

# RICO Prosecution and DMST Offenses

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## **INTRODUCTION**

The United States has declared that human trafficking is a fundamental human rights violation, and has passed legislation designed to eradicate such offenses. The Trafficking Victims Protection Act (TVPA) was enacted in 2000 and has made great strides in combating human trafficking.

However, crime is constantly changing. This is particularly true for gang related crimes and human trafficking crimes. Recently, human trafficking rings have begun to resemble organized criminal enterprises, and already existing criminal street gangs have begun engaging in human trafficking. The parallels between the human-trafficking problem and other forms of organized crime suggest that prosecutors should utilize the Racketeer Influenced and Corrupt Organizations Act (“RICO”), intended specifically to eliminate organized crime, in conjunction with the TVPA to more successfully eradicate these human-trafficking enterprises.

## **HUMAN TRAFFICKING AND GANGS: A CONTEMPORARY RELATIONSHIP**

### **Domestic Minor Sex Trafficking and the TVPA**

Human trafficking is a phenomenon that affects victims worldwide. Domestic minor sex trafficking (DMST) is the commercial sexual exploitation of American children within U.S. borders. It is the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” where the person is a U.S. citizen or lawful permanent resident under the age of 18 years.<sup>1</sup> The age of the victim is the critical issue. There is no requirement to prove that force, fraud, or coercion was used to secure the victim’s actions. In fact, the law recognizes the effect of psychological manipulation by the trafficker, as well as the effect of threat of harm which traffickers use to maintain control over their young victims.<sup>2</sup>

DMST includes but is not limited to the commercial sexual exploitation of children through prostitution, pornography, and/or stripping. Experts estimate at least 100,000 American children are victimized through prostitution in America each year. Other estimates range as high as 300,000.<sup>3</sup> Domestic minor sex trafficking is child sex slavery, child sex trafficking, prostitution of children, commercial sexual exploitation of children (CSEC), and rape of a child.<sup>4</sup>

In 2000, Congress passed the Trafficking Victim Protection Act (TVPA), which was the first federal law specifically designed to prevent victimization, protect victims and prosecute

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<sup>1</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Division A (signed into law on October 29, 2000); codified as amended at 22 USC §7102 et seq.; hereinafter “TVPA.”

<sup>2</sup> *Id.* at §1591(b)(2)

<sup>3</sup> See LINDA SMITH, NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING 4 (Shared Hope International 2009); hereinafter “SHI National Report.”

<sup>4</sup> *Id.* at iv, 4

perpetrators of human trafficking.<sup>5</sup> The TVPA criminalizes all human trafficking, but includes sections which directly impact the prosecution of the sex trafficking of America's children. Pursuant to the TVPA, the sex trafficking of children occurs when minors (under the age of 18) are commercially sexually exploited. The commercial aspect of the sexual exploitation act is critical to separating the crime of trafficking from sexual assault, rape, or molestation crimes against children. The term "commercial sex act" is defined in the TVPA as the giving or receiving of anything of value (money, drugs, shelter, food, clothes, etc.) to any person in exchange for a sex act. The money or item of value provided for the sex act can be "given to or received by any person."<sup>6</sup>

Former Chief Counsel for the Human Smuggling and Trafficking Center of the Department of Justice Cynthia Shepherd Torg argued that "effective prosecution is the linchpin to eradicating human trafficking. Prosecution, combined with the imposition of significant penalties, not only provides protection by eliminating the perpetrator's immediate ability to exploit the victim, but also serves to deter future criminal acts."<sup>7</sup> To accomplish this goal, the TVPA introduced several new prosecutorial tools to fight human trafficking. The Act enacted Section 1591, which prohibits the use of force, threats or coercion to cause a person to engage in a commercial sex act. The statute also prohibits the sex trafficking of children under the age of 18, regardless of whether or not force was utilized.<sup>8</sup> The statute reaches anyone who "benefits, financially or by receiving anything of value, from participation in a venture which has engaged in [a commercial sex act]."<sup>9</sup> The TVPA also introduced § 1594, making any attempt to violate a human-trafficking statute punishable to the same extent as the completed crime.<sup>10</sup> This becomes especially relevant in light of the sex trafficking statute, which allows for prosecution only when the act has been completed.

In 2005, Congress amended the TVPA to permit the forfeiture of a trafficker's assets.<sup>11</sup> The Trafficking Victims Protection Reauthorization Act of 2008 added a conspiracy provision, and introduced a "reckless disregard" alternative to the culpability standard of the sex trafficking statute, which was previously limited to those who "knowingly" used force or coercion.

Although the TVPA has provided prosecutors with excellent tools for prosecuting individual offenders, human trafficking rings have become more complex, requiring additional legislative tools to effectively combat traffickers.

### **Human Trafficking and Organized Crime**

The traffickers of minors, also known as pimps, are those who benefit by receiving cash or other value in exchange for sexual use of a minor by another person. In Shared Hope International's

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<sup>5</sup> TVPA, 22 U.S.C. §7101, et seq.

<sup>6</sup> TVPA, 22 U.S.C. 7101 §103(3)

<sup>7</sup> See Human Trafficking and RICO: A New Prosecutorial Hammer in the War on Modern Day Slavery, 180 Geo. Mason L. Rev. 759, 772 (2011); See also Developments in the Law: Jobs and Borders, 118 HARV. L. REV. 2171, 2186 (2005).

<sup>8</sup> 18 U.S.C. §1591(a)

<sup>9</sup> 18 U.S.C. §1591(a)(2)

<sup>10</sup> 18 U.S.C. §1594

<sup>11</sup> Trafficking Victims Protection Reauthorization Act of 2005, (codified at 18 U.S.C. § 2428).

National Report on Domestic Minor Sex Trafficking, SHI found family members, friends, and boyfriends, as well as strangers, operating as pimps in every location researched. Nearly all minors engaged in prostitution have a pimp.<sup>12</sup> A staff member at WestCare Nevada, a shelter for at-risk youth in Las Vegas, suggests that statistics underestimate the number of familial traffickers; potentially as many as 30% of domestically trafficked minors who receive services through WestCare Nevada are exploited by family members.<sup>13</sup>

Recently, federal, state and local law enforcement officials have observed a growing involvement of street gangs in alien smuggling, human trafficking and prostitution. Gang involvement in these markets is primarily due to the higher profitability and lower risks of detection and punishment, compared to drug trafficking.

Many gangs are actively participating in human trafficking and prostitution. The Bloods, MS-13, Sureños, and Somali gangs have been reportedly involved in human trafficking, according to multiple law enforcement and National Gang Intelligence Center reporting. Asian gangs, Bloods, Crips, Gangster Disciples, MS-13, Sureños, Vice Lords, and members of Outlaw Motorcycle Gangs (OMGs) are involved in prostitution operations, according to FBI, NGIC, and multiple law enforcement reporting. In November 2010, federal law enforcement officials indicted 29 members of a Somalian gang in Minneapolis for operating an interstate sex trafficking ring that sold and transported underage African-American and Somalian females from Minneapolis, Minnesota, to Columbus, Ohio, and Nashville, Tennessee, for prostitution, according to FBI and ICE. Prostitution is reportedly the second largest source of income for San Diego, California gangs.<sup>14</sup>

This shift from human trafficking as a crime perpetuated by individuals to an element of organized crime requires a different prosecutorial tool. Prosecutors should utilize the Racketeer Influenced and Corrupt Organization Act (RICO), intended specifically to eradicate organized crime, to prosecute human trafficking violations.

### **RICO: OVERVIEW AND ELEMENTS**

The Organized Crime Control Act (OCCA), which strengthened the ability of the federal government to combat and prosecute criminal organizations, was enacted in 1970. The purpose of the act was “to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.”

The Racketeer Influenced and Corrupt Organizations (RICO) Act was enacted as Title IX of the OCCA. RICO was enacted to eliminate “the infiltration of organized crime and racketeering into

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<sup>12</sup> SHI National Report , pg 7

<sup>13</sup> M. Alexis Kennedy, Ph.D. and Nicole Joey Pucci, M.A. Domestic Minor Sex Trafficking Assessment Report — Las Vegas, Nevada (Shared Hope International: August 2007),106.

<sup>14</sup> National Gang Threat Assessment 2011: Emerging Trends 25-26. (National Gang Intelligence Center 2011). <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment-emerging-trends> (Accessed August 6, 2012).

legitimate organizations operating in interstate commerce.”<sup>15</sup> Congress hoped to substantially reduce the infiltration of organized crime in legitimate businesses by criminalizing certain activities performed by individuals in relation to organizations.<sup>16</sup>

Through RICO, Congress greatly strengthened the government’s ability to prosecute members of organized crime, particularly members who had previously been “untouchable” because of their insulation within the organization.<sup>17</sup> They did this by enacting a provision stating that RICO “shall be liberally construed to effectuate its remedial purpose.”<sup>18</sup> Under this provision, the government has been able to extend RICO to numerous types of organizations, both legitimate and illegitimate.

Based upon this provision, the Supreme Court interpreted RICO in a way that permits a RICO prosecution of a criminal street gang. In United States v. Turkette, the Court held that the organization affected by or associated with criminal activity could be either a legal or illegal entity.<sup>19</sup> RICO was applicable in situations where the organization was purely criminal in nature.<sup>20</sup> Over ten years later, the Supreme Court again expanded the scope of RICO prosecutions in National Organization for Women, Inc. v. Scheidler. There the Court determined that an organization did not have to have an economic motive to fall under the reach of the RICO statute.<sup>21</sup>

These changes demonstrate the extensiveness of the RICO statute. The Supreme Court has noted that “[t]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”<sup>22</sup>

### **Criminal Activities Under RICO**

The RICO statute criminalizes four types of actions: (1) investing income derived from a pattern of racketeering activity or collecting an unlawful debt to obtain an interest in an enterprise affecting interstate or foreign commerce; (2) obtaining or maintaining through a pattern of racketeering activity or through collection of an unlawful debt “any interest in or control of” an enterprise affecting interstate or foreign commerce; (3) working for or associating with an

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<sup>15</sup> S. Rep. No. 91-617, at 80 (1969)

<sup>16</sup> *Id.*; See also Yvette M. Mastin, RICO Conspiracy: Dismantles the Mexican Mafia and Disables Procedural Due Process (2001) William Mitchell College of Law.

<sup>17</sup> Congress stated that the purpose of RICO is “[t]o seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.” Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (1970); Russello v. United States, 464 U.S. 16, 19 (1983) (showing that the defendant was significantly insulated from the predicate acts of the “association in fact” enterprise formed to commit arson and defraud insurance companies).

<sup>18</sup> 18 U.S.C. § 1961 (2000) (quoting Pub. L. § 91-453 which provides that “(a) the provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purpose”).

<sup>19</sup> United States v. Turkette, 452 U.S. 576, 585(1981)

<sup>20</sup> *Id.*

<sup>21</sup> National Organization for Women, Inc. v. Scheidler, 510 U.S. 249, 262 (1994).

<sup>22</sup> Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985) (quoting Harco, Inc. v. Am. Nat’l Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (1994)).

enterprise which affects interstate or foreign commerce through a pattern of racketeering activity or through the collection of an illegal debt to manage or conduct the affairs of such an enterprise; or (4) conspiracy to violate any of the other sections.<sup>23</sup>

The first three actions are considered “substantive” offenses.<sup>24</sup> A conspiracy to violate a RICO offense, charged under 18 U.S.C. §1962(d) is slightly different from a general conspiracy offense. In Salinas v. United States, the Court determined that a RICO conspiracy charge did not require proof of an overt act “to effect the object of the conspiracy,” as is generally required by a federal conspiracy statute.<sup>25</sup>

### **Elements of a Substantive RICO Offense**

Most criminal defendants are charged with violating subsection (c), which makes it a crime for “any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debts.”<sup>26</sup> In order to prove a violation of subsection (c), the government must prove (1) the existence of the enterprise; (2) the pattern of racketeering activity; (3) the effect on interstate or foreign commerce; and (4) the conduct of the defendant in relation to the enterprise. Each of these elements is discussed in turn.

### **The Existence of the Enterprise**

Pursuant to the RICO statutory definition, an “enterprise” is “[a]ny individual, partnership, corporation, association or other legal entity and any union or group of individuals associated in fact although not a legal entity.”<sup>27</sup> However, the Supreme Court has since interpreted a broader meaning of the term “enterprise,” defining it in United States v. Turkette as a “group of persons associated together for a common purpose of engaging in a common course of conduct.”<sup>28</sup> This sort of “associated in fact” enterprise is “an ongoing organization, formal or informal,” where its associates function as a “continuing unit” to achieve shared illegal objectives.<sup>29</sup> This sort of enterprise must have “an existence beyond that which is necessary merely to commit each of the acts charged as predicate racketeering offenses.”<sup>30</sup>

A gang is defined as a “number of people associated in some way.”<sup>31</sup> Consistent with this definition, most criminal street gangs qualify as an “association in fact” enterprise for the purpose of RICO.

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<sup>23</sup> 18 U.S.C. §1962(a)-(d)

<sup>24</sup> Salinas v. United States, 522 U.S. 52 (1997) (referring to violations of 18 U.S.C. § 1962(a), (b), and (c) as substantive RICO offenses).

<sup>25</sup> *Id.* at 63

<sup>26</sup> 18 U.S.C. §1962(c)

<sup>27</sup> 18 U.S.C. §1961

<sup>28</sup> United States v. Turkette, 452 U.S. 576, 583 (1981)

<sup>29</sup> *Id.*

<sup>30</sup> United States v. Riccobene, 709 F.2d 214, 224 (3<sup>rd</sup> Cir. 1983)

<sup>31</sup> Webster’s New Twentieth Century Dictionary (2d ed. 1983)

## The Conduct of the Defendant

Subsection (c) criminalizes the act of conducting or participating in the conduct of an enterprise's affairs.<sup>32</sup> In Reves v. Ernst & Young, the Supreme Court found that a violation of subsection (c) could be found against those "who participated in the operation or management of an enterprise through a pattern of racketeering activity."<sup>33</sup> In this opinion, the Court sought to determine the requisite level of involvement with the enterprise's affairs required to be liable under this provision.<sup>34</sup> The Court focused on the use of the word "participate" and the second use of the word "conduct," with respect to legislative intent. The Court reasoned that the word "participate" meant "to take part in" and the second use of the word "conduct" meant "to lead, run, manage or direct."<sup>35</sup> The Court went on to say that RICO liability was not limited to those with primary responsibility for the enterprise's affairs, but that *some* part in directing the enterprise's affairs is required and that to determine this, courts should apply an "operation and management test."<sup>36</sup> The Court also explained that "an enterprise is 'operated' not just by upper management but also by lower rung participants in the enterprise who are under the direction of upper management" and that "an enterprise might also be 'operated' or 'managed' by others 'associated with' the enterprise who exert control over it as, for example, bribery." The Court declined to decide in this case how far §1962(c) extends down the ladder of operation.<sup>37</sup> The Court did determine that § 1962(c) could not reach those outside the enterprise because "liability depends on showing that the defendants conducted or participated in the conduct of the 'enterprise's affairs' not just their *own* affairs.

As Reves left unanswered just how far down an enterprise's ladder §1962(c) reaches, lower federal courts have taken on this burden, and have come up with very different interpretations. The First Circuit, in United States v. Oretto<sup>38</sup>, has held that "Congress intended to reach *all* who participate in the conduct of such an enterprise, 'whether they are generals or foot soldiers'" and that "one may take part in the 'conduct' of an enterprise by knowingly implementing decisions as well as by making them."<sup>39</sup> However, the Oretto court did specify that an underling's role has to be "plainly integral to carrying out" the racketeering activities.

The Eighth Circuit, in United States v. Darden, decided on a similar interpretation and "approved a jury instruction that an enterprise may be 'operated' by lower-rung participants who are under the direct management, and that one may conduct or participate in the conduct of the affairs of the enterprise by merely performing acts that are 'necessary or helpful to its operation.'<sup>40</sup>

The Second Circuit has taken a different interpretation than the First and Eighth Circuits, however, and requiring that an underling be held liable only if they "exercise appreciable discretionary authority." Similarly, the Seventh Circuit, in Emery v. American Gen. Fin., held

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<sup>32</sup> 18 U.S.C. §1962(c)

<sup>33</sup> Reves v. Ernst & Young, 507 U.S. 170, 184 (1993)

<sup>34</sup> *Id.* at 172

<sup>35</sup> *Id.* at 177, 179

<sup>36</sup> *Id.* at 179

<sup>37</sup> *Id.* at 184 n.9.

<sup>38</sup> United States v. Oretto, 37 F.3d 739, 750 (1st Cir. 1994).

<sup>39</sup> David B. Smith & Terrance G. Reed, 1-5 Civil RICO P 5.04(3)(a) (Matthew Bender).

<sup>40</sup> See *supra* note 39.

that “in order for a corporate employee to conduct or participate in the conduct of the corporation through a pattern of racketeering activity, the employee must be a part of the corporate ‘control group,’ or at least part of a group that controls a corporate division or other identifiable branch or unit that they ‘made their own little bailiwick.’”<sup>41</sup>

In most criminal RICO cases, however, “[l]ower level persons within the chain of command have been held to operate or manage, within Reves, if they exercise broad discretion or knowingly implement criminal decisions.”<sup>42</sup> Some courts have tried to get around this issue by instead charging lower-rung people with conspiracy or aiding and abetting.<sup>43</sup>

The breadth of conduct included under the RICO statute makes it an ideal charging mechanism for gang members. The upper echelons of criminal street gangs may be very small, while the low level members carry out numerous crimes. RICO permits prosecutors to reach a range of offenders.

### **The Pattern of Racketeering Activity**

Statutorily, a “pattern of racketeering activity” must include “at least two acts of racketeering activity.” One of these predicate acts must have occurred within five years prior to the return of the indictment and the other no more than ten years earlier.<sup>44</sup> Predicate acts which constitute racketeering activity include numerous crimes including, but not limited to, murder, kidnapping, gambling, arson, robbery, extortion, money laundering, human trafficking, and wire and mail fraud.<sup>45</sup> There are a number of human trafficking and CSEC offenses included under the reach of the federal RICO law. The relevant offenses include peonage, slavery, trafficking in persons, sexual exploitation of children, and white slave traffic.<sup>46</sup>

The government must also show that these two predicate acts are related and that there is a continuity of criminal activity, such that a “pattern” of racketeering activity is established.<sup>47</sup> The relation between predicate acts may be established by a showing that the acts were related to the same enterprise in some way.<sup>48</sup> In Sedima, S.P.R.L. v. Imrex Co. Inc., the Supreme attempted to define a “pattern of activity” and determined that a pattern consists of “continuity plus relationship.”<sup>49</sup> “Criminal conduct forms a pattern if it embraces criminal acts that have the

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<sup>41</sup> See *supra* note 39.

<sup>42</sup> Civil RICO A Definitive Guide; see also United States v. Diaz, 176 F.3d 52 (2d Cir. 1999); United States v. Posada-Rios, 158 F.3d 832 (5th Cir. 1998); United States v. Allen, 155 F.3d 35 (2d Cir. 1998).

<sup>43</sup> See *supra* note 39 at n.44.17.

<sup>44</sup> 18 U.S.C. § 1961(5)(2000).

<sup>45</sup> 18 U.S.C. § 1961(1).

<sup>46</sup> 18 U.S.C. § 1962(1) (Definitions).

<sup>47</sup> E.g., H.J. Inc. v. N.W. Bell Tel. Co., 492 U.S. 229, 240-42 (1989) (noting that while two predicate acts are necessary to form a RICO pattern they may not be sufficient unless they are both related and amount to or pose a threat of continued criminal activity); Tel-Phonic Serv., Inc. v. TBS Int'l, Inc., 975 F.2d 1134, 1140 (5th Cir. 1992) (holding that the minimum requisite number of predicates is not sufficient to establish a RICO pattern). The racketeering predicates “must be related and amount to or pose a threat of continued criminal activity.” *Id.* (citing H.J. Inc., 492 U.S. at 236-39).

<sup>48</sup> Turkette, 452 U.S. 576 (1981).

<sup>49</sup> Sedima, S.P.R.L. v. Imrex Co. Inc., 473 U.S. 479, 496 n.14 (1985)

same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.”

### **The Effect on Commerce**

Courts have uniformly held that to satisfy this element, the government need only show a *de minimus* effect on interstate commerce.<sup>50</sup> For a RICO violation, a prosecutor can show the effect on interstate commerce by proving one of the following: (1) the enterprise purchased, sold or distributed contraband, in interstate commerce; (2) the enterprise used interstate facilities such as interstate banking systems, telephone calls, or wire transfers; (3) members or associates of the enterprise traveled in interstate commerce or outside the United States to carry out their illegal activities; or (4) the victims of the enterprise’s illegal activities were involved in interstate commerce.<sup>51</sup>

## **BENEFITS OF PROSECUTION UNDER RICO**

### **Effects of the Comprehensive Conspiracy**

In addition to being prosecuted for a substantive RICO offense, individuals may also be prosecuted for conspiring to commit such an offense.<sup>52</sup> The key difference between a standard conspiracy charge and RICO conspiracy charge is that a RICO conspiracy charge does not require proof of an overt act committed in furtherance of the conspiracy.<sup>53</sup>

In Salinas v. United States, the defendant argued that his conviction for conspiracy to commit a substantive RICO violation should be overturned because he had neither committed nor agreed to commit two predicate acts, and was acquitted of the underlying substantive racketeering conduct.<sup>54</sup> The Supreme Court rejected that argument and held that a defendant could be convicted for violating the RICO conspiracy provision without committing an overt act. The Court stated “[t]he RICO conspiracy statute broadened conspiracy coverage by omitting the requirement of an overt act, it did not, at the same time, work the radical change of requiring the Government to prove each conspirator agreed that he would be the one to commit two predicate acts.”<sup>55</sup> Instead, the government is only required to prove that two or more people agreed to commit a substantive RICO offense and that the defendant knew of and agreed to the overall objective of the RICO conspiracy.<sup>56</sup>

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<sup>50</sup> E.g., United States v. Doherty, 867 F.2d 47 (1st Cir. 1989); United States v. Norton, 867 F.2d 1354 (11th Cir. 1989); United States v. Muskovsky, 863 F.2d 1319 (7th Cir. 1988).

<sup>51</sup> U.S. Department of Justice, Criminal Division, Organized Crime & Racketeering Section, Douglas E. Crow & Miriam Banks, Racketeering Statutes In Gang Prosecutions 1, 3 (Apr. 22, 1998) (suggesting that gangs should be defined as “association in fact” enterprises).

<sup>52</sup> 18 U.S.C. § 1962(d)

<sup>53</sup> 18 U.S.C § 371 (conspiracy statute defining an overt act as an “act to effect the object of the conspiracy”); Salinas v. United States, 522 U.S. 52, 62 (1997).

<sup>54</sup> Salinas v. United States, 522 U.S. 52, 62-63 (1997)

<sup>55</sup> Salinas v. United States, 522 U.S. 52, 62 (1997).

<sup>56</sup> *Id.*; United States v. Posada-Rios, 158 F.3d 832, 857 (5th Cir. 1998); United States v. Marmolejo, 89 F.3d 1185, 1196-97 (5th Cir. 1996).



A tenuous connection between the defendant and the conspiracy itself may be sufficient. In United States v. Deitz, the Sixth Circuit affirmed the defendant's conviction after he and thirty-seven co-defendants were indicted for RICO conspiracy charges related to drug trafficking and firearms offenses.<sup>57</sup> Deitz claimed on appeal that there was not enough evidence to support the RICO conspiracy conviction. The court, however, held that "[o]nce a conspiracy is shown beyond a reasonable doubt, a defendant's connection to the conspiracy, 'need only be slight, and the government is only required to prove that the defendant was a party to the general conspiratorial agreement.'"<sup>58</sup>

The RICO conspiracy statute has far reaching implications in the fight against domestic minor sex trafficking. As previously discussed, the paradigm of child sex trafficking has shifted and now often occurs as a result of a larger conspiracy. A broader conspiracy statute that does not require the conspirator to commit the underlying predicate acts, but only requires that he share a common purpose with his co-conspirators, enables prosecutors to target all members of the trafficking enterprise, from the smugglers and pimps, to the facilitators such as hotel owners. It also permits prosecutors to target other gang members, including those who are not directly involved in the trafficking of minors.

### **Harsher Penalties**

Prosecution of human trafficking offenses under the RICO statute may result in longer prison sentences and far-reaching financial implications. A federal criminal RICO violation carries with it a potential twenty year prison sentence or more if the underlying offense carries a greater penalty.<sup>59</sup> Under federal law, a defendant may be charged with both a substantive RICO offense as well as conspiracy to violate RICO, a combination which carries a forty year sentence.<sup>60</sup> Additionally, a prosecutor may allege the predicate acts as separate and additional offenses in the indictment, potentially raising the prison term even higher.<sup>61</sup> Thus, utilizing a RICO charge would allow prosecutors to charge a violation of a substantive RICO offense, as well as violations of the TVPA. Indeed, one court has commented that "Congress clearly intended to permit, and perhaps sought to encourage, the imposition of cumulative sentences for RICO offenses and the underlying crimes."<sup>62</sup>

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<sup>57</sup> United States v. Dietz, 577 F.3d 672, 676-677 (6th Cir. 2009).

<sup>58</sup> *Id.* at 677 (quoting United States v. Avery, 128 F.3d 966, 971 (6th Cir. 1997)).

<sup>59</sup> See 18 U.S.C. § 1963(a) (2006). The Organized Crime and Racketeering Section will approve a RICO count seeking a sentence beyond twenty years if: (1) the count charges against the defendant a racketeering act for which the penalty includes life imprisonment; (2) the racketeering act charges the necessary facts to trigger the life imprisonment penalty, tracking that portion of the statute that sets forth the factors supporting a penalty of life imprisonment; and (3) the racketeering act cites the appropriate statute or statutes the racketeering act violates.

<sup>60</sup> *Id.*; ORGANIZED CRIME AND RACKETEERING SECTION, U.S. DEP'T OF JUSTICE, CRIMINAL RICO: 18 U.S.C. §§ 1961-1968, A MANUAL FOR FEDERAL PROSECUTORS 159, 177 (Frank J. Marine ed., 5th rev. ed. 2009) [hereinafter RICO PROSECUTOR'S MANUAL], available at [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/rico.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/rico.pdf) (Accessed July 10, 2012)

<sup>61</sup> *Id.* at 177

<sup>62</sup> United States v. Kragness, 830 F.2d 842, 864 (8th Cir. 1987) (citing United States v. Sutton, 700 F.2d at 1081); and United States v. Truglio, 731 F.2d 1123, 1129-30 (4th Cir. 1984); see also United States v. Deshaw, 974 F.2d 667, 672 (5th Cir. 1992) ("each provision [RICO and the underlying predicate] is unambiguous and authorizes punishment for a violation of its terms."); United States v. Baker, 63 F.3d 1478, 1494 (9th Cir. 1995); United States v. Grayson, 795 F.2d 278, 286 (3d Cir. 1986) 178 ("Congress intended to permit the imposition of cumulative

Because RICO prohibits continuous patterns of racketeering, it enables prosecutors to bring RICO charges that encompass actions that would otherwise be prohibited by a statute of limitations or have already been the subject of a separate state or federal criminal matter.<sup>63</sup> For example, where a defendant commits a human trafficking violation and is convicted or the statute of limitations has run, and the defendant commits an additional racketeering act within the appropriate time frame, he may be indicted on a RICO charge, which includes as a predicate act, the first human trafficking offense.

Prosecutors are additionally armed with the ability to enforce financial penalties through the asset forfeiture provision in 18 U.S.C. §1963. This statute requires the forfeiture of any interest or property gained as a result of a RICO violation.<sup>64</sup> Congress included the criminal forfeiture provision in RICO to “break the economic power of organized crime as well as to punish and deter offenders.”<sup>65</sup> The asset forfeiture provision provides for the forfeiture of the defendant’s entire interest in the enterprise (possibly including the enterprise itself), regardless of whether or not some part of the enterprise are engaged in legitimate business.<sup>66</sup> Section 1963(a)(3) requires a defendant to forfeit all proceeds acquired from a RICO violation, as determined by the court, even if the defendant no longer possesses the funds or uses other funds to meet the forfeiture order.<sup>67</sup>

The government need not prove that the assets subject to forfeiture were directly involved in the criminal acts. As the Eleventh Circuit explained in United States v. Ginsburg,<sup>68</sup> “Since RICO forfeiture is a sanction against the individual defendant rather than a judgment against the property itself, ‘it follows the defendant as a part of the penalty and thus it does not require that the government trace it, even though the forfeiture is not due until after conviction.’”<sup>69</sup> This prevents the government from having to align forfeited assets with specific criminal activity and ensures that the forfeiture provision covers the entire enterprise. Such a broad range of forfeiture may cripple the entire criminal enterprise.

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sentences for both RICO and the underlying predicate offense.”); United States v. Thomas, 757 F.2d 1359, 1369 1370 (2d Cir. 1985) (same); United States v. Mitchell, 777 F.2d 248, 264 (5th Cir. 1985).

<sup>63</sup> See, e.g., United States v. Wong, 40 F.3d 1347, 1367 (2d Cir. 1994) (“Because the limitations period is measured from the point at which the crime is complete, a defendant may be liable under substantive RICO for predicate acts the separate prosecution of which would be barred by the applicable statute of limitations.” (citations omitted)); United States v. Castellano, 610 F. Supp. 1359, 1413-27 (S.D.N.Y. 1985) (upholding thirty-six racketeering acts that were either the subject of prior state or federal prosecutions or the subject of a favorable federal ruling).

<sup>64</sup> 18 U.S.C. § 1963(a);

<sup>65</sup> G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1036 n.154 (1980).

<sup>66</sup> See, e.g., United States v. Segal, 495 F.3d 826, 838 (7th Cir. 2007) (finding that a defendant who owned the entire enterprise was properly required to forfeit the full enterprise, despite the jury’s finding that only 60 percent of his interests were “tainted” by racketeering activity); United States v. Najjar, 300 F.3d 466, 485-86 (4th Cir. 2002) (upholding order subjecting all of corporation’s assets to forfeiture); United States v. Busher, 817 F.2d 1409, 1413 (9th Cir. 1987) (“[F]orfeiture is not limited to those assets of a RICO enterprise that are tainted by use in connection with racketeering activity, but rather extends to the convicted person’s entire interest in the enterprise.”);

<sup>67</sup> 18 U.S.C. § 1963(a)(3).

<sup>68</sup> United States v. Ginsberg, 773 F.2d 798 (7th Cir. 1985).

<sup>69</sup> *Id.* at 801 (quoting United States v. Conner, 752 F.2d 566, 576 (11th Cir. 1985)).

A prosecution under the RICO statute offers the government a smorgasbord of charging options, from alleging a single substantive RICO count to alleging a substantive count, conspiracy counts, counts of predicate acts, as well as asset forfeiture. Each of these results in potentially longer prison sentences and far reaching asset forfeiture implications.

### **Prosecutorial Discretion**

The RICO statute affords a great deal of power to prosecutors, in charging, trying and sentencing a case. The statute permits a prosecutor to charge a substantive RICO offense without specifying the type of enterprise that forms the basis of the charge. “The precise description of the enterprise alleged in the indictment will rarely be relevant to determinative legal questions in a RICO prosecution, because the amorphous nature of the statute gives prosecutors remarkable flexibility in drafting indictments.” This flexibility continues to trial because the enterprise theory alleged in the indictment and the one relied on in the courtroom do not have to be the same.

Prosecutors are also permitted to join crimes that otherwise might not be subject to joinder. Federal Rule of Criminal Procedure 8(a) permits joinder of offenses only if they “are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.”<sup>70</sup> Moreover, defendants cannot be joined unless they “are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses.”<sup>71</sup> Joinder is also prohibited where such joining of offenses in a single indictment may unfairly prejudice the defendant.<sup>72</sup>

RICO’s unique structure, however, enables joinder of these types of offenses. Because the goal of a RICO prosecution is to prove the existence of an enterprise and a pattern of racketeering activity, not any individual crime, diverse offenses committed by different defendants may be joined. “Joinder of multiple defendants in RICO prosecutions is particularly appropriate even if each defendant is charged with committing different predicate acts as part of the alleged pattern of racketeering activity. Indeed, where a series of acts are properly alleged as a pattern...those acts ‘constitute part of a series of acts or transactions constituting an offense’ within the meaning of Rule 8(b).”<sup>73</sup> “Moreover, in RICO prosecutions there is little danger of prejudice from spillover evidence because evidence is generally admissible against all RICO defendants to prove the existence and nature of the racketeering enterprise and the relationship and continuity of the predicate acts which is needed to establish a pattern of racketeering activity.”<sup>74</sup>

The RICO conspiracy statute, in particular, allows for joinder with very few limitations. In United States v. Gallo, the court stated:

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<sup>70</sup> Fed. R. Crim.Pro. 8(a)

<sup>71</sup> Fed. R. Crim. Pro. 8(b)

<sup>72</sup> Fed. R. Crim. Pro. 14.

<sup>73</sup> United States v. Triumph Capital Group, Inc. Et AL., 3:00CR217 (United States District Court, District of Connecticut). Ruling on Motion for Severance, 6.

<http://www.ctd.uscourts.gov/Opinions/041802.AHN.Triumph1.pdf> (Accessed August 6, 2012)

<sup>74</sup> *Id.*

With the enactment of RICO, Congress supplemented traditional "chain" and "wheel" theories with a new conspiratorial concept—the enterprise. (citation omitted). This new notion furnishes prosecutors a much broader scope of authority for joining defendants who are alleged to have participated in a common grouping or association. The RICO conspiracy consists of an agreement to violate the "substantive" RICO law, that is, a conspiracy "to conduct or participate, directly or indirectly, in the conduct of [the] enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt," 18 U.S.C. § 1962(c), rather than of a conspiracy to perform any particular predicate crime. The "gravamen" of this kind of conspiracy is the agreement on the "overall" objective, namely, to participate in the affairs of the enterprise. (citations omitted). Joinder under Rule 8(b), therefore, is automatically authorized simply through the RICO conspiracy charge, which supplies the "sufficient nexus" to tie the various defendants and the diverse predicate offenses together. (citations omitted). The limitations on the prosecution's power to charge are virtually eviscerated by the RICO conspiracy device.<sup>75</sup>

Thus, "[t]he RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise."<sup>76</sup> RICO conspiracy statute permits prosecutors to reach even the tenuous members of the conspiracy. This is particularly important in the prosecution of human trafficking offenses, where many of the members operate as facilitators.

Additionally, because forfeiture is mandatory under the RICO statute, prosecutors gain control of a portion of the defendant's sentence – financial penalties. This increases prosecutors' bargaining power.

## **HUMAN TRAFFICKING AND RICO: THE INITIAL OFFENSES**

### **U.S. v. Pipkins**

In 2001, police arrested fifteen Atlanta pimps. A grand jury returned a 265 count indictment, naming those pimps as defendants and charging conduct spanning from 1997 to November 2001. Thirteen of the pimps pleaded guilty, and two (defendants Pipkins and Moore) proceeded to trial.

The jury found defendants Pipkins and Moore guilty of Count 1, which charged them with conspiring to participate in a juvenile prostitution enterprise affecting interstate commerce through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d). It alleged as RICO predicate acts: juvenile prostitution, kidnapping, extortion, money laundering, transferring false identification documents, distributing controlled substances to minors, and making threats of murder. The Government proceeded at trial on a theory that the overall objective of the conspiracy was to make money prostituting juveniles.

Pipkins was also found guilty on the following counts: (8) enticing juveniles to engage in prostitution, in violation of 18 U.S.C. § 2422(b); (84) using interstate facilities to carry on prostitution, in violation of 18 U.S.C. § 1952(a)(3); (104) and (105), extortion, in violation of the

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<sup>75</sup> United States v. Gallo, 668 F. Supp. 736, 747 (NY 1987)

<sup>76</sup> United States v. Elliot, 571 F.2d 880, 903 (5th Cir.1978).

Hobbs Act, 18 U.S.C. § 1951; (172) involuntary servitude, in violation of 18 U.S.C. § 1584; (244) transfer of false identification documents, in violation of 18 U.S.C. § 1028; (252) distribution of marijuana and cocaine to minors, in violation of 21 U.S.C. § 859.

The district court sentenced Pipkins to 20 years' imprisonment on Count 1; 5 years' imprisonment on Count 84; 20 years' imprisonment on Count 104; 20 years' imprisonment on Count 105; 20 years' imprisonment on Count 172; and 15 years' imprisonment on Count 244; these sentences to run concurrently. Pipkins was also sentenced to 10 years' imprisonment on Count 252 and 10 years' imprisonment on Count 8, to run concurrently with each other but consecutive to sentences on all other Counts. Thus, Pipkins' total sentence of imprisonment was 30 years.<sup>77</sup>

Although Pipkins was not specifically charged with violating the federal sex trafficking statute, this case is an excellent example of the use of the RICO statute by federal prosecutors. The RICO statute permitted the government to join all fifteen pimps in the same criminal action, even though (as defendants argued), they did not have any organization, hierarchy or leader, they did not have any continuity of membership, and that the pimps were competitors in the prostitution market. It permitted an additional RICO conspiracy charge to be alleged, a crime which carried an additional twenty years. Although Pipkins' 20 years for the RICO violation was sentenced concurrently, it could have run consecutively, bringing his sentencing to 50 years. It also permitted the government to target fifteen pimps as an organization, rather than attempting to disassemble the enterprise in a piecemeal style.

### **Giant Labor**

Though prosecutors have been able to use RICO to charge human-trafficking enterprises since 2003, the first RICO human trafficking indictment was not filed until May 6, 2009.<sup>78</sup> In that case, a federal grand jury indicted multiple defendants in the Western District of Missouri on RICO charges related to forced labor trafficking.<sup>79</sup> The indictment charged eleven defendants with 143 counts.<sup>80</sup> The indictment alleged that, since January 2001, defendant Abrorkhodja Askarkhodjaev was the leader of a criminal enterprise and directed his codefendants to carry out unlawful activities in furtherance of the enterprise. Among the predicate acts were forced labor trafficking, identity theft, harboring illegal aliens, mail fraud, conspiracy to commit money laundering, transporting illegal aliens, visa fraud, extortion, interstate travel in aid of racketeering, wire fraud and inducing the illegal entry of foreign nationals.<sup>81</sup>

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<sup>77</sup> United States v. Pipkins, 01CR00074 (11<sup>th</sup> Cir. 2004). Court of Appeals Opinion available at <http://www.ca11.uscourts.gov/opinions/ops/200214306.pdf>. (Accessed August 6, 2012).

<sup>78</sup> Press Release, Office of the United States Att'y, W. Dist. of Mo., RICO Indictment, Human Trafficking Rescue Project: Eight Uzbekistan Nationals Among 12 Charged with Racketeering, Human Trafficking, Immigration Violations (May 27, 2009) [hereinafter RICO Press Release], available at <http://www.justice.gov/usao/mow/news2009/giantlabor.ind.htm>. A superseding indictment was filed on January 7, 2010, charging eleven defendants with one-hundred-forty-three criminal counts. Indictment at 1-6, United States v. Askarkhodjaev, No. 09-00143-01/11-CR-W-ODS (W.D. Mo. Jan. 7, 2010)

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

According to the indictment, Askarkhodjaev owned and operated a labor leasing company, Giant Labor Solutions. He also associated with or controlled a dozen other businesses. Through those businesses, he secured fraudulent labor leasing contracts from hotels in numerous states. The enterprise used illegal aliens as part of its workforce to fulfill labor contracts for housekeeping, cleaning services and other duties. It required the foreign nationals to work where the enterprise assigned them, and threatened to cancel their immigration status if they did not comply. The enterprise kept a portion of each worker's pay, failed to pay overtime, and retained all taxes. It also charged the workers rent, transportation fees, uniform fees, miscellaneous and unexplained fees. "[T]his criminal enterprise lured victims to the United States under the guise of legitimate jobs and a better life, only to treat them as modern-day slaves under the threat of deportation."<sup>82</sup>

Nine of the eleven defendants charged in the Giant Labor indictment pleaded guilty to various charges in addition to forced labor trafficking, including racketeering conspiracy, fraud in foreign labor contracting, misprision of a felony, identity theft, and tax evasion.<sup>83</sup> Defendant Askarkhodjaev, the head of the Enterprise, admitted to "commit[ing] forced labor trafficking, visa fraud, fraud in foreign labor contracting, transportation of illegal aliens, extortion, interstate travel in aid of racketeering, money laundering, and mail and wire fraud, as part of a pattern of racketeering."<sup>84</sup> The Giant Labor Enterprise was effectively dismantled, proving that it is just the sort of organized criminal operation that RICO was designed to combat.

This case marks the first time that the RICO statute was used to prosecute human trafficking offenses. Although Congress amended the RICO statute in 2003 to add human trafficking offenses as predicate offenses for the purpose of establishing a RICO violation, it took six years for prosecutors to utilize this valuable tool. As Giant Labor illustrated, human trafficking rarely takes place in a vacuum. All too often, there are numerous offenses committed by multiple defendants.

### **U.S. v. Traylor**

As previously discussed, gangs are engaging in human trafficking. Prostitution is the second largest source of income for gangs in Southern California. Given the participation of criminal enterprises in the human trafficking market, RICO prosecutions offer prosecutors an abundance of tools – greater flexibility in charging indictments, harsher penalties and asset forfeiture. Since the Giant Labor case, prosecutors have been using these tools to their advantage in prosecuting human trafficking offenses.

On April 18, 2011, the United States Attorney for the Southern District of California unsealed an indictment which charged thirty-eight individuals and one Limited Liability Company (LLC) with conspiracy to violate the RICO statute. Specifically, the defendants were charged with using a corrupt enterprise to conduct a pattern of racketeering activity, namely, prostitution of

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<sup>82</sup> *Id.* <http://www.justice.gov/usao/mow/news2009/giantlabor.ind.htm>

<sup>83</sup> See Bill Draper, Man Pleads Guilty in Human Trafficking Case, BOSTON GLOBE, Oct. 20, 2010, [http://www.boston.com/news/local/massachusetts/articles/2010/10/20/man\\_pleads\\_guilty\\_in\\_human\\_trafficking\\_case](http://www.boston.com/news/local/massachusetts/articles/2010/10/20/man_pleads_guilty_in_human_trafficking_case); Press Release, U.S. Dep't of Justice, Uzbek Man Pleads Guilty to Racketeering (Aug. 19, 2010), available at <http://www.justice.gov/usao/mow/news2010/abdoollayev.ple.htm>.

<sup>84</sup> Plea Agreement at 2, United States v. Askarkhodjaev, No. 09-00143-01-CR-W-ODS (W.D. Mo. Oct. 20, 2010).

minors and adults, use of facilities of interstate commerce to promote prostitution, drug trafficking and other gang-related crimes.<sup>85</sup> Two superseding indictments were later filed, charging defendants with the original RICO violation, seven counts of Sex Trafficking of a Minor in violation of 18 U.S.C. 1591(a) and (b), and one count of Attempted Enticement of a Minor in violation of 18 U.S.C. 2422.<sup>86</sup> As of July 2012, eleven of the defendants had pleaded guilty and been sentenced, with sentences ranging from 13 months to 120 months.<sup>87</sup>

## **CONCLUSION**

Despite the fact that human trafficking has been a predicate act for the purposes of the RICO statute since 2003, prosecutors are not utilizing this valuable tool often enough. The RICO statute provides prosecutors with discretion to join crimes and defendants where joinder is generally not permitted, where crimes have been adjudicated or where the statute of limitations has run. The RICO statute provides for harsher penalties and asset forfeiture. It also provides for a very comprehensive conspiracy charge.

Human trafficking does not occur in a vacuum. Human trafficking, particularly the prostitution of minors, is a major source of income for gangs, particularly in the south. In order to effectively combat human trafficking, prosecutors must attack the organizations that traffics children, not simply the individuals.

In addition to the federal RICO statute, many states have enacted their own RICO statute. Each state's statute is, as is often the case, slightly different from the others. Below is a comparative analysis of the state's RICO laws, as they apply to human trafficking. The analysis focuses on three keys points – the scope of the RICO statute, the offenses included as predicate acts and the punishments authorized. In prosecuting a human trafficking offense, prosecutors should be concerned with the breadth of the statute, such that it will permit the indictment of traffickers, facilitators and buyers, but not the indictment of trafficking victims. Predicate acts should include both human trafficking and commercial sexual exploitation offenses. Punishment should include both imprisonment and financial penalties, such that it will require the disbanding of the enterprise. A comparative analysis follows.

## **ALABAMA**

Ala. Code § 13A-12-233 (Drug trafficking enterprise defined; punishment) is the one statute dealing with criminal enterprises and it is solely focused on drug trafficking enterprises. Ala. Code § 13A-6-26 (Compelling streetgang membership), criminalizes compelling gang membership and may reach the actions of sex trafficking networks compelling streetgang membership in its implementation of the trafficking crime. However, this offense is geared

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<sup>85</sup> Press Release, Office of the United States Att'y, Southern District of California. Members and Associates of Oceanside Crip Street Gangs and One Hotel Charged with Racketeering Conspiracy Relating to Prostitution of Minors and Adults and Other Crimes and Criminal Forfeiture (April 18, 2011) available at <http://www.justice.gov/usao/cas/press/cas11-0418-Traylor.pdf>. (Accessed August 6, 2012).

<sup>86</sup> Southern District of California, Case No. 11CR1448, Second Superseding Indictment filed 2/24/12, document number 773

<sup>87</sup> Southern District of California, Case No. 11CR1448 Docket Report, Judgments for defendants Washington, Bernard, Villareal, Bivens, Harris, Miyako Traylor, Kambanda, Samuels, Deonte Sutton, Griffith and Salazar.

toward making the forced gang membership the criminal act, rather than the predicate act of human trafficking or CSEC, which limits its use in combatting these crimes.

## **ALASKA**

Alaska has not enacted a racketeering statute. However, Alaska provides a limited penalty enhancement under Alaska Stat. § 12.55.137 (Penalties for gang activities punishable as misdemeanors) for crimes committed in furtherance of gang activity. Other gang laws, Alaska Stat. § 11.61.160 (Recruiting a gang member in the first degree) and § 11.61.165 (Recruiting a gang member in the second degree), make it a crime to recruit a gang member or induce a person to commit a crime on behalf of a gang.

## **ARIZONA**

### **RICO Statute**

Arizona's RICO act prohibits a person from acquiring or maintaining control of an enterprise through racketeering and it prohibits a person, who is employed by or associated with an enterprise, from conducting such enterprise's affairs through racketeering or from participating in the conduct of an enterprise that the person knows is being conducted through racketeering. Arizona RICO law also prohibits a person from hiring, engaging, or using a minor for any conduct preparatory to or in completion of a RICO offense. Ariz. Rev. Stat. Ann. § 13-2312(C) (Illegal control of an enterprise; illegally conducting an enterprise; classification).

Under Arizona law, an "enterprise" is defined as, among other things, an association, other legal entity, or a group of persons associated in fact although not a legal entity. Ariz. Rev. Stat. Ann. § 13-2301(D)(3) (Definitions). Arizona includes individuals or illicit as well as licit entities under its definition of "enterprise."

### **Predicate Act Requirements**

Arizona RICO law does not require a pattern of racketeering activity, but it does specify that a predicate act for the purposes of racketeering must be chargeable or indictable under Arizona law or if the act was committed outside of Arizona, that the same act would be chargeable or indictable under Arizona law if committed in Arizona. Ariz. Rev. Stat. Ann. § 13-2301(D)(4) (Definitions).

### **Relevant Offenses**

Arizona's RICO statute only includes two relevant offenses under its definition of "racketeering": sexual exploitation of a minor and prostitution. Ariz. Rev. Stat. Ann. § 13-2301(4)(b)(xxii), (xxii)(Definitions). Arizona's sex trafficking and commercial sexual exploitation of children offenses, however, are not included as predicate criminal activity under the RICO law.



## **Potential Defendants**

Arizona RICO law is more limited than federal RICO law in that it requires a person to have actually obtained control of an enterprise, in order to be found liable. Ariz. Rev. Stat. Ann. § 13-2312(A). Arizona law also requires a *mens rea* element that is not included in the federal RICO laws, requiring that a person knew that an enterprise is being conducted through racketeering activity. Ariz. Rev. Stat. Ann. § 13-2312(B).

Arizona law does include some provisions that make it more expansive than federal RICO law in some respects. Unlike federal law, Arizona includes using the proceeds of racketeering, along with the act of racketeering itself as part of a RICO violation. Ariz. Rev. Stat. Ann. § 13-2312(A). Arizona also allows a person to be liable under its RICO provisions if the person participates indirectly in the conduct of an enterprise involved in racketeering. Ariz. Rev. Stat. Ann. § 13-2312(B). This allows for people who may not have a key role in the enterprise's affairs to still be found liable if they participated. Finally, Arizona is also different and more expansive than federal law in that it also provides a provision that specifically protects minors from being hired, engaged, or used "for any conduct preparatory to or in completion of any offense in this section [Illegal control of an enterprise; illegally conducting an enterprise; classification]." Ariz. Rev. Stat. Ann. § 13-2312(C). This provision is not included in federal RICO law or other states' RICO laws.

## **Criminal Penalties**

A knowing violation of Arizona's RICO act is punishable either as a class 2 or class 3 felony, depending on the provision violated. Ariz. Rev. Stat. Ann. § 13-2312(D) (Illegal control of an enterprise; illegally conducting an enterprise; classification). Under Arizona law, a class 3 felony is punishable, for a first offense, from 2 to 8.75 years, and for a repetitive offense, from 2 to 25 years. Ariz. Rev. Stat. Ann. §§ 13-702 (First time felony offenders; sentencing; definition), 13-703 (Repetitive Offenders; sentencing). A class 2 felony is punishable, for a first offense, 3 to 12.5 years, and for a repetitive offense, from 3 to 35 years. Ariz. Rev. Stat. Ann. §§ 13-702 , 13-703. These sentences differ from those imposed under federal RICO for a federal RICO violation, which sets a maximum prison sentence at 20 years. 18 U.S.C. § 1963(a) (Criminal penalties). Unfortunately, Arizona's penalties are also not as high as its penalties for the individual predicate acts themselves, which can be as high as life imprisonment. *See* Ariz. Rev. Stat. Ann. § 13-705(A) (Dangerous crimes against children; sentences; definitions).

Arizona does not include a criminal forfeiture provision under its RICO act.

## **ARKANSAS**

While Arkansas has a version of a RICO act, known as the “Arkansas Criminal Gang, Organization, or Enterprise Act,” this act does not include human trafficking or commercial sexual exploitation offenses as predicate criminal acts. Under Ark. Stat. Ann. 5-74-103(4) “[p]redicate criminal offense” is defined as any violation of Arkansas law that is a crime of violence or a crime of pecuniary gain. *See* Ark. Code Ann. §§ 5-7-103 (Definitions); 5-74-104 (Engaging in a continuing criminal gang, organization, or enterprise).

## **CALIFORNIA**

### **RICO Statute**

California’s RICO act does not include a separate section on violations. However, it defines “criminal profiteering activity” as “any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime . . . .” Cal. Penal Code § 186.2(a) (Definitions).

### **Predicate Act Requirements**

California law requires at least two predicate acts to establish a “pattern of racketeering activity.” Cal. Penal Code § 186.2(b) (Definitions). The acts must have similar purposes, results, principals, victims, or methods of commission and were not isolated events. *Id.* They must also have been committed as a criminal activity of organized crime, meaning “crime that is of a conspiratorial nature and that is . . . of an organized nature and seeks to supply illegal goods such as . . . prostitution, . . . and pornography.” Cal. Penal Code § 186.2(b)(C), (d). Finally, the underlying offense must have occurred after October 11, 1993 with the prior act occurring within 10 years of commission of the underlying offense. *Id.* This time frame between predicate acts is identical to the one proscribed under federal RICO law. 18 U.S.C. 1961(5) (Definitions). An important distinction between California’s requirements and other states’ and the federal requirements is that California does not include predicate acts that were committed in violation of the laws of other states. It is also distinctive that California does not include enterprises in its predicate act requirements, unlike many other states’ and federal law.

### **Relevant Offenses**

California has a fairly comprehensive list of offenses covered under the definition of “criminal profiteering activity” under Cal. Penal Code 186.2(a). The list includes: child pornography or exploitation, pimping and pandering, human trafficking, and commercial sexual exploitation of children.

### **Potential Defendants**

While California has a long list of relevant offenses includes under its list of offenses constituting “criminal profiteering activity,” California’s law on criminal profiteering is limiting

with respect to potential defendants because of its strict “pattern of racketeering” requirements. The requirements that acts of criminal racketeering activity be related, continuous, and part of organized crime relating to prostitution or pornography result in a high burden of proof on prosecutors, limiting the effectiveness of California’s act in holding traffickers and other offenders liable. California’s law, however, under its definition of “criminal profiteering activity,” does allow for not only the commission of an offense, but also acts that were attempted or threatened, thus expanding the law’s reach, to a degree. Cal. Penal Code § 186.2(a) (Definitions).

### **Criminal Penalties**

Unfortunately, California does not provide for enhanced or additional criminal penalties, with the exception of criminal forfeiture, for meeting the predicate act requirements in Cal. Penal Code § 186.2(b) (Definitions). It does not include increased prison sentences or additional fines. California does allow for forfeiture of certain assets under Cal. Penal Code § 186.3 (Assets subject to forfeiture). Under this provision, a person convicted of an underlying offense shall forfeit items related to the criminal profiteering activity. Cal. Penal Code § 186.3(a). Items subject to forfeiture include: any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity and all the proceeds of a pattern of criminal profiteering activity, including all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity. Cal. Penal Code § 186.3(b), (c).

Unfortunately, California’s criminal penalties here are not as high as the penalties imposed for the actual violation of a predicate offense, which can be as high as 8 years in prison and a fine of \$100,000. *See* Cal. Penal Code § 236.1(c), (g)(1) (Human trafficking).

## **COLORADO**

### **RICO Statute**

Colorado’s RICO statute, also known as The Colorado Organized Crime Control Act, prohibits a person, who knowingly has received any proceeds derived from a pattern of racketeering activity, from using or investing any part of the proceeds to acquire of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. Col. Rev. Stat. § 18-17-104(1)(a) (Prohibited activities). Colorado RICO law also prohibits a person from knowingly acquiring or maintaining any interest in or control of any enterprise or real property through a pattern of racketeering activity and it prohibits a person, who is employed by or associated with an enterprise, from knowingly conducting or participating in such enterprise through a pattern of racketeering activity. Col. Rev. Stat. § 18-17-104(2), (3). Colorado law also prohibits a person from conspiring or endeavoring to violate any of the aforementioned provisions. Col. Rev. Stat. § 18-17-104(4).

Under Colorado’s RICO law, an “enterprise” means, among other things, an individual, a group of individuals associated in fact although not a legal entity, and illicit as well as licit entities. Col. Rev. Stat. § 18-17-103(2) (Definitions).

### **Predicate Act Requirements**

Colorado requires at least 2 predicate acts to establish a “pattern of racketeering activity.” Col. Rev. Stat. § 18-17-103(3) (Definitions). It also requires that the acts are related to the conduct of the enterprise, that at least one of the acts occurred in Colorado after July 1, 1981, and that the last of the acts occurred within 10 years of the prior act of racketeering activity. *Id.*; *see also* People. v. Chaussee, 880 P.2d 749, 758-61 (Colo. 2994). These provisions, except for the one requiring that the acts be related to the conduct of the enterprise, are similar to those proscribed under federal RICO law.

### **Relevant Offenses**

Colorado includes a long list of relevant offenses under its definition of “racketeering activity.” Among those included are offenses relating to trafficking in adults, trafficking in children, coercion of involuntary servitude, sexual exploitation of a child, obscenity, pandering, pimping, soliciting for child prostitution, pandering of a child, keeping a place of child prostitution, and pimping of a child. Colo. Rev. Stat. § 18-17-103(5) (Definitions). Colorado also includes relevant offenses included under the federal RICO act. *Id.*

### **Potential Defendants**

Colorado’s RICO act has the potential to reach a wide range of defendants because of its expansive list of relevant offenses. Colorado’s RICO act is also expansive in that it may not require proof of the existence of an enterprise, but may be met through acquiring or maintaining an interest or control in real property. Colo. Rev. Stat. § 18-17-104(2) (Prohibited activities). However, Colorado’s law can be limiting in that it requires a *mens rea* element not included under federal RICO law. Colorado’s RICO law requires that the acts be made “knowingly.” Colo. Rev. Stat. § 18-17-104(1)(a), (2), (3), (4). Furthermore, while Colorado state courts have not decided on whether to apply the “operation and management” test articulated in Reves v. Ernst & Young, the Colorado Court of Appeals has held that “to ‘maintain’ an interest in an enterprise is the equivalent of ‘operating’ an enterprise.” *See New Crawford Valley, Ltd. v. Benedict*, 877 P.2d 1363, 1373 (Colo. Ct. App. 1993). This holding, thus, has the potential to limit the applicability of Colorado’s RICO act to those who are higher up in the enterprise’s chain of command.

### **Criminal Penalties**

Colorado has a strong set of criminal penalties for violations of its state RICO statute. A person convicted of a RICO violation is guilty of a class 2 felony, which is punishable by imprisonment from 8 to 24 years with a mandatory 5 year period of parole and a fine from \$5,000 to \$1 million. Col. Rev. Stat. §§ 18-17-105 (Criminal penalties), 18-1.3-401(1)(a)(III)(A), (V)(A) (Felonies classified – presumptive penalties). Colorado also provides an additional penalty in which a

person shall be fined up to \$25,000 and criminally forfeit any interest, including proceeds, he has acquired or maintained in violation of Colorado's RICO law and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has established, operated, controlled, conducted, or participated in the conduct of in the violation. Col. Rev. Stat. §§ 18-17-105(1). Furthermore, instead of a fine otherwise authorized by Colorado law, any person convicted of engaging in conduct in violation Colorado's RICO act, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution, reasonably incurred. Col. Rev. Stat. § 18-17-105(2). This is harsher than the fine imposed under federal RICO law, which only requires a fine up to 2 times the gross profits or proceeds.

Colorado's criminal penalties for a RICO violation are similar to the penalties for a trafficking in children offense, which is also a class 2 felony. Col. Rev. Stat. § 18-3-502(3) (Trafficking in children). The penalties are higher than an offense of sexual exploitation of a child, however, which is either a class 3, 4, or 6 felony. Col. Rev. Stat. § 18-6-403(5) (Sexual exploitation of a child).

## **CONNECTICUT**

### **RICO Statute**

Connecticut's RICO statute, also known as The Corrupt Organizations and Racketeering Act, prohibits a person, who has knowingly received any proceeds derived from a pattern of racketeering activity, from using or investing any part of such proceeds to acquire any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise. Conn. Gen. Stat. § 53-395(a) (Prohibited activities). Connecticut also prohibits a person, through a pattern of racketeering activity, from receiving anything of value or acquiring or maintaining any interest in or control of any enterprise or real property and it prohibits a person, who is employed by, or associated with, any enterprise, from knowingly conducting or participating in such enterprise through a pattern of racketeering activity. Conn. Gen. Stat. § 53-395(b), (c).

Under Connecticut RICO law, an "enterprise" means, among other things, an individual, a group of individuals associated in fact although not a legal entity, and illicit as well as licit enterprises. Conn. Gen. Stat. § 53-394(c) (Definitions).

### **Predicate Act Requirements**

Connecticut RICO law requires at least 2 predicate acts to establish a "pattern of racketeering activity." Conn. Gen. Stat. § 53-394(e) (Definitions). The acts must be similar in purpose results, participants, victims, or methods of commission. *Id.* Furthermore, the acts must have a nexus to the same enterprise and not be isolated events. *Id.* Finally, the last of the acts had to have occurred after October 1, 1982, and within five years after a prior incident of racketeering

activity. *Id.* This time frame between acts is shorter than that proscribed under federal RICO law, which allows for 10 years between acts.

### **Relevant Offenses**

Connecticut includes a number of relevant offenses under the definition of “racketeering activity.” Gen. Stat. § 53-394(a) (Definitions). The list of relevant offenses includes those related to promoting prostitution, obscenity, obscenity to minors, employing a minor in an obscene performance, promoting a minor in an obscene performance, importing child pornography, possessing child pornography, possessing or transmitting child pornography by a minor, coercion, and trafficking in persons. *Id.*

### **Potential Defendants**

Connecticut’s RICO act has the potential to reach a number of defendants as it includes, under its definition of racketeering activity, not only the commission of a relevant offense, but also an attempt to commit, a conspiracy to commit, or intentionally aiding, soliciting, coercing, or intimidating another person to commit a relevant offense. Conn. Gen. Stat. § 53-394(a) (Definitions).

Connecticut’s RICO act is limiting, however, in that it requires a *mens rea* element under 2 of its provisions, which is not included under federal RICO law. Conn. Gen. Stat. § 53-395(a) (Prohibited activities). This requirement has the potential to increase the burden of proof on prosecutors, narrowing the effectiveness of Connecticut’s RICO act.

### **Criminal Penalties**

A violation of Connecticut’s RICO act is punishable by imprisonment from 1 to 20 years, similar to federal RICO law, and by a fine up to \$25,000, or both. Conn. Gen. Stat. § 53-397(a) (Penalty. Forfeiture of property. Disposition of seized property. Appointment of receiver). Persons convicted of violating Connecticut’s RICO act may also have to serve consecutive sentences for both the RICO violation and the underlying predicate acts. Conn. Gen. Stat. § 53-396(c) (Charging of incidents of racketeering activity. Sentencing on separately charged offenses). Connecticut also requires that the court “impose a separate sentence on any separately charged offense of which the defendant has been found guilty notwithstanding that the offense also constitutes an incident of racketeering activity . . . .” *Id.* These provisions, thus, have the potential to act as strong deterrents against committing human trafficking and CSEC offenses as they may come with greatly enhanced penalties and encourages prosecutors to try and add any relevant offenses to increase penalties.

The criminal penalties for a Connecticut RICO violation have the similar terms of imprisonment for a trafficking in persons violation, but they are higher with regard to financial penalties because a trafficking in persons offense only carries a fine of up to \$15,000. Conn. Gen. Stat. §§ 53a-192a(b) (Trafficking in persons: class B felony), 53a-35a(6) (Imprisonment for felony committed on or after July 1, 1981. Definite sentence. Authorized term.), 53a-41(2) (Fines for felonies). The RICO criminal penalties are less than those imposed for a violation of employing a

minor in an obscene performance, however, which carries a prison sentence up to 25 years. . Conn. Gen. Stat. §§ 53a-196a(b) (Employing a minor in an obscene performance: Class A felony) , 53a-35a(4). The RICO financial penalties are greater than those for an offense of employing a minor in an obscene performance, however, which only carries a maximum \$20,000 fine. Conn. Gen. Stat. §53a-41(1).

Violators under Conn. Gen. Stat. § 53-397(a) shall also forfeit:

(1) Any property he has acquired, maintained or used in violation of this chapter, including profits derived therefrom and the appreciated value thereof, or, where applicable, the proceeds from the sale thereof; and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of, in violation of this chapter.

## **DELAWARE**

### **RICO Statute**

Delaware RICO law prohibits a person, who is employed by, or associated with, any enterprise, from conducting or participating in the conduct of the affairs of the enterprise through a pattern of racketeering activity. Del. Code tit. 11 § 1503(a) (Violations). Delaware’s RICO act also prohibits a person from acquiring or maintaining any interest in or control of any enterprise, real property, or personal property through a pattern of racketeering activity. Del. Code tit. 11 § 1503(b). Furthermore, it prohibits a person, who has received any proceeds from a pattern of racketeering activity in which such a person has participated, from using or investing any part of the proceeds in acquisition of any interest in, or the establishment or operation of, any enterprise or real property. Del. Code tit. 11 § 1503(c). Finally, Delaware prohibits any person from conspiring or attempting to violate any of the aforementioned provisions. Del. Code tit. 11, § 1503(d).

Delaware defines an “enterprise” as including, among other things, individuals, groups of persons associated in fact although not a legal entity, and illicit as well as licit enterprises. Del. Code. tit. 11, § 1502(3) (Definitions).

### **Predicate Act Requirements**

Delaware requires at least 2 predicate acts to establish a “pattern of racketeering activity.” Del. Code tit. 11 § 1502(5) (Definitions). The acts must be related to the affairs of the enterprise and that be separate events. *Id.* At least one of the acts had to have occurred after July 9, 1986, with the last incident of conduct occurring within 10 years after a prior occasion of conduct. *Id.* Finally, for criminal actions, at least one of the acts had to have constituted a felony under Delaware or would constitute a felony under Delaware law if committed outside of Delaware. *Id.*

### **Relevant Offenses**

Delaware includes a number of relevant offenses under its definition of “racketeering.” Del. Code tit. 11, § 1502(9) (Definitions). Delaware includes the relevant offenses included under federal RICO law as well offenses related to prostitution, patronizing a prostitute prohibited, promoting prostitution, permitting prostitution, obscenity, and obscene literature harmful to minors. *Id.*

### **Potential Defendants**

Along with providing a wide range of relevant offense under its definition of “racketeering,” Delaware’s RICO act has the potential to reach a number of defendants because it also includes not only the commission of an act of racketeering, but also attempting to engage in an act of racketeering, conspiring to engage in the act, or soliciting, coercing, or intimidating another person to commit an act of racketeering. Del. Code tit. 11, § 1502(9) (Definitions).

Delaware’s RICO act also extends the reach of the federal RICO act by possibly not requiring proof of the existence of an enterprise, but allowing a prosecutor to prove the existence of real property instead. *See* Del. Code tit. 11, § 1503(a), (b), (c) (Violations).

Delaware’s RICO act is limiting, however, in that it adds the requirement that the defendant participate in the pattern of racketeering activity under the subsection on using or investing proceeds from a pattern of racketeering activity. Del. Code tit. 11, § 1503(c).

### **Criminal Penalties**

A person convicted of any of the provisions of Delaware’s RICO statute is guilty of a class B felony and shall be imprisoned and pay of fine of at least \$25,000. Del. Code tit. 11 § 1504(a) (Criminal penalties). Under Delaware law, a class B felony is punishable by imprisonment from 2 to 25 years, which is a harsher sentencing guideline than that proscribed under federal RICO law, which limits the maximum prison sentence at 20 years. Del. Code tit. 11, § 425(b)(2) (Sentence for felonies); 18 U.S.C. § 1963(a) (Criminal penalties). Furthermore, a person violating the provisions of Del. Code. tit. 11. § 1503, shall be subject to criminal forfeiture and shall turn over to the state “any real or personal property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of § 1503 of this title including any property constituting an interest in or means of control or influence over the enterprise involved in the conduct of § 1503 of this title or any property constituting the proceeds derived from the conduct in violation of § 1503 of this title . . .” Del. Code tit. 11 § 1504(b).

## **DISTRICT OF COLUMBIA**

District of Columbia has not enacted a racketeering statute. District of Columbia has enacted gang laws, but human trafficking and CSEC offenses are not predicate criminal activity under these laws. *See* D.C. Code § 22-951 (Criminal street gangs).



## **FLORIDA**

### **RICO Statute**

Florida's RICO act prohibits a person, who has with criminal intent received any proceeds derived from a pattern of racketeering activity, from using or investing any part of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. Fla. Stat. Ann. § 895.03(1) (Prohibited activities and defense). Florida RICO law also prohibits a person from acquiring or maintaining any interest in or control of any enterprise or real property through a pattern of racketeering activity and it prohibits a person, who is employed by or associated with any enterprise, from conducting or participating in such enterprise through a pattern of racketeering activity. Fla. Stat. Ann. § 895.03(2), (3). Finally, Florida RICO law prohibits a person from conspiring or endeavoring to violate any of the aforementioned provisions. Fla. Stat. Ann. § 895.03(4).

Under its definition of "enterprise," Florida includes, among other things, individuals, groups of individuals associated in fact although not a legal entity, criminal gangs, and illicit as well as licit entities. Fla. Stat. Ann. § 895.02(3).

### **Predicate Act Requirements**

Florida law requires at least 2 predicate acts to establish a "pattern of racketeering activity." Fla. Stat. Ann. § 895.02(4) (Definitions). Florida law also requires that the acts have similar intents, results, accomplices, victims, or methods of commission and are not isolated events. *Id.* Finally, Florida law requires that at least one of the acts occurred after 1977 and the last of the acts occurred within 5 years after a prior predicate act. *Id.* This time frame between acts is less than that proscribed under federal RICO law which allows for 10 years between acts.

### **Relevant Offenses**

Florida's RICO act expands the amount of relevant offenses included under federal RICO law. Florida includes the relevant offenses included under federal RICO law, as well as the following offenses related to: human trafficking, prostitution, sex trafficking, and commercial exploitation of children. Fla. Stat. Ann. § 895.02(1) (Definitions).

### **Potential Defendants**

Florida's RICO act has the potential to reach a wide range of defendants by including a number of relevant offenses along with those proscribed under federal RICO law. Florida's RICO law is also expansive because it includes, under its definition of "racketeering activity," not only the commission of a racketeering crime, but also attempting to commit a racketeering crime, conspiring to commit one, or soliciting, coercing, or intimidating another to commit one. Fla. Stat. Ann. § 895.02(1) (Definitions).

Florida's RICO act is potentially limited because of the Florida Supreme Court's ruling in LaVornia v. Rivers, adopting the "operation and management test" established in Reves v. Ernst

& Young. However, the Florida court's application of the test was not as strict as the federal application and held that "RICO liability is not limited to those with titles or policy making authority. It extends also to lower-rung management personnel who follow the orders of upper management." LaVornia v. Rivers, 669 So.2d 288, 289 (Fla. Dist. Ct. App. 1996).

### **Criminal Penalties**

A violation of Florida's RICO act is a first degree felony, which is punishable by imprisonment up to 30 years or a fine up to \$10,000. Fla. Rev. Stat. §§ 895.04(1) (Criminal penalties and alternative fine); 775.082(4)(b) (Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison); 775.083(1)(b) (Fines). This is harsher than federal RICO law, which allows for imprisonment up to 20 years. 18 U.S.C. § 1963(a) (Criminal penalties).

Florida's RICO law also allows for an alternative fine for persons convicted of a RICO violation through which the person derived pecuniary value, or by which he or she caused personal injury or property damage or other loss. Fla. Rev. Stat. § 895.04(2). Unlike federal law which sets the maximum alternative fine at 2 times the gross profits or proceeds, Florida allows a sentence of an alternative fine up to 3 times the gross value gained or gross loss caused, whichever is greater. *Id.* The court may also require the person convicted to pay court costs and the costs of investigation and prosecution. *Id.*

While individual predicate crimes under Florida's RICO statute can be classified up to a first degree felony like a RICO offense itself, some of the predicate crimes carry a higher maximum prison sentence of life imprisonment, which is much higher than that proscribed for a RICO violation. *See, e.g.*, Fla. Rev. Stat. § 787.06(3)(g), (h) (Human trafficking).

Florida does include a provision on criminal forfeiture under its RICO laws.

## **GEORGIA**

### **RICO Statute**

Georgia's RICO law prohibits a person from acquiring or maintaining any interest in or control of any enterprise, real property, or personal property through a pattern of racketeering activity. Ga. Code Ann. § 16-4-4(a) (Prohibited activities). Georgia law also prohibits a person, who is employed by or associated with any enterprise, from conducting or participating in such enterprise through a pattern of racketeering activity and it prohibits a person from conspiring or endeavoring to violate any of the aforementioned provisions. Ga. Code Ann. § 16-4-4(b), (c).

Under Georgia RICO law, an "enterprise" means, among other things, individuals, groups of individuals associated in fact although not a legal entity, and illicit as well as licit entities. Ga. Code Ann. § 16-14-3(6) (Definitions).

### **Predicate Act Requirements**

Georgia law requires at least 2 predicate acts in furtherance of one or more incidents, schemes, or transactions to establish a “pattern of racketeering activity.” Ga. Code Ann. § 16-14-3(8)(A) (Definitions). Georgia RICO law also requires that the acts have similar intents, results, accomplices, victims, or methods of commission and that they not be isolated events. *Id.* At least one of the acts has to have occurred after July 1, 1980, with the last of the acts occurring within four years after the commission of a prior predicate act. *Id.* This time frame between predicate acts is much more limited than under federal RICO law which allows for a 10 year time frame between predicate acts.

### **Relevant Offenses**

The reach of Georgia’s RICO law does not extend much farther than federal RICO law. Georgia’s RICO law only includes the relevant offenses included under federal RICO law and 3 other relevant offenses. These relevant offenses included are those related to prostitution, pandering, and distributing obscene materials. Ga. Code Ann. § 16-14-3(9)(A) (Definitions).

### **Potential Defendants**

While Georgia’s RICO law has the potential to reach human traffickers and CSEC offenders through its incorporation of federal RICO offenses under its definition of “racketeering activity,” it is limited in reaching possible defendants beyond those liable under federal law.

However, Georgia’s RICO law is less restrictive than federal RICO law in that it does not require proof of the existence of an enterprise, but allows for proof of real or personal property instead. Ga. Code Ann. § 16-14-4(a) (Prohibited activities); Cobb Cnty. v. Jones Grp., 460 S.E.2d 516, 520 (Ga. App. 1995); Dover v. State, 385 S.E.2d 417, 420 (Ga. App. 1989) . This latter provision could be easier for prosecutors to prove, thus expanding the number of defendants that could potentially fall under this law.

### **Criminal Penalties**

A person who violates Ga. Code Ann. § 16-14-4 (Prohibited activities) is guilty of a felony and shall be imprisoned for 5 to 20 years or a fine up to \$25,000 or three times the amount of any pecuniary value gained from the violation, or both imprisonment and a fine. Ga. Code Ann. § 16-14-5 (Criminal penalties and alternative fine). While Georgia’s imprisonment sentence is similar to that under federal RICO law, its fine is greater than that proscribed under federal RICO, which limits the fine to up to 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties). Furthermore, Georgia allows for separate convictions and sentences for the RICO violation and the predicate acts themselves. *See* Dorsey v. State, 615 S.E.2d 512, 519 (Ga. App. 1988).

Criminal forfeiture is not a remedy under Georgia’s RICO act.

## **HAWAII**

### **RICO Statute**

Hawaii's RICO act prohibits a person, who has received any income from a racketeering activity, from using or investing any part of the income in acquiring any interests in, or the establishment or operation of, any enterprise. Ha. Rev. Stat. § 842-2(1) (Ownership or operation of business by certain persons prohibited). Hawaii's RICO act also prohibits a person from acquiring or maintaining any interest in, or control of any enterprise and it prohibits a person, who is employed or associated with any enterprise, to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity. Ha. Rev. Stat. § 842-2(2), (3).

Hawaii defines an "enterprise" as including, among other things, a group of individuals associated for a particular purpose although not a legal entity. Ha. Rev. Stat. § 842-1 (Definitions).

### **Predicate Act Requirements**

Hawaii does not have a provision on a pattern of racketeering activity. As a result, Hawaii allows only 1 predicate act to establish a cause of action under its RICO act. See State v. Bates, 933 P.2d 48, 59 n.8 (Haw. 1997).

### **Relevant Offenses**

Hawaii's RICO act only specifically includes the relevant offenses of those relating to prostitution under its definition of "racketeering activity." Ha. Rev. Stat. § 842-1 (Definitions). However, the statute states that the definition of racketeering activity is not limited to the offenses specifically set out in that subsection, but may include other offenses so long as they are chargeable as a crime under Hawaii law and punishable by imprisonment for more than 1 year. *Id.* This language allows for the possibility to prosecute people who have violated other relevant offenses, such as those related to human trafficking and sexual exploitation.

### **Potential Defendants**

Hawaii's RICO act is limited in that it only specifically includes one CSEC offense under its definition of "racketeering activity." It is also limited in that the Hawaii Supreme Court has interpreted the act to require that an enterprise: (1) have a common or shared purpose that animates the individuals associated with it, (2) be an ongoing organization whose members function as a continuing unity, and (3) have an ascertainable structure distinct from that inherent in the conduct of racketeering activity. State v. Ontai, 929 P.2d 69, 75 (Haw. 1996). These requirements result in a higher burden of proof for prosecutors, making it harder for them to hold potential defendants liable for their actions.

Finally, Hawaii's RICO act is also limited because of the Hawaii Supreme Court's interpretation that that act includes a *mens rea* element not present in the federal RICO act. The court held that an element of Hawaii's subsection on persons employed by or associated with an enterprise

includes that “the defendant did so intentionally, knowingly, or recklessly.” State v. Bates, 933 P.2d 48, 58 (Haw. 1997). This requirement also raises the burden of proof for prosecutors, making it more difficult to prove liability.

### **Criminal Penalties**

A violation of Hawaii’s RICO act is a class B felony, which carries a sentence of 10 years imprisonment and fine up to \$25,000. Ha. Rev. Code §§ 842-3 (Penalty; forfeiture of property), 706-660 (Sentence of imprisonment for class B and C felonies; ordinary terms), 706-640 (Authorized fines). This is a much shorter imprisonment sentence than that proscribed under federal RICO law, which sets the maximum number of years at 20. 18 U.S.C. § 1963(a) (Criminal penalties). Violators shall also forfeit “any interest or property acquired or maintained in violation of [Hawaii’s chapter on organized crime]. Ha. Rev. Code § 842-3.

## **IDAHO**

### **RICO Statute**

Idaho’s RICO law prohibits a person, who has received proceeds from a pattern of racketeering activity in which the person has participated, from using or investing any part of the proceeds in establishing an enterprise or real property. Id. Code Ann. § 18-7804(a) (Prohibited activities -- Penalties). Idaho’s RICO law also prohibits a person from engaging in a pattern of racketeering activity in order to acquire or maintain an interest in or control of an enterprise or real property and it prohibits a person, who is employed by or associated with any enterprise, to conduct or participate in the conduct of the affairs of such enterprise by engaging in a pattern of racketeering activity. Id. Code Ann. § 18-7804(b), (c). Finally, Idaho RICO law also prohibits a person from conspiring to violate any of the aforementioned provisions. Id. Code Ann. § 18-7804(d).

Under its definition of “enterprise,” Idaho includes, among other things, associations or other legal entities or any group of individuals associated in fact although not in legal entity, and illicit and licit entities. Id. Code Ann. § 18-7803(c). Idaho RICO law does not include “individuals” under its definition of “enterprise,” thus potentially limiting the possible defendants in a human trafficking RICO case.

### **Predicate Act Requirements**

Similar to federal RICO law, Idaho RICO law requires at least 2 acts to establish a “pattern of racketeering activity.” Id. Code Ann. § 18-7803(d) (Definitions). Idaho RICO law also requires that the acts have similar intents, results, accomplices, victims or methods of commission and are not isolated incidents. *Id.* One of the acts must have occurred after 1981 with the last act occurring 5 years after a prior predicate act. *Id.* This time frame between predicate acts is drastically shorter than that proscribed under federal RICO law, which allows up to 10 years between predicate acts. 18 U.S.C. § 1961(5) (Definitions).

### **Relevant Offenses**

Idaho includes a number of relevant offenses under its definition of “racketeering.” Unfortunately, Idaho does not specifically include the offense of human trafficking; however, it does include offenses related to interstate trafficking in prostitution, procuring a prostitute, harboring prostitutes, inducing a minor into prostitution, disseminating harmful material to minors, advertising and promoting obscene material, and selling or distributing obscene matter. Id. Code Ann. § 18-7803(a) (Definitions).<sup>88</sup>

### **Potential Defendants**

Idaho’s RICO statute is limited in that it does not specifically reach those convicted of human trafficking. However, persons convicted of certain CSEC offenses can be potential defendants under this law. The law is also limited because, unlike other RICO laws, it does not include as an offense the solicitation, coercion, or intimidation of another person to commit a RICO violation or aiding and abetting someone in a violation.

Idaho’s RICO law is more expansive than federal RICO law, in one aspect - it does not require proof of the existence of an enterprise, but may allow proof of an interest in real property instead. Id. Code Ann. § 18-7804(a), (b) (Prohibited activities – penalties).

### **Criminal Penalties**

Violations of the provisions of Idaho’s RICO act are punishable by a fine up to \$25,000 or imprisonment up to 14 years, or both. Id. Code Ann. § 18-7804(e) (Prohibited activities – Penalties). This is shorter than the maximum imprisonment allowed under federal RICO law, which is 20 years. 18 U.S.C. § 1963(a) (Criminal penalties). A court may also order restitution for court costs, restraining orders, or prohibitions. Id. Code Ann. § 18-7804(f), (h). Additionally, under Id. Code Ann. § 18-7804(g), the violator shall also forfeit the following:

- (1) Any interest acquired or maintained in violation of the racketeering act; and
- (2) Any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the provisions of the racketeering act.

## **ILLINOIS**

### **RICO Statute**

Illinois’s RICO act, also known as the “Illinois Street Gang and Racketeering Influenced and Corrupt Organizations Law,” prohibits a person, who intentionally participates in the operation or management of an enterprise, from knowingly doing so through a pattern of predicate activity, from knowingly causing another to violate Illinois’s RICO act, and from knowingly conspiring

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<sup>88</sup> Idaho Code Ann. title 18, chapter 85 (Idaho Criminal Gang Enforcement Act) provides enhanced penalties where the enterprise is a criminal gang and includes Idaho Code Ann. § 18-8602 (Human trafficking defined) as a predicate offense. Idaho Code Ann. § 18-8502(3) (Definitions).

to violated the act. 720 Ill. Comp. Stat. 5/33G-4(a) (Prohibited activities). Illinois also prohibits a person from knowingly acquiring or maintaining any interest in or control of any enterprise, real property, or personal property through a pattern of predicate activity. 720 Ill. Comp. Stat. 5/33G-4(b).

Under its definition of “enterprise,” Illinois includes, among other things, a group of individuals associated in fact although not itself a legal entity and licit and illicit enterprises. 720 Ill. Comp. Stat. 5/33G-3(b) (Definitions). Individuals are not specifically included under this definition.

### **Predicate Act Requirements**

Unlike federal RICO law, Illinois requires at least 3 predicate acts to establish a “pattern of predicate activity.” 720 Ill. Comp. Stat. 5/33G-3(f)(1) (Definitions). Illinois also requires that the acts be related to each other, have continuity between them, and be separate acts. 720 Ill. Comp. Stat. 5/33G-3(f)(1) (Definitions). Finally, Illinois also requires that the acts occur after June 11, 2012, the last which occurring within 3 years after the first predicate act. 720 Ill. Comp. Stat. 5/33G-3(f)(2). This time frame is drastically shorter than that proscribed under federal RICO law, which allows for 10 years between predicate acts. 18 U.S.C. § 1961(5) (Definitions).

### **Relevant Offenses**

Illinois has a wide range of relevant offenses included under its RICO statute. Illinois requires, however, that all of the offenses be at a class 2 felony or higher. 720 Ill. Comp. Stat. 5/33G-3(e). Among the relevant offenses included under Illinois’s RICO statute are those relating to trafficking in persons, involuntary servitude, indecent solicitation of a child, promoting prostitution, promoting juvenile prostitution, patronizing a minor engaged in prostitution, and patronizing a juvenile prostitute. 720 Ill. Comp. Stat. 5/33G-3(e)(1). Illinois’s RICO law, however, does not include offenses related to child pornography or other offenses related to commercial sexual exploitation of children.

### **Potential Defendants**

Unlike other states’ RICO acts and the federal RICO statute, Illinois includes a definition of “operation and management,” thus eliminating the debate referenced in Reves v. Ernst & Young about how far down the chain of command in an enterprise is reached by RICO laws. Illinois defines “operation and management” as “directing or carrying out the enterprise’s affairs and is limited to any person who knowingly serves as a leader, organizer, operator, manager, director, supervisor, financier, advisor, recruiter, supplier, or enforcer of an enterprise in violation of this Article [Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law].” 720 Ill. Comp. Stat. 5/33G-3(d) (Definitions). This can severely limit the applicability of Illinois’s RICO act to defendants because it adds a *mens rea* requirement and it limits the act to people who are higher up on the enterprise’s chain of command, thus not including all people involved in possible human trafficking or CSEC offense.

Illinois’s RICO act is also limiting in that it only allows a person to be liable for a conspiring to violate its RICO act if an overt act in furtherance of the agreement is alleged and proved. 720 Ill.

Comp. Stat. 5/33G-4(a). Similarly, Illinois does not have a specific provision relating to aiding and abetting or solicitation, intimidating or coercing another to commit a RICO violation, like those included in other states' RICO laws. Instead, this language is potentially lumped under the phrase "knowingly cause another to violate" Illinois RICO act. 720 Ill. Comp. Stat. 5/33G-4(a)(2).

Illinois is also more limiting because it requires an enterprise that is an association in fact to have an ongoing organization or structure, that its members function as a continuing unit, and that it has an ascertainable structure distinct from the pattern of predicate activity. 720 Ill. Comp. Stat. 5/33G-3(b)(2). This raises the burden of proof for prosecutors and limits the amount and type of defendants they can bring a criminal RICO suit against.

### **Criminal Penalties**

A violation of Illinois's RICO act is a Class X felony. 720 Ill. Comp. Stat. 5/33G-5(a), (b) (Penalties). A violation of the subsection of Illinois's RICO act relating to participating in the operation or management of an enterprise is punishable by imprisonment from 7 to 30 years, or the sentence of imprisonment for the underlying predicate activity (whichever is higher). 720 Ill. Comp. Stat. 5/33G-5(a). This is greater than the maximum prison sentence under federal RICO law, which sets the maximum at 20 years. 18 U.S.C. § 1963(a) (Criminal penalties). This subsection may also be punishable by a criminal fine up to \$250,000 or 2 times the gross amount of any intended proceeds of the violation, whichever is higher. *Id.* A violation of the subsection of Illinois's RICO act relating to knowingly acquiring or maintaining interests in or control of property or an enterprise may be punishable by a criminal fine up to \$250,000 or 2 times the gross amount of any intended proceeds of the violation, whichever is higher. 720 Ill. Comp. Stat. 5/33G-5(b). Finally, Illinois also allows circuit courts to issue a forfeiture order to "disgorge illicit proceeds obtained by a [RICO] violation" or to divest the violator of any interest in any real or personal property obtained by a RICO violation. 720 Ill. Comp. Stat. 5/33G-6(a)(1) (Remedial proceedings, procedures, and forfeiture).

Finally, a violation of Illinois's RICO act has a similar felony classification, and thus similar penalties to individual relevant offenses, such as offenses related to trafficking in persons. *See* 720 Ill. Comp. Stat. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses).

## **INDIANA**

### **RICO Statute**

Indiana's RICO act prohibits a person, who has knowingly or intentionally received proceeds from a pattern of racketeering activity, from using or investing the proceeds to acquire an interest in property or to establish or to operate an enterprise. Ind. Code § 35-45-6-2(1) (Corrupt business influence). The act also prohibits a person from knowingly or intentionally acquiring or maintaining an interest in or control of property through a pattern of racketeering activity and prohibits a person, who is employed by or associated with an enterprise, from knowingly or



intentionally conducting or otherwise participating in the activities of that enterprise through a pattern of racketeering activity. Ind. Code § 35-45-6(2), (3).

Indiana RICO law does not include individuals under its definition of “enterprise,” nor does it specifically mention illicit or licit entities. Ind. Code. § 35-45-6-1(Sec. 1 (a)) (Definitions). The law does, however, include groups associated in fact under its definition of “enterprise.” *Id.*

### **Predicate Act Requirements**

Similar to federal RICO law, Indiana RICO law requires at least two predicate acts. 18 U.S.C. 1961(5) (Definitions); Ind. Code § 35-45-6-1(1)(d) (Definitions). The acts must be similar in intent, result, accomplice, victim, or method of commission, such that they are not isolate acts. Ind. Code § 35-45-6-1(1) (d). The law also requires that at least of the acts occurred after August 31, 1980 and that the last act occurred within 5 years after the prior act. *Id.* This allows for less time to commit predicate acts than under federal RICO law, which allows a period of 10 years between acts, limiting the amount of potential defendants that could be tried for trafficking and exploitation offenses. 18 U.S.C. § 1961(5).

### **Relevant Offenses**

Indiana includes a number of relevant offenses under its definitions of “racketeering activity.” Indiana’s RICO law includes as predicate acts human and sexual trafficking crimes, child exploitation, promoting prostitution, and crimes relating to obscenity and pornography. Ind. Code § 35-45-6-1(1)(e) (Definitions).

### **Potential Defendants**

Indiana’s RICO law is expansive in that it applies not only to those who committed a predicate violation, but also to those who have attempted or conspired to commit a violation, as well those who have aided and abetted someone in committing a violation. Ind. Code § 35-45-6-1(1)(e) (Definitions). This could potentially allow for facilitators to be held liable under Indiana’s RICO law.

Indiana law is more inclusive than federal RICO law because its courts have interpreted its RICO law “to reach persons below the managerial or supervisory level’ . . . [and] to . . . a racketeering enterprise’s ‘foot soldiers’ as well as its ‘generals.’” Keesling v. Beegle, 880 N.E.2d 1202, 1206-07 (Ind. 2008).

However, Indiana law adds a higher burden of proof on prosecutors, compared to federal RICO law, in that it either requires that a potential defendant knew or intended to commit a violation. Ind. Code § 35-45-6-2(2)(1)-(3) (Corrupt business influence).

### **Criminal Penalties**

A violation of Indiana’s RICO law is a Class C felony. Ind. Code § 35-45-6-2(2)(3) (Corrupt business influence). A Class C felony, under Indiana law, is punishable by imprisonment from 2

to 8 years and a fine up to \$10,000. Ind. Code § (6)(a) (Class C felony; nonsupport of a child as Class D felony). These penalties are significantly more lenient than federal RICO penalties which set a maximum prison sentence at 20 years and a fine up to 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties). However, Indiana does allow for consecutive sentences for the RICO violation and the individual predicate acts themselves. *See Swedarsky v. State*, 569 N.E.2d 740, 741-43 (Ind. Ct. App. 1991); *Dellenbach v. State*, 508 N.E.2d 1309, 1311, 1314-16 (Ind. Ct. App. 1987).

Indiana does not have a criminal forfeiture provision.

The penalties for a Indiana RICO violation are not as strong as penalties for some of the individual relevant offenses because some of the other offenses are classified as class A or B felonies. Ind. Code 35-42-3.5-1 (Promotion of human trafficking; sexual trafficking of a minor; human trafficking).

## **IOWA**

### **RICO Statute**

Iowa RICO law establishes 5 types of violations, only 3 of which can have the potential to be substantially related to trafficking and exploitation offenses. The first type of violation is the one most similar to federal RICO law and is labeled, “[s]pecified unlawful activity influenced enterprises.” Iowa Code § 706A.2(1) (Violations). Under this section, it is prohibited for a person, who knowingly received any proceeds of specified unlawful activity, to use or invest any part of such proceeds in the acquiring of any interest in any enterprise or any real property, or in the establishment or operation of any enterprise. .” Iowa Code § 706A.2(1)(a). This section also prohibits a person from knowingly acquiring or maintaining, any interest in or control of any enterprise or real property through specified unlawful activity or for a person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.” Iowa Code § 706A.2(1)(b),(c). Finally, this section also prohibits a person from conspiring or attempting to violate of soliciting or facilitating the above violations. Iowa Code § 706A.2(1)(d).

The second type of violation is labeled, “[a]cts of specified unlawful activity.” .” Iowa Code § 706A.2(4). This section prohibits a person from committing specified unlawful activity, which is defined as “any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an indictable offense under the laws of the state in which it occurred and under the laws of this state.” Iowa Code §§ 706A.2(4), 706.1A(5) (Definitions).

The third type of violation is labeled, “[n]egligent empowerment of specified unlawful activity.” Iowa Code §§ 706A.2(5). Under this section, a person is prohibited from allowing the person’s property or services provided by the person to be used to facilitate unlawful activity. Iowa Code §§ 706A.2(5)(a).

Finally, while Iowa's RICO statute does include groups of persons associated in fact and lawful as well as unlawful enterprises, it does not include individuals. Iowa Code § 706A.1(2) (Definitions). However, since the definition uses the inclusive word "includes" instead of "means," it is possible that an enterprise could be defined as an individual in certain cases.

### **Predicate Act Requirements**

Iowa has not defined a "pattern" of unlawful activity. Instead Iowa law only requires that the acts be committed on a "continuous basis." Iowa Code § 706A.1(5) (Definitions). The Iowa Supreme Court has held that the "continuous basis" requirement has a similar interpretation as the "pattern of racketeering activity" established by the US Supreme Court. State v. Reed, 618 N.W.2d 327, 335 (Iowa 2000).

### **Relevant Offenses**

Iowa does not specifically set out a list of offenses included under its RICO provisions. However, because of the language used under its definition of "specified unlawful activity," it is probable that any indictable offenses under Iowa code have the potential to fall under this category, if all of the other RICO requirements are met. Thus, all of Iowa's laws on human trafficking and exploitation could be included under this category. Iowa law includes the following relevant offenses: human trafficking, solicitation of commercial sexual activity, sexual exploitation of a minor, child pornography, pimping, and pandering. Surprisingly, prostitution is unlikely to fall under this category because, under Iowa law, prostitution is a misdemeanor and not an indictable offense. *See* Iowa Code § 725.1

### **Potential Defendants**

With the language in Iowa's RICO law seeming to encompass almost every related offense under Iowa law, Iowa law is quite expansive in reaching potential defendants. However, Iowa's RICO law is limiting in some circumstances in that it adds another level of proof for prosecutors with respect to how a defendant had to have had knowledge that he or she was involved in unlawful activity. Iowa Code § 706A(1).

### **Criminal Penalties**

A violation of Iowa's RICO act is guilty of a class B felony. Iowa Code § 706A.4 (Criminal sanctions). A class B felony is punishable by imprisonment up to 25 years. Iowa Code § 902.9(2) (Maximum sentence for felons). This is slightly higher than the maximum sentence of imprisonment under federal RICO law which is 20 years. 18 U.S.C. §1963(a) (Criminal penalties).

Furthermore, although not specified in a statute, Iowa's RICO laws have been interpreted to allow for cumulative sentencing of the RICO offense and the individual criminal activities. *See State v. Reed*, 618 N.W.2d 327, 335-37 (Iowa 2000).

Iowa does not have an established criminal forfeiture provision under its RICO section, nor does it set out a provision on criminal financial penalties. The omission of these two important provisions make Iowa's law less of a deterrent for potential offenders in that the penalties are much weaker under Iowa's RICO law.

## **KENTUCKY**

### **RICO Statute**

Kentucky has a version of a RICO statute under its chapter on inchoate offenses, relating to engaging in organized crime. Under this law, a person, who purposes to establish or maintain a criminal syndicate or to facilitate any of its activities, is prohibited from, among other things: (1) organizing or participating in organizing a criminal syndicate or its activities, (2) providing material aid to a criminal syndicate or any of its activities, (3) managing, supervising, or directing any of the criminal syndicates activities, at any level of responsibility, (4) knowingly furnishing legal, accounting, or other managerial services to a criminal syndicate, (5) committing, or conspiring to commit, or acting as an accomplice in the commission of, any offense that that a criminal syndicate engages on a continuing basis, or (6) committing, or conspiring to commit or acting as an accomplice in the commission of, any offense of violence. Ky. Rev. Stat. Ann. § 506.120(1) (Engaging in organized crime).

Under Kentucky law, a "criminal syndicate" means 5 more persons collaborating to promote or engage in an offense under Kentucky's section on engaging in organized crime, on a continuing basis. Ky. Rev. Stat. Ann. § 506.120(3).

### **Predicate Act Requirements**

Kentucky does have a list of predicate act requirements included in its statute on engaging in organized crime. However, as mentioned above, the act requires that a person have some involvement with a criminal syndicate, which requires 5 or more persons to promote or engage in an offense on a continuing basis. Ky. Rev. Stat. Ann. § 506.120(3) (Engaging in organized crime).

### **Relevant Offenses**

Kentucky includes human trafficking and prostitution-related offenses in its list of relevant offenses, but does not include many CSEC offenses. Ky. Rev. Stat. Ann. § 506.120(3)(b) (Engaging in organized crime). Kentucky does not include pornography offenses or offenses related to solicitation, thus limiting the power of its law on engaging in organized crime.

### **Potential Defendants**

Kentucky's law on engaging in organized crime is severely limited. It requires a high burden of proof by requiring at least 5 people participated in the offense and that they did so on a continuing basis. Ky. Rev. Stat. Ann. § 506.120(3) (Engaging in organized crime). However,

Kentucky courts have interpreted Kentucky's law on engaging in organized crime to not require proof of "any specific number of incidents or any element of time" or "that each participant in the criminal scheme collaborated with or was aware of the collaboration of the other participants." Edwards v. Commonwealth, 906 S.W.2d 343, 348 (KY 1995); *see also*, Parker v. Commonwealth, 291 S.W.3d 647, 675 (KY 2009). Kentucky also allows the offenses of conspiring or attempting to commit an offense and aiding another to commit an offense. Ky. Rev. Stat. Ann. § 506.120(1)(b), (e), (f).

### **Criminal Penalties**

Most violations of Kentucky's organized crime statute constitute a Class B felony. Ky. Rev. Stat. Ann. § 506.120(2) (Engaging in organized crime). A Class B felony is punishable by imprisonment for 10 to 20 years and a fine from \$1,000 to \$10,000. Ky. Rev. Stat. Ann. §§ 532.060(2)(b) (Sentence of imprisonment for felony; postincarceration supervision); 534.030(1) (Fines for felonies). These provisions are similar to the ones proscribed under federal RICO law, except that federal RICO law allows for the imposition of an alternative fine up to 2 times the gross profits or proceeds and federal RICO laws include a provision on criminal forfeiture. 18 U.S.C. § 1963(a) (Criminal penalties).

Regarding sentencing provisions under Kentucky law, in at least two cases the Kentucky Supreme Court has held that a person could be convicted of both crimes of the criminal syndicate and the underlying criminal offenses. *See Brooks v. Commonwealth*, 905 S.W.2d 861, 864-65 (KY 1995); *Edwards v. Commonwealth*, 906 S.W.2d 343, 347-48 (KY 1995).

The criminal penalties for a violation of Kentucky's organized crime law are also not as strong as a violation of Kentucky's human trafficking law when the victim is under 18, which can be classified as a Class A felony and carry a maximum prison sentence of life in prison. Ky. Penal Code § 529.100(2)(b) (Human trafficking), 532.060(2)(a) (Sentence of imprisonment for felony; postincarceration supervision).

## **LOUISIANA**

Under Louisiana's Racketeering Act, La. Rev. Stat. Ann. § 15:1353(A), (B) prohibits "any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise . . . [or] knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property." Furthermore, "[i]t is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity . . . [or] for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section." La. Rev. Stat. Ann. § 15:1353(C), (D).

Racketeering Activity is defined under La. Rev. Stat. Ann. § 15:1352(a) as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime which is punishable under the [select listed] provisions of Title 14 of the Louisiana Revised Statutes of 1950, the Uniform Controlled Dangerous Substances Law, or the Louisiana Securities Law . . .” The only CSEC offense listed as racketeering activity under this definition is La. Rev. Stat. Ann. § 14:84 (Pandering). La. Rev. Stat. Ann. § 15:1352(a)(16). Trafficking offenses are not included as predicate activity.

Racketeering is punishable under the act by imprisonment up to 50 years at hard labor, a fine up to \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(a).

## **MAINE**

Maine has not enacted a racketeering or gang crimes statute.

## **MARYLAND**

Maryland does not have a racketeering offense, participation in a criminal gang is criminalized under Md. Code Ann., Crim. Law § 9-804(a) (Participation in criminal gang prohibited) which makes it unlawful for a person to “(1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; and (2) knowingly and willfully direct or participate in an underlying crime, or act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang.”

A “pattern of criminal gang activity” is defined as “the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.” Md. Code Ann., Crim. Law § 9-801(d). The definition of “underlying crime” includes “a violation of . . . § 11-303 (human trafficking)” and “a crime of violence,” which is defined under § 14-101 to include “abduction.” Md. Code Ann., Crim. Law § 9-801(f)(1), (2).

A conviction under Md. Code Ann., Crim. Law § 9-804(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-804(c)(1)(i). However, if the commission of the underlying crime results in the victim’s death, a conviction is punishable by imprisonment up to 20 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-804(c)(1)(ii). Lastly, persons who “organize, supervise, finance, or manage a criminal gang” are guilty of a felony punishable by imprisonment up to 20 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-805(a), (b).<sup>89</sup>

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<sup>89</sup> “A sentence imposed under this section shall be separate from and consecutive to a sentence for any crime based on the act establishing a violation of this section.” Md. Code Ann., Crim. Law § 9-805(c).

## **MICHIGAN**

### **RICO Statute**

Michigan's RICO law prohibits a person, who is employed by, or associated with, an enterprise, from knowingly conducting or participating in the affairs of the enterprise through a pattern of racketeering activity. Mich. Comp. Laws § 750.159i(1). It also prohibits a person from knowingly acquiring or maintaining an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, through a pattern of racketeering activity. Mich. Comp. Laws § 750.159i(2). It further prohibits a person who has knowingly received any proceeds from a pattern of racketeering activity from using or investing any part of those proceeds in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise. Mich. Comp. Laws § 750.159i(3). Finally, Michigan's RICO law prohibits a person from conspiring or attempting to violate the above provisions. Mich. Comp. Laws § 750.159i(4).

Under Michigan law, the definition of "enterprise" includes, among other things, individuals, groups of persons associated in fact although not a legal entity, and illicit as well as licit enterprises. Mich. Comp. Laws § 750.159f(a).

### **Predicate Act Requirements**

Similar to federal RICO law, Michigan RICO law requires at least 3 predicate acts to establish a "pattern of racketeering activity." Mich. Comp. Laws § 750.159f(c). The acts must be similar in purpose, result, participant, victim, or method of commission and requires that they are not isolated events. *Id.* They must also be continuous and one of the acts had to have occurred on or after the effective date of Michigan's RICO section, with the last act occurring 10 years after the commissions of a prior predicate act. *Id.* The time frame between acts is also similar to the federal time allowance between predicate acts.

### **Relevant Offenses**

Michigan has a wide range of relevant offenses included under its definition of "racketeering." Michigan includes the offenses relating to the display or dissemination of obscene matter to minors, child sexually abusive activity or material, prostitution, human trafficking, and obscenity. Mich. Comp. Laws § 750.159g(h), (n), (ff), (gg), (kk) (Definitions; racketeering). Michigan RICO law also includes offenses that were committed in other states in violation of law substantially similar to the offenses Michigan includes under its RICO laws, as well as racketeering activity as defined in 18 U.S.C. 1961(1). Mich. Comp. Laws § 750.159g(mm)-(oo).

### **Potential Defendants**

By including a long list of offenses under its definition of racketeering, Michigan expands the reach of the federal RICO act. It is also expansive in that it also includes the offenses of attempts and conspiracies to commit predicate acts, along with aiding and abetting a person to commit a predicate act and soliciting, coercing, or intimidating a person to commit a predicate act. Mich. Comp. Laws § 750.159g. Finally, Michigan's RICO law is more expansive than the federal RICO act in that it also includes violations with respect to interests in real and personal property. Mich. Comp. Laws § 750.159i(2)-(3). However, the property does have to have been used or intended to be used for an enterprise's affairs, so the existence of an enterprise still needs to be proven. *Id.*

Michigan's RICO law is limiting, however, in that it requires a higher burden of proof on victims to prove that their attackers acted "knowingly." Mich. Comp. Laws § 750.159i(1)-(3).

### **Criminal Penalties**

A person who violates Michigan's RICO laws is guilty of a felony punishable by imprisonment up to 20 years or a fine up to \$100,000, or both. Mich. Comp. Laws § 750.159j(1) (Violation of § 750.159i; penalties; costs; court's authority, criminal forfeiture of property, additional authority; attorney fees; determination of property subject to forfeiture, order of forfeiture; deposit of money seized, examination, return; application of other criminal or civil remedies). While the maximum prison sentence is similar to that proscribed under federal RICO law, the maximum fine of \$100,000 has the potential to be greater than that under federal RICO law which sets the maximum at 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties). Under Michigan RICO law, the court may also order the violator to pay court costs or the costs of investigation and prosecution. Mich. Comp. Laws § 750.159j(2).

A violation of Michigan's RICO law carries harsher penalties than human trafficking offenses which carry a sentence of up to 15 years. Mich. Comp. Laws § 750.462b(2) (Subjecting or attempting to subject a person to forced labor or services by causing or threatening to cause physical harm to another person; penalties).

Michigan RICO law also includes a criminal forfeiture provision requiring that a person convicted of a RICO violation forfeit any real, personal, or intangible property that the person has an interest in and that was used in the violation. Mich. Comp. Laws § 750.159j(4).

## **MINNESOTA**

### **RICO Statute**

Minnesota RICO law prohibits a person, who is employed by or associated with an enterprise and intentionally conducts or participates in the enterprise's affairs, from participating in a pattern of criminal activity and it prohibits a person from acquiring or maintaining an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of racketeering activity. Minn. Stat. § 609.903(1)(1)-(2) (Racketeering). Minnesota law also



prohibits a person from participating in a pattern of criminal activity and knowingly investing derived proceeds in an enterprise or real property. Minn. Stat. § 609.903(1)(3).

As defined by Minnesota law, an “enterprise” means, among other things, a group of persons associated in fact although not a legal entity and illicit as well as legitimate enterprises. Minn. Stat. § 609.902(3) (Definitions). This definition does not include “individuals.”

### **Predicate Act Requirements**

Unlike federal RICO law, which only requires 2 predicate acts, Minnesota RICO law requires at least 3 predicate acts. Minn. Stat. § 609.902(6) (Definitions). Minnesota also requires that the acts were committed within 10 years of the criminal proceeding, that they are not isolated acts, and that they do not constitute a single criminal offense. Minn. Stat. § 609.902(6)(1)-(2). The acts must be either related to each other through a common scheme, plan, or purpose or that they were committed, solicited, requested, importuned, or intentionally aided by persons acting with the *mens rea* required to commit the acts and that the persons were associated with or in an enterprise involved in the criminal activities. Minn. Stat. § 609.902(6)(3).

### **Relevant Offenses**

Minnesota includes a number of relevant offenses under its definition of a “criminal act.” Among the relevant offenses include the solicitation, inducement, and promotion of prostitution; sex trafficking; and criminal sexual conduct, including certain sex offenses against minors. Minn. Stat. Ann. § 609.902(4) (Definitions).

### **Potential Defendants**

While Minnesota’s RICO law includes a wide-range of relevant offenses, it has been interpreted by the Minnesota Supreme Court to be more limited. More specifically, the court held that an enterprise has 3 elements not explicitly included under Minnesota’s RICO law. The three elements that characterize an enterprise are “ (1) a common purpose among the individuals associated with the enterprise; where (2) the organization is ongoing and continuing, with its members functioning under some sort of decision making arrangement or structure; and where (3) the activities of the organization extend beyond the commission of the underlying criminal acts either to coordinate the underlying criminal acts into a pattern of criminal activity or to engage in other activities.” *State v. Huynh*, 519 N.W.2d 191, 196 (Minn. 1994). This has a limiting effect because it raises the burden of proof on prosecutors to show that a defendant could be held liable under Minnesota’s RICO act.

Minnesota RICO law is also limiting because it adds a *mens rea* requirement to 2 of its subsections, requiring that a defendant either acted “intentionally” or “knowingly.” Minn. Stat. § 609.903(1)(1), (1)(3) (Racketeering). This *mens rea* requirement is not included under federal law and raises the burden of proof for prosecutors.

Another difference between Minnesota RICO law and other RICO laws is that it does not include a prohibition on soliciting, intimidating, or coercing another to commit racketeering, or aiding and abetting someone to commit racketeering.

Minnesota's RICO law is more expansive than the federal RICO law with respect to 2 of its subsections, however, because it creates the possibility that a prosecutor would only have to prove existence of an interest in real property, rather than proof of an enterprise.

### **Criminal Penalties**

One convicted of violating Minnesota's RICO act may be sentenced to up to 20 years imprisonment or a fine up to \$1,000, 000, or both. Minn. Stat. Ann. § 609.904(1). While the maximum term of imprisonment is similar to that proscribed under federal RICO law, Minnesota's financial penalty has the potential to be much greater than that allowed under federal RICO law which limits a financial penalty to 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties). Minnesota also allows for an alternative fine if the person convicted of violating Minnesota's RICO law received economic gain from the act or caused economic loss or personal injury. Minn. Stat. Ann. § 609.904(2). This alternative fine is set a maximum of 3 times the gross value gained or gross loss (not including pain and suffering) caused, plus court costs and the costs of investigation and prosecution, minus the value of any forfeited property under Minnesota RICO law. *Id.* This is harsher than the alternative fine proscribed under federal law which, as mentioned above, is set at a maximum of only 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a).

A violation of Minnesota's RICO act can also carry harsher penalties than the crimes of solicitation, inducement, and promotion of prostitution and sex trafficking offenses in the first degree under Minnesota law, which only carries a maximum prison sentence of 20 years or a fine up to \$50,000, or both. Minn. Stat. Ann. § 609.322(1)(a) Solicitation, inducement, and promotion of prostitution; sex trafficking).

Minnesota also allows for criminal forfeiture for violations of its RICO act. Minn. Stat. Ann. § 609.905(1) (Criminal forfeiture). Items subject to forfeiture includes "real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation [of Minnesota's RICO laws]." *Id.* Minnesota also allows the forfeiture of "property constituting an interest in or means of control or influence over the enterprise involved in the violation of [Minnesota's RICO laws] . . . and any property constituting proceeds derived from the violation . . ." *Id.* Examples of this kind of property includes, among other things: positions, commissions, employment contracts, compensations, property or contractual rights, and amounts payable. Minn. Stat. Ann. § 609.905(1)(1)-(4).

## **MISSISSIPPI**

### **RICO Statute**

Mississippi's RICO act prohibits a person, who has with criminal intent received any proceeds from a pattern of racketeering activity, from using or investing any part of the proceeds in the acquisition of any title to, or any right, interest, or equity in real property or in the establishment or operation of any enterprise. Miss. Code Ann. § 97-43-5(1) (Activities prohibited).

Mississippi also prohibits a person from acquiring or maintaining an interest in or control of any enterprise or real property through a pattern of racketeering activity and it prohibits a person, who is employed by or associated with any enterprise, to conduct or participate in such enterprise through a pattern of racketeering activity. Miss. Code Ann. § 97-43-5(2), (3). Finally, Mississippi prohibits a person from conspiring to violate any of the aforementioned provisions. Miss. Code Ann. § 97-43-5(4).

Under Mississippi RICO law, an enterprise<sup>90</sup> is defined as, among other things, an individual, an association or group of individuals associated in fact although not a legal entity, and illicit as well as licit enterprises. Miss. Code Ann. § 97-43-3(c) (Definitions).

### **Predicate Act Requirements**

Similar to federal RICO law, Mississippi requires at least 2 predicate acts to establish a “pattern of racketeering activity.” Miss. Code Ann. § 97-43-3(d) (Definitions). The acts must have similar intents, results, accomplices, victims, or methods of commission, and must not be isolated events. *Id.* The law also requires that at least one of the acts occur after 1984, with the last act occurring within 5 years after a prior predicate act. *Id.* This time frame is much less than that required under federal RICO law, which allows 10 years between predicate acts. 18 U.S.C. § 1961(5) (Definitions).

### **Relevant Offenses**

Mississippi includes a few of relevant offenses under its definition of “racketeering activity.” Among the offenses including are ones relating to prostitution and child exploitation. Miss. Code Ann. § 97-43-3(a)(10), (11) (Definitions). Mississippi's RICO law is thus quite vague and limited by not including, under its definition of “racketeering activity,” human trafficking, pornography, and other commercial exploitation offenses.

### **Potential Defendants**

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<sup>90</sup> Where the enterprise targeted through the racketeering statute is a criminal gang, the Mississippi Street Gang Act may apply as well. Under Miss. Code Ann. § 97-44-19(1) (Penalties for criminal street gang activity) “[a]ny person who intentionally directs, participates, conducts, furthers, or assists in the commission of illegal gang activity shall be punished by imprisonment for not less than one (1) year nor more than one-half (1/2) of the maximum term of imprisonment provided for an underlying offense and may be fined an amount not to exceed Ten Thousand Dollars (\$ 10,000.00). Any sentence of imprisonment imposed pursuant to this section shall be in addition and consecutive to any sentence imposed for the underlying offense.” Pursuant to Miss. Code Ann. § 97-44-19(2), (3), “[a]ny person who is convicted of a felony or an attempted felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, . . . [or] is convicted of an offense other than a felony which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct or enterprise by gang members,” faces a penalty enhancement of 1 year imprisonment under subsection (3), or 1 year to “one-half (1/2) of the maximum term of imprisonment provided” for the underlying offense.

Mississippi's RICO law, while only including very few relevant offenses under its definition of "racketeering activity," is more expansive in who can be held liable under it because it also includes, not only the commission of a predicate act, but attempting or conspiring to commit a predicate act, as well as soliciting, coercing, or intimidating another person to commit a predicate act. Miss. Code. Ann. § 97-43-3(a) (Definitions).

Mississippi's law is also more expansive than federal RICO law in that it also prohibits using or investing proceeds in real property, and it also prohibits a person from acquiring real property through a pattern of racketeering activity. Miss. Code Ann. § 97-43-5(1), (2) (Activities prohibited). This creates the possibility that prosecutors may only need to prove the existence of an interest in real property rather than having to prove the existence of an enterprise, which may be more difficult to achieve.

Mississippi's RICO law is more limited, however, because it includes a *mens rea* element in one of its subsections. It requires that a person receive proceeds from a pattern of racketeering activity with criminal intent. Miss. Code Ann. § 97-43-5(1) (Activities prohibited). This requirement is not included under federal law and it limits the breadth of potential defendants held liable under Mississippi's RICO act by raising the burden of proof for prosecutors.

### **Criminal Penalties**

A person convicted of a violation of Mississippi's RICO law is guilty of a felony, which is punishable by imprisonment up to 20 years, a \$25,000 fine, or both. Miss. Code Ann. § 97-43-7(1) (Penalties). This specified prison term is identical that proscribed under federal RICO law. 18 U.S.C. § 1963(a) (Criminal penalties). A person convicted of a RICO violation and who derived pecuniary value or by which he caused personal injury or property damage or other loss may also be sentenced with an alternative fine. Miss. Code Ann. § 97-43-7(2). Unlike federal RICO law, which caps the alternative fine at 2 times the gross profits or proceeds, Minnesota caps its alternative fine at 3 times the gross value gained or loss caused, whichever is greater. 18 U.S.C. § 1963(a); Miss. Code. Ann. § 97-43-7(2). Mississippi's alternative fine also includes court costs and the costs of investigation and prosecution. Miss. Code. Ann. § 97-43-7(2).

A violation of Mississippi's RICO act also carries harsher penalties than some of its CSEC offenses, such as enticing a child, which only carries a penalty of prison up to 10 years or a fine up to \$1,000, or both. Miss. Code Ann. § 97-5-5 (Enticing a child under fourteen; punishment). A RICO violation is more lenient than some other CSEC offenses under Mississippi law such as depicting a child engaging in sexual conduct which carries a penalty of up to 40 years and a fine up to \$500,000. Miss. Code Ann. § 97-5-35 (Depicting child engaging in sexual conduct; punishment).

### **MISSOURI**

Missouri has not enacted a racketeering statute, however, Missouri's criminal gang statutes may apply to some trafficking enterprises. Pursuant to Mo. Rev. Stat. 578.421(1)(Definitions), a

“criminal street gang” is defined as, “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (2) of this section [“Pattern of criminal street gang activity”], which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.” However, a pattern of criminal street gang activity is not defined to include trafficking or commercial sexual exploitation of children offenses. Mo. Rev. Stat. 578.421(2)

Although not specific to CSEC and trafficking crimes, Mo. Rev. Stat. §§ 578.423 criminalizes the conduct of “[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal street gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years. In addition, enhanced penalties may be applied to convictions for crimes committed “for the benefit of, at the direction of, or in association with, any criminal street gang . . . .” Mo. Rev. Stat. 578.425. For misdemeanors, the offender “shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years.” Mo. Rev. Stat. 578.425(1). For felony convictions, the judge has discretion to add an additional “one, two, or three years” to the sentence of “two, three, or four years” if the violation was committed near a school. Mo. Rev. Stat. 578.425(2).

## **MONTANA**

### **RICO Statute**

Montana has a version of a RICO act, known as the “Montana Street Terrorism Enforcement and Prevention Act.” Mont. Code Ann. § 45-8-401(Short title). This act prohibits a person from committing or soliciting, conspiring, or attempting to commit 2 or more criminal street gang activity offenses. Mont. Code Ann. § 45-8-405(1) (Pattern of criminal street gang activity).

Montana defines a “criminal street gang” as “any organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in 45-8-405 [Pattern of criminal street gang activity], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engage in a pattern of street gang activity.” Mont. Code Ann. § 45-8-402(1) (Definitions).

### **Predicate Act Requirements**

Montana law requires at least 2 or more predicate acts to establish a “pattern of criminal street gang activity.” Mont. Code Ann. § 45-8-405(1) (Pattern of street criminal gang activity). Montana also requires that the acts be committed, attempted, or solicited within a 3 year period and occur on separate occasions. *Id.* This time frame between acts is much more limited than the

federal RICO act, which allows for up to 10 years between acts. *See* 18 U.S.C. § 1963(a) (Criminal penalties).

### **Relevant Offenses**

Montana's RICO law is very limited in that it only includes one type of relevant offense. It only includes the offense of aggravated promotion of prostitution, which includes the aggravated promotion of prostitution of a minor. Mont. Code Ann. §§ 45-8-405(2) (Pattern of criminal street gang activity), 45-5-603(1) (Aggravated promotion of prostitution).

### **Potential Defendants**

Montana's RICO act is very limiting in its application to potential defendants. Not only does it include only 1 relevant offense, but it also requires that the acts be committed within a 3 year period, and it is restrictive in its definition of a "criminal street gang," which requires that the entity be composed of 3 or more persons, be ongoing, and have as one of its primary activities the commission of one or more of the criminal acts enumerated in Montana's statute on a pattern of criminal street gang activity. Mont. Code Ann. §§ 45-8-402(1) (Definitions), 45-8-405(1) (Pattern of criminal street gang activity).

### **Criminal Penalties**

Under Montana law, a person convicted of a felony that the person committed for the benefit of, at the direction of, or in association with any criminal street gang for the purposes of promoting, furthering, or assisting any criminal conduct by criminal street gang members shall be sentenced to imprisonment from 1 to 3 years. Mont. Code Ann. § 45-8-404(1)(a) (Additional sentence for criminal street gang-related felony). This sentence is in addition to the sentences imposed from the underlying offenses and shall run consecutively with those sentences. Mont. Code Ann. § 45-8-404(1)(a), (3). This sentencing provision is much less than the sentences proscribed under federal RICO law, which allow for a prison sentence up to 20 years, along with financial criminal penalties and criminal forfeiture provisions. *See* 18 U.S.C. § 1963(a) (Criminal penalties).

## **NEBRASKA**

### **RICO Statute**

Nebraska's RICO law, also known as the Public Protection Act, prohibits a person, who has received proceeds knowingly from a pattern of racketeering activity, from using any part of the proceeds in acquiring any right, interest, or equity in real property or in the establishment or operation of any enterprise. Neb. Rev. Stat. § 28-1355(1) (Pattern of racketeering activity or collection of unlawful debt; prohibited acts). Nebraska's RICO law also prohibits a person from acquiring or maintaining any interest in or control of any enterprise or real property through a pattern of racketeering activity and it prohibits a person, who is employed by or associated with any enterprise, from conducting or participating in the conduct of such enterprise's affairs

through a pattern of racketeering activity. Neb. Rev. Stat. § 28-1355(2), (3). Furthermore, Nebraska also prohibits a person from conspiring or attempting to violate any of the above provisions. Neb. Rev. Stat. § 28-1355(4).

Finally, Nebraska defines an “enterprise” as including, among other things, individuals, groups of individuals associated in fact although not a legal entity, and illicit and licit entities. Neb. Rev. Stat. § 28-1354(1) (Terms, defined).

### **Predicate Act Requirements**

Nebraska has a unique definition of a “pattern of racketeering activity” that requires a cumulative loss for one or more victims or gains for the enterprise of not less than \$1,500. Neb. Rev. Stat. § 28-1354(2) (Terms, defined). The loss or gain has to have resulted from at least 2 predicate acts, one of which occurred after August 30, 2009, and the last of which occurred within 10 after the prior predicate act. Neb. Rev. Stat. § 28-1354. This is a very strict requirement that can be very hard to prove as loss for victims of human trafficking and other abuse is not always monetary, but emotional and physical loss, too, which is not necessarily quantifiable.

### **Relevant Offenses**

Nebraska includes a wide range of relevant offenses included under its definition of “racketeering activity.” Among the relevant offenses included are: prostitution, pandering, keeping a place of prostitution, human trafficking, offenses related to child pornography. Neb. Rev. Stat. § 28-1354(5) (Terms, defined).

### **Potential Defendants**

Nebraska’s RICO act is limited as it adds a *mens rea* element to its provisions, requiring that the defendant knew that the proceeds were from a pattern of racketeering activity. Neb. Rev. Stat. § 28-1355(1) (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts). This raises the burden of proof for prosecutors as it can be difficult to prove that someone had knowledge of an event or circumstance.

Nebraska’s RICO act provisions prohibit a person from acquiring or maintaining a right, interest, or equity in real property instead of just interests in an enterprise. This results in a prosecutor not having to prove the existence of an enterprise. Neb. Rev. Stat. § 28-1355(1), (2).

Finally, Nebraska’s RICO act reaches a wider set of potential defendants because it includes, not only the commission of a racketeering activity, but also a criminal attempt to commit, a conspiracy to commit, aiding and abetting in the commission or, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid a commission of racketeering activity. Neb. Rev. Stat. s 28-1354(5) (Terms, defined).

### **Criminal Penalties**

A violation of Nebraska's RICO law is a Class III felony, unless the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony, in which case the violator is guilty of a Class IB felony. Neb. Rev. Stat. § 28-1356(1) (Violation; penalty). A Class III felony is punishable by a maximum 20 years imprisonment, or a \$25,000 fine, or both, while a Class IB felony is punishable by imprisonment from 20 years to life. Neb. Rev. Stat. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation). Nebraska also includes an alternative fine provision in which a person convicted of a RICO violation through which he or she derived pecuniary value or which caused personal injury or property damage or other loss, may be sentenced to a fine up to 3 times the gross value gained or gross loss caused, whichever is greater. Neb. Rev. Stat. § 28-1356(2). The person may also have to pay court costs and the costs of investigation and prosecution. *Id.* Nebraska's criminal penalty provisions are harsher than federal RICO penalties, which set a maximum prison sentence at 20 years and fine up to only 2 times the gross profits or proceeds. 18 U.S.C. 1963(a) (Criminal penalties). Unfortunately, however, unlike federal RICO law, Nebraska does not include a forfeiture provision under its RICO act.

A violation of Nebraska's RICO law is the same class of felony as a human trafficking violation under Nebraska law, carrying the same penalties. *See* Neb. Rev. Stat. § 28-831(1).

## NEVADA

### RICO Statute

Nevada's RICO act prohibits a person, who has with criminal intent, received proceeds derived from racketeering activity, from using or investing any part of the proceeds in the acquisition or any title, right, interest, or equity in real property or any interest in or the establishment or operation of any enterprise. Nev. Rev. Stat. § 207.400(1) (Unlawful acts; penalties). Nevada RICO law also prohibits a person from acquiring or maintaining any interest in or control of an enterprise through racketeering activity and prohibits a person, who is employed by or associated with any enterprise, from conducting or participating in the affairs of the enterprise through racketeering activity of racketeering activity through the affairs of the enterprise. *Id.* Furthermore, Nevada RICO law also prohibits a person from intentionally organizing, managing, directing, supervising, or financing a criminal syndicate and from conducting or attempting to conduct any transaction involving property that a person knows represents the proceeds from an unlawful activity. *Id.* Finally, Nevada RICO law prohibits a person from conspiring to commit any of the aforementioned acts. *Id.*

Under Nevada RICO law, an enterprise is defined as including, among other things, individuals, groups of persons associated in fact although not a legal entity, and illicit as well as licit enterprises. Nev. Rev. Stat. § 207.380(1)-(2) ("Enterprise" defined). Also under Nevada RICO law, a "criminal syndicate" is separate from, but related to, the definition of an enterprise and is defined as "any combination of persons, so structured that the organization will continue its operation even if the individual members enter or leave the organization, which engages in or has the purpose of engaging in racketeering activity." Nev. Rev. Stat. s 207.370 ("Criminal syndicate" defined).



## **Predicate Act Requirements**

Nevada RICO law is similar to federal RICO law in that it requires a least 2 predicate acts for there to be a “pattern of racketeering activity.” Nev. Rev. Stat. § 207.390 (“Racketeering activity” defined). The acts must be similar in pattern, intent, results, accomplices, victims, or methods of commission and they may not be isolated acts. *Id.* Furthermore, the law requires that at least one of the acts have occurred after July 1, 1983 and that the last of the acts occurred within 5 years after the prior commission of a racketeering crime. *Id.* This time frame between acts is much stricter than that allowed under federal RICO law (10 years), thus limiting the scope of defendants capable of being prosecuted under Nevada’s RICO act, even if they did commit human trafficking and CSEC related offenses. *See* 18 U.S.C. 1961(5) (Definitions).

## **Relevant Offenses**

Nevada’s RICO act is very limited in that it only includes 2 related offenses under its definition of a “crime related to racketeering.” The act only includes the related offenses of pandering and placing a person in a house of prostitution. Nev. Rev. Stat. § 207.360(29) (“Crime related to racketeering” defined). Nevada’s RICO is thus very weak in protecting victims as it does not include the relevant offenses of human trafficking, pornography, or all prostitution-related and commercial exploitation offenses.

## **Potential Defendants**

While Nevada’s RICO law is similar the federal RICO law, it does limit the amount potential defendants because it adds a *mens rea* requirement that is omitted from the federal law. Under most of the Nevada RICO provisions, violators are required to have acted either knowingly or intentionally. Nev. Rev. Stat. § 207.400(1) (Unlawful acts; penalties).

Nevada law is more expansive than federal law, however, in that it also allows a person to be liable for a RICO offense for involvement in a criminal syndicate, whether as a manager or operator or as an aid or assistant. Nevada also includes violations in relation to the use of property, which is not included under the federal RICO statute. Thus, Nevada does provide prosecutors with more tools to get at potential defendants.

## **Criminal Penalties**

A violation of Nevada’s RICO act is category B felony, which is punishable by imprisonment from 5 to 20 years, which is similar to federal RICO law, and a fine up to \$25,000. Nev. Rev. Stat. § 207.400(2) (Unlawful acts; penalties). Nevada also provides for an alternative fine that is harsher than federal RICO law provisions, and allows a court to impose a fine of up to 3 times the gross pecuniary value the convicted person gained or any gross loss the convicted person caused, including property damage and personal injury, whichever is greater, as a result of the violation. Nev. Rev. Stat. § 207.410(1)-(2) (Alternative fine for unlawful acts). Under this alternative fine provision, a person convicted of a RICO violation may also be sentenced to pay courts costs and the costs of investigation and prosecution. Nev. Rev. Stat. § 207-410(2).

However, if any property is criminally forfeited under this law, the value of that must be subtracted from the alternative fine. *Id.*

Nevada also includes a criminal forfeiture provision under its RICO act, if it is alleged that real or personal property was derived from, realized through, or used or intended for use in the course of the unlawful act and the extent of that property. Nev. Rev. Stat. § 207-420(1) (Criminal forfeiture: property subject to forfeiture; substitution for unreachable property). Nevada also includes a wide range of property subject to forfeiture, including: titles or interests, derived proceeds, property or contractual rights, position, contracts of employment, compensation, amounts payable, etc.. Nev. Rev. Stat. § 207-420(2).

## **NEW HAMPSHIRE**

New Hampshire has not enacted a racketeering statute. However, N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) (Extended term of imprisonment) provides sentence enhancements for offenses committed by criminal street gangs if a “jury also finds beyond a reasonable doubt that such person . . . Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members: (1) Violent crime as defined in RSA 651:5, XIII,” which includes “[a]ny felonious child pornography offense under [N.H. Rev. Stat. Ann. §] 649-A]. . .”

## **NEW JERSEY**

### **RICO Statute**

New Jersey’s RICO act prohibits a person, who has received income from a pattern of racketeering in which he participated as a principal, from using or investing any part of the income or its proceeds to acquire any interest in an enterprise which is engaged in or the activities of which affect trade commerce. N.J. Stat. Ann. § 2C:41-2(a) (Prohibited activities). New Jersey’s RICO law also prohibits a person from acquiring or maintaining an interest in or control of an enterprise engaged in or activities of which affect trade or commerce, through a pattern of racketeering activity or for a person, who is employed by or associated with such an enterprise, to conduct or participate in the conduct of the enterprise’s affairs through a pattern of racketeering activity. N.J. Stat. Ann. § 2C:41-2(b), (c). It is also prohibited to conspire to commit any of the aforementioned activities. N.J. Stat. Ann. § 2C:41-2(d). The requirement that the activities affect trade and commerce is unique to New Jersey and the federal RICO law, as most states have omitted similar language. In this way, New Jersey RICO law is thus more restrictive than other states’ RICO laws, as it requires a higher burden of proof for the prosecutor.

Under New Jersey RICO law, an “enterprise” as including, among other things, individuals, groups of individuals associated in fact although not a legal entity, and illicit as well as licit enterprises. N.J. Stat. Ann. § 2C:41-1(a) (Definitions).

## **Predicate Act Requirements**

New Jersey law requires at least 2 predicate acts to establish a “pattern of racketeering activity.” N.J. Stat. Ann. § 2C:41-1(d)(1) (Definitions). One of the predicate acts had to have occurred after the effective date of New Jersey’s RICO act, with the last occurring within 10 years after a prior predicate act, similar to federal RICO requirements. N.J. Stat. Ann. § 2C:41-1(d)(1); 18 U.S.C. § 1961(5) (Definitions). Finally, New Jersey law requires that the acts are similar in purpose, results, participants or victims or methods of commission and are not isolated incidents. N.J. Stat. Ann. § 2C:41-1(d)(2).

## **Relevant Offenses**

New Jersey includes the relevant offenses of promoting prostitution, human trafficking, certain child pornography offenses, and the trafficking and exploitation offenses included under the definition of “racketeering activity” under 18 U.S.C. § 1961(1)(A), (B), and (D) (Definitions). N.J. Stat. Ann. § 2C:41-1(a) (Definitions). New Jersey thus expands the reach of the federal RICO law, but not so far as to include state offenses relating to all forms of child pornography or prostitution offenses.

## **Potential Defendants**

The amount and type of defendants potentially found liable of a RICO violation under New Jersey is somewhat constrained. For example, unlike most other states, New Jersey does not include the actions of attempting to commit a RICO offense, or soliciting, coercing, or intimidating another person to commit a RICO offense, or aiding and abetting someone in creating a RICO offense.<sup>91</sup> However, the reach of the law has the potential to be expanded in some circumstances because New Jersey includes, under its definition of “racketeering activity,” “equivalent laws under the laws of any other jurisdiction.” N.J. Stat. Ann. § 2C:41-1(a); *See also* ABA Section of Antitrust Law, RICO State by State: A Guide to Litigation under the State Racketeering Statutes, 767 (2d Ed. 2011).

However, New Jersey’s definition of continuous acts is broader, placing more emphasis on the relatedness of a pattern of racketeering activity, and by not requiring that an enterprise have an ascertainable structure. *See State v. Ball*, 661 A.2d 251, 260-64 (N.J. 1995); *State v. Taccetta*, 693 A.2d 1229, 1240 (N.J. Superior Ct. App. Div. 23, 1997).

Another reason why New Jersey’s RICO law is more beneficial to prosecutors is that it has been interpreted to reject the narrow interpretation postulated in *Reves v. Ernst & Young*, expanding the amount and type of potential defendants to low-level members or those that, while still committing an offense or being part of an enterprise, may not have led the enterprise under *Reves*’ “operation and management” test. *See State v. Ball*, 661 A.2d 251, 266-67 (N.J. 1995). The Supreme Court of New Jersey has concluded that it believe the Legislature meant to hold bosses liable but also “those who do not manage or supervise racketeering activity, but

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<sup>91</sup> ABA Section of Antitrust Law, RICO State by State: A Guide to Litigation under the State Racketeering Statutes, 767 (2d Ed. 2011).

nevertheless knowingly assist it.” *Id.* Thus the New Jersey statute only requires that a defendant be “a person is ‘employed by or associated with an enterprise’ if he or she has a position or a functional connection with the enterprise that enables him or her to engage or participate directly or indirectly in the affairs of the enterprise . . . [and] that to conduct or participate in the affairs of an enterprise means to act purposefully and knowingly in the affairs of the enterprise in the sense of engaging in activities that seek to further, assist or effectuate the goals of the enterprise.” *Id.* at 268. This wide-reaching interpretation thus provides greater protections to victims by seeking to hold everyone responsible, liable for their crimes.

### **Criminal Penalties**

New Jersey has a unique set of criminal penalties for violators of its RICO act. If the violation involved a crime of violence, a crime of the first degree or the use of firearms, the violator is guilty of a crime of the first degree, otherwise the violator is guilty of a crime in the second degree. N.J. Stat. Ann. § 2C:41-3(a) (Criminal penalties). A crime in the first degree is punishable by imprisonment between 10 and 20 years and a fine up to \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1) (Sentence of imprisonment for crime; ordinary terms; mandatory terms), 2C:43-3(a)(1) (Fines and restitution). A crime in the second degree is punishable by imprisonment between 5 and 10 years and a fine up to \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2). New Jersey also provides for enhanced penalties because it allows for consecutive sentences for the RICO violation and the individual predicate acts. *See State v. Tancetta*, 693 A.2d 1229, 1246-47 (N.J. Super. Ct. Div. 1997).

While the maximum prison terms set under New Jersey law are similar to those imposed under federal law, New Jersey’s financial penalties have the potential to be harsher than federal RICO laws which set a maximum financial penalty at up to 2 times the gross profits or proceeds. 18 U.S.C. 1963(a) (Criminal penalties).

The criminal penalties for a violation of New Jersey’s RICO act is similar to those for a violation of its human trafficking statute, which is a crime of the first degree, except with the violator of the trafficking law receives anything of value from participation, which carries a prison term of 20 years without parole or a term up to life imprisonment. N.J. Stat. Ann. § 2C:13-8(2)(

New Jersey also has a criminal forfeiture provision. N.J. Stat. Ann. § 2C:41-3(b). There is wide range of items subject to forfeiture including: any interests acquired or maintained through a violation of New Jersey’s RICO act and any interest in, security of, claim against, or property or contractual right affording a source of influence over any enterprise that the violator established, acquired, maintained, operated, controlled, conducted, or participated in the conduct of, in violation of New Jersey’s RICO act. *Id.* New Jersey law also provides that the court may enter restraining orders of prohibitions to guarantee forfeiture. N.J. Stat. Ann. § 2C:41-3(b).

## **NEW MEXICO**

### **RICO Statute**

New Mexico's RICO act, also known as the "Racketeering Act," prohibits a person, who has received proceeds from a pattern of racketeering activity in which the person has participated in, from using or investing the proceeds in acquiring a part in an enterprise. N.M. Stat. Ann. § 30-42-4(A) (Prohibited activities; penalties). It also prohibits a person from engaging in a pattern of racketeering activity to acquire or maintain an interest in or control of any enterprise and for a person, who is employed or associated with an enterprise, from conducting or participating in the conduct of the enterprise through a pattern of racketeering activity. N.M. Stat. Ann. § 30-42-4(B), (C). Furthermore, New Mexico RICO law prohibits conspiring to violate the above provisions. N.M. Stat. Ann. § 30-42-4(C).

Finally, New Mexico defines an "enterprise" as, among other things, a group of individuals associated in fact although not in legal entity, including illicit as well as licit entities. N.M. Stat. Ann. § 30-42-3(C) (Definitions). An "individual" is not included as an "enterprise" for purposes of New Mexico's RICO act. *Id.*

### **Predicate Act Requirements**

New Mexico has a very limited set of predicate act requirements. Under New Mexico RICO law, a "pattern of racketeering activity" means engaging in at least 2 predicate acts with the intent of accomplishing any of the prohibited racketeering offenses. N.M. Stat. Ann. § 30-42-3(D) (Definitions). New Mexico law also requires that at least one of the acts occurred after February 28, 1980, with the last act occurring within 5 years after the commission of a prior act of racketeering. *Id.* While the requirement of 2 predicate acts is consistent with federal RICO law, New Mexico law is less effective than federal law because it cuts the allowable amount of time between predicate acts in half, decreasing the amount of offenders that could be given enhanced penalties under its RICO act. *See* N.M. Stat. Ann. § 30-42-3(D); 18 U.S.C. § 1961(5) (Definitions).

### **Relevant Offenses**

The only relevant offense included under New Mexico's RICO act is the offense of promoting prostitution. N.M. Stat. Ann. § 30-42-3(A)(15). While New Mexico's statute on promoting prostitution is quite broad and has the potential to reach traffickers, facilitators, and buyers, it does not make New Mexico's RICO act anywhere near as effective as other states' RICO acts or the federal RICO act.

### **Potential Defendants**

New Mexico's RICO act is very weak at reaching potential defendants because it only includes the offense of promoting prostitution. It is also weak, compared to other RICO laws, in that it does not include, under its definition of "racketeering," attempting to commit a predicate act, aiding and abetting someone in committing a predicate act, or coercing, intimidating, or soliciting another to commit a predicate act, unless otherwise chargeable or indictable under New Mexico law.

New Mexico's law is also weaker than other RICO acts, including the federal RICO act, because it does not include an "individual" under its definition of "enterprise." Furthermore, at least one New Mexico court has interpreted New Mexico's RICO act to require that an enterprise have a common purpose among participants, organization, and continuity. State v. Hughes, 767 P.2d 382, 389 (N.M. 1988). Another court held that the continuity element "means that the enterprise is an ongoing organization whose associated act as a continuing unit." State v. Rael 981 P.2d 280, 285 (N.M. Ct. App. 1999).

New Mexico's law also has the potential to be more limiting than federal RICO law because it requires that a defendant, who received proceeds from a pattern of racketeering activity, *participate* in the pattern of racketeering activity. N.M. Stat. Ann. § 30-42-4(A) (Prohibited activities; penalties). This potentially restrictive language is not present in federal RICO law.

New Mexico's RICO law, unlike federal RICO law, also requires that a defendant have engaged in a pattern of racketeering activity for a purpose – to acquire or maintain an interest in or control of an enterprise – suggesting that some proof of intent may be required to hold someone liable under this subsection. N.M. Stat. Ann. § 30-42-4(B).

However, New Mexico's definition of "enterprise" has been interpreted by at least one court to be more expansive by holding that "a group associated only for the purpose of committing one or more types of RICO predicate acts may be an enterprise for the purposes of that act." *Id.* at 388.

### **Criminal Penalties**

A violation through commission of a RICO offense is a second degree felony under New Mexico law. N.M. Stat. Ann. § 30-42-4(A)-(C) (Prohibited activities; penalties). Anyone who conspires to violate a RICO offense under New Mexico law is guilty of a third degree felony. N.M. Stat. Ann. § 30-42-4(D). A second degree felony is punishable by a prison sentence of 9 years, unless it is a second degree for a sexual offense against a child, which is punishable by a prison sentence of 15 years. N.M. Stat. § 30-42-4(A)(5), (6) (Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions). A third degree felony is punishable by a prison sentence of 3 years, unless it is a third degree felony for a sexual offense against a child, which is punishable by a prison sentence of 6 years. N.M. Stat. Ann. § 31-18-15(A)(8), (9). The court may also impose a fine up to \$10,000 for a second degree felony or a fine up to \$12,500 for a second degree felony for a sexual offense against a child. N.M. Stat. Ann. § 31-18-15(E)(5), (6). For a third degree felony, even one for a sexual offense against a child, the court may also impose a fine up to \$5,000. N.M. Stat. Ann. § 31-18-15(E)(8), (9). These criminal penalties are significantly more lenient than federal RICO penalties, which set a maximum prison sentence at 20 years and a financial penalty of up to 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties).

New Mexico also allows for criminal forfeiture under its RICO act. N.M. Stat. Ann. § 30-42-4(E). The items required to be forfeited include: any acquired or maintained interests and any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise. *Id.*

## NEW YORK

### RICO Statute

New York's RICO focuses primarily on enterprise corruption. The law prohibits a person, who has knowledge of the existence of a criminal enterprise and its activities and is either employed by or associated with the enterprise, from: (1) intentionally conducting or participating in the enterprise's affairs by participating in a pattern of criminal activity, (2) intentionally acquiring or maintaining an interest in or control of an enterprise by participating in a pattern or criminal activity, or (3) participating in a pattern or criminal activity and knowingly investing any proceeds in an enterprise. N.Y. Penal Law § 460.20(1) (Enterprise corruption).

New York law provides two definitions for the type of enterprise referenced in its RICO act, stating that either type will satisfy the RICO provisions. One type of enterprise is a "criminal enterprise," which has the specific requirements of meaning "a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure distinct from a pattern of criminal activity, and with a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents." N.Y. Penal Law § 460.10(3) (Definitions). The other type of enterprise is less rigid in its requirements and means: "any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity." N.Y. Penal Law § 175.00(1) (Definition of terms).

### Predicate Act Requirements

New York has a complex set of predicate act requirements. First, New York is one of the only states that requires at least 3 predicate acts, which differs from federal RICO laws which only require at least 2 predicate acts. N.Y. Penal Law § 460.12(4) (Definitions), 18 U.S.C. 1961(5) (Definitions). New York also requires that the predicate acts be committed within 10 years of the commencement of the criminal action. N.Y. Penal Law § 460.12(4). Two of the acts must also be felonies other than conspiracy and two of the acts, one of which is a felony, must have occurred within 5 years of the commencement of the criminal action. N.Y. Penal Law § 460.20(2) (Enterprise corruption). Furthermore, New York requires that the acts be neither isolated nor actually single acts and each of the acts must have occurred within 3 years of a prior act. N.Y. Penal Law §§ 460.12(4), 460.20(2). The law also requires that the act be either: (1) related through a common scheme or plan or (2) were committed, solicited, requested, importuned or intentionally aided by persons with the *mens rea* to commit the act and associated with or in the enterprise. *Id.* Under New York's section on enterprise corruption, there is an intent requirement for persons to be held liable for participating in a pattern of criminal activity; the person must have acted with the intent to participate in or advance the criminal enterprise's affairs. N.Y. Penal Law § 460.20(2).

These requirements are significantly more restrictive than the predicate act requirements pursuant to federal law. *See, e.g., People v. Wakefield Financial Corp.*, 590 N.Y.2d 382, 388 (N.Y. Sup. Ct. 1992). These restrictions work to make it more difficult to hold liable “minor figures who did not really know or intent to advance the affairs of the criminal enterprise.”<sup>92</sup> Furthermore, case law has established that the acts committed by members of an organization have to be for the purpose of participating in or advancing the activities of the criminal organization itself, so as to further the organization’s own affairs.<sup>93</sup>

### **Relevant Offenses**

New York includes a number of human trafficking and related offenses under its definition of a “criminal act.” The list of offenses covered include those relating to promoting prostitution, sex trafficking, obscenity, and promoting a sexual performance by a child. N.Y. Penal Law § 460.10(1)(a).

### **Potential Defendants**

As mentioned above, the amount and type of potential defendants is severely limited by New York’s rigid RICO law through its extensive list of requirements under each provision. Due to New York’s requirement of three predicate acts, its increased level of intent required to be proven, its focus on the structure, purpose, and existence of an established enterprise, and the legislative intent behind the laws that New York’s RICO act not be used to prosecute all people potentially involved in human trafficking and exploitation, New York’s statute is not particularly powerful.

### **Criminal Penalties**

Similar to a violation of New York’s sex trafficking statute, the RICO offense of enterprise corruption is a class B felony. N.Y. Penal Laws §§ 230.34(Sex trafficking), 460.20(3) (Enterprise corruption). A class B felony is punishable by imprisonment from 1 to 25 years and a fine of up to \$30,000. N.Y. Penal Laws §§ 70.00(2)(b), (3)(b) (Sentence of imprisonment for felony). If a person convicted of a RICO offense through which he derived pecuniary value or caused personal injury or property damage or other loss, may be sentenced to pay an alternative fine up to 3 times the gross value gained or gross loss caused (whichever is greater). N.Y. Penal Laws § 460.30(5) (Enterprise corruption; forfeiture). These penalties are greater than those proscribed under federal law which set a maximum prison sentence at 20 years and an alternative fine at 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a) (Criminal penalties).

New York also allows for criminal forfeiture of a wide range of interests related to the enterprise through the violation. Items subject to forfeiture under a conviction of committing enterprise

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<sup>92</sup> ABA Section of Antitrust Law, RICO State by State: A Guide to Litigation under the State Racketeering Statutes, 830 (2d Ed. 2011); Daniel L. Feldman, *Principled Compromise: The New York State Organized Crime Control Act*, 6 Criminal Justice Ethics 50, 58 (1987).

<sup>93</sup> ABA Section of Antitrust Law, RICO State by State: A Guide to Litigation under the State Racketeering Statutes, 830-31 (2d Ed. 2011); *People v. Cantarella*, 606 N.Y.S.2d 942, 946-49 (N.Y. Sup. Ct. 1993); *People v. Besser*, 96 N.Y.S.2d 136, 143-44 (N.Y. Sup. Ct. 2001).



corruption include: any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise that was used in the violation and for which the person was convicted; any interests, including proceeds, that the person acquired or maintained in an enterprise through the violation; and any interest, including proceeds derived from investment of proceeds in the enterprise. N.Y. Penal Law § 460.30 (1) (Enterprise corruption; forfeiture).

New York limits the effectiveness of its criminal penalties, however, by also including the provision that criminal forfeiture or the additional fine mentioned above precludes the imposition of any other such order or judgment of forfeiture or fine based upon the same criminal conduct, except under some civil practice law and rules. N.Y. Penal Law § 460.30(6). Fortunately, New York law also provides that “the imposition of criminal penalty, forfeiture or fine under this section [enterprise corruption; forfeiture] shall not preclude the application of any other criminal penalty or civil remedy under this article or under any other provision of law.” N.Y. Penal Law § 460.30(7).

## **NORTH CAROLINA**

North Carolina’s RICO statute provides solely civil remedies but the offense of continuing criminal enterprise under N.C. Stat. § 14-7.20 imposes criminal penalties on criminal enterprises. Pursuant to N.C. Stat. § 14-7.20, “(a) Any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section. (b) Any person who is convicted under subsection (a) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina: (1) The profits obtained by the person in the enterprise, and (2) Any of the person's interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise. (c) For purposes of this section, a person is engaged in a continuing criminal enterprise if: (1) The person violates any provision of this Chapter, the punishment of which is a felony; and (2) The violation is a part of a continuing series of violations of this Chapter: a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and b. From which the person obtains substantial income or resources.”

All CSEC and trafficking offenses are felonies under Chapter 14 (Criminal Law). Thus for organizations of five or more persons, the organizers or managers may be criminally prosecuted and subject to forfeiture under this criminal statute as well as civil forfeiture procedures under the RICO Act. Unfortunately this precludes prosecution of smaller organizations and non-management participants of the enterprise.

## **NORTH DAKOTA**

### **RICO Statute**

North Dakota's RICO act prohibits a person from acquiring or maintaining control of an enterprise through a pattern of racketeering activity or its proceeds. N.D. Cent. Code § 12.1-06.1-03(1) (Illegal control of an enterprise – illegally conducting an enterprise.) The act also prohibits a person, who is employed or associated with any enterprise, from conducting or participating in the conduct of that enterprise's affairs through a pattern of racketeering activity. N.D. Cent. Code § 12.1-06.1-03(2).

North Dakota's definition of "enterprise" is limiting, however, in that it does not include individuals and does not specify that includes illicit enterprises, besides a group of persons associated in fact although not a legal entity. N.D. Code § 12.1-06.1-01(2)(b) (Definitions).

### **Predicate Act Requirements**

North Dakota law requires at least 2 predicate acts for there to be a "pattern of racketeering activity," similar to federal RICO law. 18 U.S.C. § 1961(5) (Definitions); N.D. Cent. Code § 12.1-06.1-01(2)(e) (Definitions). Under North Dakota law, at least one of the predicate acts had to have occurred after July 8, 1987, with the last predicate act occurring within 10 years after the prior act of racketeering activity. N.D. Cent. Code § 12.1-06.1-01(2)(e). The 10 year time period between acts is similar to federal RICO time requirement. 18 U.S.C. § 1961(5).

### **Relevant Offenses**

North Dakota RICO law covers a wide spectrum of offenses under its definition of "racketeering." The relevant categories of offenses included under its RICO law are: obscenity, child pornography, prostitution, and human trafficking. N.D. Cent. Code § 12.1-06.1-01(2)(f)(17)-(20) (Definitions). Furthermore, North Dakota not only considers it a violation to commit one of the above offenses, but also to criminally attempt to commit one of the offenses, along with facilitating, soliciting, or conspiring to commit one of the offenses. N.D. Cent. Code § 12.1-06.1-01(2)(f).

### **Potential Defendants**

North Dakota law limits the extent to which some persons can be held liable under its state RICO law. For the first provision under North Dakota's RICO statute, a person is liable if the person acquires or maintains control of an enterprise. N.D. Cent. Code. § 12.1-06.1-03(1) (Illegal control of an enterprise – illegally conducting an enterprise). North Dakota defines "control" as "possession of a sufficient interest to permit substantial direction over the affairs of the enterprise." N.D. Cent. Code § 12.1-06.1-01(2)(a) (Definitions). This language suggests that a person cannot be held liable under this first provision if they are only underlings or do not have a large role in the enterprise, even if they do still take part in it.

## **Criminal Penalties**

A knowing violation of North Dakota's RICO act is a class B felony. N.D. Cent. Code § 12.1-06.1-.3(3) (Illegal control of an enterprise – illegally conducting an enterprise). A class B felony is punishable by imprisonment for up to 10 years, a \$10,000 fine, or both. N.D. Cent. Code § 12.1-32-01(3) (Classification of offenses – penalties). These penalties are significantly more lenient than federal criminal RICO penalties, which set the maximum prison sentence at 20 years and a financial penalty of up to 2 times the gross profits or proceeds. 18 U.S.C. § 1962(a) (Prohibited activities).

North Dakota does not have a criminal forfeiture provision.

The criminal penalties for a knowing RICO violation are weaker than those for a human trafficking violation under North Dakota law, which can be classified as either class AA or a class A felony. A class AA felony and a class A felony are punishable by maximum penalties of life imprisonment or up to 20 years, respectively, and a fine up to \$10,000 for a class A felony. N.D. Cent. Code §§ 12.1-40-01(2) (Human trafficking – penalty), 12.1-3201(1), (2) (Classification of offenses – penalties).

## **OHIO**

### **RICO Statute**

Ohio's RICO act prohibits a person, who is employed or associated with an enterprise, from conducting or participating in the affairs of an enterprise through a pattern of corrupt activity and it prohibits a person from acquiring or maintaining an interest in or control of an enterprise or real property through a pattern of corrupt activity. Ohio Rev. Code Ann. § 2323.32(A)(1), (2) (Engaging in a pattern of corrupt activity; fines; penalties; forfeiture; records and reports; third-party claims to property subject to forfeiture). Ohio RICO law also prohibits a person, who has knowingly received proceeds from a pattern of corrupt activity, from using or investing any of those proceeds in acquiring real property or in an enterprise. Ohio Rev. Code Ann. § 2323.32(A)(3).

Under its definition of "enterprise," Ohio RICO law includes, among other things, individual, or organizations, associations, or groups of persons associated in fact although not in legal entity, as well as illicit and licit enterprises. Ohio Rev. Code Ann. § 2923.31(C) (Definitions).

### **Predicate Act Requirements**

Ohio RICO law requires two or more predicate acts of corrupt activity for a pattern of corrupt activity. Ohio Rev. Code Ann. § 2923.31(E) (Definitions). The acts must be related to the affairs of the same enterprise, not be isolated, and not constitute a single event. *Id.* Ohio RICO law requires that at least one of the predicate act occurred on or after January 1, 1986 and (unless any act was aggravated murder or murder) the last of the acts occurred within 6 years of the prior act. *Id.* This latter provision makes Ohio RICO law more limited than federal RICO law because federal RICO law allows a person to be liable when the last act occurred within 10 years. 18 U.S.C. § 1961(5) (Definitions). Ohio RICO law thus protects traffickers, facilitators, and buyers who may not commit acts as frequently as others, but are still guilty of corrupt activity.

### **Relevant Offenses**

Ohio's RICO act is comprehensive in that it includes the offenses of human trafficking and other CSEC offenses under its list of offenses constituting corrupt activity. An act of corrupt activity includes: pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, compelling prostitution, promoting prostitution, and human trafficking. Ohio Rev. Code Ann. § 2923.31(I)(2)(Definitions). Ohio also includes racketeering offenses included under federal RICO law in 18 U.S.C. § 1961(1)(B)-(E). Ohio Rev. Code Ann. § 2923.31(I)(1).

Ohio's RICO law, however, has been severely limited with the enactment of recent legislation that states that a person cannot be convicted of both a human trafficking offense and compelling prostitution offense because the Ohio legislature merged these two offenses, labeling them "allied offenses of similar import" under its provisions on multiple counts. *See* Ohio Rev. Code Ann. §§ 2905.32(D) (Human trafficking), 2942.25(A) (Multiple counts). Thus, in classifying a

predicate act, a person cannot be convicted of a RICO offense if one predicate act is for human trafficking and another is for compelling prostitution if these two offenses are of similar import.

Ohio courts have interpreted “similar import” based upon the answer to two questions: (1) whether it is possible to commit one offense and commit the other with the same conduct, not whether it is possible to commit one without the other, and (2) if the multiple offenses can be committed by the same conduct, then the court must determine whether the offenses were committed by the same conduct, i.e., single act, committed with a single state of mind. *See State v. Swiergosz*, 965 N.E.2d 1070, 1083-84 (Ohio Ct. App. 2012) (analyzing *State v. Johnson*, 942 N.E.2d 1061 (Ohio 2010) and quoting *State v. Blakenship*, 526 N.E.2d 816 (Ohio 1988) and *State v. Brown*, 895 N.E.2d 149 (Ohio 2008)). Then “if the answer to both questions is yes, then the offenses are allied offenses of similar import and must be merged.” *State v. Swiergosz*, 965 N.E.2d 1070, 1084 (Ohio Ct. App. 2012), quoting *State v. Johnson*, 942 N.E.2d 1061 (Ohio 2010)). The offenses will not merge if “one offense will never result in the commission of the other, or if the offenses are committed separately, or if the defendant has separate animus for each offense.” *Id.* Thus, the answer to these two questions will both be “yes” if a prosecutor tries to convict a person of conduct that is both trafficking and compelling prostitution. The result is that these offenses will be merged and the conduct will only constitute one predicate act. This makes it more difficult to prosecute offenders because more offenses will be necessary to prove corrupt activity.

Furthermore, Ohio RICO law also specifies that a human trafficking offense can be considered a predicate to the extent that it is “not based solely on the same conduct that constitutes corrupt activity ... due to the conduct being in violation of section 2907.21 of the Revised Code [Compelling prostitution].” Ohio Rev. Stat. Ann. § 2923.31(I)(2)(g). This further emphasizes that predicate acts based on conduct resulting in both human trafficking and compelling prostitution must be merged and count as only one predicate act.

### **Potential Defendants**

Ohio RICO law allows for a wide range of offenders to be liable under its provisions. For example, a person can be found liable for not only in engaging in corrupt activity, but also attempting to engage in, conspiring to engage in, soliciting, coercing, or intimidating another person to engage in violating Ohio’s RICO provisions. Ohio Rev. Code Ann. § 2923.31(I) (Definitions).

While Ohio courts are torn over whether an association in fact requires proof that is was ongoing, had a common purpose, a continuing and ascertainable structure that was distinct from the predicate acts, at least one Ohio court has held that there was an association-in-fact enterprise when only two persons were connected for the purpose of drug trafficking . *See State v. Fritz*, 896 N.E.2d 778, 786-88 (Ohio Ct. App. 2008). This suggests that a human trafficking enterprise might also fall under the definition of an association in fact enterprise if at least two persons, associated together for the common purpose of engaging in a course of criminal conduct by trafficking in persons, are part of an ongoing organization, which is a similar pattern of events in *Fritz*. *See id.* at 787-88.

Ohio RICO law is potentially limiting, however, with respect to the question of how much intent is necessary to be found liable of a RICO offense. Some Ohio courts interpret Ohio Rev. Code Ann. § 2923.32(a)(1) and (2) as strict liability offense. See State v. Schlosser, 681 N.E.2d 911, 913-16 (Ohio 1997); State v. Rice, 659 N.E.2d 826, 837 (Ohio Ct. App. 1995); State v. Haddick, 638 N.E.2d 1096, 1099-1101 (Ohio Ct. App. 1994). Other Ohio courts interpret these sections as only requiring proof that a person committed a predicate act. See State v. Burkett, 624 N.E.2d 210, 214-15 (Ohio Ct. App. 1993); State v. Thrower, 575 N.E.2d 863, 871-72 (Ohio Ct. App. 1989). However, the Ohio Supreme Court seemed to hold that these two interpretations are not mutually exclusive in that there are “varying culpable mental states necessary for the predicate offenses,” and so it seems that all that is required under Ohio RICO law is that “there is no additional or higher mental state required for a conviction under PCA [Ohio’s RICO act, also referred to as the Pattern of Corrupt Activities law] than would be required for a conviction of the predicate offenses themselves.” *Rico State by State*, pg. 961-62 (analyzing State v. Schlosser, 681 N.E.2d 911 (Ohio 1997) and State v. Rice, 659 N.E.2d 826 (Ohio Ct. App. 1995)). Since this interpretation is not firmly established, however, conviction of RICO violators might require a higher burden of proof for prosecutors to prove a higher level of intent.

### **Criminal Penalties**

Ohio law states that a violation of its RICO provisions is a felony in the second degree, unless one of the predicate acts is a felony of the first, second, or third degree, aggravated murder, murder, or felony under US law or the law of another state, that would constitute a felony of the first, second, of third degree, aggravated murder, murder under Ohio law, then the pattern of corrupt activity is a felony in the first degree. Ohio Rev. Code Ann. § 2923.32(B)(1) (Engaging in a pattern of corrupt activity; fines; penalties; forfeiture; records and reports; third-party claims to property subject to forfeiture). For a first degree felony, the court shall impose a prison term up to 3 to 11 years and a fine of up to \$20,000. Ohio Rev. Code Ann. §§ 2929.14(A)(1) (Prison terms), 2929.18(3)(a) (Financial sanctions). For a second degree felony, the court shall impose a prison term up to 2 to 8 years and a fine up to \$15,000. Ohio Rev. Code Ann. §§ 2929.14(A)(2), 2929.18(3)(b).

While the above criminal penalties are significantly more lenient than federal RICO law penalties, Ohio also has a special human trafficking specification and enhanced penalties included under its list of criminal penalties for a RICO offense. Ohio Rev. Code Ann. §§ 2929.32(B)(1). This provision states that if the person also is convicted or pleads guilty for knowingly committing the offense in furtherance of human trafficking or is convicted or pleads guilty to the offense of compelling prostitution, promoting prostitution, engaging in corrupt activity, illegal use of a minor in nudity-oriented material or performance, or endangering children through certain pornography-related actions, then the court shall impose an addition prison term depending on the classification level of the felony. Ohio Rev. Code Ann. § 2941.1422(A) (Additional term; human trafficking specification). The specification also requires that the offender pay restitution in the form of the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and either the gross income or value to the offender of the victim’s labor or services or the value of the victim’s labor under federal and state labor laws, whichever is greater. Ohio Rev. Code Ann. §§ 2929.32(B)(1), 2929.18(8)(a) (Financial sanctions).

Ohio's RICO law also provides for enhanced sentencing provisions by allowing separate sentences for the RICO violation and for the individual predicate acts themselves. *See State v. Thrower*, 575 N.E.2d 863, 875 (Ohio Ct. App. 1989). This provision provides greater disincentives to potential traffickers, facilitators, and buyers, because, if convicted, these violators could be spending lengthy sentences in prison.

An violation of Ohio's RICO law carries weaker penalties than a violation of it trafficking in persons law which is a first degree felony carrying a maximum prison sentence of 15 years and a fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E) (Trafficking in persons), 2929.18(3)(a).

Ohio's RICO law also provides for an alternative fine in lieu of the financial sanctions otherwise authorized under its laws. Ohio Rev. Code Ann. § 2923.32(2)(a). This alternative fine applies with respect to any person who derives pecuniary value or causes property damage, personal injury other than pain and suffering, or other loss and cannot exceed 3 times the gross value gained or gross loss caused, whichever is greater. *Id.* This provision is harsher than Ohio's counterpart provision under federal RICO law, which sets the maximum alternative fine amount at 2 times the gross profits or other proceeds. 18 U.S.C. §1963(a) (Criminal penalties).

Finally, Ohio's RICO law also includes a criminal forfeiture provision requiring that any person, who is convicted or pleads guilty to a RICO violation, forfeits any real or personal property in which the person has an interest and that was used for, intended to be used for, derived from, or realized through a RICO violation. Ohio Rev. Code Ann. § 2923.32(3). The real or personal property subject to forfeiture include position, commissions, employment contracts, compensation, property or contractual rights, amounts payable, etc. *Id.*

## **OKLAHOMA**

### **RICO Statute**

Oklahoma's RICO act prohibits a person who is employed by or associated with any enterprise from conducting or participating in an enterprise's affairs through a pattern of racketeering activity or from acquiring or maintaining an interest in or control of an enterprise or real property through a pattern of racketeering activity. Okla. Stat. tit. 22, § 1403(A), (B) (Participation in pattern of racketeering activity or collection of unlawful debt prohibited – investment of funds prohibited – conspiracy to violate prohibition – venue of actions). The act also prohibits a person who has received proceeds from a pattern of racketeering activity, in which the person participated as a principal, from using or investing any part of the proceeds or from investing or using the proceeds in the acquisition of real property or the establishment or operation of an enterprise. Okla. Stat. tit. 22, § 1403(C). Finally, Oklahoma law prohibits a person from attempting or conspiring to commit the aforementioned acts. Okla. Stat. tit. 22, § 1403(D).

Oklahoma defines an enterprise as including, among other things, individuals and unincorporated associations or groups of persons associated in fact although not a legal entity, involved in any lawful or unlawful project of undertaking. Okla. Stat. tit. 22, § 1402(2) (Definitions).

## **Predicate Act Requirements**

Under Oklahoma's RICO law, a "pattern of racketeering activity" means two or more predicate acts. Okla. Stat. tit. 22, § 1402(5) (Definitions). The acts must also be related to the enterprise's affairs and not be isolated, however, they must actually be separate events. *Id.* One of the predicate acts has to have occurred after November 1, 1988, with the last act occurring within 3 years. *Id.* This time frame between predicate acts is much shorter than that proscribed under federal RICO law, which is 10 years. 18 U.S.C. § 1961(5) (Definitions).

## **Relevant Offenses**

Oklahoma has a very broad and comprehensive list of related offenses included under the definition of racketeering activity. This results in the possibility that traffickers, as well as facilitators and buyers, can be held liable under Oklahoma's RICO act. The list of relevant offenses covered under Oklahoma's definition of racketeering activity include: child pornography offenses, solicitation of minors, pandering, child prostitution, and human and child trafficking. Okla. Stat. tit. 22, § 1402(10) (Definitions).

## **Potential Defendants**

Oklahoma limits the breadth of potential defendants liable under its RICO laws. Oklahoma's RICO act states that a person violates the provision prohibiting a person who has received proceeds from a pattern of racketeering activity from using or investing any part of the proceeds in acquiring any right, title, or interest in real property or enterprise, only if the person is a principal. Okla. Stat. tit. 22, § 1403(C) (Participation in pattern of racketeering activity or collection of unlawful debt prohibited – investment of funds prohibited – venue of actions). A principal is defined, not only as a person who violates Oklahoma's RICO provisions, but also a person "who is legally accountable for the conduct of another who engages in a violation." Okla. Stat. tit. 22, § 1402(9). This prevents Oklahoma from incorporating low level participants under this section

However, Oklahoma also expands the amount and type of defendants liable under its RICO act by including a provision that prohibits using or investing any part of the proceeds the person received from a pattern of racketeering activity in the acquisition of any right, title, or interest in real property, not just in the establishment or operation of any enterprise, with no requirement that the person is a "principal." Okla. Stat. tit. 22, § 1403(C). This addition potentially results in an additional tool for prosecutors, by creating the possibility that they may only need to prove the existence of real property instead of an enterprise, which can be more legally challenging and complex.

## **Criminal Penalties**

Oklahoma has significant criminal penalties in place for violators of its RICO laws. A violation is punishable by imprisonment for a minimum of 10 years, without eligibility for a deferred sentence, probation, suspension, work furlough, or release until the violator has served half of the sentence. Okla. Stat. tit. 22, § 1403(A) (Persons authorized to institute proceedings). This varies



from the sentencing provisions under federal RICO law and has the potential to be harsher than federal sentencing instructions, which set the maximum term of imprisonment for a RICO violation at 20 years. 18 U.S.C. 1963(a) (Criminal penalties). Furthermore, each violation of a RICO provision is a separate offense. *Id.* Oklahoma RICO law also provides for the sentencing of an alternative fine otherwise authorized by the RICO law, in which anyone who violates a RICO provision through which the person derived monetary value, or by which the person cause personal injury, or property damage or other loss, may have to up to 3 times the gross value gained or loss caused (whichever is greater). Okla. Stat. tit. 22, § 1403(B). Under the alternative fine, the violator may also have to pay court, investigation, and prosecution costs minus the value of any property forfeited. *Id.* This alternative fine provision provides greater penalties than the federal RICO law, which sets a maximum amount at 2 times the gross profits or other proceeds. 18 U.S.C. 1863(a).

Oklahoma provides much harsher penalties for a RICO offense than for a child trafficking violation, which only results in imprisonment for up to 3 years. Ok. Stat. tit. 21, § 867(A) (Trafficking in children a felony). However, its RICO penalties are weaker than the penalties for a CSEC violation involving child prostitution which can carry a penalty of up to 25 years in prison and up to a \$25,000 fine. Okla. Stat. tit. 22, § 1088(B)(1).

Oklahoma also has a comprehensive criminal forfeiture provision under its RICO penalties. The forfeiture provision requires that, upon conviction of a RICO violation, the violator forfeit both real and personal property “used in the course of, intended for use in the course of, derived from, or realized through conduct” constituting a violation of Oklahoma’s RICO law. Okla. Stat. tit. 22, § 1405(A) (Criminal forfeiture procedures). Property required to be forfeited includes: compensation, commission, employment contracts, property or contractual rights over an enterprise, and amounts payable. *Id.*

## **OREGON**

### **RICO Statute**

Oregon’s RICO act prohibits a person from knowingly receiving any proceeds from a pattern of racketeering activity, and from to using or investing any part of those proceeds for real property or an enterprise. Or. Rev. Stat. § 166.720(1) (Receipt of proceeds of racketeering activity). It is also unlawful for a person to acquire or maintain an interest in or control of real property or an enterprise through pattern of racketeering activity or for a person who is employed by or associated with an enterprise to conduct or participate in the enterprise through a pattern of racketeering activity. Or. Rev. Stat. § 166.720(2), (3). Finally, it is also unlawful to conspired to commit the aforementioned acts. Or. Rev. Stat. § 166.720(4).

The definition of enterprise, under Oregon’s RICO law, includes, among other things, individuals, groups of individuals associated in fact although not in legal entity, as well as illicit and licit enterprises. Or. Rev. Stat. § 166.715(2) (Definitions).

### **Predicate Act Requirements**

The predicate act requirements under Oregon’s RICO act are similar to the requirements under federal RICO law. Pursuant to Oregon’s RICO act, a “pattern of racketeering activity” means engaging in two predicate acts that are related in terms of intent, results, accomplices, victims, or methods of commission. Or. Rev. Stat. § 166.715(4) (Definitions). Oregon law also requires that the acts have a nexus in the same enterprise and are not isolated acts. *Id.* Finally, Oregon law also requires that at least one of the predicate acts occurred after November 1, 1981 and the last act occurring within 5 years after a prior act of racketeering activity. *Id.*

### **Relevant Offenses**

Oregon has a very comprehensive list of relevant offenses included under its definition of racketeering activity. The list of predicate acts contributing to a pattern of racketeering activity under Oregon’s RICO act includes: visual recording of sexual conduct of children, using child in display of sexually explicit conduct, possessing materials depicting sexually explicit conduct, prostitution-related offenses, luring a minor, exhibiting an obscene performance to minors, displaying obscene materials to minors, publicly displaying nudity or sex for advertising purposes, involuntary servitude, human trafficking, and the relevant offenses included under 18 U.S.C. §1961(1)(B), (C), (D), (E) (Definitions). Such a wide-ranging list provides greater protections to victims of human trafficking and exploitation by targeting offenders from a large set of cruel and inhuman offenses.

### **Potential Defendants**

Along with committing the predicate acts listed above, a person also commits racketeering activity by attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit one of the aforementioned crimes. Or. Rev. Stat. § 166.715(6) (Definitions). This expands the range of Oregon’s RICO act to ensure that all persons responsible to a trafficking or exploitation offense are held liable.

Oregon law is potentially limiting because, as interpreted by Oregon courts, the prosecution must prove that an organization was on-going. *See State v. Cheek*, 786 P.2d 1305, 1307 (Or. Ct. App. 1990). While the prosecution does have to prove that an organization is ongoing, “the associates in that organization might come and go.” *Id.* at 1308. The ruling in *Cheek* also suggests that a defendant’s criminal activities cannot be unrelated to the operation of the organization. *Id.* This is similar to the Supreme Court’s interpretation of Oregon RICO’s counterpart in federal law, in which a person must meet the “operation and management test” to be found liable for a RICO offense. *See Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). This is further supported by the fact that Oregon’s RICO act was modeled after the federal act, resulting in the Oregon Court Appeals stating that federal interpretations of the federal RICO act “are persuasive in interpreting the intent of the legislature.” *State v. Blossom*, 744 P.2d 281, 283 (Or. Ct. App. 1987).

Oregon’s RICO act is more helpful to victims in other aspects, as well. The act allows persons participating in racketeering activity, even if they were “innocent” and “unwilling” participants, to still be held accountable and liable because Oregon’s RICO act “requires only that there be proof of the existence of an enterprise with which a defendant associated to conduct or

participate in a pattern of racketeering activity.” State v. Gleason, 919 P.2d 1184, 1186-87 (Or. Ct. App).

### **Criminal Penalties**

Similar to a violation of at least one of its CSEC laws, a violation of Oregon’s RICO act is a Class A felony and punishable by imprisonment up to 20 years and a fine up to \$375,000. Or. Rev. Stat. §§ 166.720(5)(a) (Receipt of proceeds of racketeering activity), 161.605(1) (Maximum terms of imprisonment, felonies), 161.625(1)(b) (Felonies; fines), 163.670(2) (Using child in display of sexually explicit conduct). However, in lieu of a fine otherwise authorized by law, a violator who derived a pecuniary value from racketeering or caused personal injury or property damage or other loss may be sentenced to a fine up to 3 times the gross value gained or gross loss caused (whichever is greater), along with court, investigation, and prosecution costs. Or. Rev. Stat. § 166.720(5)(b). Oregon’s criminal penalties for RICO violations are similar to federal RICO law in terms of maximum prison sentences, but are different and harsher than federal financial penalties which only allow for an alternative fine up to 2 times the gross profits or other proceeds. *See* 18 U.S.C. 1963(a) (Criminal penalties).

Oregon’s RICO act carries harsher penalties than a violation of its trafficking in persons statute which is only a Class B felony. Or. Rev. Stat. § 163.266(2) (Trafficking in persons). A Class B felony carries a maximum penalty of 10 years imprisonment and a fine up to \$250,000. Or. Rev. Stat. Ann. § 161.605(2), 161.625(c).

Oregon’s laws also include enhanced penalties for violators of its RICO offenses because violators can also be given consecutive sentences for the predicate acts themselves. *See* State v. Gleason, 919 P.2d 1184, 1188-89 (Or. Ct. App. 1996). Thus, a human trafficker could potentially be sentenced for a violation of Oregon’s human trafficking statute as well as given a separate sentence for violating Oregon’s RICO laws.

Oregon does not provide for criminal forfeiture as a penalty for an Oregon RICO violation.

## **PENNSYLVANIA**

### **RICO Statute**

Pennsylvania’s RICO act, also known as the Corrupt Organizations Act, prohibits a person who has received income from a pattern of racketeering activity, where the person acted as a principal, to use or invest any part of the income or its proceeds in an enterprise. 18 Pa. Cons. Stat. § 911(b)(1) (Corrupt organizations). The Act also prohibits a person from acquiring or maintaining an interest in or control of an enterprise through a pattern of racketeering activity or for a person employed or associated with an enterprise to conduct or participate in the conduct of the enterprise through a pattern of racketeering activity. 18 Pa. Cons. Stat. § 911(b)(2), (3). Finally, it is also unlawful for a person to conspire to violate the aforementioned provisions. 18 Pa. Cons. Stat. § 911(b)(4).

Pursuant to Pennsylvania’s definition of “enterprise,” an individual, a group of individuals associated in fact although not in legal entity, and legitimate and illegitimate entities are considered enterprises. 18 Pa. Cons. Stat. § 911(h)(3). However, the statute does stipulate that to be considered an enterprise, the entity has to be “engaged in commerce,” which is omitted from the federal RICO laws. *Id.*

### **Predicate Act Requirements**

Pennsylvania has a short list of predicate act requirements. Pursuant to Pennsylvania’s RICO law, a “pattern of racketeering activity” requires only two or more predicate acts with one of the acts occurring after the effective date of the Pennsylvania RICO law. 18 Pa. Cons. Stat. § 911(4) (Corrupt organizations).

### **Relevant Offenses**

The only relevant offenses covered under Pennsylvania’s RICO law are human trafficking and conspiracy to commit human trafficking. 18 Pa. Cons. Stat. § 911(h)(1)(i) (Corrupt organizations). This severely limits the amount and type of potential defendants because Pennsylvania’s trafficking statute only applies to traffickers who *knowingly* traffic or attempt to traffic another person, not facilitators or buyers specifically, and the RICO law does not cover other relevant offenses such as ones covering commercial exploitation, pornography, or prostitution.

### **Potential Defendants**

Pennsylvania’s RICO act is weak at reaching potential defendants. Not only does it just include a limited version of a human trafficking offense under its list of relevant offenses, it also does not include attempting to commit an offense, aiding and abetting someone to commit an offense, or coercing, intimidating, or soliciting another person to commit an offense. Finally, Pennsylvania’s RICO act is also limited because it requires that an individual, legal entity, or group be engaged in commerce for it to be an “enterprise.” 18 Pa. Cons. Stat. § 911(h)(3) (Corrupt organizations). This could possibly be difficult for prosecutors to prove, thus limiting the reach of Pennsylvania’s RICO act to potential defendants.

### **Criminal Penalties**

Similar to a violation of Pennsylvania’s law on trafficking a person under 18, a violation of Pennsylvania’s RICO law is first degree felony and a violation continues “so long as the person who committed the violation continues to receive any benefit from the violation.” 18 Pa. Cons. Stat. § 911(c) (Corrupt organizations). Pursuant to Pennsylvania law, a first degree felony is punishable by imprisonment up to 20 years and a fine up to \$25,000. 18 Pa. Cons. Stat. §§ 1103(1), (Sentence of imprisonment for felony), 1103(2) (Fines). These penalty provisions are similar to the federal penalty provisions, which also impose a maximum imprisonment of 20 years. 18 U.S.C. § 1963(a) (Criminal penalties).

## **RHODE ISLAND**

### **RICO Statute**

Rhode Island's RICO act prohibits a person, who has knowingly received income from racketeering activity, to use or invest the income in an enterprise. R.I. Gen. Laws § 7-15-2(a) (Prohibited activities). The act also prohibits a person from acquiring or maintaining an interest in or control of any enterprise through a pattern of racketeering activity and for a person employed or associated with an enterprise to conduct or participate in the conduct of an enterprise through racketeering activity. R.I. Gen. Laws § 7-15-2(b), (c).

Pursuant to Rhode Island law, an enterprise includes, among other things, a group of individuals associated for a particular purpose although not a legal entity. R.I. Gen. Laws § 7-15-1(a) (Definitions).

### **Predicate Act Requirements**

The predicate act requirements for a Rhode Island RICO violation are not specifically set out by statute defining a pattern of criminal activity. Instead, a pattern is not necessary for a violation, only "(1) the commission of one act of racketeering activity and (2) the use or investment of the proceeds of the racketeering activity in the establishment, conduct, or operation of an enterprise." State v. Brown, 486 A.2d 595, 599-600 (R.I. 1985). This language makes it easier to prosecute traffickers, facilitators, and buyers because the burden of proof is reduced to only have to prove one predicate act, unlike federal and other states' RICO requirements.

### **Relevant Offenses**

The only relevant offenses covered under Rhode Island's RICO act include offenses relating to child exploitation for commercial or immoral purposes. R.I. Gen. Laws § 7-15-1(c) (Definitions). Unfortunately, Rhode Island does not include its list of RICO offenses, provisions on human trafficking, sex trafficking of a minor or pornography- and prostitution-related provisions. Rhode Island's RICO act is, thus, severely deficient in including protections for victims of human trafficking and exploitation.

### **Potential Defendants**

With the limited amount of relevant offenses covered under Rhode Island's RICO act, the amount of potential defendants under Rhode Island's RICO act is also very limited. Furthermore, Rhode Island requires a higher burden of proof, compared with the federal RICO law, because Rhode Island includes the requirement that a person "*knowingly*" receive income from racketeering activity. R.I. Gen. Laws § 7-15-2(a) (Prohibited activities). This requirement also makes it more difficult to prosecute traffickers, facilitators, and buyers under Rhode Island's RICO act.

Rhode Island also differ from federal RICO law and other states' RICO law in that does not specifically include a provision regarding conspiracy to commit a predicate act. However, the Rhode Island Supreme Court has repeatedly held that conspiring to commit a predicate act is a violation of Rhode Island's RICO act. *See State v. Brown*, 486 A.2d 595, 601 (R.I. 1985); *See also State v. Martinez*, 774 A.2d 15, 17-18 (R.I. 2001); *State v. Porto* 591 A.2d 791, 795 (R.I. 1991).

Finally, while Rhode Island does not include an individual under its definition of "enterprise," the word "includes" follows "enterprise" instead of "means," suggesting that the list defining "enterprise" is not exhaustive and could potentially include "persons." *See* R.I. Gen. Laws § 7-15-1(a).

### **Criminal Penalties**

Similar to violations of some of Rhode Island's laws on child pornography, a violation of Rhode Island's RICO act is punishable by imprisonment up to 10 years, a fine up to \$10,000, or both. R.I. Gen. Laws §§ 7-15-3(a) (Penalties for violations – disposition of seized property), 11-9-1(b) (Exploitation for commercial or immoral purposes), 11-9-1.1 (Child nudity prohibited in publications). These penalties are significantly lower than criminal penalties under federal RICO law, which set a maximum of 20 years imprisonment and a fine of up to 2 times the gross profits. 18 U.S.C. § 1963(a) (Criminal penalties). These penalties are also lower than the penalties proscribed for the offense of exhibiting, using, or employing a minor for the purpose of prostitution, which carries a maximum prison sentence of 20 years, a fine up to \$20,000, or both. R.I. Gen. Laws § 11-9-1(c).

Rhode Island does, however, have a criminal forfeiture provision that requires whoever violates Rhode Island's RICO act to forfeit to the state: any property acquired, maintained, or derived from racketeering activity or any interests, securities, claims, or rights over an enterprise that the person has established, participated in, operated, controlled, or conducted through a racketeering activity. R.I. § 7-15-3(a)(1)-(3). In making sure that the forfeiture order is carried out, the court may enter a restraining order or an injunction of any other action to preserve the availability of the property. R.I. Gen. Laws § 7-15-3.1(b) (Criminal forfeiture procedures).

### **SOUTH CAROLINA**

South Carolina has not enacted a racketeering statute, however, patterns of criminal activity committed by groups of five or more associates may be prosecuted under the Criminal Gang Prevention Act. S.C. Code Ann. § 16-8-210 to 340. Prohibited acts include the use of force or coercion related to participation or continued participation in gang activity, § 16-8-240, and witness intimidation, § 17-8-250. "Pattern of criminal gang activity" is defined as "the commission or attempted commission of, commission as an accessory before or after the fact to, or solicitation or conspiracy to commit, by a criminal gang member, while knowingly and actively participating in criminal gang activity, four or more of the following offenses occurring within a two-year period, provided that at least three of these offenses occurred after July 1, 2007." S.C. Code Ann. § 16-8-230(4). Enumerate offenses include "a violent offense as defined

in Section 16-1-60 committed as a part of criminal gang activity.” S.C. Code Ann. § 16-8-230(4)(a). S.C. Code Ann. § 16-1-60 defines “violent crime” to include trafficking in persons engaging a child for a sexual performance, producing, directing, or promoting sexual performance by a child, promoting prostitution of a minor, and participating in prostitution of a minor.

## **SOUTH DAKOTA**

South Dakota has not enacted a racketeering statute. However, under S.D. Codified Laws Chapter 22-10A (Street Gang Activity), sentences for violent crimes are intensified when committed as part of a “[p]attern of street gang activity.” A “[p]attern of street gang activity” is defined as “the commission, attempted commission, or solicitation by any member or members of a street gang of two or more felony or violent misdemeanor offenses on separate occasions within a three-year period for the purpose of furthering gang activity.” S.D. Codified Laws § 22-10A-1(3). This would include sex trafficking and CSEC offenses, but can only be used in sentencing members of street gangs consisting of three or more individuals identified as a group. See S.D. Codified Laws § 22-10A-1(1).

## **TENNESSEE**

### **RICO Statute**

Tennessee’s RICO act prohibits a person who has, with criminal intent, received any proceeds from a pattern of racketeering activity from using those proceeds to acquire any title, right, interest, or equity in real or personal property or in an enterprise. Tenn. Code Ann. § 39-12-204(a). It is also unlawful, under Tennessee’s RICO laws for a person, through a pattern of racketeering activity, to acquire or maintain an interest in or control of an enterprise of real or personal property or for a person employed by or associated with an enterprise to knowingly conduct or participate in an enterprise through a pattern of racketeering activity. Tenn. Code Ann. § 39-12-204(a), (b). Finally, Tennessee also prohibits a person from conspiring or endeavoring to violated the above acts. Tenn. Code Ann. § 39-12-204(d).

An enterprise, pursuant to Tenn. Code Ann. § 39-12-203(3) (Definitions), means, among other things, an individual; a group of individuals associated in fact, although not in legal entity; illicit, as well as licit, enterprises; and criminal gangs.

### **Predicate Act Requirements**

Tennessee RICO law requires at least 2 predicate acts that are related in terms of intent, results, accomplices, victims, or methods of commission. Tenn. Code Ann. § 36-12-203(6) (Definitions). At least one of acts had to have occurred after July 1, 1986, with the last act occurring within 2 years after a prior act. *Id.* This last provision differs greatly from federal RICO, which allows 10 years to pass between the last and prior acts. 18 U.S.C. 1961(5) (Definitions). In limiting the time allowed between predicate acts, Tennessee also severely

restricts the ability to prosecute traffickers, facilitators, and buyers who, while still committing heinous offenses, may leave more time between acts.

### **Relevant Offenses**

Tennessee recently enacted and introduced strong legislation to protect victims of human trafficking and CSEC offenses. Unfortunately, Tennessee's RICO laws only include a small subset of these related offenses. The only relevant offenses included under Tennessee's definition of "racketeering activity" are offenses involving aggravated or especially aggravated sexual exploitation of a minor. Tenn. Code Ann. § 39-12-203(9) (Definitions). Tennessee's RICO laws, are thus extremely narrow in terms of whom they protect, especially regarding the exclusion of human trafficking offenses, prostitution-related offenses, and more commercial exploitation-related offenses from its lists of RICO offenses. Tennessee does, however, extend its reach, to a degree, by also including attempting to commit a RICO offense, conspiring to commit an offense, or soliciting, coercing, or intimidating another person to commit an offense, in its definition of "racketeering activity." *Id.*

### **Potential Defendants**

For the CSEC offenses that are covered under Tennessee's RICO act, Tennessee has a wide reach over potential defendants with its broad definition of "enterprise." A recent amendment added criminal gangs to the definition of "enterprise." This provides greater protections to victims, as studies have shown that gangs can be heavily involved in human exploitation.<sup>94</sup>

Tennessee's RICO act differs from federal RICO laws with respect to the type of intent required in the commission of a pattern of racketeering activity. Tennessee raises the burden of proof so that prosecutors will have to prove that a person, who received proceeds from a pattern of racketeering activity and used or invested the proceeds illegally, acted intentionally. Tenn. Code Ann. 39-12-204(a) (Prohibited activities). Tennessee RICO laws also require that a person employed or associated with an enterprise to knowingly conduct or participate in illegal activity. Tenn. Code Ann. 39-12-204(c). Both of these requirements are opposed to the federal RICO law which does not require an "additional mens rea requirement beyond that found in the predicate crimes." United State v. Biasucci, 786 F.2d 504, 512 (2d Cir. 1986); *See also Genty v. Resolution Trust Corp.*, 937 F.2d 899, 908 (3d Circuit, 1991).

Tennessee's RICO act also differs significantly from the federal RICO requirement that a "person . . . conduct or participate . . . in the conduct of the enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). Tennessee does not include the second use of the word "conduct" its federal counterpart to this section of its RICO act. *See* Tenn. Code Ann. § 39-12-204(c). This omission is relevant because the second use of the word "conduct" in the

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<sup>94</sup> *See, e.g.,* Laura J. Lederer, *Sold for Sex: The Link between Street Gangs and Trafficking in Persons*, John Hopkins Journal of Human Rights and Civil Society, Fall 2011, at 1, available at <http://www.protectionproject.org/wp-content/uploads/2011/11/The-Protection-Project-Journal-of-Human-Rights-Civil-Society-Volume-IV.pdf> (last visited July 27, 2012); National Gang Intelligence Center, 2011 National Gang Threat Assessment – Emerging Trends, available at <http://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/> (last visited July 27, 2012).



federal RICO law led the Supreme Court to rule that a person must be involved in the operation or management of the enterprise to be found liable. *See Reves v. Ernst & Young*, 507 U.S. 170, 177-79, (1990). Tennessee courts have not had to interpret this subsection of its statute, but omission of the second “conduct” is suggestive that the courts would interpret Tennessee’s RICO law as not requiring a defendant meet the “operation and management test” elaborated upon in *Reves* to be found liable. If it is decided that Tennessee does require this provision, prosecutors will have the tools to prosecute more traffickers, facilitators, and buyers, specifically those that occupy lower rungs of the enterprise because it eliminates federal requirement that a person has to operate or manage an enterprise to be found liable.

### **Criminal Penalties**

Tennessee’s criminal penalties for a RICO violation are substantial. Similar to a violation Tennessee’s statute on especially aggravated sexual exploitation, a violation of Tennessee’s RICO laws carries a Class B felony is punishable by 12 to 20 years imprisonment or a fine up to \$250,000, or both. Tenn. Code Ann. §§ 39-12-205(a) (Financial penalties), 40-35-112(b)(2) (Sentence ranges), 39-17-1005(d) (Especially aggravated sexual exploitation). Furthermore, instead of a fine otherwise authorized by law, a person convicted of a RICO violation where pecuniary value is derived or personal injury or property damage caused, may be sentenced to a fine up to 3 times the gross value gained or 3 times the gross loss caused (whichever is greater), along with court, investigation, and prosecution costs. Tenn. Code Ann. § 39-12-205(b)(1) (Fines and penalties). This is harsher than the federal RICO law which limits this fine to 2 times the gross profits caused. 18 U.S.C. 1963(a).

Tennessee does not have a criminal forfeiture provision.

## **TEXAS**

### **RICO Statute**

Texas has a version of the federal RICO act under its chapter on organized crime, focusing particularly on criminal street gangs. This act will still be applicable to violators of human trafficking or CSEC laws because criminal street gangs participate in many of these activities.<sup>95</sup>

Under Texas penal law, a person is prohibited from intentionally establishing, maintaining, or participating in a combination or in the profits of a combination or as a member of a criminal street gang from committing or conspiring to commit a criminal act specified under this section on organized criminal activity. Tex. Penal Code Ann. § 71.02 (Engaging in organized criminal activity). Texas penal law defines a “combination” as “three or more persons who collaborate in carrying on criminal activities, although: (1) participants may not know each other’s identity; (2) membership in the combination may change from time to time; and (3) participants may stand in a wholesaler-retailer or other arm’s-length relationship in illicit distribution operations.” Tex. Penal Code Ann. § 71.01(a) (Definitions). A “criminal street gang” is defined as “three or more

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<sup>95</sup> *See supra* note 94.

persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.” *Id.*

### **Predicate Act Requirements**

Texas does not include a definition for a pattern of organized criminal activity. It does require that a person commit or conspire to commit one of the acts included under its act on organized criminal activity. To conspire to commit an act, a person must “agree[] with one or more persons that they or one of more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement.” Tex. Penal Code § 71.01(b) (Definitions).

### **Relevant Offenses**

Texas has a fairly inclusive list of relevant offenses covered under its act on organized criminal activity. Among the relevant offenses included are ones relating to the promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity depicting or involving conduct by or directed toward a minor, and human trafficking. Tex. Penal Code § 71.02(a)(3) (Engaging in organized criminal activity). Unfortunately, unlike many other states, Texas does not include more offenses related to the commercial exploitation of children.

### **Potential Defendants**

Texas’s RICO act is limited in that requires a combination of 3 or more persons who collaborate in carrying on criminal activities and does not include all of the RICO provisions proscribed under federal RICO law. Tex. Penal Code § 71.01(a) (Definitions). Furthermore, Texas’s law’s requirement that the combination be “carrying on criminal activities” has been interpreted to “impl[y] continuity – something more than a single, *ad hoc* effort.” *Nguyen v. State*, 1 S.W.3d 694, 697 (Tex. Crim. App. 1999). This limits Texas’s RICO law because it raises the burden of proof on prosecutors.

Texas’s RICO act is also limited in that it adds a *mens rea* provision not included under federal RICO law, requiring that person had have the “*intent* to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.” Tex. Penal Code § 71.02(A) (Engaging in criminal activity)(emphasis added). This also raises the burden of proof of prosecutors, making it more difficult to hold potential defendants liable for their crimes.

Texas’s RICO act is expansive, however, in that it has been interpreted to not require that a person be a member of a combination to be guilty of engaging in organized criminal activity. *Hart v. State*, 89 S.W.3d 61, 63 (Tex. Crim. App. 2002). This lowers the burden of proof for prosecutors, making it easier to prove a combination.

### **Criminal Penalties**

Texas has a unique provision establishing the class of an act of organized criminal activity. Except with regards to conspiring to commit an offense under Texas's organized criminal activity act, a person who commits an organized criminal activity violation is guilty of an offense that was 1 category higher than the most serious offense listed in this act. Tex. Penal Code § 71.02(b) (Engaging in organized criminal activity). Furthermore, at least one Texas court has held that “[a]n organized criminal activity is a separate offense, for double jeopardy purposes, from any of the predicate acts listed under sections 71.02(a)(1)-(11) of the Texas Penal Code [Engaging in organized criminal activity].” Lam v. State, 17 S.W.3d 381, 385 (Tex. Ct. App. 2000).

Additionally, violators are subject to criminal forfeiture. Any property “used or intended to be used in the commission of” Tex. Penal Code Ann. § 71.02(a) (Engaging in organized criminal activity) is subject to the forfeiture provisions of Tex. Code Crim. Proc. Ann. art. 59. Tex. Code Crim. Proc. Ann. art. 59.01(2)(B)(xii).

## **UTAH**

### **RICO Statute**

Utah's RICO act, also known as the Pattern of Unlawful Activity Act, prohibits a person from using or investing any proceeds received from a pattern of unlawful activity, in which the person has participated as a principal, in acquiring an interest in an enterprise. Utah Code Ann. § 76-10-1603(1) (Unlawful acts). It is also an offense under Utah's RICO act for a person to acquire or maintain an interest in or control of an enterprise through a pattern of unlawful activity and for a person employed by or associated with an enterprise to conduct or participate in the conduct the enterprise through a pattern of unlawful activity. Utah Code Ann. § 76-10-1603(2), (3). Finally, it is also prohibited for a person to conspire to violate the aforementioned offenses. Utah Code Ann. § 76-10-1603(4).

Under Utah RICO law, an enterprise means, among other things, an individual and any group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities. Utah Code Ann. § 76-10-1602(1) (Definitions).

### **Predicate Act Requirements**

Unlike a number of other states, Utah requires at least 3 predicate acts. Utah Code Ann. § 76-10-1602(2) (Definitions). It also requires that the acts be related in terms of purpose, result, participants, victims, or methods of commission. *Id.* The acts must also not be isolated and at least one of the acts has to have occurred after July 31, 1981, which the most recent act occurring within 5 years of the next preceding act. *Id.* This time frame between acts is much shorter than that proscribed under federal law, which allows up to 10 years between acts. 18 U.S.C. § 1961(5) (Definitions).

### **Relevant Offenses**

Utah RICO laws include a wide breadth of offenses related to human trafficking and CSEC offenses. Pursuant to Utah Code Ann. § 76-10-1602(4) (Definitions), the list of offenses include: human trafficking, aggravated human trafficking, sexual exploitation of a minor, sale of a child, distributing pornography, inducing acceptance of pornographic material, dealing in harmful material to a minor, prostitution, aiding prostitution, exploiting prostitution, aggravated exploitation of prostitution, and the trafficking and CSEC offenses included in 18 U.S.C. 1961(1)(B),(C), and (D).

“Unlawful activity” also includes soliciting, requesting, commanding, encouraging, or intentionally aiding another person to engage in a Utah RICO offense listed above. Utah Code Ann. § 76-10-1602(4) (Definitions).

### **Potential Defendants**

The potential defendants under Utah’s RICO laws are similar to the potential defendants under the federal RICO laws. The main difference is that reaches a wider range of violators by specifying that “[i]t is unlawful for any person employed by or associated with an enterprise to conduct or participate, *whether directly or indirectly*, in the conduct of that enterprise’s affairs through a pattern of unlawful activity.” Utah Code Ann. § 76-10-1603(3) (Unlawful acts). This additional language potentially results in lower-rung persons to be found liable under this subsection.

### **Criminal Penalties**

A person who violates Utah’s RICO law is guilty of a 2nd degree felony, which is punishable by imprisonment for between 1 and 15 years and a fine up to \$10,000. Utah Code Ann. §§ 76-10-1603.5(1) (Violation of a felony – costs – forfeiture – fines – divesture – restrictions – dissolution or reorganization – prior restraint), 76-3-203(2) (Felony conviction – indeterminate term of imprisonment), 76-3-301(1)(a) (Fines of persons). These penalties are, thus, more lenient than federal RICO penalties, which include imprisonment up to 20 years. 18 U.S.C. § 1963(a). Utah also provides for fines where a corporation, association, partnership, or governmental instrumentality commits a felony conviction and state that felony conviction carries a fine up to \$20,000. Utah Code Ann. § 76-3-302(1) (Fines of corporations, associations, partnerships, or government instrumentalities). This provision provides further encouragement for businesses to track how and where there money comes from to verify that it is not involved in human trafficking or exploitation in any way, thus promoting better business practices. Instead of a fine otherwise authorized by law for a RICO violation under Utah law, a defendant who receives net proceeds from the unlawful activity may not be fined more than twice the amount of the net proceeds. Utah Code Ann. § 76-10-1603.5(3).

The penalties for a RICO violation under Utah law are weaker than the penalties for a violation of Utah’s statute on aggravated human trafficking, which is a first degree felony. Utah Code Ann. § 76-5-310(4)(a) (Aggravated human trafficking and aggravated human smuggling – penalties). Under Utah law, a felony in the first degree is punishable by a maximum sentence of life imprisonment and a fine up to \$10,000. Utah Code Ann. §§ 76-3-203(1), 76-3-301(a).

Utah's RICO laws also contain a criminal forfeiture provision for violators of its RICO laws. Utah Code Ann. § 76-10-1603.5(1). A person convicted of a RICO violation shall forfeit: interests acquired or maintained in violation of Utah's RICO laws; interests, securities, claims, or rights over an enterprise, any property from the net proceeds of the pattern or an act of unlawful activity. *Id.* Property under Utah's RICO laws includes real and personal property. Utah Code Ann. § 76-10-1603.5(4). Finally, in some circumstances, the violator may be required to pay the costs of investigation, prosecution, and securing of forfeitures. Utah Code Ann. § 76-10-1603.5(1).

## **VERMONT**

Vermont has not enacted any racketeering or gang crime statutes.

## **VIRGINIA**

### **RICO Statute**

Virginia's RICO act makes it an offense for an enterprise or a person heading the enterprise to receive proceeds known to have been derived from racketeering activity and to use at least \$10,000 of those proceeds to acquire rights or interests in real property or an enterprise. Va. Code Ann. § 18.2-514(A) (Racketeering offenses). It is also an offense for an enterprise or the head of the enterprise to directly acquire or maintain interest of control of an enterprise or real property through racketeering activity or for a person employed by or associated with an enterprise to conduct or participate through racketeering activity. Va. Code Ann. § 18.2-514(B), (C). Finally, it is unlawful to conspire to do any of the aforementioned offenses. Va. Code Ann. § 18.2-514(D).

Pursuant to Va. Code Ann. § 18.2-513 (Definitions), Virginia does include a criminal street gang under the definition of an enterprise, along with groups of three or more individuals associated for the purpose of a criminal activity. Including criminal street gangs under the definition of enterprise is beneficial to victims of human trafficking and exploitation because some gangs may not fall under a state's definition of enterprise and so not be liable under their RICO statutes even though they may be engaged in severe forms of human trafficking and exploitation.<sup>96</sup>

### **Predicate Act Requirements**

Virginia does not have a separate statute on the predicate requirements under its RICO laws, but includes predicate requirements under its definition of "racketeering activity." Va. Code Ann. § 18.2-513 (Definitions). Under that definition, the predicate act requirements include committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit two or more specific racketeering offenses. *Id.*

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<sup>96</sup> See, e.g., *supra* note 94.

## **Relevant Offenses**

Virginia's laws have a very limited reach in covering human trafficking and CSEC offenses. Virginia does not have a law specifically making human trafficking illegal. Thus, the only relevant offenses included under Virginia's RICO laws include some pornography and prostitution related offenses and the kidnapping statute.

## **Potential Defendants**

Unlike most state and federal RICO laws, Virginia allows for either an enterprise or a person to be liable under its RICO laws. Va. Code Ann. § 18.2-514 (Racketeering offenses). Unfortunately, pursuant to Va. Code Ann. § 18.2-514(A) and (B), Virginia limits the persons that can be found liable to ones that organize, supervise, or manage and enterprise. *Id.* Furthermore, subsection (C) is similar to 18 U.S.C. § 1962(c), in which the Supreme Court interpreted the federal subsection to mean that a person can only be found liable if he or she "participated in the operation or management of the enterprise itself." Reves v. Ernst & Young, 507 U.S. 170, 183 (1993). While this is a federal case, it does provide some insight as to how a Virginia court might interpret its own RICO laws if a case was brought on this issue.

Virginia also differs from federal RICO law in that it requires that a person use or invest an aggregate of \$10,000 or more of the proceeds it received from racketeering activity and it allows the proceeds to have used or invested in real property, as well as an enterprise. *Id.* Federal RICO law, on the other hand, does not set a specific amount of proceeds that need to be used or invested and only allows for using or investing the proceeds in an enterprise, not real property. *See* 18 U.S.C. § 1962(a) (Prohibited activities).

Virginia RICO also differs from other RICO laws in that it does not make it unlawful for an enterprise or a person to "indirectly" receive proceeds from racketeering activity or to acquire or maintain an interest on or control of any enterprise or real property through racketeering activity. *See* Va. Code Ann. § 18.2-514(A),(B) (Racketeering offenses). This severely limits the reach of Virginia's RICO laws. It is also unclear just how close a person has to be to the enterprise or real property for him or her to be found liable under Virginia's RICO laws.

Finally, Virginia's law is limiting in that it requires a defendant to have used or invested an aggregate of \$10,000 or more of the proceeds known to have been derived from racketeering activity. Va. Code Ann. § 18.2-514(A) (Racketeering offenses). This is a very strict requirement and has the potential to be difficult to prove, and thus hold defendants liable.

## **Criminal Penalties**

A violation under Virginia's RICO laws is a felony and punishable by imprisonment for 5 to 40 years and a fine up to \$1 million. Va. Code Ann. § 18.2-515(A) (Criminal penalties; forfeiture). Virginia also provides enhanced penalties for subsequent offenders of its RICO laws. A subsequent offense is punishable as a Class 2 felony and a fine up to \$2 million. *Id.* Pursuant to Va. Code Ann. § 18.2-10(b) (Punishment for conviction of felony; penalty), a Class 2 felony is punishable by imprisonment for 20 years to life and a fine up to \$100,000. These sentences are

much higher than those proscribed under federal RICO law, which set a maximum prison sentence at 20 years and an alternative fine at 2 times the gross profits or proceeds. 18 U.S.C. § 1963(a).

While Virginia does include a provision on criminal financial penalties, it does not have a criminal forfeiture provision under its RICO laws.

## **WASHINGTON**

### **RICO Statute**

Washington's RICO act, also known as the Criminal Profiteering Act, has a number of provisions for prosecuting persons engaged in criminal profiteering. One provision makes it an offense to lead organized crime by intentionally overseeing 3 or more persons with the intent to engage in a pattern of criminal profiteering activity or by intentionally inciting or inducing others to further or promote a pattern criminal profiteering activity. Wash. Rev. Code § 9A.82.060(1) (Leading organized crime). Another provision makes it an offense to use the proceeds of criminal profiteering by knowingly receiving proceeds derived from a pattern of criminal profiteering activity to use or invest in real property or in the establishment or operation of an enterprise, by knowingly acquiring an interest in or control of an enterprise or real property through a pattern of criminal profiteering activity, or knowingly conspire or attempt carry out the aforementioned activities. Wash. Rev. Code § 9A.82.080 (Use of proceeds of criminal profiteering – controlling enterprise or realty – conspiracy or attempt).

Pursuant to Wash. Rev. Code §9A.82.010(8) (Definitions) , an “enterprise” includes, among other things, individuals, a group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises.

### **Predicate Act Requirements**

Unlike, federal RICO laws, Washington requires that at least three acts of criminal profiteering be committed, one of which occurred after July 1, 1985 and the last act occurred within 5 years after the first act, for there to be a pattern of criminal profiteering activity. Wash. Rev. Code § 9A.82.010(12) (Definitions). Washington also requires that the three acts be isolated events, but related in terms of “intent, results, accomplices, principals, victims, or methods of commission, . . . including a nexus to the same enterprise.” *Id.*

### **Relevant Offenses**

Washington has a very strong and comprehensive list of offenses included under the definition of “criminal profiteering.” They include offenses that were attempted or committed, but the actions must have been committed for financial gain. Wash. Rev. Code. § 9A.82.010(4) (Definitions). Among the list of offenses include: child selling or child buying, promoting pornography, sexual exploitation of children, promoting prostitution, commercial sex abuse of a minor, and promoting commercial sex abuse of a minor. *Id.* Washington's RICO law is more progressive in

that it is keeping up with recent technological changes that make it easier for traffickers, facilitators, and buyers to sell, buy, and access victims and pornography on the internet. *See* Wash. Rev. Code § 9.68A.101 (Promoting commercial sexual abuse of a minor—penalty).

### **Potential Defendants**

Unlike federal RICO laws, a violator under Washington RICO laws must have knowingly engaged in a pattern of criminal profiteering or intentionally lead organized crime with the intent of engaging in or promoting a pattern of criminal profiteering activity. Wash. Rev. Code §§ 9A.82.080(1)-(3) (Use of proceeds of criminal profiteering – controlling enterprise of realty – conspiracy or attempt), 9A.82.060 (Leading organized crime). This limits the possibilities for prosecuting traffickers and exploiters by raising the burden of proof for the State and providing greater protections to traffickers and exploiters. This also discourages good business practices by not encouraging people to investigate where their money is actually coming from.

Washington also differs from federal RICO laws in that proof of the existence of an enterprise is not required and instead, proof of an interest in or control of real property through a pattern of criminal profiteering activity or receiving proceeds derived from the use of real property through a pattern of criminal profiteering activity is sufficient. Wash. Rev. Code § 9A.82.080(1)-(2).

Washington’s RICO law does not include the offense of being employed by or associated with an enterprise set out in 18 U.S.C. §1962(c) (Prohibited activities). Instead, Washington included the offense of leading organized crime under Wash. Rev. Code § 9A.82.060(1). Under this statute and as interpreted by Washington courts, someone who aids or abets the leader in a pattern of criminal profiteering activity, but whom does not actually lead himself, may not be held liable; only leaders of organized crime are liable. *State v. Hayes*, 262 P.3d 538, 544 (Wash. Ct. App. 2011); *State v. Johnson*, 873 P.2d 514, 523 (Wash. 1994). In some ways, this provision makes Washington’s RICO statute more restrictive in that only the upper echelons of a criminal organization can be prosecuted. This would be highly detrimental to victims because traffickers, facilitators, and buyers can be underlings or assistants in criminal organizations, not just leaders. However, by not including a counterpart to 18 U.S.C. § 1962(c), Washington eliminates the controversy addressed in *Reves v. Ernst & Young*, 507 U.S. 170 (1993), over whether a person who is not a leader or higher-up in an enterprise can “operate and manage” activities, and thus be held liable for a pattern of racketeering activity. Washington’s law, allows all people who meet the necessary requirements, including leaders and underlings, to be held liable under its RICO laws. *See* Wash. Rev. Code § 9A.82.080(1)-(2) (Use of proceeds of criminal profiteering – controlling enterprise or realty – conspiracy or attempt).

### **Criminal Penalties**

Washington’s sentences for violations of its RICO laws are substantial, compared with other state and federal legislation. Similar to a violation of Washington’s law on the sexual exploitation of a minor, a violation of Washington’s RICO law is a class B felony. Wash. Rev. Code §§ 9A.82.080(1),(2) (Use of proceeds of criminal profiteering—controlling enterprise or realty—conspiracy or attempt), 9.68A.040(2) (Sexual exploitation of a minor – elements of crime – penalty). If a person knowing conspires or attempts to violate the above provision, that is



a class C felony, which is the same felony classification for a violation of Washington’s law of child buying and selling. Wash. Rev. Code §§ 9A.82.080(3), 9A.64.030(3) (Child selling – child buying). A violation of Wash. Rev. Code § 9A.82.060(1) (Leading organized crime) is either a class A or class B felony. Wash. Rev. Code § 9A.82.060(2). The maximum sentence for a class A felony is imprisonment for life or a fine of \$50,000, or both. Wash. Rev. Code § 9A.20.021(1)(a) (Maximum sentences for crimes committed July 1, 1984, and after). The maximum sentence for a class B felony is imprisonment for 10 years or a fine of \$20,000, or both. Wash. Rev. Code § 9A.20.021(1)(b). The maximum sentence for a class C felony is imprisonment for five years or a fine of \$10,000, or both. Wash. Rev. Code § 9A.20.021(1)(c).

Washington’s RICO laws also differ from federal legislation in that it does not provide a criminal forfeiture provision for RICO offenses, only a civil forfeiture provision. Wash. Rev. Code §9A.82.100(4)(f).

## **WEST VIRGINIA**

### **RICO Statute**

West Virginia’s RICO act, also known as the West Virginia Anti-Organized Criminal Enterprise Act criminalizes membership and participation in certain felonies as a member or in combination with other members of the enterprise. W. Va. Code Ann. § 61-13-3(a). Soliciting others to become a member or assist the criminal enterprise is also criminalized. W. Va. Code Ann. § 61-13-3(b).

W. Va. Code Ann. § 61-13-2 (Definitions) defines “organized criminal enterprise” as “a combination of five or more persons engaging over a period of not less than six months in one or more of the qualifying offenses set forth in this section.” Unfortunately, this definition may prevent prosecution of smaller trafficking enterprises.

### **Predicate Act Requirements**

West Virginia does not require more than one offense to be considered organized crime so long as it is in association with the enterprise. A member engaged in “any qualifying offense” is guilty of a felony. W. Va. Code Ann. § 61-13-3(a). A group of five people need only be engaged in “one or more of the qualifying offenses.” W. Va. Code Ann. § 61-13-2.

### **Relevant Offenses**

“Qualifying offense” is defined under § 61-13-2 to include felony violations of W. Va. Code Ann. § 61-2-14(a) (Abduction of person; kidnapping or concealing child; penalties), § 61-3C-14b (Soliciting, etc. a minor via computer; penalty), § 61-8C-2 (Use of minors in filming sexually explicit conduct prohibited; penalty), § 61-8C-3 (Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty), § 61-2-17 (Human

trafficking; criminal penalties) and § 61-8A-5 (Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties) or any convictions under § 61-8-8 (Receiving support from prostitution; pimping; penalty).

However, this definition excludes certain relevant CSEC offenses including W. Va. Code Ann. § 61-8-6 (Detention of person in place of prostitution; penalty) and § 61-8-7 (Procuring for house of prostitution; penalty).

### **Potential Defendants**

Potential Defendants under the West Virginia statute are similar to the federal RICO in that the existence of the enterprise must be established in order for violators to be prosecuted. See W.Va. Code Ann. § 61-13-3. This places a high burden of proof on prosecutors, especially since a number of criminal organizations that commit human trafficking or exploitation offenses may not qualify under the exact definition of an “organized criminal enterprise” pursuant to W. Va. Code Ann. § 61-13-2.

The burden on the prosecution is also higher, because, unlike the federal RICO statute, the West Virginia statute requires that the defendant be a knowing member of a criminal enterprise and “knowingly promotes, furthers or assists in the commission of any qualifying offense.” W. Va. Code Ann. § 61-13-3(a)

### **Criminal Penalties**

Violation of the West Virginia Anti-Organized Criminal Enterprise Act is a “felony and, upon conviction, shall be confined in a state correctional facility for not more than ten years or fined not more than \$25,000, or both.” W. Va. Code Ann. § 61-1303(a). Sentencing under this statute is separate from the qualifying offense and may be punished separately from it. *Id.*

Additionally, asset forfeiture applies pursuant to W. Va. Code Ann. § 61-13-5(a) (Forfeiture) which provides that any property “directly or indirectly used or intended for use” in violation of the Act as well as profits and proceeds therefrom are identified as contraband and subject to forfeiture.

Additionally, any “private building or place used by members of an organized criminal enterprise for the commission of qualifying offenses” will be declared “a nuisance and may be the subject of an injunction or cause of action for damages or for abatement of the nuisance” as provided for in W. Va. Code Ann. Chapter 61 (Crimes and their punishment), Article 9 (Equitable remedies in aid of chastity, morality and decency). W. Va. Code Ann. § 61-13-4(a).

## **WISCONSIN**

### **RICO Statute**

Wisconsin's RICO act, also known as the Wisconsin Organized Crime Control Act, makes it unlawful for a person to knowingly receive proceeds from a pattern of racketeering activity, to acquire or maintain interest in an enterprise through a pattern of racketeering activity, and to be employed or associated with an enterprise and conduct or participate in that enterprise through a pattern of racketeering activity. Wis. Stat. § 946.83(1)-(3) (Prohibited activities).

Wis. Stat. § 946.82(2) (Definitions) defines an enterprise to include illicit and licit enterprises. However, a "person" is not included under the definition of "enterprise," and so both must be proven to be separate entities under Wisconsin law. See *State v. Judd*, 433 N.W.2d 260, 262 (Wis. Ct. App. 1988). Wisconsin also prohibits engaging in a continuing criminal enterprise, which includes the prohibited activity mentioned above, but also requires that the activity was committed by a person in concert with 5 or more other people, each of whom had intent to commit the crime. Wis. Stat. § 946.85(1), (2). Wisconsin law also requires that the person occupied a supervisory possession and obtained more than \$25,000 in gross income or resources from the activity. *Id.*

### **Predicate Act Requirements**

Under Wisconsin law, a "pattern of racketeering activity" means engaging in at least 3 incidents of racketeering activity and the incidents must be related in terms of intent, result, accomplices, victims, or methods of commission. Wis. Stat. § 946.82(3). The acts also have to have taken place within 7 years of each other and, if the acts occur at the same time and place, they may only count as 1 incident of racketeering activity. *Id.*

### **Relevant Offenses**

Pursuant to Wis. Stat. § 946.82(4) (Definitions), the following offenses, whether attempted, committed, or conspired are included under the definition of "racketeering activity": human trafficking, trafficking of a child, possessing child pornography, obscenity-related felonies, prostitution-related felonies, and activities specified under the federal RICO statute, 18 U.S.C. § 1961(1).

### **Potential Defendants**

Compared to potential defendants under the federal RICO law, Wisconsin's RICO has a couple of differences. For a violation under Wisconsin law, the person must have had knowledge that the proceeds were derived from a pattern of racketeering activity. Wis. Stat. § 946.83(1) (Prohibited activities). There is no such knowledge requirement under federal RICO law and the inclusion of the knowledge requirement could potentially encourage potential violators of Wisconsin's RICO laws from finding out where their money and profits are coming from and whether the money came from the exploitation of human beings. This requirement, thus, discourages good business practices. Furthermore, a knowledge requirement can be hard to prove, thus putting a heavier burden on the State.

Wisconsin RICO law also differs from federal RICO law in that a prosecutor does not have to prove existence of an enterprise to prove there was a RICO violation. By including proceeds

from “real property” along with the “establishment or operation of any enterprise,” violators can be prosecuted for proof of: positions, commissions, compensation, interests, securities, claims, contractual rights, amounts payable, etc.. Wis. Stat. §§ 946.83(1), 946.86(2). The burden of proof is thus easier for prosecutors, especially since a number of criminal organizations that commit human trafficking or exploitation offenses may not qualify under the exact definition of an “enterprise” pursuant to Wis. Stat. § 846.82(2).

Another difference between Wisconsin’s RICO laws and federal RICO laws is that a prosecutor must prove that the person engaged in racketeering activity profited from that activity. *See State v. Ross*, 659 N.W.2d 122, 132 (Wis. Ct. App. 2003).

Wisconsin’s RICO law also differs in that a criminal prosecution “may be commenced at any time within 6 years after a RICO violation terminates or the cause of action accrues.” Wis. Stat. § 946.88(1) (Enforcement and jurisdiction). Federal RICO laws, while not including a set statute of limitations for a criminal prosecution of a RICO offense, have been interpreted by federal courts to have a 5 year statute of limitations, pursuant to 18 U.S.C. § 3282(a) (Offenses not capital). *See Agency Holding Corp. v. Malley-Duff & Assoc.*, 483 U.S. 143, 155 (1987); *United States v. Rastelli*, 870 F.2d 822, 838 (2d Cir. 1989). Wisconsin law, thus, protects victims more by allowing for a longer period for which a victim can raise a claim against a human trafficker or exploiter.

Finally, Wisconsin’s RICO laws are more limited in reach compared with federal RICO laws because Wisconsin does not include a conspiracy violation as one of its prohibited activities. Thus, potentially letting traffickers and exploiters continue to walk the streets.

### **Criminal Penalties**

Violators of Wisconsin’s RICO laws are guilty of a Class E felony, which is punishable by imprisonment up to 15 years. Wis. Stat. §§ 946.84(1)(Penalties), 939.50(3)(e) (Classification of felonies). This is a more lenient classification than an a violation of Wisconsin’s law of human trafficking of a child, which is a Class C felony and punishable by imprisonment up to 40 years, a fine up to \$100,000, or both. Wis. Stat. 939.50(3)(c). Wisconsin RICO laws, also provide for more lenient penalties compared to federal RICO laws, since under federal law, violators can be imprisoned for up to 20 years. 18 U.S.C. § 1963(a) (Criminal penalties). However, similar to federal law, Wisconsin also allows for consecutive sentences for the RICO offense and the predicate acts. *See State v. Evers*, 472 N.W.2d 828, 832 (Wis. Ct. App. 1991). Furthermore, instead of a fine under the classification of a class E felony, a violator may be fined up to 2 times the gross value gained from the racketeering activity or 2 times the gross loss caused (whichever is greater) along with court costs and costs related to investigation and prosecution. Wis. Stat. § 946.84(2).

Wisconsin also has a criminal forfeiture statute, requiring that a court order forfeiture against a violator of Wisconsin’s RICO laws. Wis. Stat. § 946.86(1) (Criminal forfeitures). The violator shall then forfeit any real or personal property used, intended to be used, derived from or realized through racketeering activity. *Id.* The property can include: positions, commissions, compensation, interests, contractual rights, and amounts payable, etc.. *Id.*

Wisconsin also applies enhanced penalties to violators of its RICO laws because it allows for consecutive sentences for both the RICO violation and the predicate acts themselves. *See State v. Evers*, 472 N.W.2d 828, 830, 833 (Wis. Ct. App. 1991). This results in longer sentences for violators, providing greater disincentives to commit human trafficking and CSEC offenses.

## **WYOMING**

### **RICO Statute**

Wyoming does not have a racketeering statute, but some trafficking activity may fall under the criminal gang statutes. 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) for any activity engaged in for the purpose of threatening, intimidating, injuring, or damaging the property of another on behalf of the gang or in order to induce others to participate in the gang. Wyo. Sta. Ann. § 62-2-403(a)

A “criminal street gang” is defined as “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)

### **Predicate Acts**

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 on separate occasions within a three (3) year period.” Wyo. Stat. Ann. § 6-1-104(a)(xv).

### **Relevant Offenses**

The definition of “pattern of criminal street gang activity” includes Wyo. Sta. Ann. § 6-4-103, promoting prostitution, but excludes Wyo. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions). The application of the statute is further limited by Wyoming’s lack of a human trafficking statute.

### **Potential Defendants**

The defendants reached by this statute are limited by the definition of a criminal street gang because the trafficking enterprise must not only be comprised of at least five people, but it must also be identified by some collective name, sign, or symbol. *See* Wyo. Stat. Ann. § 6-1-104(a)(xiv).

### **Criminal Penalties**

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).

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