

## 2019 ANALYSIS AND RECOMMENDATIONS

### WYOMING

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

##### *Legal Components:*

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

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

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

Wyoming Statutes Annotated (Wyo. Stat. Ann.), Title 6, Article 7 contains the provisions related to human trafficking, including the offenses of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree), § 6-2-706 (Sexual servitude of a minor), and § 6-2-707 (Patronizing a victim of sexual servitude), all of which criminalize sex trafficking of a minor.<sup>2</sup>

Pursuant to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), a person commits human trafficking in the first degree “when the person<sup>3</sup> intentionally or knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains or entices an individual for the purpose of: . . . (iii) Sexual servitude of a minor in violation of W.S. 6-2-706.” Wyo. Stat. Ann. § 6-2-702. Pursuant to Wyo. Stat. Ann. § 6-2-703 (Human trafficking in the second degree), a person commits human trafficking in the second degree when a person “recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates,

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

<sup>2</sup> Wyo. Stat. Ann. § 6-2-701 (a)(ix) defines “minor” as “any natural person younger than eighteen (18) years of age.”

<sup>3</sup> Wyo. Stat. Ann. § 6-2-701 (a)(xi) defines “person” as “an individual, partnership, corporation, joint stock company or any other association or entity, public or private.”

maintains or entices an individual for the purpose of: . . . (iii) Sexual servitude of a minor in violation of W.S. 6-2-706.” Wyo. Stat. Ann. § 6-2-703.

Wyo. Stat. Ann. § 6-2-706(a) (Sexual servitude of a minor) states, “A person is guilty of sexual servitude of a minor when the person intentionally, knowingly or recklessly offers, obtains, procures or provides an individual less than eighteen (18) years of age to engage in commercial sexual services.”<sup>4</sup>

Proof of force, fraud or coercion is not required when the victim of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree), or § 6-2-706 (Sexual servitude of a minor) is a minor under 18 used in commercial sexual activity.<sup>5</sup> However, “commercial sexual activity,” as used in § 6-2-706 (Sexual servitude of a minor), is classified as “services,” which is defined in Wyo. Stat. Ann. § 6-2-701 (a)(xiv) as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” This definition narrows the application of the trafficking statutes to those cases in which a minor is under the control of a third party trafficker.

*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 treat CSEC as distinct crimes.

1. Pursuant to Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties), “Except as provided in W.S. 6-2-701 through 6-2-710, a person commits a felony if he: (i) Knowingly or intentionally entices or compels another person to become a prostitute . . . .” Where the “person enticed or compelled is under eighteen (18) years of age,” a conviction for violating Wyo. Stat. Ann. § 6-4-103(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-4-103(b).
2. Pursuant to Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions),

A person is guilty of sexual exploitation of a child<sup>6</sup> if, for any purpose, he knowingly:  
(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;<sup>7</sup>

<sup>4</sup> Wyo. Stat. Ann. § 6-2-701 (a)(xiv) defines “services” as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity is ‘services’ in this article.”

<sup>5</sup> Wyo. Stat. Ann. § 6-2-701 (a)(xv) defines “victim” as “the person alleged to have been subjected to human trafficking.”

<sup>6</sup> Wyo. Stat. Ann. § 6-4-303(a)(i) defines “child” as “a person under the age of eighteen (18) years.”

<sup>7</sup> Wyo. Stat. Ann. § 6-4-303(a)(ii) states:

“Child pornography” means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:

(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;

(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or

(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

. . . .

(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct<sup>8</sup>;

....

A first conviction under Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

Several other non-commercial sex offenses may be applicable in cases involving the commercial sexual exploitation of a child. Such laws include the following:

1. Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) states,

Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits,<sup>9</sup> procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony . . . .

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2. Under Wyo. Stat. Ann. § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties) a person commits a crime when “[b]eing sixteen (16) years of age or older, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age.”<sup>10</sup> A conviction under this statute is generally punishable by imprisonment up to 50 years, “unless the person convicted qualifies under W.S. 6-2-306(e) [Penalties for sexual assault],” which requires a defendant with prior convictions for specific sex crimes to receive life imprisonment without the possibility of parole if the convictions were for offenses committed after the actor reached the age of 18.<sup>11</sup> Wyo. Stat. Ann. §§ 6-2-314(b),

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<sup>8</sup> Wyo. Stat. Ann. § 6-4-303(a)(iii) defines “explicit sexual conduct” as “actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person.”

<sup>9</sup> “Solicit” is not defined in either Wyo. Stat. § 6-2-301 (the definitions for the sexual offenses) or Wyo. Stat. § 6-1-104 (the general definitions for all criminal laws). In *Blakeman v. State*, 100 P.3d 1229, 1234–36 (Wyo. 2004) (decided under prior law), the Supreme Court of Wyoming held that the district court made no error in instructing the jury on the definition of “solicit,” which defined “solicit” as “(1) to ask or seek earnestly or pleadingly, (2) to tempt or to entice someone to do wrong, (3) to approach for some immoral purpose.”

<sup>10</sup> Wyo. Stat. Ann. § 6-2-301(a)(vii) (Definitions) defines “sexual intrusion” as follows:

- (A) Any intrusion, however slight, by any object or any part of a person’s body, except the mouth, tongue or penis, into the genital or anal opening of another person’s body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or
- (B) Sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with or without emission.

<sup>11</sup> Wyo. Stat. Ann. § 6-2-306(e) provides,

An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S.

6-2-306(e). However, if the person convicted for violating this statute is 21 years of age or older, the defendant will receive imprisonment for 25–50 years, “unless the person convicted qualified under W.S. 6-2-306(e).” Wyo. Stat. Ann. § 6-2-314(c). In either case, the court may order the defendant to pay a possible fine not to exceed \$10,000 in addition to his sentence. Wyo. Stat. Ann. § 6-10-102.<sup>12</sup>

3. Pursuant to Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree),

Except under circumstance constituting sexual abuse of a minor in the first degree as defined by W.S. 6-2-314, an actor commits the crime of sexual abuse of a minor in the second degree if:

- (i) Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;
- (ii) Being sixteen (16) years of age or older, the actor engages in sexual contact<sup>13</sup> of a victim who is less than thirteen (13) years of age;

A conviction for violating Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) is punishable by imprisonment up to 20 years and a possible fine not to exceed \$10,000, “unless the person convicted qualifies under W.S. 6-2-306(e),” to be punished by life imprisonment without the possibility of parole for convictions where the offense was committed after the actor reached the age of 18.<sup>14</sup> Wyo. Stat. Ann. §§ 6-2-315(b), 6-2-306(e), 6-10-102.

4. Wyo. Stat. Ann. § 6-2-316(a) (Sexual abuse of a minor in the third degree) states in part,

Except under circumstance constituting sexual abuse of a minor in the first or second degree as defined by W.S. 6-2-314 and 6-2-315, an actor commits the crime of sexual abuse of a minor in the third degree if:

- (i) Being seventeen (17) years of age or older, the actor engages in sexual contact with a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;
- ....
- (iii) Being less than sixteen (16) years of age, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or
- (iv) Being seventeen (17) years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than seventeen (17) years of age and the victim is at least four (4) years younger than the actor.

A conviction for violating Wyo. Stat. Ann. § 6-2-316(a) is punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-316(b), 6-10-102.

5. Wyo. Stat. Ann. § 6-2-317(a) (Sexual abuse of a minor in the fourth degree) states,

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6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought, which arose out of separate occurrences in this state or elsewhere and were committed after the actor reached 18 years of age.

<sup>12</sup> Although Wyo. Stat. Ann. § 6-2-314 through § 6-2-317 do not specifically classify the offenses listed in each statute as felonies, the fact that each of the offenses are punishable by imprisonment for more than one year make them felonies according to Wyo. Stat. Ann. § 6-10-101 and subject to the fines listed in Wyo. Stat. Ann. § 6-10-102.

<sup>13</sup> Wyo. Stat. Ann. § 6-2-301(a)(vi) defines “sexual contact” as “touching, with the intention of sexual arousal, gratification or abuse, of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or of the clothing covering the immediate area of the victim’s or actor’s intimate parts.”

<sup>14</sup> See *supra* note 11 for the text of Wyo. Stat. Ann. § 6-2-306(e).

Except under circumstance constituting sexual abuse of a minor in the first, second or third degree as defined by W.S. 6-2-314 through 6-2-316, an actor commits the crime of sexual abuse of a minor in the fourth degree if:

- (i) Being less than sixteen (16) years of age, the actor engages in sexual contact with a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or
- (ii) Being twenty (20) years of age or older, the actor engages in sexual contact with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim.

A conviction for violating Wyo. Stat. Ann. § 6-2-317(a) is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-317(b), 6-10-102.

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

Wyoming's prostitution laws, Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties), § 6-4-102 (Soliciting an act of prostitution; penalties) and § 6-4-103 (Promoting prostitution; penalties) refer to the human trafficking statutes, Wyo. Stat. Ann. § 6-2-706 (Sexual servitude of a minor), § 6-2-707 (Patronizing a victim of sexual servitude), and other related statutes, helping 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.*

Wyoming has not enacted a racketeering statute. However, gangs engaged in commercial sexual exploitation of children may face prosecution under Wyo. Stat. Ann. § 6-2-403(a) (Intimidation in furtherance of the interests of a criminal street gang), which provides the following:

A person is guilty of intimidation in furtherance of the interests of a criminal street gang if he threatens or intimidates by word or conduct to cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang.

A "criminal street gang" is "an ongoing formal or informal organization, association or group of five (5) or more persons having as one (1) of its primary activities the commission of" one of the offenses listed under the definition of "pattern of criminal street gang activity" and "having a common name or identifying sign or symbol and whose members or associates individually or collectively engage in or have been engaged in a pattern of criminal street gang activity." Wyo. Stat. Ann. § 6-1-104(a)(xiv) (Definitions). A "pattern of criminal street gang activity" includes "the commission of, conviction or adjudication for or solicitation, conspiracy or attempt to commit two (2) or more of the offenses listed in this paragraph [includes § 6-4-103, promoting prostitution] on separate occasions within a three (3) year period." Wyo. Stat. Ann. § 6-1-104(a)(xv). A violation of Wyo. Stat. Ann. § 6-2-403(a) is a high misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Wyo. Stat. Ann. § 6-2-403(b).

***Legal Components:***

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
- 2.3 *Solicitation laws differentiate between soliciting sex acts with an adult and soliciting sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
- 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
- 2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*
- 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
- 2.9 *Buying and possessing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors are required to register as sex offenders.*

***Legal Analysis:***

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

Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude) applies directly to buyers of sex with minors, stating,

A person is guilty of patronizing a victim of sexual servitude when the person pays, agrees to pay or offers to pay anything of value so that the person or another may engage in sexual activity with an individual when the person knows that the individual is a victim of sexual servitude in violation of . . . W.S. 6-2-706.<sup>15</sup>

However, a buyer must know the minor is a victim of sexual servitude. “Commercial sexual activity,” as used in § 6-2-706 (Sexual servitude of a minor), is classified as “services,” which is defined in Wyo. Stat. Ann. § 6-2-701 (a)(xiv) as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” This definition narrows the application of Wyo. Stat. Ann. § 6-2-707(a) to those cases in which the buyer knew the minor was under the control of a third party trafficker, a high evidentiary burden for prosecutors.

Wyoming’s core sex trafficking offenses also contains language applicable to buyers. Following federal precedent,<sup>16</sup> Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree) and § 6-2-703 (Human

<sup>15</sup> See *supra* note 3 (defining “person”). See *supra* note 5 (defining “victim”).

<sup>16</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of

trafficking in the second degree) prohibit a person from intentionally, knowingly, or recklessly obtaining an individual for purposes of sexual servitude of a minor, which, pursuant to Wyo. Stat. Ann. § 6-2-706(a), includes engaging a child in commercial sexual services. As noted above, however, Wyo. Stat. Ann. § 6-2-706(a) requires the child to be under a trafficker's the control.

2.1.1 Recommendation: Amend the core sex trafficking offenses, Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree) and § 6-2-703 (Human trafficking in the second degree) to include the conduct of buyers.

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

Wyoming has not enacted a separate CSEC law specifically criminalizing the buying of sex with a minor. If an action is not brought under Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude), a buyer would likely be prosecuted under Wyoming's generally applicable solicitation law, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties). Pursuant to Wyo. Stat. Ann. § 6-4-102, "Except as provided in W.S. 6-2-701 through 6-2-710 [Title 6, Article 7, Human trafficking], a person is guilty of soliciting an act of prostitution if, with the intent that an act of sexual intrusion . . . be committed, that person knowingly or intentionally pays, or offers or agrees to pay money or other property to another person under circumstances strongly corroborative of the intention that an act of prostitution be committed." A conviction for violating Wyo. Stat. Ann. § 6-4-102 is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Wyo. Stat. Ann. § 6-4-102.

Several sexual offense laws could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to a human trafficking law.<sup>17</sup>

2.2.1 Recommendation: Enact a law that makes it a crime to purchase sex with a minor and imposes penalties consistent with the severity of the crime.

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

Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) does not differentiate between soliciting sex with all minors and soliciting sex with adults. Wyo. Stat. Ann. § 6-4-102 states,

Except as provided in W.S. 6-2-701 through 6-2-710 [Wyoming's human trafficking statutes], a person is guilty of soliciting an act of prostitution if, with the intent that an act of sexual intrusion . . . be committed, that person knowingly or intentionally pays, or offers or agrees to pay money or other property to another person under circumstances strongly corroborative of the intention that an act of prostitution be committed.

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Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms "patronize" and "solicit" to the list of prohibited conduct and expressly states, "section 108 of this title amends section 1591 of title 18, United States Code, to add the words 'solicits or patronizes' to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case." Id. at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term "obtains") to the extent such interpretation does not conflict with state case law.

<sup>17</sup> See *supra* Component 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

Effectively, this only differentiates cases of soliciting sex acts with an adult who is not a victim of human trafficking from cases of soliciting sex acts with a minor under 18 who is a victim of sexual servitude. Because Wyoming’s trafficking statutes, Wyo. Stat. Ann. §§ 6-2-701 through 6-2-710, require third party control,<sup>18</sup> this distinction does not offer increased protections for all minors, specifically minors who are not under the control of a third party trafficker.

2.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) to expressly differentiate soliciting sex acts with all minors from soliciting sex acts with an adult.

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

Buyers of commercial sex acts with minors may be prosecuted for crimes ranging from misdemeanors to felonies. Misdemeanors are punishable by imprisonment up to 6 months, fines not to exceed \$750, or both, to felonies punishable by varying ranges of imprisonment and fines not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-4-102, 6-2-314(c), 6-2-306(e), 6-10-102, 6-2-707.

Under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude), a person who purchases sex with someone he or she knows to be a victim of sexual servitude of a minor is guilty of a felony and faces imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-2-707. A conviction under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Buyers convicted of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalties),<sup>19</sup> a felony offense, face imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102. Buyers face similar or greater penalties under Wyoming’s sexual offense laws.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>20</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>21</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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<sup>18</sup> See *infra* Component 5.1 for discussion of third party control requirement.

<sup>19</sup> Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalties) makes it a crime when a person “solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301.”

<sup>20</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>21</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).



extent buyers can be prosecuted under other federal CSEC laws,<sup>22</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>23</sup>

2.4.1 Recommendation: Increase the penalties for patronizing a victim of sexual servitude and other offenses that cover buying sex with minors to align with the penalties available for federal trafficking offenders.

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.*

Buyers who use the Internet or electronic communications to solicit commercial sex with a minor under 14 years of age may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult buyer

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion<sup>24</sup> as defined in W.S. 6-2-301 [Definitions] . . . .

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

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

Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) does not prohibit a mistake of age defense. Further, buyers who cannot be prosecuted under Wyo. Stat. Ann. § 6-2-707 due to the knowledge requirement may be prosecuted under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties), a general solicitation law. Because Wyo. Stat. Ann. § 6-4-102 is age neutral, however, permissibility of a mistake of age defense is irrelevant.

2.6.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) to prohibit buyers from asserting a mistake of age defense.

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

Wyoming's buyer-applicable trafficking law, Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude), does not stagger penalties based on a minor's age, but penalties are not sufficiently high; a conviction under this offense is only punishable by up to 3 years imprisonment. Wyo. Stat. Ann. § 6-2-707.

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<sup>22</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>23</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>24</sup> See *supra* note 10 for definition of “sexual intrusion.”

Wyoming has not enacted a separate CSEC law that specifically criminalizes buying sex with a minor.

2.7.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) to increase penalties to reflect the seriousness of the offense.

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

Buyers may be ordered to pay fines up to \$10,000. Specifically, a buyer convicted under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) may be ordered to pay a fine not to exceed \$750 while a buyer convicted under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) faces a fine of up to \$5,000. A buyer convicted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), or Wyo. Stat. Ann. § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), may be ordered to pay a fine of up to \$10,000. Wyo. Stat. Ann. §§ 6-2-707, 6-2-318, 6-4-102, 6-4-303(d), (e).

Buyers are also subject to mandatory orders of restitution pursuant to Wyo. Stat. Ann. § 7-9-102 (Order to pay upon conviction) and § 6-2-710 (Restitution). Under Wyo. Stat. Ann. §6-2-710,

- (a) In addition to any other punishment prescribed by law, upon conviction for any misdemeanor or felony under this article, the court shall order a defendant to pay mandatory restitution to each victim as determined under W.S. 7-9-103 and 7-9-114.
- (b) If the victim of human trafficking 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 victim's 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.<sup>25</sup>

Wyo. Stat. Ann. § 7-9-102 states,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b) (Determination of amount owed; execution),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction . . . . In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

Buyers are also subject to asset forfeiture under Wyo. Stat. Ann. § 6-2-711 (Asset forfeiture) which includes any property<sup>26</sup> used by a person in violating an offense within Article 7 (Human trafficking). Wyo. Stat. Ann. § 6-2-711(a) states,

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<sup>25</sup> See *supra* note 5 (defining "victim").

The following are subject to forfeiture<sup>27</sup> as permitted pursuant to subsections (c) through (j) of this section:

- (i) All assets subject to the jurisdiction of the court:
    - (A) Used by a person while engaged in perpetrating a violation of this article [Article 7, Human Trafficking];
    - (B) Affording a person a source of influence over a trafficked individual in violation of this article;
    - (C) Acquired or maintained by a person with the intent to, and for the purpose of supporting, conducting or concealing an act which violates this article; or
    - (D) Derived from, involved in or used or intended to be used to commit an act which violates this article.
  - (ii) All books, records, products and materials which are used or intended for use in violation of this article;
  - (iii) All conveyances including aircraft, vehicles or vessels, knowingly used or intended for use to transport victims or in any manner to knowingly facilitate transportation of victims for human trafficking in violation of this article are subject to forfeiture . . . .
  - (iv) All buildings knowingly used or intended for use to further human trafficking in violation of this article if the owner has knowledge of or gives consent to the act of violation . . . .
  - (v) Any property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets or other property of any kind traceable to the exchange and any money, securities or other negotiable instruments used to facilitate a violation of this article . . . .
- . . . .

Buyers who possess child sexual abuse material (CSAM) in violation of Wyo. Stat. Ann. § 6-4-303(b) (Sexual exploitation of children; penalties; definitions) are subject to additional fines and mandatory criminal asset forfeiture. A violation is subject to a fine of not more than \$10,000. Wyo. Stat. Ann. § 6-4-303(d). Additionally, pursuant to Wyo. Stat. Ann. § 6-4-303(f), a convicted offender shall forfeit

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

The property shall be forfeited directly to the state. There are no specific seizure provisions authorized. Wyo. Stat. Ann. § 6-4-303(f).

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

Under Wyo. Stat. Ann. § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), it is illegal if a person “possesses child pornography.”<sup>28</sup> A first conviction under Wyo. Stat. Ann. § 6-4-303(b)(iv) is

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<sup>26</sup> However, pursuant to Wyo. Stat. Ann. § 6-2-711(h), “[a] persons’ interest in property is not subject to forfeiture to the extent that the forfeiture is grossly disproportionate to the gravity of the offense giving rise to the forfeiture. The state shall have the burden of demonstrating by a preponderance of the evidence that a forfeiture is not grossly disproportionate.”

<sup>27</sup>Pursuant to Wyo. Stat. Ann. § 6-2-711(j) (iii) forfeited assets can be used to pay restitution and civil judgements against the defendant’s victim.

punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(d). A second or subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

In comparison, a federal conviction for possession of child sexual abuse material (CSAM)<sup>29</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>30</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>31</sup>

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

Wyo. Stat. Ann. § 7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.”

Offenses requiring sex offender registration are listed under Wyo. Stat. Ann. § 7-19-301(a)(viii) (Definitions), which includes buyers convicted of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree), § 6-2-706 (Sexual servitude of a minor), § 6-4-102 (Soliciting an act of prostitution; penalties) (where the person solicited is a minor), § 6-2-318 (Soliciting to engage in illicit relations; penalty), § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties), § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree; penalties), § 6-2-316(a)(i), (iii), (iv) (Sexual abuse of a minor in the third degree), § 6-2-317(a)(i), (ii) (Sexual abuse of a minor in the fourth degree), § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), and any “criminal offense in Wyoming or any other jurisdiction containing the same or similar elements, or arising out of the same or similar facts or circumstances” as these offenses. Wyo. Stat. Ann. §§ 7-19-301(a)(viii), 7-19-302(g)–(j).

However, buyers of commercial sex acts convicted of Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) are not required to register.

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<sup>28</sup> See *supra* note 7.

<sup>29</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>30</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>31</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

***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.*

Under Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty), if the victim is a minor, the offense is a felony punishable by imprisonment for not less than twenty-five (25) nor more than fifty (50) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.<sup>32</sup>

An offense under Wyo. Stat. Ann. § 6-2-703 (Human trafficking in the second degree; penalty) is a felony punishable by imprisonment for not less than two (2) nor more than twenty (20) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.<sup>33</sup>

Traffickers of a child for commercial sex acts can also be prosecuted under the “sexual servitude of a minor” statute, within the human trafficking statute. Wyo. Stat. Ann. § 6-2-706(a) (Sexual servitude of a minor). A person commits sexual servitude of a minor when he or she “intentionally, knowingly or recklessly offers, obtains, procures or provides an individual less than eighteen (18) years of age to engage in commercial sexual services.” Wyo. Stat. Ann. § 6-2-706(a). Sexual servitude of a minor is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-2-706(b).

Traffickers can also be prosecuted under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), “Except as provided in W.S. 6-2-701 through 6-2-710 . . .” if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>34</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>35</sup> against a minor. 18 U.S.C. § 3559(e)(1).

<sup>32</sup> See *supra* Component 1.1 for a more detailed discussion of the statute’s provisions.

<sup>33</sup> See *supra* Component 1.1 (quoting the relevant statute to understand when the statute is applicable).

<sup>34</sup> See *supra* note 20.

<sup>35</sup> See *supra* note 21.

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

Creating or distributing child sexual abuse material (CSAM) is prohibited under Wyo. Stat. Ann. § 6-4-303(b)(i)–(iii) (Sexual exploitation of children; penalties; definitions), which states in part,

A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

- (i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;
- (ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;
- (iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.

A conviction under Wyo. Stat. Ann. § 6-4-303(b)(i)–(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). Subsequent convictions are punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>36</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>37</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>38</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>39</sup>

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<sup>36</sup> See *supra* note 21.

<sup>37</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>38</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>39</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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.*

Traffickers who use the Internet or electronic communications to procure a minor under 14 years of age to engage in a commercial sex act may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult trafficker

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion<sup>40</sup> as defined in W.S. 6-2-301 [Definitions] . . . .

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

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

Financial penalties for traffickers include fines, asset forfeiture, and victim restitution. Pursuant to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty) and § 6-2-703 (Human trafficking in the second degree; penalty), traffickers are subject to fines up to \$10,000. Under Wyo. Stat. Ann. § 6-2-706 (Sexual servitude of a minor), traffickers are subject to fines up to \$5,000.

Under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), unless Wyo. Stat. Ann. §§ 6-2-701 through 6-2-710 provide otherwise, if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by . . . a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b). Additionally, Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides for mandatory criminal asset forfeiture for traffickers who violate Wyo. Stat. Ann. § 6-4-303(b) and states,

Any person who is convicted of an offense under this section shall forfeit to the state the person’s interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

This statute does not provide specific seizure provisions. Assets forfeited go directly to the state. Traffickers are also subject to asset forfeiture<sup>41</sup> under Wyo. Stat. Ann. § 6-2-711 (Asset forfeiture) which includes any

<sup>40</sup> See *supra* note 10 for definition of “sexual intrusion.”

<sup>41</sup> Pursuant to Wyo. Stat. Ann. § 6-2-711(j) (iii), forfeited assets can be used to pay restitution and civil judgements against the defendant’s victim.

property<sup>42</sup> used by a person in violating an offense within Article 7 (Human trafficking). Wyo. Stat. Ann. § 6-2-711(a) (Asset forfeiture) states,

The following are subject to forfeiture as permitted pursuant to subsections (c) through (j) of this section:

- (i) All assets subject to the jurisdiction of the court:
  - (A) Used by a person while engaged in perpetrating a violation of this article [Article 7, Human Trafficking];
  - (B) Affording a person a source of influence over a trafficked individual in violation of this article;
  - (C) Acquired or maintained by a person with the intent to, and for the purpose of supporting, conducting or concealing an act which violates this article; or
  - (D) Derived from, involved in or used or intended to be used to commit an act which violates this article.
- (ii) All books, records, products and materials which are used or intended for use in violation of this article;
- (iii) All conveyances including aircraft, vehicles or vessels, knowingly used or intended for use to transport victims or in any manner to knowingly facilitate transportation of victims for human trafficking in violation of this article are subject to forfeiture . . . .
- (iv) All buildings knowingly used or intended for use to further human trafficking in violation of this article if the owner has knowledge of or gives consent to the act of violation . . . .
- (v) Any property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets or other property of any kind traceable to the exchange and any money, securities or other negotiable instruments used to facilitate a violation of this article . . . .
- (vi) Overseas assets of persons convicted of human trafficking under this article to the extent that they can be retrieved by the state.

Traffickers are also subject to mandatory orders of restitution for any misdemeanor or felony conviction, pursuant to Wyo. Stat. Ann. §§ 7-9-102 (Order to pay upon conviction), 6-2-710 (Restitution). Mandatory restitution is determined in accordance with Wyo. Stat. Ann. § 7-9-103 (Determination of amount owed; execution) and § 7-9-114 (Determination of long-term restitution; time for order; enforcement). Under Wyo. Stat. Ann. § 7-9-103(b), reasonable actual pecuniary and reasonably foreseeable future pecuniary damages are owed to victims.<sup>43</sup> Victims are also owed monthly fixed amounts of restitution under Wyo. Stat. Ann. § 7-9-114(a), for long-term physical health care for as long as the victim requires the care.<sup>44</sup>

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

Wyo. Stat. Ann. §7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.”

Offenses requiring sex offender registration are listed under Wyo. Stat. Ann. § 7-19-301(a)(viii) (Definitions), which includes traffickers convicted under Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree), § 6-2-706 (Sexual servitude of a minor), § 6-4-103

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<sup>42</sup> See *supra* note 26.

<sup>43</sup> See *supra* Component 2.8 (quoting Wyo. Stat. Ann. § 7-9-103(b)). Wyo. Stat. Ann. §6-2-701(x) defines “Pecuniary damage” as “all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, including damages for wrongful death. It does not include punitive damages and damages for pain, suffering, mental anguish and loss of consortium . . . .”

<sup>44</sup> See *supra* Component 2.8 (quoting Wyo. Stat. Ann. § 7-9-114(a)).



(Promoting prostitution; penalties), § 6-2-318 (Soliciting to engage in illicit relations; penalty), § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), and any “criminal offense in Wyoming or any other jurisdiction containing the same or similar elements, or arising out of the same or similar facts or circumstances” as these offenses. Wyo. Stat. Ann. §§ 7-19-301(a)(viii), 7-19-302(g)–(j).

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.*

Under Wyo. Stat. Ann. § 14-2-309(a) (Grounds for termination of parent-child relationship; clear and convincing evidence),

The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:

....

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child’s health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

....

Therefore, under Wyo. Stat. Ann. § 14-2-309(a)(iv), if a person is incarcerated because they have been convicted of a felony related to domestic minor sex trafficking, such as Wyo. Stat. Ann. § 6-2-702 (Human Trafficking in the first degree; penalties), § 6-2-703 (Human Trafficking in the second degree; penalties), § 6-2-706 (Sexual servitude of a minor), § 6-4-103 (Promoting prostitution; penalties), § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), or § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), and the court finds that “the parent is unfit to have the custody and control of the child,” the court may terminate the convicted parent’s parental rights. “Proof by clear and convincing evidence that the parent has been convicted of “a felony assault, in which the child suffers “serious bodily injury,” “may constitute grounds that the parent is unfit to have custody or control of any child and may be grounds for terminating the parent-child relationship as to any child with no requirement that reasonable efforts be made to reunify the family.” Wyo. Stat. Ann. § 14-2-309(b)(ii).

Additionally, because “abuse,” as used in Wyo. Stat. Ann. § 14-2-309(a)(iii) includes sexual abuse, the parental rights of a trafficker may also be terminated pursuant to Wyo. Stat. Ann. § 14-2-309(a)(iii).<sup>45</sup> Wyo. Stat. Ann. § 14-2-309(a)(iii) requires evidence that reasonable efforts be made to “preserve and reunify the family” for parental rights to be terminated. However, under Wyo. Stat. Ann. § 14-2-309(c), this requirement is eliminated,

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<sup>45</sup> Wyo. Stat. Ann. § 14-2-308 (Definitions) incorporates the definition of “abuse” from Wyo. Stat. Ann. § 14-3-202 (Definitions) for the purposes of chapter 2 (Parents). Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions) provides that “abuse” means the following:

[I]nflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

....

D. “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury . . .

[I]n any case in which the court determines any one (1) or more of the following by clear and convincing evidence:

- (i) The parental rights of the parent to any other child have been terminated involuntarily;
- (ii) The parent abandoned, chronically abused or sexually abused the child; or
- (iii) The parent has been convicted of committing one (1) or more of the following crimes against the child or another child of that parent:
  - (A) Sexual assault under W.S. 6-2-302 through 6-2-304;
  - (B) Sexual battery under W.S. 6-2-313;
  - (C) Sexual abuse of a minor under 6-2-314 through 6-2-317.
- (iv) The parent is required to register as a sex offender pursuant to W.S. 7-19-302 if the offense involved the child or another child of that parent. This shall not apply if the parent is only required to register for conviction under W.S. 6-2-201;
- (v) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

***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.*

The acts of assisting, enabling or benefitting from child sex trafficking are not included in the human trafficking or sexual servitude of a minor laws.<sup>46</sup> None of Wyoming’s CSEC laws apply to facilitators. In the absence of CSEC laws, other laws may apply to facilitators.

Under Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties), a facilitator who has “control over the use of a place, [and] knowingly or intentionally permits another person to use the place for prostitution” or who “[r]eceive[s] money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution” is guilty of a felony punishable by imprisonment up to 3 years, a fine not to exceed \$3,000, or both. Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv), (b).

- 4.1.1 **Recommendation:** Amend the human trafficking laws to reach the actions of facilitators of sex trafficking.

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

Facilitators may be subject to Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties) which imposes a possible fine not to exceed \$3,000. Wyo. Stat. Ann. § 6-4-103(b).

Facilitators are also subject to mandatory orders of restitution following any misdemeanor or felony conviction pursuant to Wyo. Stat. Ann. § 7-9-102.<sup>47</sup> Under Wyo. Stat. Ann. § 7-9-103(b) (Determination of amount owed; execution), reasonable actual pecuniary and reasonably foreseeable future pecuniary damages are owed to victims.<sup>48</sup> Victims are also owed monthly fixed amounts of restitution under Wyo. Stat. Ann. § 7-9-114(a) (Determination of long-term restitution; time for order; enforcement), for long-term physical health care for as long as the victim requires the care.<sup>49</sup>

Although the acts of assisting, enabling or benefitting from child sex trafficking are not included in the human trafficking or sexual servitude of a minor laws to clearly apply to facilitators, facilitators may still be subject to

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<sup>46</sup> See *supra* Component 1.1.

<sup>47</sup> See *supra* Component 2.8 (quoting Wyo. Stat. Ann. § 7-9-102).

<sup>48</sup> *Id.* (quoting Wyo. Stat. Ann. § 7-9-103(b)).

<sup>49</sup> *Id.* (quoting Wyo. Stat. Ann. § 7-9-114(a)).

asset forfeiture<sup>50</sup> pursuant to Wyo. Stat. Ann. § 6-2-711(a)(i)(C),(a)(i)(D) (Asset forfeiture), which includes property “acquired or maintained” for “supporting, . . . or concealing” acts of human trafficking and property which is “derived from” human trafficking. Wyo. Stat. Ann. § 6-2-711(a)(iii) and (a)(iv) could subject vehicles or buildings furnished by facilitators to further human trafficking to asset forfeiture, and Wyo. Stat. Ann. § 6-2-711(a)(v) renders any financial benefits, potentially of facilitators subject to asset forfeiture, including “property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets or other property . . . .” Wyo. Stat. Ann. § 6-2-711 states,

(a) The following are subject to forfeiture as permitted pursuant to subsections (c) through (j) of this section:

(i) All assets subject to the jurisdiction of the court:

. . . .

(B) Affording a person a source of influence over a trafficked individual in violation of this article;

(C) Acquired or maintained by a person with the intent to, and for the purpose of supporting, conducting or concealing an act which violates this article; or

(D) Derived from, involved in or used or intended to be used to commit an act which violates this article.

. . . .

(iii) All conveyances including aircraft, vehicles or vessels, knowingly used or intended for use to transport victims or in any manner to knowingly facilitate transportation of victims for human trafficking in violation of this article are subject to forfeiture . . . .<sup>51</sup>

(iv) All buildings knowingly used or intended for use to further human trafficking in violation of this article if the owner has knowledge of or gives consent to the act of violation . . . .

(v) Any property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets or other property of any kind traceable to the exchange and any money, securities or other negotiable instruments used to facilitate a violation of this article . . . .

(vi) Overseas assets of persons convicted of human trafficking under this article to the extent that they can be retrieved by the state.

. . . .

(h) A persons’ interest in property is not subject to forfeiture to the extent that the forfeiture is grossly disproportionate to the gravity of the offense giving rise to the forfeiture. The state shall have the burden of demonstrating by a preponderance of the evidence that a forfeiture is not grossly disproportionate.<sup>52</sup>

Additionally, facilitators are subject to mandatory criminal asset forfeiture following a conviction for sexual exploitation of children. Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides,

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<sup>50</sup> Pursuant to Wyo. Stat. Ann. § 6-2-711(j) (iii) forfeited assets can be used to pay restitution and civil judgements against the defendant’s victim.

<sup>51</sup> The provisions under § 6-2-711(a)(iii) apply, provided that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or corporate officer is a consenting party or privy to a violation of this article;

(B) No conveyance is subject to forfeiture under this section by reason of any act committed without the knowledge or consent of the owner;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest if the secured party neither had knowledge of nor consented to the act.

<sup>52</sup> See *supra* note 26.

Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

Pursuant to Wyo. Stat. Ann. § 6-4-303(f), a facilitator who “distributes, reproduces, delivers or possesses with the intent to deliver” child sexual abuse material (CSAM) under Wyo. Stat. Ann. § 6-4-303(b)(iii), if convicted, shall forfeit any proceeds obtained from the crime and any property used in the commission of the crime.

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

Wyoming has not enacted a law prohibiting the promotion or sale of child sex tourism.

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

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

Wyo. Stat. Ann. § 6-4-303(b)(iii) (Sexual exploitation of children; penalties; definitions) states, “A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly: . . . receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.”<sup>53</sup> A conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

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<sup>53</sup> See *supra* note 6.

**Legal Components:**

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

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.<sup>54</sup>*

Not all commercially sexually exploited children are identifiable as sex trafficking victims under Wyoming law. Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree) and § 6-2-703 (Human trafficking in the second degree) do not require a showing of force, fraud or coercion to prove that sex trafficking has occurred when the victim is a minor.<sup>55</sup>

Although buyer conduct is prohibited under Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude),<sup>56</sup> a commercially sexually exploited minor must be under the control of a third party or a third party must be benefiting in order for the exploitation to fall within sex trafficking definitions. Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude) prohibits

patronizing a victim of sexual servitude when the person pays, agrees to pay or offers to pay anything of value so that the person or another may engage in sexual activity with an individual when the person knows that the individual is a victim of sexual servitude in violation of . . . W.S. 6-2-706.

“Sexual servitude of a minor” under Wyo. Stat. Ann. § 6-2-706 (Sexual servitude of a minor) is defined as “intentionally, knowingly, or recklessly offer[ing], obtain[ing], procur[ing] or provid[ing] an individual less

<sup>54</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>55</sup> See *supra* Component 1.1.

<sup>56</sup> See *supra* discussion in Component 2.1.

than eighteen (18) years of age to engage in commercial sexual services.” “Commercial sexual services” is defined under “services” pursuant to Wyo. Stat. Ann. § 6-2-701(a)(xiv) (Definitions) as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” Correspondingly, the core sex trafficking offenses, Wyo. Stat. Ann. § 6-2-702 and § 6-2-703, do not prohibit buyer conduct, but only apply to conduct committed “for the purpose of (ii) Sexual servitude of a minor in violation of W.S. 6-2-706.”

These definitions narrow the application of trafficking statutes to those cases in which the minor is under the control of a third party trafficker. This barrier prevents all commercially sexually exploited children from being identified as a victim of sex trafficking.

- 5.1.1 Recommendation: Amend Wyo. Stat. Ann. §§ 6-2-702 (Human trafficking in the first degree), 6-2-703 (Human trafficking in the second degree), 6-2-706 (Sexual servitude of a minor), and 6-2-701 (Definitions) so that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.<sup>57</sup>

- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.*<sup>58</sup>

Under Wyo. Stat. Ann. § 6-2-706(c) (Sexual servitude of a minor), a predicate offense to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty) and § 6-2-703 (Human trafficking in the second degree; penalty), “[i]t is not a defense in a prosecution under this section that the individual consented to engage in commercial sexual services . . . .” However, no such limitation exists for the section of the statute that expressly covers buyers. Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude).

The CSEC laws, Wyo. Stat. Ann. § 6-4-103(a)(i) (Promoting prostitution; penalties) and § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), do not indicate whether consent is available as a defense in a prosecution for the crime. Similarly, Wyoming’s laws criminalizing sexual abuse of a minor, Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties), § 6-2-315 (Sexual abuse of a minor in the second degree), § 6-2-316 (Sexual abuse of a minor in the third degree), and § 6-2-317 (Sexual abuse of a minor in the fourth degree), do not specifically state that the consent of a minor is immaterial to the crime.

- 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>59</sup>

Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) provides an exception to criminalization for victims of trafficking crimes; however, not all commercially sexually exploited children may be protected due to third party control requirements under the state’s trafficking law.<sup>60</sup> Wyo. Stat. Ann. § 6-4-101 states, “Except as provided in W.S. 6-2-701 through 6-2-710, [Wyo. Stat. Ann. § 6-2-701(Definitions), § 6-2-702 (Human trafficking in the first degree; penalty), § 6-2-703 (Human trafficking in the second degree; penalty), § 6-2-706 (Sexual servitude of a minor), § 6-2-707 (Patronizing a victim of sexual servitude), § 6-2-708 (Victim defenses; vacating convictions)], a person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion . . . for money or other property commits prostitution . . . .”

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<sup>57</sup> Subsequent recommendations that discuss referring certain crimes to the human trafficking statute are predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>58</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>59</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>60</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

Wyo. Stat. Ann. § 6-2-708(a) (Victim defenses; vacating convictions) expressly provides, “A victim of human trafficking is not criminally liable for any commercial sex act or other criminal acts committed as a direct result of, or incident to, being a victim of human trafficking in violation of W.S. 6-2-702 through 6-2-707.”<sup>61</sup>

Instead, Wyo. Stat. Ann. § 6-2-708(b) provides, “A victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act or a neglected child in accordance with the Child Protection Act.” Accordingly, while Wyo. Stat. Ann. § 6-2-708(b) allows a child to be treated as a neglected child, this statute also leaves open the possibility of a juvenile sex trafficking victim being treated as a status offender under the Child in Need of Supervision Act to the extent that the child meets that definition.<sup>62</sup>

5.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) to specify that all minors shall be protected from criminal or delinquency charges for prostitution-related offenses.<sup>63</sup>

5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry*

### **System response to child engaged in commercial sex act**

Under Wyo. Stat. Ann. § 6-2-709(a) (Victims’ rights; services), a law enforcement officer or state’s attorney must report suspected cases of juvenile sex trafficking to the victim services division within the office of the attorney general and the department of family services (DFS), but services are not required to be specialized to the needs of commercially sexually exploited youth. Specifically, Wyo. Stat. Ann. § 6-2-709(a) states,

As soon as possible after the initial encounter with a person who reasonably appears to a law enforcement agency, district or county and prosecuting attorneys’ office to be a victim of human trafficking, the agency or office shall:

- (i) Notify the victim services division within the office of the attorney general that the person may be eligible for services under this article; and
- (ii) Make a preliminary assessment of whether the victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the Trafficking Victims Protection Act, 22 U.S.C. section 7105, or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is a minor or is a vulnerable adult, the agency or office shall also notify the department of family services.

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<sup>61</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>62</sup> A child in need of supervision is defined in Wyo. Stat. Ann. § 14-6-402(a)(iv) (Definitions) to include

any child who has not reached his eighteenth birthday who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority or is ungovernable and beyond control. “Child in need of supervision” includes any child who has not reached his eighteenth birthday who has committed a status offense.

<sup>63</sup> 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](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).



Further, juvenile sex trafficking victims should not be charged for acts resulting from their victimization.<sup>64</sup>

## Summary

Although Wyoming law prohibits a juvenile sex trafficking victim from being held criminally liable for delinquent acts resulting from his or her victimization and mandates referral to DFS and other services as available, specialized services are not required.

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

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>65</sup>

Although child sex trafficking and commercial sexual exploitation are not expressly identified as types of abuse within Wyoming's child protection statutes, "abuse" is defined to include a sexual offense against a child. Specifically, Wyo. Stat. Ann. § 14-3-202(ii) (Definitions) states,

"Abuse" means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including . . . the commission or allowing the commission of a sexual offense against a child as defined by law . . . ."

Further, Wyo. Stat. Ann § 6-2-708(b) (Victim defenses; vacating convictions) provides, "[a] victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act [Wyo. Stat. Ann §§ 14-6-401 – 440] or a neglected child in accordance with the Child Protection Act [Wyo. Stat. Ann. §§ 14-3-401 – 441]."

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.*

Pursuant to Wyo. Stat. Ann § 6-2-708(b) (Victim defenses; vacating convictions), a minor victim of human trafficking will be deemed as neglected or as a child in need of supervision regardless of the child's relationship to the perpetrator. However, not all commercially sexually exploited children qualify as minor victims of human trafficking under Wyoming's sex trafficking laws.<sup>66</sup> To the extent that a commercially sexually exploited child does not fall under the definition of a child sex trafficking victim, Wyo. Stat. Ann. § 14-3-202(a)(i) (Definitions), which prescribes the duties of child protective services, "a person responsible for a child's welfare" is defined to include, "the child's parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child." This definition is not broad enough to include all perpetrators of Wyo. Stat. Ann. 6-2-707 (Patronizing a victim of sexual servitude), so this will only potentially constitute a barrier to services for commercially sexually exploited children who are exploited without an identified third party controller.

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

Under Wyo. Stat. Ann. § 6-2-709 (Victims' rights; services), "Victims of human trafficking are entitled to . . . forms of compensation under the Crime Victims Compensation Act."

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<sup>64</sup> See *supra* Component 5.3 for full discussion of Wyoming's non-criminalization law.

<sup>65</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>66</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted. See *supra* Component 5.1 for discussion of third party control requirement.

Where not identified as a minor sex trafficking victim, a minor victim may still be eligible to receive compensation under the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-101 et. seq. Pursuant to Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) victims are “entitled to compensation under” the Wyoming Crime Victims Compensation Act if certain requirements are met. Wyo. Stat. Ann. § 1-40-106(a). For purposes of the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-102(a)(ix) (Definitions) defines a “victim” to include the following:

- (A) A person who suffers personal injury or is killed in this state as a direct result of:
    - (I) A criminal act of another person;
    - (II) The person’s good faith and reasonable effort in attempting to prevent the commission of a criminal act, or to apprehend a person engaging in a criminal act or assisting a law enforcement officer to do so;
    - (III) Assisting or attempting to assist a person against whom a crime is being perpetrated or attempted;
    - (IV) A federal crime occurring in Wyoming.
  - (B) A resident who is a victim of a crime occurring outside this state if:
    - (I) The crime would be compensable had it occurred inside this state; and
    - (II) The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in W.S. 1-40-101 [Short title] through 1-40-119 [Surcharge to be assessed in certain criminal cases; paid to account].
- ....

Even to the extent that a commercially sexually exploited child “suffers personal injury . . . as a direct result of another’s crime, several other requirements for compensation may present difficulties for domestic minor sex trafficking victims not identified as human trafficking victims under Wyoming law. Wyo. Stat. Ann. § 1-40-102(a)(ix)(A). Specifically, to be eligible for compensation Wyo. Stat. Ann. § 1-40-106(a) requires,

- (i) The victim suffered personal injury as a result of a criminal act;
- ....
- (iii) The injury to or death of the victim was not attributable to his own wrongful act;
  - (iv) The appropriate law enforcement authorities were notified of the criminal act allegedly causing the injury to or death of the victim as soon as practical under the circumstance after perpetration of the offense and the claimant cooperates with appropriate law enforcement authorities with respect to the crime for which compensation is sought; [and]
  - (v) The application for compensation is filed with the division within one (1) year after the date of the injury to or death of the victim, or within any extension of time the division allows for good cause shown;
- ....

“Good cause” is not defined within Wyo. Stat. Ann. § 1-40-106, but 015-0012-3 Wyo. Code R. § 4(b)(viii)(A) (Eligibility for compensation) states,

Good cause in determining whether a victim has satisfied the requirement to report a crime to law enforcement, the Division may consider the victims age, physical condition and psychological state, and any compelling health or safety reason that would jeopardize the well being of the victim. The Division may waive the report to law enforcement or the 1 year filing date if good cause is shown.

Additionally, 015-0012-3 Wyo. Code R. § 4(c)(i) provides guidance regarding what constitutes “reasonable cooperation with law enforcement.” Specifically, the regulations state,

In determining whether a victim reasonably cooperated with law enforcement the Division may consider the victim's age, physical condition and psychological state and any compelling health and safety reasons that would jeopardize the well being of the victim.

(i) Reasonable cooperation with law enforcement by the victim may include but not be limited to the following:

(A) providing law enforcement with a true, accurate and complete statement of the circumstances that led to the crime;

(B) participating in the investigation of the crime to assist law enforcement with the identification of a suspect;

(C) participating in prosecution procedures including deposition and trial testimony as requested;

(D) Sexual abuse victims shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual assault forensic exam.

5.7.1 Recommendation: Amend Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) to exempt all CSEC victims from the listed requirements.

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

Wyoming law includes several victim-friendly criminal justice procedures and protections throughout the criminal justice process.

The human trafficking law provides, “In a prosecution for an offense under this article, police and prosecuting agencies shall keep the identity of the victim and the victim's family confidential. The prosecutor shall take reasonable steps to protect the victim and the victim's family from being revictimized.” Wyo. Stat. Ann. § 6-2-709(e).

The Wyoming Victim and Witness Bill of Rights, codified at Wyo. Stat. Ann. § 1-40-203 (Victim and witness bill of rights), sets out key rights of crime victims. Some of these rights are expounded in other statutes.

For example, under Wyo. Stat. Ann. § 1-40-205(a), crime victims specifically have the right to “be free from any form of harassment, intimidation or retribution.” To ensure this right, a victim may sit in a separate waiting room from other witness while waiting to testify in “any proceeding regarding a criminal act,” and law enforcement shall provide the victim information regarding other protections available to the victim. Wyo. Stat. Ann. § 1-40-205(b), (d).

Additionally, under Wyo. Stat. Ann. § 1-40-204(a) (Rights of victims and witnesses to be informed during the criminal justice process),

Victims of a criminal act shall be informed without undue delay by law enforcement about:

(i) The rights enumerated in this act;

(ii) The right to be informed of the status of the case from the initial police investigation to the final appellate review;

(iii) The fact that financial assistance or other social service options may be available to the victim;

(iv) The existence of the Crime Victims Compensation Act and that compensation may be available to the victim;

(v) The right to have an interpreter or translator to inform the victim of these rights;

(vi) The name and official telephone number of the primary law enforcement officer assigned to investigate the case together with the official address and telephone number of the criminal justice agency investigating the case;

(vii) The right to seek legal counsel and to employ an attorney.

Also, the victim has the right to information including the right to receive written notice of a certain event's related to the defendant's progress in the criminal justice system. Wyo. Stat. Ann. § 1-40-204(b).

Some additional protections are afforded in Wyo. Stat. Ann. § 7-11-408 (Videotape depositions) to children who are the victims of sexual abuse under Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties) through Wyo. Stat. Ann. § 6-2-317 (Sexual abuse of a minor in the fourth degree), but not to victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Specifically, under Wyo. Stat. Ann. § 7-11-408, a victim under the age of 12 may give testimony that may be admissible at trial<sup>67</sup> through a videotaped deposition if the judge finds the following, pursuant to subsection (c),

- (i) The child's testimony would be relevant and material;
- (ii) The best interests of the child would be served by permitting the videotape deposition;
- (iii) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial; and
- (iv) The defendant or his legal counsel has the opportunity to be present and to cross-examine the child at the videotape deposition.

Only video technicians, "the child, the judge, prosecutor, defendant and defense counsel, [and] a family member who was not a witness to the offense or a support person for the child" may be present at the child's videotaped deposition. Wyo. Stat. Ann. § 7-11-408(b). However, pursuant to Wyo. Stat. Ann. § 7-11-408(d), the judge may "deny the defendant's face-to-face confrontation of the child" if

- (i) The defendant is alleged to have inflicted physical harm or is alleged to have threatened to inflict physical harm upon the child, and physical or psychological harm to the child is likely to occur if there is a face-to-face confrontation of the child by defendant;
- (ii) The defendant's legal counsel will have reasonable opportunity to confer with his client before and at any time during the videotape deposition; and
- (iii) The defendant will have opportunity to view and hear the proceedings while being taken.

In addition, a child who is "unable to articulate what was done to them will be permitted to demonstrate the sexual act or acts committed against them with the aid of anatomically correct dolls." Wyo. Stat. Ann. § 7-11-408(f). These "demonstrations will be under the supervision of the court and shall be videotaped to be viewed at trial, and shall be received into evidence as demonstrative evidence." Wyo. Stat. Ann. § 7-11-408(f).

Wyo. Stat. Ann. § 6-2-312 (Evidence of victim's prior sexual conduct or reputation; procedure for introduction) also provides limited protection to victims of sexual assault, without regard to their age, including victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). However, the protection does not extend to victims of Wyoming's CSEC laws, Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and Wyo. Stat. Ann. § 6-4-303(b)(i)-(ii) (Sexual exploitation of children; penalties; definitions). Pursuant to Wyo. Stat. Ann. § 6-2-312(a), where a defendant is prosecuted under Wyoming's sexual assault laws, or "lesser included offense[s]," evidence of the victim's prior sexual conduct and reputation or opinion evidence regarding the victim's character may only be admitted when "the court finds that the probative value of the evidence substantially outweighs the probability that its admission will create prejudice." Wyo. Stat.

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<sup>67</sup> Pursuant to Wyo. Stat. Ann. § 7-11-408(e):

A videotape deposition may be admitted at trial in lieu of the direct testimony of the child, if the judge finds, after hearing, that:

- (i) The visual and sound qualities of the videotape are satisfactory;
- (ii) The videotape is not misleading;
- (iii) All portions of the videotape that have been ruled inadmissible have been deleted; and
- (iv) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial.

Ann. § 6-2-312(a)(iv). However, nothing in Wyo. Stat. Ann. § 6-2-312(a) prevents a defendant from introducing “evidence as to prior sexual conduct of the victim with the actor.” Wyo. Stat. Ann. § 6-2-312(b).

Another victim-friendly criminal justice procedure is found in Wyo. Stat. Ann. § 6-2-311 (Corroboration unnecessary), which states, “Corroboration of a victim’s testimony is not necessary to obtain a conviction for sexual assault.” Wyo. Stat. Ann. § 6-2-311.

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.*

Wyoming law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a minor turns 18.

Regarding expungement, Wyo. Stat. Ann. § 14-6-241(a) (Expungement of records in juvenile and municipal courts) authorizes a person “adjudicated delinquent as a result of having committed a delinquent act other than a violent felony”<sup>68</sup> to petition the court for expungement of the person’s juvenile court records after the person turns 18. Wyo. Stat. Ann. § 14-6-241(a)<sup>69</sup> further provides,

If an objection is filed [by the prosecuting attorney] and after investigation the court finds that the petitioner has not been convicted of a felony since adjudication, that no proceeding involving a felony is pending or being instituted against the petitioner and the rehabilitation of the petitioner has been attained to the satisfaction of the court or the prosecuting attorney, it shall order expunged all records in any format including electronic records in the custody of the court or any agency or official, pertaining to the petitioner’s case. If not objection is filed, the court may summarily enter an order if the court finds that the petitioner is otherwise eligible for relief under this subsection . . . .

Once the court enters an order of expungement, “the proceedings in the petitioner’s case are deemed never to have occurred and the petitioner may reply accordingly upon any inquiry in the matter.” Wyo. Stat. Ann. § 14-6-241(a). Records related to the conviction of a juvenile for a misdemeanor in circuit court also may be expunged, subject to the requirements of Wyo. Stat. Ann. § 14-6-241(a). Wyo. Stat. Ann. § 14-6-241(c).

Because Wyo. Stat. Ann. § 14-6-241 mandates that a minor turn 18 before petitioning for expungement, however, a child sex trafficking victim may face collateral consequences associated with having an accessible delinquency record during the waiting period.

Regarding vacatur, Wyo. Stat. Ann. § 6-2-708(c) (Victim defenses; vacating convictions) provides,

At any time after the entry of a conviction, the court in which it was entered may vacate the conviction if the defendant's participation in the offense is found to have been the result of having been a victim. Official documentation of the defendant's status as a victim at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim, but shall not be required for granting a motion under this section.

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<sup>68</sup> Pursuant to Wyo. Stat. Ann. § 6-1-104(a)(xii) (Definitions) a “violent felony” includes “murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, strangulation of a household member, aircraft hijacking, arson in the first or second degree, or aggravated burglary, or a violation of W.S. 6-2-314(a)(i) [Sexual abuse of a minor in the first degree; penalties] or 6-2-315(a)(ii) [Sexual abuse of a minor in the second degree; penalties] or a third, or subsequent, domestic battery under W.S. 6-2-511(a) and (b)(iii).”

<sup>69</sup> The text of Wyo. Stat. Ann. § 14-6-241 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 44 during the 2019 General Session of Wyoming’s 65th Legislature (effective July 1, 2019).

However, Wyo. Stat. Ann. § 6-2-708(c) applies specifically to “convictions,” and Wyo. Stat. Ann. § 14-6-238 (Proceedings deemed in equity; effect of orders and decrees) states in part, “No order or decree pursuant to this act [Juvenile Justice Act] shall be deemed a conviction of a crime . . . .” Accordingly, a delinquency adjudication cannot be vacated under Wyo. Stat. Ann. § 6-2-708(c).

Additionally, record expungement is not automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

- 5.9.1 Recommendation: Enact a law that allows 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.*

Wyoming law does not provide specific civil remedies for victims of domestic minor sex trafficking; however, Wyo. Stat. Ann. § 7-9-110(a) (Civil action) provides that any restitution received by a victim of a crime does not preclude them from bringing a civil suit, but “[a]ny restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim, however, in a civil action arising out of the same facts or event.” Additionally, Wyo. Stat. Ann. § 1-3-105(b) (Actions other than recovery of real property) suggests that there is a “a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v)<sup>70</sup> against a minor” under Wyoming law.

Domestic minor sex trafficking victims also are able to receive mandatory restitution from their offender under the human trafficking statute as well as for any misdemeanor or felony conviction, pursuant to Wyo. Stat. Ann. § 6-2-709(d) (Victims' rights; services), § 7-9-102 (Order to pay upon conviction), and § 6-2-710 (Restitution). Mandatory restitution should be determined in accordance with Wyo. Stat. Ann. §§ 7-9-103 (Determination of amount owed; execution), 7-9-114 (Determination of long-term restitution; time for order; enforcement). Wyo. Stat. Ann. § 7-9-103(b) provides reasonable actual pecuniary and reasonably foreseeable future pecuniary damages to victims.<sup>71</sup> Pursuant to Wyo. Stat. Ann. § 7-9-114(a), victims are also owed monthly fixed amounts of restitution for long-term physical health care for as long as the victim requires the care.<sup>72</sup>

*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.*

No statute of limitations applies to the prosecution of any crimes in Wyoming;<sup>73</sup> however civil actions are subject to certain statutes of limitations. Wyo. Stat. Ann. § 1-3-102.

The most relevant provision to victims of domestic minor sex trafficking states, “an action for . . . [a]n injury to the rights of the plaintiff, not arising on contract and not herein enumerated” must be commenced within four years of the date the plaintiff’s cause of action accrues. Wyo. Stat. Ann. § 1-3-105(a)(iv)(C). Actions for “[a]ssault or battery not including sexual assault” shall be brought within one year. Wyo. Stat. Ann. § 1-3-

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<sup>70</sup> Sexual assault is defined in Wyo. Stat. Ann. § 6-2-301(a)(v) (Definitions) as “any act made criminal pursuant to W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-319 [Names not to be released; restrictions on disclosures or publication of information; violations; penalties].”

<sup>71</sup> See *supra* Component 2.8. Under Wyo. Stat. Ann. §6-2-701(x), “‘Pecuniary damage’ means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, including damages for wrongful death. It does not include punitive damages and damages for pain, suffering, mental anguish and loss of consortium . . . .” See *supra* note 2.

<sup>72</sup> See *supra* Component 2.8.

<sup>73</sup> See *Boggs v. State*, 484 P.2d 711, 714 (Wyo. 1971).

105(a)(v)(B). Additionally, for “a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v) (Definitions)<sup>74</sup> against a minor” a claim “may be brought within the later of: (i) Eight (8) years after the minor’s eighteenth birthday; or (ii) Three (3) years after the discovery.” Wyo. Stat. Ann. § 1-3-105(b). Moreover, under Wyo. Stat. Ann. § 1-3-114<sup>75</sup> (Legal disabilities),

If a person entitled to bring any action except for an action arising from error or omission in the rendering of licensed or certified professional or health care services or for a penalty or forfeiture, is, at the time the cause of action accrues, a minor . . . the person may bring the action within three (3) years after the disability is removed or within any other statutory period of limitation, whichever is greater.

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<sup>74</sup> See *supra* note 70.

<sup>75</sup> In *Kordus v. Montes*, 337 P.3d 1138 (Wyo. 2014), the court held that the exception contained in Wyo. Stat. Ann. § 1-3-114—“except for an action arising from error or omission in the rendering of licensed or certified professional or health care services”—is constitutionally infirm. The court ruled that two-year statute of limitations applicable to medical malpractice actions under Wyo. Stat. Ann. § 1-3-107 (Act, error or omission in rendering professional or health care services), as applied to juvenile patient who had no procedural capacity to sue, violated her fundamental right of access to the courts under the open courts provision of State Constitution; patient's exclusive remedy was to file suit, through her parents or some other guardian, seeking to recover damages for the alleged malpractice, but patient could not bring suit against her parents if they negligently failed to bring the claim within the limitations period.

***Legal Components:***

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

***Legal Analysis:***

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

Wyoming addresses training of law enforcement and other individuals through its human trafficking law. Pursuant to Enacted House Bill 133, Sec. 3 (2013),<sup>76</sup>

- (a) The division of victim services shall continue to provide training regarding provisions of this act to be used for presentation to law enforcement agencies, the law enforcement academy, prosecutors, public defenders, judges and others involved in the juvenile and criminal justice systems. The training may include:
  - (i) State and federal laws on human trafficking;
  - (ii) Methods used to identify United States citizen and foreign national victims of human trafficking;
  - (iii) Methods of prosecuting human traffickers; and
  - (iv) Methods of protecting the rights of victims of human trafficking, including collaboration with nongovernmental and other social service agencies in the course of investigating and prosecuting human trafficking cases.

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

Single party consent to audiotaping is permitted in Wyoming. Wyo. Stat. Ann. § 7-3-702(a)(i), (b)(iv) (Prohibition against interception or disclosure of wire, oral or electronic communications; exceptions; penalties) provides,

- (a) Except as provided in subsection (b) of this section, no person shall intentionally:
  - (i) Intercept, attempt to intercept, or procure any other person to intercept or attempt to intercept any wire, oral or electronic communication;
  - ....
- (b) Nothing in subsection (a) of this section prohibits:
  - ....
  - (iv) Any person from intercepting an oral, wire or electronic communication where the person is a party to the communication or where one (1) of the parties to the communication has given prior

<sup>76</sup> 2013 Wyo. Sess. Laws 280.



consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act.

Therefore, if one party to the communication consents, audiotaping the communication is permissible under Wyo. Stat. Ann. § 7-3-702(a).

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

Offenses related to domestic minor sex trafficking are not included as crimes for which a wiretapping order may be issued. Under Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications), applications for orders authorizing the use of wiretapping may only be requested when the investigation involves a violation of the Wyoming Controlled Substances Act of 1971 or a specified crime incident to or discovered while investigating a violation of the Wyoming Controlled Substances Act of 1971.

6.3.1 Recommendation: Amend Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications) to specifically authorize the attorney general or district attorney to seek a court order permitting the use of wiretapping where the interception may provide evidence of domestic minor sex trafficking.

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.*

Wyoming's sex trafficking and CSEC statutes do not prohibit a defense to prosecution based on a law enforcement decoy posing as a minor. However, Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), a non-CSEC offense, makes it a crime to "solicit[], procure[] or knowingly encourage[] . . . a person purported to be less than the age of fourteen (14) years." The term "purported" makes this provision broad enough to allow the use of a decoy by law enforcement in the investigation of a violation of Wyo. Stat. Ann. § 6-2-318. Therefore, a defense would not be available based on the fact that an actual minor was not involved.

6.4.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution) to expressly authorize law enforcement's use of a decoy posing as a minor to investigate offenses of sex trafficking in which a minor is used in prostitution or live sexual performance.

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

Using the Internet or electronic communications to investigate buyers and traffickers is seemingly permissible under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) based on use of the term "purported." Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult trafficker

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 [Definitions] . . . .

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

Reporting of missing children and located missing children is not statutorily mandated. However, "[d]uring the

1990 Wyoming legislative session, the legislature mandated “The Office of the Attorney General shall establish and operate a central repository of information and clearinghouse on missing children and missing persons.”<sup>77</sup> Under Wyoming’s current “Amber Alert Plan”:

Each state or local program establishes its own AMBER Plan criteria; however, the National Center for Missing & Exploited Children suggests the following criteria should be met before an Alert is activated:

Law enforcement confirms a child has been abducted.

A child is considered seventeen years old or younger.

Law enforcement will only activate an Amber Alert if it is believed the circumstances surrounding the abduction indicate that the child is in danger of serious bodily harm or death.

There is enough descriptive information about the child, abductor, and/or suspect’s vehicle to believe an immediate broadcast alert will help in the safe return of the child.<sup>78</sup>

- 6.6.1 Recommendation: Enact a law requiring law enforcement and child welfare services to report missing and located missing children to the clearinghouse on missing children and to the National Crime Information Center (NCIC) database to ensure law enforcement have information to identify missing and runaway children who are at high risk for sex trafficking.

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<sup>77</sup> Wyoming Division of Criminal Investigation, Office of the Attorney General, *Wyoming Missing Person Clearinghouse: 2014 Annual Report*, 1 (2014), [https://4e5d2660-a-84cef9ff-s-sites.googlegroups.com/a/wyo.gov/dci---public/files/2014%20MP%20Annual%20Rpt.pdf?attachauth=ANoY7cphzWHHjmhMI5be-H\\_R6YuxT7KE7KjRKI3xtLbF2KGGKQnGrC0gNPEyVmOuyMS9KUWJ9-YtiXu8yD3c0k4CpQbgCi-rSODWfHRaEM3SbsbsaAXWILTj-g5TfmrCXStfouKpf9gX40ZvzVfMPrXBBD9ahPyHeDFWQ\\_fXqVVfT91dWxwxT6Z7eVEXaDqZ\\_nRyI2\\_MXTeS1rwyUkxU\\_dGy1NAhrhj8PDTto4omQ6bTtGS0ZXFnqt-s%3D&attredirects=0](https://4e5d2660-a-84cef9ff-s-sites.googlegroups.com/a/wyo.gov/dci---public/files/2014%20MP%20Annual%20Rpt.pdf?attachauth=ANoY7cphzWHHjmhMI5be-H_R6YuxT7KE7KjRKI3xtLbF2KGGKQnGrC0gNPEyVmOuyMS9KUWJ9-YtiXu8yD3c0k4CpQbgCi-rSODWfHRaEM3SbsbsaAXWILTj-g5TfmrCXStfouKpf9gX40ZvzVfMPrXBBD9ahPyHeDFWQ_fXqVVfT91dWxwxT6Z7eVEXaDqZ_nRyI2_MXTeS1rwyUkxU_dGy1NAhrhj8PDTto4omQ6bTtGS0ZXFnqt-s%3D&attredirects=0) (last visited July 24, 2016).

<sup>78</sup> Wyoming Division of Criminal Investigation, *Wyoming AMBER Alert Plan*, <http://wyomingdci.wyo.gov/dci-criminal-justice-information-systems-section/control-terminal/amber> (last visited July 24, 2016).

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