face penalties under several of Vermont’s statutes related to human trafficking and prostitution. A conviction under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) is punishable as a felony by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b). A conviction under Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking) is a felony punishable by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). Attempts to commit either human trafficking or aggravated human trafficking are punishable to the same extent as the completed offense. Vt. Stat. Ann. tit. 13, § 9(a) (Attempts). A conviction under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2655(b). Lastly, a buyer’s first conviction under Vt. Stat. Ann. tit. 13, § 2632(a) (Prostitution) is punishable by imprisonment up to 1 year or a fine up to \$100, while subsequent convictions are punishable by imprisonment up to 3 years. Vt. Stat. Ann. tit. 13, § 2632(b).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human

²⁰ See *supra* note 2 for the definition of “commercial sex act.”

trafficking statute to bring these criminal offenses within the ambit of human trafficking under Vt. Stat. Ann. tit. 13, § 2653.²¹

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 buyer has a prior conviction for a federal sex offense²² against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²³ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁴

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

Although Vt. Stat. Ann. tit. 13, § 2828 (Luring a child) is not expressly commercial or limited in application to offenses involving the use of the Internet or electronic communications, the statute may be used to convict a buyer who uses the Internet or electronic communications to lure, entice, recruit, or purchase commercial sex acts with a minor. Vt. Stat. Ann. tit. 13, § 2828 states,

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 [Definitions]²⁵ of this title or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.²⁶

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

²¹ See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

²² 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).

²³ 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).

²⁴ 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

²⁵ See *supra* note 12 for the definition of “sexual act.”

²⁶ See *supra* Component 1.2 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2602(a).

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, § 2825(e) (Penalties).

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

Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), § 2655(a) (Solicitation), and § 2653 (Aggravated human trafficking) do not expressly prohibit a mistake of age defense.

2.6.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), § 2653 (Aggravated human trafficking), and Vermont's CSEC law to expressly prohibit the 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.*

Vermont's trafficking laws do not stagger penalties based on a minor's age and provide sufficiently high penalties. A conviction under Vt. Stat. Ann. tit. 13, § 2652(b) (Human trafficking) is punishable as a felony by imprisonment "for a term up to and including life," while a conviction under Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking) is a felony punishable by imprisonment for 20 years to life. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b), 2653(b).

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

Buyers of commercial sex with minors face fines, restitution, and civil penalties; however, buyers will not have to forfeit assets used in or acquired through a violation of Vermont's human trafficking law.

A buyer convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) may be required to pay a fine not to exceed \$ 500,000. Vt. Stat. Ann. tit. 13, § 2652(b). Buyers convicted under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) or § 2653(a) (Aggravated human trafficking) are subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2653(b), 2655(b). Lastly, a buyer's conviction under Vt. Stat. Ann. tit. 13, § 2632(a) (Prostitution) is subject to a possible fine not to exceed \$100. Vt. Stat. Ann. tit. 13, § 2632(b).

Buyers convicted of violating Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2655(a) shall be ordered to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

(a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.

(b) If the victim of human trafficking²⁷ to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

In a case involving a buyer convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,²⁸ has suffered a material loss.

²⁷ See *supra* note 6 for the definition of "victim of human trafficking."

²⁸ Vt. Stat. Ann. tit. 13, § 5301(4) states, "'Victim' means a person who sustains physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, incompetent or a homicide victim."

- (2) For purposes of this section, “material loss” means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
- (3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:
- (A) attorney’s fees and costs; and
 - (B) the greater of either:
 - (i) the gross income or value of the labor performed for the offender by the victim; or
 - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) states that “[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.”

- 2.8.1 Recommendation: Enact a law requiring buyers who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2655(a) (Solicitation), or Vermont’s CSEC law to forfeit property used in or acquired through the commission of the crime.

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

Vermont’s statutes penalize the possession of child sexual abuse material (CSAM) only if the depicted child is under the age of 16. Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography) makes it illegal for a person “with knowledge of the character and content, [to] possess any photograph, film or visual depiction, including any depiction which is stored electronically, of sexual conduct²⁹ by a child³⁰ or of a clearly lewd exhibition of a child’s genitals or anus.” Pursuant to Vt. Stat. Ann. tit. 13, § 2825(c)(2) (Penalties), if CSAM depict “sexual conduct by a child,” a first conviction under Vt. Stat. Ann. tit. 13, § 2827(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both, but if CSAM depict “a clearly lewd exhibition of a child’s genitals or anus, other than a depiction of sexual conduct by a child,” a first conviction is punishable as a misdemeanor by imprisonment up to 2 years, a fine not to exceed \$5,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(c)(2). Subsequent convictions under Vt. Stat. Ann. tit. 13, § 2827(a) are punishable as felonies by imprisonment up to 10 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, § 2825(d).

In comparison, a federal conviction for possession of CSAM³¹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³² Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³³

²⁹ Vt. Stat. Ann. tit. 13, § 2821(2) (Definitions) defines “sexual conduct” as,

- (A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva or the mouth and the vulva;
- (B) any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;
- (C) any intentional touching, not through the clothing, of the genitals, anus or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;
- (D) masturbation;
- (E) bestiality; or
- (F) sadomasochistic abuse for sexual purposes.

³⁰ See *supra* note 11 for the definition of “child.”

³¹ 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).

³² 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

- 2.9.1 Recommendation: Amend the definition of “child” in Vt. Stat. Ann. tit. 13, § 2821(1) (Definitions) to include any person under the age of 18 in order to protect all minors from Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography).
- 2.9.2 Recommendation: Increase the penalties under Vt. Stat. Ann. tit. 13, § 2827 (Possession of child pornography) to reflect the seriousness of the offense.

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

Buyers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) (Human trafficking), § 2653(a)(4) (Aggravated human trafficking), § 2632(a)(6) (Prostitution), when the person solicited is a minor, or § 2827(a) (Possession of child pornography) are required to register as sex offenders, but buyers convicted under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) are not expressly required to register. Vt. Stat. Ann. tit. 13, § 5402(a) (Sex offender registry) states that “[t]he department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.” Vt. Stat. Ann. tit. 13, § 5407(a) (Sex offender’s responsibility to report) states that “a sex offender shall report to the department.” Vt. Stat. Ann. tit. 13, § 5401(10)(A), (B) (Definitions) defines “sex offender” as

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

-
- (viii) human trafficking in violation of subdivisions 2652(a)(1)–(4) of this title;
- (ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and
- (x) a federal conviction in federal court for any of the following offenses:
 - (I) Sex trafficking of children as defined in 18 U.S.C. § 1591.
 - (II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.
 - (III) Sexual abuse as defined in 18 U.S.C. § 2242.
 - (IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.
 - (V) Abusive sexual contact as defined in 18 U.S.C. § 2244.
 -
 - (VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.
 - (VIII) Selling or buying of children as defined in 18 U.S.C. § 2251A.
 - (IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.
 - (X) Material containing child pornography as defined in 18 U.S.C. § 2252A.
 -
 - (XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.
 -

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).

³³ 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).

(XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

(xi) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10).

....

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64 [which includes Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography)].

(vi) procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6) [Prostitution].

....

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2652

....

(x) an attempt to commit any offense listed in this subdivision (B).

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.

Traffickers may be convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) or Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking). A conviction under Vt. Stat. Ann. tit. 13, § 2652(a) is punishable as a felony by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both, while a conviction under Vt. Stat. Ann. tit. 13, § 2653(a) is a felony punishable by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b), 2653(b). Attempts to commit either human trafficking or aggravated human trafficking are punishable to the same extent as the completed offense. Vt. Stat. Ann. tit 13, § 9(a) (Attempts).

A trafficker may also be convicted under Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking),³⁴ which is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§, 1 2654(b).

Traffickers may be convicted under Vermont’s CSEC law. A conviction under Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance)³⁵ is punishable by imprisonment up to 10 years, a fine up to \$20,000, or both; however, if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), Vt. Stat. Ann. tit. 13, § 2823, or Vt. Stat. Ann. tit. 13, § 2824(a) (Promoting a recording of sexual conduct), a conviction under Vt. Stat. Ann. tit. 13, § 2822(a) is punishable by imprisonment for a term of 1–15 years, a fine up to \$50,000, or both. Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁶ 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 offense³⁷ against a minor. 18 U.S.C. § 3559(e)(1).

³⁴ See *supra* Component 1.1 for the provisions of Vt. Stat. Ann. tit. 13, § 2654(a).

³⁵ See *supra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2822(a).

³⁶ 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.).

³⁷ See *supra* note 22.

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

Vermont prohibits the creation and distribution of child sexual abuse material (CSAM). Creating CSAM is prohibited under Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), which makes it illegal for a person to “promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.” A conviction under Vt. Stat. Ann. tit. 13, § 2822(a) is generally punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both, but if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a), (b).

Vt. Stat. Ann. tit. 13, § 2824(a) prohibits the distribution of CSAM by making it illegal for a person “with knowledge of the character and content, [to] promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child’s genitals or anus.” Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.” A conviction under Vt. Stat. Ann. tit. 13, § 2824(a) is punishable in the same manner as Vt. Stat. Ann. tit. 13, § 2822 described above. Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Lastly, Vt. Stat. Ann. tit. 13, § 2823 may be used to convict a trafficker who is the parent, legal guardian, or custodian of a child depicted in CSAM. Specifically, Vt. Stat. Ann. tit. 13, § 2823 makes it illegal for a “parent, legal guardian, or custodian of a child . . . [to], with knowledge of the character and content, consent to the participation of that child in a sexual performance or a performance including a lewd exhibition of the genitals by that child.” A conviction under Vt. Stat. Ann. tit. 13, § 2823 is punishable in the same manner as Vt. Stat. Ann. tit. 13, § 2822 described above. Vt. Stat. Ann. tit. 13, § 2825(a), (b).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense³⁸ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM³⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴¹

³⁸ See *supra* note 22.

³⁹ 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).

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

⁴¹ 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)

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 Vt. Stat. Ann. tit. 13, § 2828 (Luring a child) is not expressly commercial or limited in application to offenses involving the use of the Internet or electronic communications, the statute may be used to convict a trafficker who uses the Internet or electronic communications to lure, entice, recruit, or purchase a minor for commercial sex acts. Vt. Stat. Ann. tit. 13, § 2828 states,

- (a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 of this title⁴² or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.
- (b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.
- (c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(e) (Penalties).

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

Traffickers face fines, restitution, and civil penalties; however, assets used in or acquired as a result of the commercial sexual exploitation of a child will not be seized.

Traffickers convicted under Vermont's human trafficking, CSEC, and statutes related to prostitution may be required to pay fines. Traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) are subject to a possible fine not to exceed \$500,000, while those convicted under § 2653(a)(1) (Aggravated human trafficking), if the victim is under the age of 18, or § 2654(a) (Patronizing or facilitating human trafficking) are subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2652(b), 2653(b), 2654(b). A trafficker convicted under either Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance) or § 2823 (Consenting to a sexual performance) is subject to a possible fine not to exceed \$20,000, but the possible fine range increases to \$50,000 if the offender has a prior conviction under § 2822(a), § 2823, or § 2824(a) (Promoting a recording of sexual conduct). Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) are required to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

- (a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.
- (b) If the victim of human trafficking⁴³ to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

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).

⁴² *See supra* note 12 for the definition of "sexual act."

⁴³ *See supra* note 6 for the definition of "victim of human trafficking."

In a case involving a trafficker convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

- (1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,⁴⁴ has suffered a material loss.
- (2) For purposes of this section, “material loss” means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
- (3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:
 - (A) attorney’s fees and costs; and
 - (B) the greater of either:
 - (i) the gross income or value of the labor performed for the offender by the victim; or
 - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) provides that “[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.”

- 3.4.1 Recommendation: Enact a law requiring traffickers who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2654(a) (Patronizing or facilitating human trafficking), or Vermont’s CSEC law to forfeit property used in or acquired through the commission of the crime.

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

Vt. Stat. Ann. tit. 13, § 5402(a) (Sex offender registry) states, “The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.” Vt. Stat. Ann. tit. 13, § 5407(a) (Sex offender’s responsibility to report) mandates that “a sex offender [as defined in Vt. Stat. Ann. tit. 13, § 5401(10)(A), (B) (Definitions)⁴⁵] shall report to the department” and register as a sex offender. Therefore, traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) (Human trafficking), § 2653(a)(4) (Aggravated human trafficking), § 2822(a) (Use of a child in a sexual performance), § 2823 (Consenting to a sexual performance), § 2824(a) (Promoting a recording of sexual conduct), or § 2632(a)(6) (Prostitution), if victim is a minor, are required to register as sex offenders. Vt. Stat. Ann. tit. 13, § 5401(10)(A), (B) (Definitions).

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.*

Vermont does not specifically include a violation of Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), or any of Vermont’s other human trafficking or CSEC laws as grounds for terminating parental rights. Vt. Stat. Ann., tit. 15A, § 3-504(a)(3) (Grounds for terminating relationship of parent and child) states that parental rights shall be terminated if it is in the best interests of the child and, among other things, the parent has been convicted of a violent crime. Specifically, Vt. Stat. Ann. tit. 15A, § 3-504(a)(3) states,

. . . If the court finds, upon clear and convincing evidence, that any one of the following grounds exists and that termination is in the best interests of the minor,⁴⁶ the court shall order the termination of any parental relationship of the respondent to the minor:

⁴⁴ See *supra* note 28 for the definition of “victim” under Vt. Stat. Ann. tit. 13, § 5301(4).

⁴⁵ See *supra* Component 2.10 for the provisions of Vt. Stat. Ann. tit. 13, § 5401(1)(A), (B).

⁴⁶ Pursuant to Vt. Stat. Ann. tit. 33, § 5114(a),

....

(3) The respondent has been convicted of a crime of violence or has been found by a court of competent jurisdiction to have committed an act of violence that violated a restraining or protective order, and the facts of the crime or violation indicate that the respondent is unfit to maintain a relationship of parent and child with the minor.

(4) The respondent has committed a sexual assault resulting in the conception of the child.

Although parental rights may not be terminated upon conviction for human trafficking, Vt. Stat. Ann. tit. 15, § 665(f) (Rights and responsibilities order; best interests of the child) allows the court to award sole parental rights to a trafficking victim who conceived a child with his or her trafficker. Vt. Stat. Ann. tit. 15, § 665(f) states,

(1) The court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault, or the nonmoving parent was convicted of human trafficking pursuant to 13 V.S.A. § 2652, and the moving parent was the trafficked victim

(2) The court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the court finds by clear and convincing evidence that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent, or that the moving parent was trafficked by the non-moving parent pursuant to 13 V.S.A. § 2652 and the court finds by a preponderance of the evidence that such an order is in the best interests of the child. A conviction is not required under this subdivision, and the court may consider other evidence of sexual assault or sexual exploitation in making its determination

(3) Issuance of an order pursuant to this subsection shall not affect the right of the custodial parent to seek child support from the noncustodial parent.

(4) Upon issuance of a rights and responsibilities order pursuant to this subsection, the court shall not issue a parent-child contact order concerning the child and the nonmoving parent. An order issued in accordance with this subdivision shall be permanent and shall not be subject to modification.

Resultantly, Vt. Stat. Ann. tit. 15, § 665(f) seeks to limit the traumatic psychological effects of an ongoing relationship between victim and trafficker and to prevent a trafficker from threatening to pursue his or her parental rights as a form of control. Vt. Stat. Ann. tit. 15, § 665(f).⁴⁷

At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall consider the best interests of the child in accordance with the following:

(1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.

(2) The child's adjustment to his or her home, school, and community.

(3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.

(4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare.

⁴⁷ Vermont's parentage laws provide additional protection to victims of sexual exploitation. Vt. Stat. Ann. tit. 15C, § 402(b) (Challenge to presumed parent) extends the timeframe for challenging a presumption of parentage if a victim-parent "openly held out the child as the presumptive parent's child due to duress, coercion, or threat of harm . . ." Further, Vt. Stat. Ann. tit. 15C, § 616(a), (d)(2) (Precluding establishment of parentage by perpetrator of sexual assault) allows a victim of sexual exploitation to preclude parentage of the offender-parent upon a showing by clear and convincing evidence that the offender-parent "sexually exploited the person who gave birth to the child and that

the child was conceived as a result of the . . . sexual exploitation, regardless of whether criminal charges were brought against the person.” Vt. Stat. Ann. tit. 15C, § 102(21) (Definitions) defines “sexual exploitation” to include, inter alia, “sexual exploitation of a minor as provided in 13 V.S.A. § 3258, . . . and similar offenses in other jurisdictions.” However, Vt. Stat. Ann. tit. 15C, § 616(b) states, “This section shall not apply if the person alleged to have committed a sexual assault has previously been adjudicated to be a parent of the child.”

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.*

Vermont’s human trafficking law applies to those who financially benefit, but requires knowledge of force, fraud, or coercion. Specifically, Vt. Stat. Ann. tit. 13, § 2652(a)(4) (Human trafficking) prohibits a person from “benefit[ing] financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.” Additionally, Vt. Stat. Ann. tit. 13, § 2652(a)(1) may apply to some facilitators, including those who knowingly “harbor, [or] transport . . . a person under the age of 18 for the purpose of having the person engage in a commercial sex act.”

To the extent a facilitator violates Vt. Stat. Ann. tit. 13, § 2652(a)(1) or (4) when the victim of human trafficking is a minor or the circumstances of the trafficking also constitute sexual assault, the facilitator may be convicted under Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking), which is punishable as a felony by imprisonment for 20 years to life, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). A facilitator may also be convicted under Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking),⁴⁸ which is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2654(b).

Pursuant to Vt. Stat. Ann. tit. 13, § 2656 (Human trafficking by a business entity; dissolution), additional penalties may also apply if the facilitator is a business entity. Vt. Stat. Ann. tit. 13, § 2656 states,

If a business entity, including a corporation, partnership, association, or any other legal entity, is convicted of violating this chapter, the attorney general may commence a proceeding in the civil division of the superior court to dissolve the entity pursuant to 11A V.S.A. § 14.30–14.33.

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

Facilitators of commercial sex with minors face fines, restitution, and civil penalties; however, assets used in or acquired as a result of the commercial sexual exploitation of a child will not be seized.

Facilitators convicted under Vermont’s human trafficking, CSEC, and statutes related to prostitution may be required to pay fines. Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) are subject to a possible fine not to exceed \$500,000, while those convicted under Vt. Stat. Ann. tit. 13, § 2653(a)(1) (Aggravated human trafficking) or § 2654(a) (Patronizing or facilitating human trafficking) are

⁴⁸ See *supra* Component 1.1.

subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2652(b), 2653(b), 2654(b). A facilitator convicted under Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance)⁴⁹ is subject to a possible fine not to exceed \$20,000, but the possible fine range increases to \$50,000 if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct). Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) are required to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

- (a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.
- (b) If the victim of human trafficking⁵⁰ to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

In a case involving a facilitator convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

- (1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,⁵¹ has suffered a material loss.
- (2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
- (3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:
 - (A) attorney's fees and costs; and
 - (B) the greater of either:
 - (i) the gross income or value of the labor performed for the offender by the victim; or
 - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) may also face civil liability. Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action)⁵² expressly authorizes victims of human trafficking to bring a civil claim against their offenders.

- 4.2.1 Recommendation: Enact a law requiring facilitators who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2654(a) (Patronizing or facilitating human trafficking), or Vermont's CSEC law to forfeit property used in or acquired through the commission of the crime.

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

Vermont has no statute specifically related to child sex tourism.

⁴⁹ See *supra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2822(a).

⁵⁰ See *supra* note 6 for the definition of "victim of human trafficking."

⁵¹ See *supra* note 28 for the definition of "victim" under Vt. Stat. Ann. tit. 13, § 5301(4).

⁵² See *supra* Component 2.8 for the provisions of Vt. Stat. Ann. tit. 13, § 2662.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel in or outside of Vermont for the purpose of engaging in commercial sexual exploitation of a minor under the age of 18.

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

Vermont prohibits the promotion and sale of child sexual abuse material (CSAM). Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.”

Vt. Stat. Ann. tit. 13, § 2822(a) (Use of child in a sexual performance) makes it illegal for a person, “with knowledge of the character and content, [to] promote a sexual performance⁵³ by a child⁵⁴ or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child”

Additionally, Vt. Stat. Ann. tit. 13, § 2824(a) (Promoting a recording of sexual conduct) makes it unlawful for a person, “with knowledge of the character and content, [to] promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child’s genitals or anus.”

A first conviction under either Vt. Stat. Ann. tit. 13, § 2822(a) or § 2824(a) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a) (Penalties). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

⁵³ See *supra* note 10.

⁵⁴ See *supra* note 11.

Legal Components:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based upon 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.*⁵⁵

Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), Vermont’s core sex trafficking statute includes all commercially sexually exploited children. When the victim is a minor, means of force, fraud, or coercion are not required to establish the child as a victim.⁵⁶ Additionally, Vt. Stat. Ann. tit. 13, § 2652 is buyer applicable; thus, any person who buys sex with a minor commits the offense of human trafficking. Lastly, third party control is not required to identify all commercially sexually exploited children as victims of human trafficking.

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

Vt. Stat. Ann. tit. 13, § 2652(d) (Human trafficking) expressly prohibits a defendant from raising consent of the minor as a defense, stating, “In a prosecution for a violation of this section, the victim’s alleged consent to the human trafficking is immaterial and shall not be admitted.” However, Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance) is silent regarding the availability of a defense based on the minor’s willingness to engage in the commercial sex act.

⁵⁵ 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).

⁵⁶ See *supra* Component 1.1.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁵⁷

Several provisions under Vermont’s core human trafficking statute prevent the criminalization of minors under 18 years of age for prostitution offenses; however, such protections are limited to minors identified as human trafficking victims. Specifically, Vt. Stat. Ann. tit. 13, § 2652(c)(1) (Human trafficking) protects victims of domestic minor sex trafficking, stating,

(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provisions of law, a person under the age of 18 shall be immune from prosecution in the Criminal Division of the Superior Court for a violation of subsection 2632 of this title [Prostitution], but may be treated as a juvenile under 33 V.S.A. chapter 52 (Delinquency proceedings) or referred to the department for children and families for treatment under 33 V.S.A. chapter 53 (Children in need of care or supervision).

5.3.1 Recommendation: Clarify Vt. Stat. Ann. tit. 13, § 2652(c)(1) (Human trafficking) to specify that all minors shall be protected from criminal or delinquency charges for prostitution-related offenses.⁵⁸

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

Although a juvenile sex trafficking victim will likely be identified as a child in need of care or supervision,⁵⁹ rather than as delinquent, Vermont law does not provide a statutory avenue to specialized services.

Pursuant to Vt. Stat. Ann. tit. 13, § 2652(e) (Human trafficking), “If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.”

⁵⁷ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁵⁸ 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).

⁵⁹ Vt. Stat. Ann. tit. 33, § 5102(3) (Definitions and provisions of general application) defines a “child in need of care or supervision (CHINS)” as one who

(A) has been abandoned or abused by the child’s parent, guardian, or custodian. A person is considered to have abandoned a child⁵⁹ if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child’s care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

Further, Vt. Stat. Ann. tit. 13, § 2652(c)(1)(A) prohibits juvenile sex trafficking victims from being treated as delinquent for prostitution offenses, stating,

A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter (59) lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

In addition, Vt. Stat. Ann. tit. 13, § 2652(c)(1)(B) states that a minor engaged in prostitution may be “referred to the department for children and families for treatment under 33 V.S.A. chapter 53 (Children in need of care or supervision).”

To the extent that a juvenile sex trafficking victim commits an offense other than one under Vt. Stat. Ann. tit. 13, ch. 59 or 63 that “arises out of the sex trafficking or benefits the sex trafficker,” Vt. Stat. Ann. tit. 13, § 2652(c)(2) allows for an affirmative defense based on force, fraud, or coercion.⁶⁰

Summary

Although Vermont law prohibits the criminalization of juvenile sex trafficking victims for prostitution offenses and allows for referrals to the department of children and families, the provision of specialized services is not required.⁶¹

5.4.1 Recommendation: Amend Vermont’s protective response for juvenile sex trafficking victims to provide for specialized services.

⁶⁰ Although not trafficking or CSEC specific, Vermont law also provides for a juvenile diversion program under Vt. Stat. Ann. tit. 3, § 163(a), (b) (Juvenile court diversion project), which states,

- (a) The attorney general shall develop and administer a juvenile court diversion project for the purpose of assisting juveniles charged with delinquent acts
- (b) The diversion project administered by the attorney general shall encourage the development of diversion projects in local communities through grants of financial assistance to municipalities, private groups or other local organizations

⁶¹ However, 2011 Vt. Acts & Resolves 55, § 3 (Services for victims of human trafficking) authorizes the Vermont center for crime victim services to establish a task force responsible for developing a statewide protocol to provide services for victims of human trafficking. Pursuant to 2011 Vt. Acts & Resolves 55, § 3(b), the Vermont center for crime victims’ services may enter into contracts with individuals and government organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking . . . [which] may include

- (1) Case management;
- (2) Emergency temporary housing;
- (3) Health care;
- (4) Mental health counseling;
- (5) Drug addiction screening and treatment;
- (6) Language interpretation and translation services;
- (7) English language instruction;
- (8) Job training and placement assistance;
- (9) Post-employment services for job retention; and
- (10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

2011 Vt. Acts & Resolves 55 became effective on July 1, 2011, but Section 3 is not codified. *See* <http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT055.PDF> (last checked September 28, 2016).

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁶²

Pursuant to both Vermont’s human trafficking and child abuse statutes, minor sex trafficking and commercial sexual exploitation victims are expressly identified as children requiring child welfare protection and care. Vt. Stat. Ann. tit. 13, § 2652(e) (Human trafficking) states, “If a person who is identified as a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as a subject of a child in need of care or supervision proceeding.” Additionally, for the purposes of Vermont’s child abuse reporting statutes, Vt. Stat. Ann. tit. 33, § 4912 (1), (15) (Definitions) contains the following definitions related to the abuse of a child:

(1) “Abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.

.....

(15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including:

- (A) incest;
- (B) prostitution;
- (C) rape;
- (D) sodomy;
- (E) or any lewd and lascivious conduct involving a child;
- (F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child;
- (G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;
- (H) human trafficking;
- (I) sexual assault;
- (J) voyeurism;
- (K) luring a child; or
- (L) obscenity.

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.*

Vermont’s child welfare and human trafficking statutes do not prevent child sex trafficking victims from accessing necessary protective services as a result of limited definitions of “caregiver.” Contrarily, for the purposes of Vermont’s child reporting statutes, Vt. Stat. Ann. tit. 33, § 4912(1)(15) (Definitions) an offender includes “Any person involved in sexual molestation or exploitation of a child, including,

- (A) rape;
- (B) prostitution

.....

(F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photography, motion picture, exhibition, show, representation, or other presentation in which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child;

(G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;

⁶² For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

- (H) human trafficking;
- (I) sexual assault;
-
- (K) luring a child; or
- (L) obscenity.

Resultantly, any child subjected to sexual abuse, including human trafficking, under Vt. Stat. Ann. tit. 33, § 4912(1)(15) is included as a child eligible for child welfare protections regardless of the relationship between the child and the offender.

Additionally, a child identified as a victim of human trafficking may be treated as a child in need of care or supervision. Vt. Stat. Ann. tit., 13 § 2652(c)(2)(e) (Human trafficking). For purposes of Vermont’s laws regarding juvenile proceedings, which includes laws related to children in need of care or supervision, Vt. Stat. Ann. tit. 33, § 5102(1) (Definitions and provisions of general application) defines “care provider” as “a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.” Vt. Stat. Ann. tit. 33, § 4912(10) (Person responsible for a child’s welfare) further broadens those responsible for a child’s care to include,

the child’s parent; guardian; foster parent; any other adult residing in the child’s home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child’s welfare while in a residential, educational, or child care setting, including any staff person.

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

Commercially sexually exploited children may be eligible to receive crime victims’ compensation, but they are not specifically mentioned in Vermont’s crime victim compensation statutes.

Vt. Stat. Ann. tit. 13, § 5353(a) (Application for compensation) establishes certain eligibility requirements for a victim to receive compensation. Vt. Stat. Ann. tit. 13, § 5353(a) states,

- A victim or a dependent of a victim⁶³ shall, upon application, be eligible for compensation if:
- (1) a law enforcement official has filed a report concluding that a crime was committed which resulted in the injury or death of the victim; and
 - (2) the crime was committed in this state; or
 - (3) the victim is a Vermont resident, the state in which the crime occurred does not have an eligible crime victim’s compensation program and the applicant would have been eligible for compensation under this chapter if the crime had been committed in this state; or
 - (4) the victim is a Vermont resident who is injured or killed by an act of terrorism outside the United States, to the extent that compensation is not otherwise available under federal law.

If “a preponderance of the evidence shows that as a direct result of the crime an injury occurred which resulted in a pecuniary loss⁶⁴ to the victim,” the victims’ compensation board shall award compensation to an applicant. Vt. Stat. Ann. tit. 13, § 5355(a).

⁶³ See *supra* Component 5.1 for the definition of victim under Vt. Stat. Ann. tit. 13, § 5351(7) (Definitions).

⁶⁴ Vt. Stat. Ann. tit. 13, § 5351(5) states,

“Pecuniary loss” means, in the case of a victim, the amount of medical or medically-related expenses, loss of wages, and any other expenses which the board feels became necessary as a direct result of the crime. Medical or medically-related expenses may include, but are not limited to, the costs of individual or family psychological, psychiatric or mental health counseling and the costs of replacing or repairing eyeglasses,

Even if a commercially sexually exploited child meets the basic eligibility requirements, certain additional requirements may make a commercially sexually exploited child ineligible to receive compensation. Vt. Stat. Ann. tit. 13, § 5355(b) (Approval or rejection of application) states,

An application for assistance shall be denied if any of the following apply:

- (1) The application was not made within the period of time permitted for commencing prosecution of the crime. The board may extend the time for filing for good cause shown.
- (2) The victim violated a criminal law of this state which caused or contributed to the victim's injuries or death.

Vt. Stat. Ann. tit. 13, § 5355(b) may, however, have limited applicability to victims of human trafficking, given that Vt. Stat. Ann. tit. 13, § 2652(c)(1)(A) (Human trafficking) protects victims of human trafficking from being “found in violation of” crimes outlined in Vt. Stat. Ann. tit. 13, Ch. 59 (Lewdness and prostitution) or Ch. 63 (Obscenity).

- 5.7.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 5355(b) (Approval or rejection of application) to specify an exception for minor victims of sex trafficking and commercial sexual exploitation of children to ensure that listed ineligibility criteria do not prevent access to crime victim compensation.

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

Vermont affords some specific criminal justice protections to domestic minor sex trafficking victims. Vt. Stat. Ann. tit. 13, § 3255(a) (Evidence) provides evidentiary protection to victims as follows:

In a prosecution for a crime defined in this chapter and in sections 2601 [Lewd and lascivious conduct] and 2602 [Lewd or lascivious conduct with child] of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title . . .

- (1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.
- (2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence set forth by case law regarding sexual assault shall no longer be required.
- (3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:
 - (A) Evidence of the complaining witness' past sexual conduct with the defendant;
 - (B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;
 - (C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

Under Vermont law, victims⁶⁵ of certain crimes, including victims of human trafficking or aggravated human trafficking, are entitled to certain procedural protections. Vt. Stat. Ann. tit. 13, § 5301(7)(DD), (EE). Victims have the right to be notified of motions filed in the case that might substantially change the proceeding and the right to be notified of and present at their defendant's arraignment and further court proceedings. Vt. Stat. Ann.

hearing aids, dentures or any prosthetic devices which were taken, lost or destroyed during the commission of the crime. In the case of a dependent, “pecuniary loss” means the cost of psychological, psychiatric or mental health counseling, funeral expenses for the victim and upon demonstration of financial hardship, temporary living expenses.

⁶⁵ See *supra* note 28 for the definition of “victim” under Vt. Stat. Ann. tit. 13, § 5301(4).

tit. 13, §§ 5308, 5309, 5312(a). Additionally, Vt. Stat. Ann. tit. 13, § 5313 (Limitations on employer) prohibits an employer from discharging or disciplining “a victim of a listed crime or a victim’s family member or representative for honoring a subpoena to testify.”

Vt. Stat. Ann. tit. 13, § 5314 (Information from law enforcement agency) requires law enforcement to give victims of certain crimes, including victims of human trafficking or aggravated human trafficking, information about their rights including the right to refuse to answer questions unless they are at a deposition or in court, the availability of assistance or protection, the identity of the accused, the case number and contact information for the law enforcement officer assigned to the case, the name and contact information of the prosecutor, and whether the accused has been taken into custody.

Additionally, Vt. Stat. Ann. tit. 13, § 5316 (Complete identification by prosecution and defense) states, “Any individual associated with the prosecution or defense of a listed crime, including attorneys, investigators or experts, who comes in contact with the victim or the victim’s family shall properly identify himself or herself and by whom he or she is employed.” Lastly, Vt. Stat. Ann. tit. 13, § 5321(d), (e) (Appearance by victim) states,

(d) At or before the sentencing hearing, the prosecutor’s office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the commissioner of corrections and that the commissioner of corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release and other early release programs. in [sic] addition, the prosecutor’s office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

(e) At or before a change of plea hearing where the plea agreement filed with the court proposes a deferred sentence, the prosecutor’s office shall instruct the victim of a listed crime about the significance of a deferred sentence and the potential consequences of a violation of conditions imposed by the court. In addition, the prosecutor’s office shall consult with the victim concerning any proposed probation conditions prior to the hearing.

Pursuant to Vt. Stat. Ann. tit. 13, § 5306 (Victim advocates), victim advocates are authorized to “carry out the provisions of the victims’ assistance program.” Additionally, Vt. Stat. Ann. tit. 13, § 5310 (Nondisclosure of information about victim) helps keep victims’ information confidential by prohibiting a witness from disclosing a victim’s address or place of employment unless the “nondisclosure of the information will prejudice the defendant.” Moreover, Vt. Stat. Ann. tit. 13, § 5322 (Confidentiality) states,

When responding to a request for public records, or on any state website or state payment report, the state of Vermont shall not disclose to the public the name or any other identifying information, including the town of residence or the type or purpose of the payment, of an applicant to the victim’s compensation program, a victim named in a restitution judgment order, or a recipient of the domestic and sexual violence survivors’ transitional employment program.

Additionally, Vt. Stat. Ann. tit. 13, § 5321(a)–(c) (Appearance by victim) protects the victims’ right to be informed and to participate in certain aspects of the trial, stating the following:

(a) The victim of a crime has the following rights in any sentencing proceedings concerning the person convicted of that crime, or in the event a proposed plea agreement filed with the court recommends a deferred sentence, at any change of plea hearing concerning the person charged with committing that crime:

- (1) to be given advance notice by the prosecutor’s office of the date of the proceedings; and
- (2) to appear, personally, to express reasonably his or her views concerning the crime, the person convicted, and the need for restitution.

(b) The change of plea hearing or sentencing shall not be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(c) In accordance with court rules, at the sentencing or change of plea hearing, the court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing or the proposed deferral of sentencing. In imposing the sentence or considering whether to defer sentencing, the court shall consider any views offered at the hearing by the victim. [If] the victim is not present, the court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing or the proposed deferral of sentencing and shall take those views into consideration in imposing the sentence or considering whether to defer sentencing.

Additional protections may apply to the extent that a domestic minor sex trafficking victim is also the victim of certain sex related crimes. Vt. R. Evid. 807 (Testimony where victim is a minor, a mentally ill person or a mentally retarded person) authorizes the court to allow children 12 years of age or under who are victims of Vt. Stat. Ann. tit. 13, § 3252 (Sexual assault), § 3253 (Aggravated sexual assault), or § 2602 (Lewd or lascivious conduct with child), among others, to provide testimony via a two-way closed circuit television under certain circumstances. Pursuant to Vt. R. Evid. 807(c),

The court shall make an order for two-way closed-circuit television or recorded testimony under this rule only upon a finding that requiring the child or mentally ill or mentally retarded person to testify in court will present a substantial risk of trauma to the child or mentally ill or mentally retarded person which would substantially impair the ability of the child or mentally ill or mentally retarded person to testify.

If testimonial protection for the child is authorized, Vt. R. Evid. 807(e) permits the court to allow a person “whose presence the court finds would contribute to the welfare and well-being of the child . . . [to] be present in the room with the child.”

Human trafficking victims may also participate in the address confidentiality program under Vt. Stat. Ann. tit. 15, § 1152(a) (Address confidentiality program; application; certification), which states,

[A] parent or legal guardian acting on behalf of a minor . . . may apply to the secretary of state to have an address designated by the secretary serve as the person’s address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state, and if it contains:

(1) a statement made under oath by the applicant that:

(A) the applicant, or the minor . . . on whose behalf the application is made, is a victim of . . . human trafficking,⁶⁶

(B) the applicant fears for his or her safety or his or her children’s safety, or the safety of the minor . . . on whose behalf the application is made;

(C) the parent or legal guardian applying on behalf of a minor . . . has legal authority to act on the person’s behalf;

. . . .

. . . .

(4) the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault or, stalking, or human trafficking;

. . . .

⁶⁶ Pursuant to Vt. Stat. Ann. tit. 15, § 1151 (Definitions), “[h]uman trafficking’ means conduct prohibited by 13 V.S.A. § 2652 or § 2653, and includes a threat of such, regardless of whether the conduct or threat of conduct have been reported to law enforcement officers.”

In addition, a human trafficking victim “may file a petition for a protective order in the county in which he or she resides or in Washington County to protect the confidentiality of his or her address.” Vt. Stat. Ann. tit. 15, § 1152(f).

Pursuant to Vt. Stat. Ann. tit. 15, § 1152(c), “Applicants shall be certified for four years following the date of filing, unless the certification is withdrawn or cancelled before that date” Under Vt. Stat. Ann. tit. 15, § 1157 (Assistance for program applicants), “The secretary of state shall make available a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault, stalking, and human trafficking to assist persons applying to be program participants” Vt. Stat. Ann. tit. 15, § 1160 (Adoption of rules) further provides,

The secretary of state shall adopt rules necessary to perform his or her duties under this subchapter relating to: program application and certification; certification cancellation; agency use of designated addresses and exceptions; voting by program participants; and recording of vital statistics for program participants. All such rules . . . shall be designed with an understanding of the needs and circumstances of victims of domestic violence, sexual assault and, stalking, and human trafficking.

Lastly, Vt. Stat. Ann. tit. 12, § 1646(a)(3) (Evidence of sexual conduct) prohibits evidence of sexual behavior in civil cases as follows:

Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

- (A) evidence of the complaining witness’ past sexual conduct with the defendant;
- (B) evidence of specific instances of the complaining witness’ sexual conduct showing the source of origin of semen, pregnancy or disease;
- (C) evidence of specific instances of the complaining witness’ past false allegations of wrongful sexual activity.

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.*

Vermont law does not provide a mechanism for minors to vacate delinquency adjudications, but juvenile records may be sealed after a waiting period.

Several avenues for sealing juvenile records exist, but each mandates a waiting period. Vt. Stat. Ann. tit. 33, § 5119(c) (Sealing of records) governs sealing a child’s record who has been adjudicated a child in need of care or supervision. Vt. Stat. Ann. tit. 33, § 5119(c) states,

On application of a person who, while a child, was found to be in need of care or supervision or, on the court’s own motion, after notice to all parties of record and hearing, the court may order the sealing of all files and records related to the proceeding if it finds:

- (1) the person has reached the age of majority; and
- (2) sealing the person’s record is in the interest of justice.

Similarly, Vt. Stat. Ann. tit. 33, § 5119(a) governs sealing a child’s record who has been adjudicated delinquent after July 1, 1996. Vt. Stat. Ann. tit. 33, § 5119(a) states,

(1) . . . the court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state’s attorney, the court finds:

- (A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 [Definitions] or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or
 - (B) rehabilitation of the person has not been attained to the satisfaction of the court.
- (2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the court shall provide such person's name and other identifying information to the state's attorney in the county in which the person was adjudicated delinquent. The state's attorney may object, and a hearing may be held to address the state's attorney's objection.
- (3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the court may limit the order to the court files and records only upon good cause shown by the state's attorney.
-

If a minor participates in a juvenile diversion program, Vt. Stat. Ann. tit. 3, § 163(e), (f)⁶⁷ (Juvenile court diversion project) allows juvenile records to be sealed 2 years after the successful completion of a diversion program. Vt. Stat. Ann. tit. 3, § 163(e), (f) states,

- (e) (1) Within 30 days after the two-year anniversary of a successful completion of juvenile diversion, the court shall provide notice to all parties of record of the court's intention to order the expungement of all court files and records, law enforcement records other than entries in the juvenile court diversion program's centralized filing system, fingerprints, and photographs applicable to the proceeding. The court shall give the State's Attorney an opportunity for a hearing to contest the expungement of the records. The court shall expunge the records if it finds:
 - (A) two years have elapsed since the successful completion of juvenile diversion by the participant and the dismissal of the case by the State's Attorney;
 - (B) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction;
 - (C) rehabilitation of the participant has been attained to the satisfaction of the court; and
 - (D) the participant does not owe restitution related to the case under a contract executed with the Restitution Unit.
 - (2) The court may expunge any records that were sealed pursuant to this subsection prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects
-
- (f) Except as otherwise provided in this section, upon entry of an order expunging files and records under this section, the proceedings in the matter shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter

Regardless of the avenue, however, child sex trafficking victims must wait to have juvenile records sealed. Further, Vt. Stat. Ann. tit. 33, § 5119(j) states that a "sealed" file or record is retained and shall not be destroyed unless a court issues an order to expunge the record."

Regarding vacatur, Vt. Stat. Ann. tit. 13, § 2658⁶⁸ (Prostitution conviction; motion to vacate by victim of human trafficking) provides,

....

⁶⁷ The text of Vt. Stat. Ann. tit. 3, § 163 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 105 during the 2019 Regular Session of the Vermont Legislature (effective July 1, 2019).

⁶⁸ The text of Vt. Stat. Ann. tit. 13, § 2658 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 460 during the 2019 Regular Session of the Vermont Legislature (effective July 1, 2019).

(b) A person convicted of a qualifying crime⁶⁹ may file a motion to vacate the conviction if it was obtained as a result of the person having been a victim of human trafficking

. . . .

(d)

(2) If the motion is granted, the Court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The Court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

(e) Official documentation of a person's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the person's conviction was obtained as a result of having been a victim of human trafficking. Such documentation shall not be required to grant a motion under this section.

However, Vt. Stat. Ann. tit. 13, § 2658 applies specifically to “convictions,” and Vt. Stat. Ann. tit. 33, § 5202(a)(1)(A) (Order of adjudication; noncriminal) states, “[a]n order of the Family Division of the Superior Court in proceedings under this chapter [Delinquency Proceedings] shall not . . . be deemed a conviction of crime” Accordingly, a delinquency adjudication cannot be vacated and related records cannot be expunged under Vt. Stat. Ann. tit. 13, § 2658.

5.9.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2658 (Prostitution conviction; motion to vacate by victim of human trafficking) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.

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.*

Vt. Stat. Ann. tit. 13, § 7043(a)(1) (Restitution) states that the court shall consider restitution “in every case in which the victim of a crime⁷⁰ . . . has suffered a material loss.”⁷¹ As a result, a commercially sexually exploited child whose offender is convicted under any of Vermont’s laws may be able to receive restitution. Moreover, commercially sexually exploited children whose offenders are convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), or § 2655(a) (Solicitation) are eligible to receive restitution under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

⁶⁹ Vt. Stat. Ann. tit. 13, § 2658(a)(1) defines “qualifying crime” as “a criminal offense in this State that is not listed in 33 V.S.A. § 5204(a) [Transfer from Family Division of the Superior Court],” which includes the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

⁷⁰ See *supra* note 30.

⁷¹ See *supra* Component 2.8 for the definition of “material loss.”

- (a) A person convicted of a violation of this subchapter [Criminal Acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.
- (b) If the victim of human trafficking⁷² to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Vt. Stat. Ann. tit. 13, § 7043(a)(3) further explains,

In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:

- (A) attorney's fees and costs; and
- (B) the greater of either:
 - (i) the gross income or value of the labor performed for the offender by the victim; or
 - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

In certain circumstances, the victim's offender need not be convicted of a crime in order for the victim to be eligible to receive restitution. Vt. Stat. Ann. tit. 13, § 7043(e)(3) states, "An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense."

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) states that "[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order."

Commercially sexually exploited children whose offenders are convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2655(a) may pursue civil remedies as Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action) authorizes victims of human trafficking to bring a civil claim against their offenders. Vt. Stat. Ann. tit. 13, § 2662 provides,

- (a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 [Restitution] of this chapter.
- (b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.
- (c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

⁷² See *supra* note 6 for the definition of "victim of human trafficking."

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.*

Regarding statutes of limitations applicable to criminal prosecutions, Vt. Stat. Ann. tit. 13, § 4501(a)⁷³ (Limitation of prosecutions for certain crimes) eliminates the statute of limitations for prosecuting violations of Vt. Stat. Ann. tit. 13, § 3253 (Aggravated sexual assault), § 3253(a) (Aggravated sexual assault of a child), § 3258(c) (Sexual exploitation of a minor),⁷⁴ § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), and § 3252 (Sexual assault). Vt. Stat. Ann. tit. 13, § 4501(b) establishes that prosecutions must be commenced within 6 years for “lewd and lascivious conduct.” For other felonies, Vt. Stat. Ann. tit. 13, § 4501(c), (e) (Limitation of prosecutions for certain crimes) states,

(c) Prosecutions for any of the following offenses shall be commenced within 40 years after the commission of the offense, and not after:

(1) lewd and lascivious conduct alleged to have been committed against a child under 18 years of age;

....

(3) lewd or lascivious conduct with a child;

(4) sexual exploitation of children under chapter 64 of this title;⁷⁵ and

....

(e) Prosecutions for other felonies and for misdemeanors shall be commenced within three years after the commission of the offense, and not after.

Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action) does not specify a statute of limitations within its provisions. Therefore, Vermont’s generally applicable 6 year statute of limitations for civil actions, codified at Vt. Stat. Ann. tit. 12, § 511 (Civil action), is applicable.

However, Vt. Stat. Ann. tit. 12, § 551(a) (Minority, insanity or imprisonment) provides, “When a person entitled to bring an action specified in this chapter is a minor . . . at the time the cause of action accrues, such person may bring such action within the times in this chapter respectively limited, after the disability is removed.” Accordingly, if the victim of human trafficking is a minor, the victim will be able to bring a civil claim under Vt. Stat. Ann. tit. 13, § 2662 within 6 years of the minor’s 18th birthday. Vt. Stat. Ann. tit. 1, § 173, tit. 12, §§ 511, 551(a).

⁷³ The text of Vt. Stat. Ann. tit. 13 § 4501 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 511 during the 2019 Regular Session of the Vermont Legislature (effective May 30, 2019).

⁷⁴ Vt. Stat. Ann. tit. 13, § 3258(a), (c) states:

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

....

(c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

⁷⁵ “Sexual exploitation of children under chapter 61 of this title [Title 13]” includes Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), § 2823 (Consenting to a sexual performance), § 2824 (Promoting a recording of sexual conduct), § 2827 (Possession of child pornography), and § 2828 (Luring a child).

5.11.1 Recommendation: Eliminate the statute of limitations for all civil causes of action for child victims of sex trafficking and commercial sexual exploitation.

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.*

Vermont does not specifically require law enforcement to receive training on human trafficking or domestic minor sex trafficking. 2011 Vt. Acts & Resolves 55, § 3 (Services for victims of human trafficking), however, authorizes the Vermont center for crime victim services to “convene a task force to assist . . . law enforcement agencies . . . to develop a statewide protocol to provide services for victims of human trafficking. The protocol may include a public awareness and education campaign.”

- 6.1.1 Recommendation: Enact a law that authorizes law enforcement to receive training on human trafficking, including domestic minor sex trafficking.

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

Vermont’s statutes do not address whether single party or two-party consent to audiotaping is required.

- 6.2.1 Recommendation: Enact a law permitting single party consent audiotaping.

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

Vermont code does not address whether wiretapping is permitted for domestic minor sex trafficking or any other crime.

- 6.3.1 Recommendation: Should Vermont enact a law authorizing wiretapping by law enforcement, include investigations related to Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), and § 2655(a) (Solicitation).

- 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.*

None of Vermont’s trafficking or CSEC offenses expressly prohibit a defendant from asserting a defense based on the use of a law enforcement decoy posing as a minor during an investigation of the offense. However, Vt. Stat. Ann. tit. 13, § 2828(a) (Luring a child), a non-CSEC offense, prevents any person from “knowingly

soliciting, luring, or enticing, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16.” Thus, a buyer charged with “soliciting, luring, or enticing . . . another person believed by the person to be a child under the age of 16” would be prohibited from asserting a defense based on the person being law enforcement decoy.

6.4.1 Recommendation: Enact a law expressly prohibiting a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate child sex trafficking and Vermont’s CSEC law.

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

Vermont has no law expressly authorizing law enforcement to use the Internet or electronic communications to investigate buyers and traffickers. However, Vt. Stat. Ann. tit. 13, § 2828(a) (Luring a child) makes it illegal for an offender to “knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16.” Vt. Stat. Ann. tit. 13, § 2828(b) further explains that “[t]his section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.” Although not explicit, together these two phrases suggest that law enforcement may use the Internet or electronic communications to investigate buyers and traffickers.

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

Vt. Stat. Ann. tit. 20, § 1820(1) (Definitions) defines a “missing person” as “an individual: whose whereabouts is unknown; and with either a physical disability, a mental disability, or a developmental disability; or who is an unemancipated minor.” Once a person files a missing person complaint pursuant to Vt. Stat. Ann. tit. 20, § 1821 (Missing person complaint), Vt. Stat. Ann. tit. 20, § 1822 (Missing person report) requires the law enforcement agency that receives the complaint to “prepare a missing person report,” which must “include all information contained in the missing person complaint and any information or evidence gathered by a preliminary investigation, if one was made.” Vt. Stat. Ann. tit. 20, § 1823(a) (Dissemination of missing person report) requires the law enforcement agency next to forward copies of the report to “all law enforcement agencies within the jurisdiction where the missing person lives or was last seen, and other law enforcement agencies that can reasonably be expected to be involved in any investigation.” Furthermore, Vt. Stat. Ann. tit. 20, § 1823(b) mandates that law enforcement forward the report to

- (1) all law enforcement agencies to which the complainant reasonably requests the report be sent;
- (2) any law enforcement agency requesting a copy of the missing person report; and
- (3) all media in the region in which the missing person lives, or was last seen, unless such disclosure would impede an ongoing investigation or unless otherwise requested by the complainant.

Vt. Stat. Ann. tit. 20, § 1824(a) (Searches for missing persons) requires any law enforcement agency that receive a missing persons report to “commence a search for a missing person as soon as a report is received.” If the “missing person complaint involves an unemancipated minor, including a runaway child as defined in 13 V.S.A. § 1311 [Unlawful sheltering; aiding a runaway child], the law enforcement agency shall transmit the report, as soon as it is complete, to the Department of Public Safety for inclusion in the National Crime Information Center database.” Vt. Stat. Ann. tit. 20, § 1825.

Additionally, Vermont established the Vermont Amber Alert Program “to aid in the identification and location of abducted children.” Vt. Stat. Ann. tit. 20, § 1828. Vt. Stat. Ann. tit. 20, § 1828(3) (Vermont Amber Alert Program) provides that an Alert shall be issued by the Department of Public Safety if

- (A) a law enforcement agency notifies the Department of the abduction of a child;

- (B) there is sufficient information about the child or the person suspected of abducting the child that an immediate broadcast might help locate the child; and
- (C) the child is in danger of imminent death or serious bodily harm.

Vt. Stat. Ann. tit. 20, § 1828(5), (6) (Vermont Amber Alert Program) dictates the procedure that law enforcement must follow upon locating a missing child for whom an Alert was issued as follows:

- (5) A law enforcement agency which locates a child who is the subject of an Alert issued under this section shall immediately notify the law enforcement agency which requested the Amber Alert.
- (6) An Alert issued under this section shall be canceled:
 - (A) if the Department notifies the Federal Communications Commission’s designated state Emergency Alert System broadcaster in Vermont that the child has been located;
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