

2017 ANALYSIS AND RECOMMENDATIONS

ARIZONA

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Arizona's child sex trafficking law includes the exploitation of all minors under 18 without requiring proof of force, fraud, or coercion. Pursuant to Arizona Revised Statutes Annotated (Ariz. Rev. Stat. Ann.) § 13-3212² (Child sex trafficking; classification; increased punishment; definition),

- A. A person commits child sex trafficking by knowingly:
 1. Causing any minor to engage in prostitution.
 2. Using any minor for the purposes of prostitution.
 3. Permitting a minor who is under the person's custody or control to engage in prostitution.

¹ This report includes legislation enacted as of August 1, 2017.

² The text of Ariz. Stat. Ann. § 13-3212 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
 5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
 6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
 7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.
 8. Providing a means by which a minor engages in prostitution.
 9. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the intent to cause the minor to engage in prostitution or any sexually explicit performance.
 10. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the knowledge that the minor will engage in prostitution or any sexually explicit performance.
- B. A person who is at least eighteen years of age commits child sex trafficking by knowingly:
1. Engaging in prostitution with a minor who is under fifteen years of age.
 2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.
 3. Engaging in prostitution with a minor who is fifteen, sixteen or seventeen years of age.
- C. It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.

....

Child sex trafficking is a Class 2 felony³ or a Class 6 felony depending on the age of the victim and the prohibited conduct, with penalty enhancements (Dangerous crimes against children) for trafficking a minor under 15. Ariz. Rev. Stat. Ann. §§ 13-3212(E)–(J),⁴ 13-705(C).⁵

- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*⁶

The following state laws create separate and specific crimes of commercial sexual exploitation of children:

³ Here and elsewhere in this report that felony classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-702 (First time felony offenders; sentencing; definition): Class 2 is punishable by imprisonment of 4-10 years (presumptive 5 years), Class 3 is punishable by imprisonment of 2.5 to 7 years (presumptive 3.5 years), Class 4 is punishable by imprisonment of 1.5 to 3 years (presumptive 2.5 years), Class 5 is punishable by imprisonment of .75 to 2 years (presumptive 1.5 years), and Class 6 is punishable by .5 to 1.5 years (presumptive 1 year). These penalties are listed without consideration of aggravating or mitigating factors, which increase or reduce the penalties respectively, according to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702. All classes of felonies are punishable by possible fines up to \$150,000. Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies).

⁴ See *infra* chart in Component 2.4 for complete penalty guide.

⁵ The text of Ariz. Stat. Ann. § 13-705 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

⁶ See *infra* Components 2.4 and 3.1 for charts outlining the relevant penalty provisions for offenses listed in this section.

1. Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution) makes it a crime if one “takes away any minor from the minor’s father, mother, guardian or other person having the legal custody of the minor, for the purpose of prostitution” A conviction is punishable as a Class 4 felony, unless the minor is under 15, which makes a conviction punishable as a Class 2 felony since it is a dangerous crime against a child under Ariz. Rev. Stat. Ann. § 13-705(C)⁷ (Dangerous crimes against children; sentences; definitions).
2. Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor) is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3552(B), 13-705(D). The law states in part,
 - A. A person commits commercial sexual exploitation of a minor by knowingly:
 1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct⁸ for the purpose of producing any visual depiction or live act depicting such conduct.
 2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
 3. Permitting a minor under the person’s custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.
 4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.
 5. Using an advertisement⁹ for prostitution as defined in section 13-3211 that contains a visual depiction of a minor.
 - B. Subsection A, paragraph 5 of this section does not apply to an act that is prohibited by section 13-3555 or to websites or internet service providers that host advertisements created and published by third parties and do not participate in creating or publishing the advertisements.

. . . .

Other sexual exploitation laws that may apply in cases of commercial sexual exploitation of a child although they do not specify commercial exchanges include the following:

⁷ See *supra* note 5.

⁸ Ariz. Rev. Stat. Ann. § 13-3551, which provides the definitions for chapter 35.1, states in subsection (10),

“Sexual conduct” means actual or simulated:

- (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
- (b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
- (c) Sexual bestiality.
- (d) Masturbation, for the purpose of sexual stimulation of the viewer.
- (e) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (f) Defecation or urination for the purpose of sexual stimulation of the viewer.

⁹ Ariz. Rev. Stat. Ann. § 13-3551(1), which provides the definitions for chapter 35.1, states, “‘Advertising’ or ‘advertisement’ means any message in any medium that offers or solicits any person to engage in sexual conduct in this state.”

1. Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) states that a person commits a crime by knowingly “1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct. 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” Violating Ariz. Rev. Stat. Ann. § 13-3553 is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).
2. Ariz. Rev. Stat. Ann. § 13-3554 (Luring a minor for sexual exploitation) makes “offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor” a crime. The offense is a Class 3 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3554(C), 13-705(E).
3. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) makes the following actions a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705(D) if the minor is under 15:

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors¹⁰ for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
 2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.
4. Ariz. Rev. Stat. Ann. § 13-1412(B) (Unlawful sexual conduct by a peace officer) creates a Class 2 felony for a peace officer to engage in sexual conduct with a minor under fifteen while the minor is in custody. It also creates a Class 3 felony for a peace officer to engage in sexual conduct with a minor who is between fifteen and eighteen years old. While this offense is not specific to commercial exploitation there is the potential for a quid pro quo arrangement solicited by a peace officer to a minor, meaning this offense can be used to prosecute commercially sexually exploitive conduct by peace officers.

¹⁰ Ariz. Rev. Stat. Ann. § 13-3560(E)(2) refers to § 13-3501 for the definition of “harmful to minors.” Ariz. Rev. Stat. Ann. § 13-3501(1) states,

“Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

- (a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:
 - (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
 - (ii) Portrays the description or representation in a patently offensive way.
- (b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

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

Arizona’s prostitution statute, Ariz. Rev. Stat. Ann. § 13-3214(D) (Prostitution; classification), acknowledges the intersection of prostitution with trafficking victimization by providing victims of sex trafficking with an affirmative defense. Ariz. Rev. Stat. Ann. § 13- 3214(D) states, “[i]t is an affirmative defense to a prosecution under this section that the defendant committed the acts constituting prostitution as a direct result of being a victim of sex trafficking.”

1.4 *The state racketeering or gang crimes statute includes sex trafficking or commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute child sex trafficking crimes.*

Arizona law provides criminal and civil penalties for racketeering offenses involving acts of child sex trafficking and commercial sexual exploitation of children. Pursuant to Ariz. Rev. Stat. Ann. § 13-2312 (Illegal control of an enterprise; illegally conducting an enterprise; classification),

- A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
- B. A person commits illegally conducting an enterprise if such person is employed by or associated with any enterprise and conducts such enterprise’s affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering.
- C. A person violates this section if the person hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section.

Ariz. Rev. Stat. Ann. § 13-2301(D)(4)¹¹ (Definitions) defines “racketeering” as

Any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

....

(b) Any of the following acts if committed for financial gain:

....

(xxii) Sexual exploitation of a minor.

(xxiii) Prostitution.

....

(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

....

(xxxi) Child sex trafficking.

(xxxii) Sex trafficking.

(xxxiii) Trafficking of persons for forced labor or services.

¹¹ The text of Ariz. Stat. Ann. § 13-2301 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

Based on this definition of racketeering, acts of child sex trafficking and commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making it an available tool for combatting criminal enterprises that engage in child sex trafficking.

If the racketeering statute is used to combat criminal enterprises that commit CSEC offenses, additional penalties are available for convictions under Ariz. Rev. Stat. Ann. § 13-2312, which states,

A knowing violation of subsection A or B is a class 3 felony. A knowing violation of subsection C is a class 2 felony and the person is not eligible for probation, pardon, suspension of sentence or release on any basis until the person has served the sentence imposed by the court or the sentence is commuted.

Additionally, civil remedies are available. Ariz. Rev. Stat. Ann. § 13-2301(D)(6) states, “‘Remedy racketeering’ means to enter a civil judgment pursuant to this chapter or chapter 39¹² of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.”

Ariz. Rev. Stat. Ann. § 13-2314¹³ (Racketeering; civil remedies by this state) states,

A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312. If the person against whom a racketeering claim has been asserted, including a forfeiture action or lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Before a determination of liability the orders may include, issuing seizure warrants, entering findings of probable cause for in personam or in rem forfeiture, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to forfeiture, damages or other remedies or restraints pursuant to this section as the court deems proper.

D. Following a determination of liability the orders may include:

. . . .

4. Ordering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.

. . . .

6. In personam forfeiture pursuant to chapter 39 of this title to the general fund of the state or county as appropriate, to the extent that forfeiture is not inconsistent with protecting the rights of any person who sustained injury to his person, business or property by the racketeering conduct, of the interest of a person in:

¹² Chapter 39 is entitled “Forfeiture.”

¹³ The text of Ariz. Stat. Ann. § 13-2314 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2477 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

- (a) Any property or interest in property acquired or maintained by the person in violation of section 13-2312.
- (b) Any interest in, security of, claims against or property, office, title, license or contractual right of any kind affording a source of influence over any enterprise or other property that the person has acquired or maintained an interest in or control of, conducted or participated in the conduct of in violation of section 13-2312.
- (c) All proceeds traceable to an offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 and held by the person and all monies, negotiable instruments, securities and other property used or intended to be used by the person in any manner or part to facilitate commission of the offense and that the person either owned or controlled for the purpose of that use.

Under Ariz. Rev. Stat. Ann. § 13-2314.01(F)¹⁴ (Anti-racketeering revolving fund; use of fund; reports), money in the racketeering fund may be spent for the following purposes:

1. The funding of gang prevention programs, substance abuse prevention programs, substance abuse education programs, programs that provide assistance to victims of a criminal offense that is listed in section 13-2301 [Racketeering; civil remedies by this state] and witness protection pursuant to or for any purpose permitted by federal law relating to the disposition of any property that is transferred to a law enforcement agency.
2. The investigation and prosecution of any offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 or section 13-2312, including civil enforcement.
3. The payment of the relocation expenses of any law enforcement officer and the officer's immediate family if the law enforcement officer is the victim of a bona fide threat that occurred because of the law enforcement officer's duties.
4. The costs of the reports, audits and application approvals that are required by this section.

As such, services for victims of human trafficking and CSEC offenses may receive funding from the anti-racketeering revolving fund. Ariz. Rev. Stat. Ann. § 13-2314.01(F)(1).

¹⁴ The text of Ariz. Stat. Ann. § 13-2314.01 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2477 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

Legal Components:

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

Legal Analysis:

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

Ariz. Rev. Stat. Ann. § 13-3212(B)¹⁵ (Child sex trafficking; classification; increased punishment; definition) applies to buyers of sex with minors. It states,

A person who is at least eighteen years of age commits child sex trafficking by knowingly:

- 1. Engaging in prostitution with a minor who is under fifteen years of age.
- 2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.
- 3. Engaging in prostitution with a minor who is fifteen, sixteen or seventeen years of age.

....

Moreover, Ariz. Rev. Stat. Ann. § 13-3212(A) may apply to buyers of sex with minors through the term “cause” and, following federal precedent, through the term “obtain.”¹⁶ Ariz. Rev. Stat. Ann. § 13-3212(A) states,

¹⁵ See *supra* note 2.

¹⁶ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex

A person commits child sex trafficking by knowingly:

1. Causing any minor to engage in prostitution.

....

9. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the intent to cause the minor to engage in prostitution or any sexually explicit performance.

10. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the knowledge that the minor will engage in prostitution or any sexually explicit performance.

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

None of Arizona's CSEC offenses include the crime of purchasing sex with a minor.

2.2.1 Recommendation: Enact a law that specifically criminalizes the act of buying sex with a minor.

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

Arizona's solicitation law differentiates between buying sex acts with an adult and buying sex acts with a minor by providing an enhanced penalty if a minor victim is involved. Ariz. Rev. Stat. Ann. § 13-1002(A) (Solicitation; classifications) defines the crime of solicitation as follows:

A person . . . commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other's complicity in its commission.

The penalty for violating Ariz. Rev. Stat. Ann. § 13-1002 depends on the penalty for violating the underlying felony or misdemeanor offense. Ariz. Rev. Stat. Ann. § 13-1002(B). Because prostitution of an adult is a misdemeanor, solicitation would be a Class 3 misdemeanor.¹⁷ Ariz. Rev. Stat. Ann. §§ 13-3214(E), 13-1002(B)(7). Because engaging in prostitution with a minor under 15 years of age or with a minor known to be 15–17 years of age is a Class 2 felony, solicitation would be a Class 4 felony. Ariz. Rev. Stat. Ann. §§ 13-3212(F), (I),¹⁸ 13-1002(B)(2). If the state cannot prove the buyer knew the victim's age, engaging in prostitution with a 15–17 year old is a Class 6 felony, which would make solicitation a Class 2 misdemeanor. Ariz. Rev. Stat. Ann. § 13-3212(J), 13-1002(B)(6). Accordingly, Arizona law provides an enhanced penalty for soliciting a minor versus an adult.

trafficking laws (in particular the term "obtains") to the extent such interpretation does not conflict with state case law.

¹⁷ Here and elsewhere in this report that misdemeanor classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-707: Class 1 misdemeanors are punishable by imprisonment up to 6 months, Class 2 misdemeanors are punishable by imprisonment up to 4 months, and Class 3 misdemeanors are punishable by imprisonment up to 30 days. Misdemeanors also face possible fines in the following amounts pursuant to Ariz. Rev. Stat. Ann. § 13-802: Class 1 misdemeanors face a possible fine up to \$2,500, Class 2 misdemeanors face a possible fine up to \$750, and Class 3 misdemeanors face a possible fine up to \$500.

¹⁸ See *supra* note 2.

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

The following chart depicts the sentences applicable to buyers of sex with minors. Enhanced penalties apply if the victim is under 15.

| Offense | Crime classification | Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. § 13-702 (First time felony offenders; sentencing; definition) (except where noted differently) ¹⁹ | Ariz. Rev. Stat. Ann. § 13-705 ²⁰ (Dangerous crimes against children; sentences; definitions) (first felony offense) – applies when victim is under 15 years old | Ariz. Rev. Stat. Ann. § 13-705 enhancement (person “previously convicted of one predicate felony”) |
|---|--|---|---|--|
| Ariz. Rev. Stat. Ann. § 13-3212 ²¹ (Child sex trafficking; classification; increased punishment; definition) ²² | 1) § 13-3212(A)(1)–(10): Class 2 felony if involves a minor under 15 years of age (Ariz. Rev. Stat. Ann. § 13-3212(E)) | 1) N/A | 1) 13–27 years Presumptive 20 years | 1) 23–37 years Presumptive 30 years |
| | 2) § 13-3212(B)(1): Class 2 felony if involves a minor under 15 years of age (Ariz. Rev. Stat. Ann. § 13-3212(F)) | 2) N/A | 2) 13–27 years Presumptive 20 years | 2) 23–37 years Presumptive 30 years |
| | 3) § 13-3212(A)(1)–(8): Class 2 felony if involves a minor 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(G)) | 3) 10–24 years Presumptive 13.5 years (Ariz. Rev. Stat. Ann. § 13-3212(G)) | 3) N/A | 3) N/A |

¹⁹ These penalties include those of aggravating or mitigating factors, which increase or reduce the penalties, respectively, in accordance to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702.

²⁰ See *supra* note 5.

²¹ Ariz. Rev. Stat. Ann. § 13-3212(D) states:

Notwithstanding any other law, a sentence imposed on a person for any of the following shall be consecutive to any other sentence imposed on the person at any time:

1. A violation of subsection A or subsection B, paragraph 2 of this section involving a minor who is fifteen, sixteen or seventeen years of age
2. A violation of subsection A, paragraph 9 or 10 of this section.

See *supra* note 2.

²² Ariz. Rev. Stat. Ann. § 13-701(D)(24) (Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition) considers “recruit[ing], entic[ing] or obtain[ing] [a] victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault” as an aggravated factor for sentencing purposes if the defendant has been convicted of child sex trafficking.

The text of Ariz. Stat. Ann. § 13-701 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

| | | | | |
|---|---|---|--|--|
| | <p>Rev. Stat. Ann. § 13-3212(G))</p> <p>4) § 13-3212(A)(9)–(10): Class 2 felony if involves a minor 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(H))</p> <p>5) § 13-3212(B)(2): Class 2 felony if involves a minor known to be 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(I))</p> <p>6) § 13-3212(B)(3): Class 6 felony if involves a minor 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(J))</p> | <p>4) 3–12.5 years Presumptive 5 years</p> <p>5) 7–21 years Presumptive 10.5 years (Ariz. Rev. Stat. Ann. § 13-3212(I))</p> <p>6) .33–2 years Presumptive 1 year (However, (H) states that if the offender is sentenced to probation, “the court shall order that as an initial term of probation,” 180 days imprisonment in county jail. If the offender meets certain requirements, the court has discretion to suspend 90 days of the sentence.)</p> | <p>4) N/A</p> <p>5) N/A</p> <p>6) N/A</p> | <p>4) N/A</p> <p>5) N/A</p> <p>6) N/A</p> |
| <p>Ariz. Rev. Stat. Ann. § 13-1405²³ (Sexual conduct with a minor)</p> | <p>1) Class 2 felony if involves a minor under 15 years of age</p> | <p>1) N/A</p> | <p>1) 13–27 years Presumptive 20 years (Under (B), however, “sexual conduct with a minor who is under twelve years of age”</p> | <p>1) 23–37 years Presumptive 30 years</p> |

²³ Pursuant to Ariz. Rev. Stat. Ann. § 13-401(2), for Chapter 14 (Sexual Offenses),

"Position of trust" means a person who is or was any of the following:

- (a) The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
- (b) The minor's teacher.
- (c) The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
- (d) The minor's clergyman or priest.
- (e) Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.

| | | | | |
|--|--|--|---|---|
| | 2) Class 6 felony if the minor is 15–17 years of age 3) Class 2 felony if committed by someone who is or was “in a position of trust” | 2) .33–2 years Presumptive 1 year 3) 3–12.5 years Presumptive 5 years | may result in a life sentence.) 2) N/A 3) N/A | 2) N/A 3) N/A |
| Ariz. Rev. Stat. Ann. § 13-1417 (Continuous sexual abuse of a child under 14 years of age) | Class 2 felony | N/A | 13–27 years Presumptive 20 years | 23–37 years Presumptive 30 years |
| Ariz. Rev. Stat. Ann. § 13-1410 (Molestation of a child under 15) | Class 2 felony | N/A | 10–24 years Presumptive 17 years | 21–35 years Presumptive 28 years |
| Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) | Class 2 felony | 3–12.5 years Presumptive 5 years | 10–24 years Presumptive 17 years | 21–35 years Presumptive 28 years |
| Ariz. Rev. Stat. Ann. § 13-3560 (Aggravated luring a minor for sexual exploitation) | Class 2 felony | 3–12.5 years Presumptive 5 years | 10–24 years Presumptive 17 years | 21–35 years Presumptive 28 years |
| Ariz. Rev. Stat. Ann. § 13-3554 (Luring a minor for sexual exploitation) | Class 3 felony | 2–8.75 years Presumptive 3.5 years | 5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release | 8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release |
| Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) | Class 3 felony | 2–8.75 years Presumptive 3.5 years | 5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release | 8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release |

In addition, a fine may be imposed as part of the sentence requiring the felon to “pay an amount fixed by the court not more than one hundred fifty thousand dollars.” Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to

life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense²⁴ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²⁵ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁶

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

Using the Internet or electronic communications to initiate, solicit, or engage in sexual conduct with a minor is a separate crime that results in serious penalties for buyers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation acts committed against a child. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705(D), (E) (Dangerous crimes against children; sentences; definitions) if the minor is under 15 years of age. Ariz. Rev. Stat. Ann. § 13-3560(C).

In addition, Ariz. Rev. Stat. Ann. § 13-3561(A) (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

²⁴ Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

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

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

A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry].

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

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

Ariz. Rev. Stat. Ann. § 13-3212(B)(1)²⁷ (Child sex trafficking; classification; increased punishment; definition) eliminates a mistake of age defense for a person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age.” Although a mistake of age defense is permitted when the victim is 15–17 years of age, a successful defense will result in a lower penalty, not acquittal. Pursuant to Ariz. Rev. Stat. Ann. § 13-3212(B)(2), (3), a buyer who engages in prostitution with a 15–17 year old is guilty of a Class 2 felony if the state can prove the buyer knew or should have known the victim's age; otherwise, a buyer who engages in prostitution with a 15–17 year old will be guilty of a Class 6 felony.²⁸

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

Ariz. Rev. Stat. Ann. § 13-3212(B)²⁹ (Child sex trafficking; classification; increased punishment; definition) staggers penalties based on the victim's age, providing a substantially lower penalty (Class 6 felony) for buyers of sex with minors aged 15, 16, and 17 if the state cannot prove the buyer knew or should have known the minor's age. Specifically, a person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age” commits a Class 2 felony and is subject to punishment pursuant to Ariz. Rev. Stat. Ann. § 13-705³⁰ (Dangerous crimes against children; sentences; definitions). Ariz. Rev. Stat. Ann. § 13-3212(B)(1), (F). A person who “[e]ngag[es] in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age” is also guilty of a Class 2 felony. Ariz. Rev. Stat. Ann. § 13-3212(B)(2), (I). By contrast, a person who “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” will be guilty of a Class 6 felony if actual or constructive knowledge of the minor victim's age is not proven. Ariz. Rev. Stat. Ann. § 13-3212(B)(3), (J).³¹

2.7.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3212 (Child sex trafficking; classification; increased punishment; definition) to raise the base penalty for all minors to reflect the seriousness of the offense, regardless of the offender's knowledge of the victim's age.

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

Arizona law enables courts to apply monetary penalties and allows for victim restitution and asset forfeiture. Pursuant to Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies), courts may impose a fine up to a \$150,000 as part of a sentence for a felony conviction.

²⁷ See *supra* note 2.

²⁸ See *infra* Component 2.7 for discussion regarding the sufficiency of base penalties.

²⁹ See *supra* note 2.

³⁰ See *supra* note 5.

³¹ See *supra* Component 2.4 for chart detailing applicable sentences.

In addition, asset and property forfeiture are available. Ariz. Rev. Stat. Ann. § 13-3557³² (Equipment; forfeiture) states,

On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

Where the seized property is money, “the court shall order the monies returned to each law enforcement agency that makes a showing of costs or expenses which it incurred in connection with the investigation and prosecution of the matter and shall order all excess monies remaining after such returns deposited in the anti-racketeering fund of this state or of the county in which the political subdivision seizing the monies or prosecuting the action is located”

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant, or without a court order under certain conditions, and with probable cause established. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state, “All property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.”

Finally, mandatory restitution is available in cases of child sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309³³ (Restitution), which states,

[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services; classification; definitions] or section 13-3212, subsection A, paragraph 9 or 10 [Child sex trafficking; classification; increased punishment; definition], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.

2.9 *Buying and possessing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is

³² Statute is codified in Chapter 35.1 entitled, “Sexual Exploitation of Children.”

³³ The text of Ariz. Stat. Ann. § 13-309 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” Sexual exploitation of a minor is a Class 2 felony (presumptive 5 year sentence) with a sentence enhancement under § 13-705(D) (Dangerous crimes against children; sentences; definitions) if the minor is under 15 (presumptive 17 year sentence for first offense).

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)³⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁶

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

Convicted buyers of sex with minors are required to register as sex offenders. Ariz. Rev. Stat. Ann. § 13-3821³⁷ (Persons required to register) lists the crimes for which an offender must register as a sex offender. They include the following crimes:

....

3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.
4. Sexual conduct with a minor pursuant to section 13-1405.
5. Sexual assault pursuant to section 13-1406.

....

10. Child prostitution pursuant to section 13-3212, subsection A or subsection B, Paragraph 1 or 2 committed before the effective date of this amendment to this section [August 9, 2017].
11. Child sex trafficking pursuant to section 13-3212, subsection A or subsection B, paragraph 1 or 2 committed on or after the effective date of this amendment to this section [August 9, 2017].

....

13. Sexual exploitation of a minor pursuant to section 13-3553.

....

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

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

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

³⁷ The text of Ariz. Stat. Ann. § 13-3821 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

However, buyers convicted of child sex trafficking under § 13-3212(B)(3)³⁸ (Child sex trafficking; classification; increased punishment; definition), which applies to buyers of sex with minors aged 15–17 where the buyer’s actual or constructive knowledge of the victim’s minority has not been proven, are not required to register as sex offenders.

Buyers convicted of sex offenses or possession of images of child sexual exploitation (ICSE) may face non-mandatory registration under Ariz. Rev. Stat. Ann. § 13-3821(C), which states, “Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14³⁹ or 35.1⁴⁰ of this title or for an offense for which there was a finding of sexual motivation pursuant to section 13-118⁴¹ may require the person who committed the offense to register pursuant to this section.”

³⁸ See *supra* note 2.

³⁹ Chapter 14 is entitled, “Sexual Offenses.”

⁴⁰ Chapter 35.1 is entitled, “Sexual Exploitation of Children.”

⁴¹ Ariz. Rev. Stat. Ann. § 13-118(A) (Sexual motivation special allegation; procedures; definition) states,

A. In each criminal case involving an offense other than a sexual offense, the prosecutor may file a special allegation of sexual motivation if sufficient admissible evidence exists that would justify a finding of sexual motivation by a reasonable and objective finder of fact.

B. If the prosecutor files a special allegation of sexual motivation, the state shall prove beyond a reasonable doubt that the defendant committed the offense with a sexual motivation. The trier of fact shall find a special verdict as to whether the defendant committed the offense with a sexual motivation.

C. For purposes of this section “sexual motivation” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

Legal Components:

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

Legal Analysis:

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

Arizona has a series of laws directed at traffickers. The following chart depicts applicable penalties, including penalty enhancements if the victim is under 15.

| Offense | Crime classification | Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. § 13-702 (First time felony offenders; sentencing; definition) (except where noted differently) ⁴² | Ariz. Rev. Stat. Ann. § 13-705 ⁴³ (Dangerous crimes against children; sentences; definitions) (first felony offense)—applies when victim is under 15 years old | Ariz. Rev. Stat. Ann. § 13-705 enhancement (person “previously convicted of one predicate felony”) |
|---|---|---|---|--|
| Ariz. Rev. Stat. Ann. § 13-3212 ⁴⁴ (Child sex trafficking; classification; increased punishment; definition) ⁴⁵ | 1) § 13-3212(A) (1)–(10): Class 2 felony if involves a minor under 15 years of age (Ariz. Rev. Stat. Ann. § 13-3212(E)) | 1) N/A | 1) 13–27 years Presumptive 20 years | 1) 23–37 years Presumptive 30 years |

⁴² These penalties include those of aggravating or mitigating factors, which increase or reduce the penalties, respectively, in accordance to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702.

⁴³ See *supra* note 5.

⁴⁴ See *supra* note 2.

⁴⁵ Ariz. Rev. Stat. Ann. § 13-701(D)(24) (Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition) considers “recruit[ing], entic[ing] or obtain[ing] [a] victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault” as an aggravated factor for sentencing purposes if the defendant has been convicted of child sex trafficking.
See *supra* note 22.

| | | | | |
|---|--|---|---|---|
| | 2) § 13-3212(A) (1)–(8): Class 2 felony if minor is 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(G)) | 2) 10–24 years Presumptive 13.5 years (Ariz. Rev. Stat. Ann. § 13-3212(G)) | 2) N/A | 2) N/A |
| | 3) § 13-3212(A) (9)–(10): Class 2 felony if involves a minor 15–17 years of age (Ariz. Rev. Stat. Ann. § 13-3212(H)) | 3) 3–12.5 years Presumptive 5 years | 3) N/A | 3) N/A |
| Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution) | 1) Class 4 felony 2) Class 2 felony if under 15 years old | 1) 1–3.75 years Presumptive 2.5 years 2) N/A | 1) N/A 2) 13–27 years Presumptive 20 years | 1) N/A 2) 23–37 years Presumptive 30 years |
| Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor) (images of child sexual exploitation) | Class 2 felony | 3–12.5 years Presumptive 5 years | 10–24 years Presumptive 17 years | 21–35 years Presumptive 28 years |
| Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) | Class 2 felony | 3–12.5 years Presumptive 5 years | 10–24 years Presumptive 17 years | 21–35 years Presumptive 28 years |
| Ariz. Rev. Stat. Ann. § 13-3554 (Luring a minor for sexual exploitation) | Class 3 felony | 2–8.75 years Presumptive 3.5 years Possibility of probation if child is over 15 | 5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release | 8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release |
| Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) | Class 3 felony | 2–8.75 years Presumptive 3.5 years | 5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release | 8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release |

Additionally, Arizona has a range of laws prohibiting conduct centered on promoting prostitution, including Ariz. Rev. Stat. Ann. § 13-3201 (Enticement of persons for purpose of prostitution), § 13-3202 (Procurement by false pretenses of person for purpose of prostitution), § 13-3203 (Procuring or placing

persons in house of prostitution), § 13-3204 (Receiving earnings of prostitute), § 13-3207 (Detention of persons in house of prostitution for debt), § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution), and § 13-3209 (Pandering; methods; classification). These offenses are either Class 5 or Class 6 felonies.⁴⁶

In addition, a fine may be imposed as part of the sentence requiring the felon to “pay an amount fixed by the court not more than one hundred fifty thousand dollars.” Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies).

Pursuant to Ariz. Rev. Stat. Ann. § 9-500.10 (Escort and escort agency advertising requirements; civil penalty; definitions), traffickers and advertisers may also face civil penalties for advertising:

- A. An escort or escort agency shall not advertise escort services unless the advertisement includes either:
 - 1. The escort license number of the escort if the advertisement is for the services of a specific escort.
 - 2. The business license number of the escort agency where the services are offered if the advertisement does not offer the services of a specific escort.
- B. An escort or escort agency shall retain on file, for at least one year, proof of the age of any escort whose services are offered in any advertisement of escort services.

Penalties range from \$500 for a first time offense to \$5,000 for a third or subsequent offense. Ariz. Rev. Stat. Ann. § 9-500.10(C).

Traffickers also face penalties under the money laundering provisions. Ariz. Rev. Stat. Ann. § 13-2317 (A)–(E) (Money laundering; classification; definitions) states,

- A. A person is guilty of money laundering in the first degree if the person does any of the following:
 - 1. Knowingly initiates, organizes, plans, finances, directs, manages, supervises or is in the business of money laundering in violation of subsection B of this section.

.....
- B. A person is guilty of money laundering in the second degree if the person does any of the following:
 - 1. Acquires or maintains an interest in, transacts, transfers, transports, receives or conceals the existence or nature of racketeering proceeds knowing or having reason to know that they are the proceeds of an offense.
 - 2. Makes property available to another by transaction, transportation or otherwise knowing that it is intended to be used to facilitate racketeering.
 - 3. Conducts a transaction knowing or having reason to know that the property involved is the proceeds of an offense and with the intent to conceal or disguise the nature, location, source, ownership or control of the property or the intent to facilitate racketeering.

.....
- D. In addition to any other criminal or civil remedy, if a person violates subsection A or B of this section as part of a pattern of violations that involve a total of one hundred thousand dollars or more in any twelve month period, the person is subject to forfeiture of substitute assets in an amount that is three times the amount that was involved in the pattern, including conduct that occurred before and after the twelve month period.
- E. Money laundering in the third degree is a class 6 felony. Money laundering in the second degree is a class 3 felony. Money laundering in the first degree is a class 2 felony.

⁴⁶ See *supra* note 3.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴⁷ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁴⁸ against a minor. 18 U.S.C. § 3559(e)(1).

3.2 *Creating and distributing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” A conviction is punishable as a Class 2 felony with a sentence enhancement under Ariz. Rev. Stat. Ann. § 13-705 (Dangerous crimes against children; sentences; definitions) if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁴⁹ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of images of child sexual exploitation (ICSE)⁵⁰ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵¹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵²

⁴⁷ See *supra* Component 2.4 for further discussion.

⁴⁸ See *supra* note 24.

⁴⁹ See *supra* note 24.

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

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

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

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

Using the Internet or electronic communications to accomplish a sexual offense is a separate crime resulting in serious penalties for traffickers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation of a child as long as a depiction of material harmful to minors is transmitted as part of the communication. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors⁵³ for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3560(C), 13-705(D).

In addition, Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry], subsection A.

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in Ariz. Rev. Stat. Ann. § 13-705(E) (Dangerous crimes against children; sentences; definitions) if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

⁵³ Ariz. Rev. Stat. Ann. § 13-3560 refers to the definition of "harmful to minors" in Ariz. Rev. Stat. Ann. § 13-3501. Ariz. Rev. Stat. Ann. § 13-3501(1) states,

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

- (a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:
 - (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
 - (ii) Portrays the description or representation in a patently offensive way.
- (b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

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

Arizona law provides financial penalties, including fines, asset and property forfeiture, and mandatory restitution, for traffickers. Traffickers convicted of child sex trafficking, other CSEC felonies, or money laundering face a possible fine up to \$150,000 imposed by the court. Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies).

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant or without a court order under certain conditions and with probable cause. While allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions) does state that “[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.”

In cases of commercial sexual exploitation of a child for prohibited conduct concerning images of child sexual exploitation (ICSE) and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture) states, “On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.” Pursuant to Ariz. Rev. Stat. Ann. 9.500.10, traffickers and advertisers may seek civil penalties for posting escort advertisements without proper licensure. Penalties range from \$500 for a first time offense to \$5,000 for a third or subsequent offense. Ariz. Rev. Stat. Ann. § 9-500.10(C).

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

Finally, mandatory restitution is available in cases of child sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309⁵⁴ (Restitution), which states,

[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services; classification; definitions] or section 13-3212, subsection A, paragraph 9 or 10 [Child sex trafficking; classification; increased punishment; definition], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.

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

Under Ariz. Rev. Stat. Ann. § 13-3821(A)⁵⁵ (Persons required to register), convicted traffickers are required to register as sex offenders. Ariz. Rev. Stat. Ann. § 13-3821(A) lists the crimes for which an offender must register as a sex offender. The list includes, in relevant part, the following crimes:

⁵⁴ See *supra* note 33.

⁵⁵ See *supra* note 37.

....

3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.
 4. Sexual conduct with a minor pursuant to section 13-1405.
 5. Sexual assault pursuant to section 13-1406.
 6. Sexual assault of a spouse if the offense was committed before August 12, 2005.
 7. Molestation of a child pursuant to section 13-1410.
 8. Continuous sexual abuse of a child pursuant to section 13-1417.
 9. Taking a child for the purpose of prostitution pursuant to section 13-3206.
 10. Child prostitution pursuant to section 13-3212, subsection A or subsection B, paragraph 1 or 2 committed before the effective date of this amendment to this section [August 9, 2017].
 11. Child sex trafficking pursuant to section 13-3212, subsection A or subsection B, paragraph 1 or 2 committed on or after the effective date of this amendment to this section [August 9, 2017].
 12. Commercial sexual exploitation of a minor pursuant to section 13-3552.
 13. Sexual exploitation of a minor pursuant to section 13-3553.
 14. Luring a minor for sexual exploitation pursuant to section 13-3554.
 15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to section 13-1402.
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20. Unlawful age misrepresentation.
 21. Aggravated luring a minor for sexual exploitation pursuant to section 13-3560.

3.6 *Laws relating to termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for termination in order to prevent traffickers from exploiting their parental rights as a form of control.*

Arizona law includes child sex trafficking as a ground for terminating parental rights based on the definition of “abuse.” Under Ariz. Rev. Stat. Ann. § 8-863(B) (Hearing to terminate parental rights), “The court may terminate the parental rights of a parent if the court finds by clear and convincing evidence one or more of the grounds prescribed in section 8-533.” Ariz. Rev. Stat. Ann. § 8-533(B) (Petition; who may file; grounds) states in part,

Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the parent has abandoned the child.
2. That the parent has neglected or willfully abused a child. This abuse includes serious physical⁵⁶ or emotional injury⁵⁷ or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.

⁵⁶ Ariz. Stat. Ann. § 8-201(33) defines “serious physical injury” as,

[A]n injury that is diagnosed by a medical doctor and that does any one or a combination of the following:

- (a) Creates a reasonable risk of death.
- (b) Causes serious or permanent disfigurement.
- (c) Causes significant physical pain.
- (d) Causes serious impairment of health.
- (e) Causes the loss or protracted impairment of an organ or limb.

The text of Ariz. Stat. Ann. § 8-201 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

⁵⁷ Ariz. Stat. Ann. § 8-201(32) defines “serious emotional injury” as

. . . .

Ariz. Rev. Stat. Ann. § 8-201(2) (Definitions), which provides definitions for title 8 “unless the context otherwise requires,” defines “abuse” in relevant part as

[T]he infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:

(a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child sex trafficking pursuant to section 13-3212.

Additionally, Ariz. Rev. Stat. § 8-846(D)(2) (Services provided to the child and family) states, “The court shall consider the following factors and reunification services are not required to be provided if the court finds by clear and convincing evidence that: The parent or guardian of a child has been convicted of . . .sexual abuse of a child . . . commercial sexual exploitation of a minor, sexual exploitation of a minor, or luring a minor for sexual exploitation.”

[A]n injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

(a) Seriously impairs mental faculties.

(b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.

(c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child sex trafficking pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

Legal Components:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*
 - 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*
 - 4.3 *Promoting and selling child sex tourism is illegal.*
 - 4.4 *Promoting and selling images of child sexual exploitation carries penalties as high as similar federal offenses.*
-

Legal Analysis:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Arizona's child sex trafficking law prohibits the acts of assisting, enabling, or financially benefitting from child sex trafficking. Pursuant to § 13-3212(A)(4)–(10)⁵⁸ (Child sex trafficking; classification; increased punishment; definition), facilitators may be prosecuted for knowingly:

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.
8. Providing a means by which a minor engages in prostitution.
9. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the intent to cause the minor to engage in prostitution or any sexually explicit performance.
10. Enticing, recruiting, harboring, providing, transporting, making available to another or otherwise obtaining a minor with the knowledge that the minor will engage in prostitution or any sexually explicit performance.

If the victim is under 15 years of age, a conviction under Ariz. Rev. Stat. Ann. § 13-3212(A) is punishable as a Class 2 felony and subject to the sentencing provisions in Ariz. Rev. Stat. Ann. § 13-705⁵⁹ (Dangerous crimes against children; sentences; definitions). Ariz. Rev. Stat. Ann. § 13-3212(E). If the victim is 15–17 years of age, a conviction under Ariz. Rev. Stat. Ann. § 13-3212(A)(4)–(8) is a Class 2 felony punishable by 10–24 years imprisonment with the presumptive sentence being 13.5 years. Ariz. Rev. Stat. Ann. § 13-3212(G).

⁵⁸ See *supra* note 2.

⁵⁹ See *supra* note 5.

Furthermore, Ariz. Rev. Stat. Ann. § 13-1308⁶⁰ (Trafficking of persons for forced labor or services; classification; definitions) makes it a crime to

[k]nowingly benefit, financially or by receiving anything of value, from participation in a venture that has engaged in an act in violation of section 13-1306 [Unlawfully obtaining labor or services], section 13-1307 [Sex trafficking] this section, or section 13-3212, subsection A, paragraph 9 or 10 [Child sex trafficking; classification; increased punishment; definition].

The acts of facilitators are prohibited in other CSEC provisions. Ariz. Rev. Stat. Ann. § 13-3210 (Transporting persons for purpose of prostitution or other immoral purpose) is a Class 5 felony and prohibits a person from “knowingly transporting by any means of conveyance, through or across this state, any other person for the purposes of prostitution or concubinage, or for any other immoral purposes” Ariz. Rev. Stat. Ann. § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution) makes it illegal if a person “knowingly operates or maintains a house of prostitution or prostitution enterprise” This offense is also a Class 5 felony.

Ariz. Rev. Stat. Ann. § 13-3553(A) (Sexual exploitation of a minor) states,

A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.⁶¹

If a facilitator makes use of a visual depiction of a minor in an advertisement for prostitution, it is a Class 2 felony with sentence enhancements if the minor is under 15 years of age. Ariz. Rev. Stat. Ann. §§ 13-3552, 13-705(D). However, this crime is not applicable to “an act that is prohibited by section 13-3555 [Portraying adult as minor; classification] or to websites or internet service providers that host advertisements created and published by third parties and do not participate in creating or publishing the advertisements.” Ariz. Rev. Stat. Ann. § 13-3552(B).

Facilitators could also be convicted under money laundering provisions.⁶² A money laundering conviction is punishable as a Class 2, 3, or 6 felony (depending on degree) and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-2317(E), 13-801.

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

Arizona law provides financial penalties, including fines, asset and property forfeiture, and mandatory restitution, for facilitators of child sex trafficking. Facilitators face a possible fine up to \$150,000 imposed by

⁶⁰ The text of Ariz. Stat. Ann. § 13-1308 cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

⁶¹ Ariz. Rev. Stat. Ann. § 13-3559 (Reporting suspected visual depictions of sexual exploitation of a minor; immunity) provides a defense to those that may otherwise be viewed as facilitators by stating in subsection (C), “It is an affirmative defense to a prosecution for a violation of section 13-3553 that on discovery a person in good faith reports the discovery of unsolicited suspected visual depictions involving the sexual exploitation of a minor.”

⁶² See *supra* Component 3.1 for relevant provisions.

the court as part of the sentence for child sex trafficking and felony CSEC violations. Ariz. Rev. Stat. Ann. § 13-801 (Fines for felonies).

In cases of commercial sexual exploitation of a child for prohibited conduct concerning images of child sexual exploitation (ICSE) and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture)⁶³ states, “On the conviction of a person for a violation of section . . . 13-3553 [Sexual exploitation of a minor] . . . the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.”

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

However, if the seized property is money,

[T]he court shall order the monies returned to each law enforcement agency that makes a showing of costs or expenses which it incurred in connection with the investigation and prosecution of the matter and shall order all excess monies remaining after such returns deposited in the anti-racketeering fund of this state or of the county in which the political subdivision seizing the monies or prosecuting the action is located

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant, or without a court order under certain conditions and with probable cause. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state that “[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.” Therefore, forfeiture may not be available for child sex trafficking and commercial sexual exploitation of children offenses because these offenses do not appear to be specifically designated in a statute providing for forfeiture.

Mandatory restitution is also specifically available in cases of child sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309⁶⁴ (Restitution), which states that

The court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services] or section 13-3212, subsection A, paragraph 9 or 10 [Child sex trafficking; classification; increased punishment; definition], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.

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

There is no specific provision in the Arizona code prohibiting child sex tourism.

⁶³ Statute is codified in Chapter 35.1 entitled, “Sexual Exploitation of Children.”

⁶⁴ See *supra* note 33.

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

4.4 *Promoting and selling images of child sexual exploitation carries penalties as high as similar federal offenses.*

Ariz. Rev. Stat. Ann. § 13-3553(A) (Sexual exploitation of a minor), a Class 2 felony, makes it illegal if

A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

Legal Components:

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

Legal Analysis:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*⁶⁵

Ariz. Rev. Stat. Ann. § 13-3212⁶⁶ (Child sex trafficking; classifications; increased punishment; definitions), Arizona’s core child sex trafficking offense, identifies all commercially sexually exploited children as trafficking victims. When the victim is a minor, means of force, fraud, or coercion are not required.⁶⁷ Ariz. Rev. Stat. Ann. § 13-3212(A), (B). Additionally, the child sex trafficking law applies directly to buyer conduct; thus, buying commercial sex with a person who is under the age of eighteen constitutes child sex trafficking.⁶⁸ Ariz. Rev. Stat. Ann. § 13-3212(A), (B). Finally, the offense of child sex trafficking under Ariz. Rev. Stat. Ann. § 13-3212 does not require that a trafficker or controlling third party be identified. Consequently, Arizona’s child sex trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the child without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Ariz. Rev. Stat. Ann. § 13-3212.

⁶⁵ See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

⁶⁶ See *supra* note 2.

⁶⁷ See *supra* Component 1.1.

⁶⁸ See *supra* Component 2.1.

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

Ariz. Rev. Stat. Ann. § 13-3212⁶⁹ (Child sex trafficking; classification; increased punishment; definition) and § 13-3552 (Commercial sexual exploitation of a minor) are silent regarding the availability of a defense based on the willingness of a minor to engage in a commercial sex act.

- 5.2.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3212 (Child sex trafficking; classification; increased punishment; definition) and § 13-3552 (Commercial sexual exploitation of a minor) to specifically prohibit a defendant prosecuted under these provisions from asserting a defense based on the willingness of the minor to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁷⁰

Ariz. Rev. Stat. Ann. § 13-3214 (Prostitution; classification) contains age-neutral provisions and renders minors under the age of 18 liable to prosecution for prostitution offenses. However, Ariz. Rev. Stat. Ann. § 13-3214(D) provides an affirmative defense when the prostitution offense was committed as a result of trafficking victimization.

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

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

Arizona law does not provide juvenile sex trafficking victims with a statutory avenue to specialized services or mandate immunity for offenses committed as a result of the trafficking victimization.

- 5.4.1 Recommendation: Enact a protective response for juvenile sex trafficking victims that provides an avenue to specialized services and a mandatory mechanism to prevent delinquency adjudications.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁷¹

Arizona law defines abuse to include child sex trafficking and commercial sexual exploitation of children. Pursuant to Ariz. Rev. Stat. Ann. § 8-201(2)⁷² (Definitions), “abuse” is defined in part as

the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:

- (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-

⁶⁹ See *supra* note 2.

⁷⁰ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁷¹ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁷² See *supra* note 56.

3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child sex trafficking pursuant to section 13-3212.

....

However, Ariz. Rev. Stat. Ann. § 8-201(25) does not define “neglect” to include child sex trafficking. Rather, Ariz. Rev. Stat. Ann. § 8-201(25) defines “neglect” or “neglected” as

....

(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.

(f) Any of the following acts committed by the child’s parent, guardian or custodian with reckless disregard as to whether the child is physically present:

(i) Sexual contact as defined in section 13-1401.

(ii) Oral sexual contact as defined in section 13-1401.

(iii) Sexual intercourse as defined in section 13-1401.

(iv) Bestiality as prescribed in section 13-1411.

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

The definition of abuse requires fault by “an individual who has the care, custody, and control over a child” Ariz. Rev. Stat. Ann. § 8-201(2)⁷³ (Definitions). While an offender is commonly in a position to exert control over a child sex trafficking victim, “custodian” is defined only to include “a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.” Ariz. Rev. Stat. Ann. § 8-201(9). Therefore, the definition of “custodian” is unlikely to include non-familial offenders and would be a barrier to a sex trafficked child accessing child welfare protection and services.

5.6.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 8-201 (Definitions) to expressly allow child welfare protection for child sex trafficking victims irrespective of the perpetrator of the abuse.

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

Ariz. Rev. Stat. Ann. § 41-2407 (Victim compensation and assistance fund; subrogation) establishes a victim compensation and assistance fund administered by the Arizona criminal justice commission. The fund’s operational details are set forth in Arizona’s Administrative Code (Ariz. Admin. Code). The Administrative Code contains ineligibility criteria that could operate to bar a child sex trafficking victim’s claim for compensation. According to a state website, “The maximum award of any single claim is \$25,000.”⁷⁴ Ariz. Admin. Code § R10-4-108 (Compensation award criteria) outlines the expenses for which a claim may be made, including medical expenses, mental health counseling and care, work loss expenses, funeral expenses, and crime scene cleanup expenses.

Ariz. Admin. Code § R10-4-106 (Prerequisites for a Compensation Award) states in part,

⁷³ See supra note 56.

⁷⁴ *Victim Compensation*, ARIZONA CRIMINAL JUSTICE COMMISSION <http://azcjc.gov/ACJC.Web/victim/VictComp.aspx> (last visited July 27, 2016).

The Board shall make a compensation award only if it determines that,

....

3. The victim of the criminally injurious conduct or act of international terrorism or a person who submits a claim regarding criminally injurious conduct or an act of international terrorism was not:

- a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death.

....

The Board must also determine that the victim was not “[c]onvicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.” Ariz. Admin. Code § R10-4-106(A)(3)(e).

Additionally, under Ariz. Admin. Code § R10-4-106(A)(4), (5), (7), among other things, the board must determine that the crime was “reported to an appropriate law enforcement authority within 72 hours after its discovery,” that the victim “cooperated with law enforcement agencies,” and that the claim “was submitted to the operational unit within two years after discovery of the criminally injurious conduct” However, under Ariz. Admin. Code § R10-4-106(B), “The Board shall extend the time limits under subsections (A)(4) [the 72 hour limit] and (A)(7) [the two year limit] if the Board determines there is good cause for a delay.”

Ariz. Admin. Code § R10-4-108(F) (Compensation Award Criteria) requires the board to “deny or reduce” the award if, among other things,

The Board determines that the victim's physical injury, medical condition, mental distress, or death was due in substantial part to the victim's:

- a. Negligence,
- b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism, or
- c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism.

Finally, Ariz. Admin. Code § R10-4-108(H)(1) (Compensation Award Criteria) requires denial of a claim in total if,

The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial health or safety risk. The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:

- a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or act of international terrorism or failed to appear as a witness for the prosecution;
- b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct or act of international terrorism escaped prosecution or the prosecution of the suspect was negatively affected; or
- c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities;

....

- 5.7.1 Recommendation: Amend the crime victims' compensation rules to stipulate an exception to the ineligibility criteria noted above for victims of CSEC crimes, including Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution), § 13-3212⁷⁵ (Child sex trafficking; classification; increased punishment; definition), § 13-3552 (Commercial sexual exploitation of a minor), and § 13-3553 (Sexual exploitation of a minor) in recognition of the challenges these victims face through trauma-bonding, denial, and delayed disclosure.

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

Arizona law provides some victim-friendly tools throughout the trial process for minors under 18, including: privacy, out of court room testimony, recorded testimony, and guardian ad litem.

Pursuant to Ariz. Rev. Stat. Ann. § 13-4434 (Victim's right to privacy; exception; definitions), a victim's right to privacy is protected during the court process. Ariz. Rev. Stat. Ann. § 13-4434 states,

- A. The victim has the right at any court proceeding not to testify regarding any identifying or locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.
- B. A victim's identifying and locating information that is obtained, compiled or reported by a law enforcement agency or prosecution agency shall be redacted by the originating agency and prosecution agencies from records pertaining to the criminal case involving the victim including discovery disclosed to the defendant.
- C. Subsection B of this section does not apply to:
 - 1. The victim's name except, if the victim is a minor, the victim's name may be redacted from public records pertaining to the crime if the countervailing interests of confidentiality, privacy, the rights of the minor or the best interests of this state outweigh the public interest in disclosure.
 - 2. Any records that are transmitted between law enforcement and prosecution agencies or a court.
 - 3. Any records if the victim or, if the victim is a minor, the victim's representative as designated under section 13-4403 has consented to the release of the information.
 - 4. The general location at which the reported crime occurred.
- D. For the purposes of this section:
 - 1. "Identifying information" includes a victim's date of birth, social security number and official state or government issued driver license or identification number.
 - 2. "Locating information" includes the victim's address, telephone number, e-mail address and place of employment.
 -

Ariz. Rev. Stat. Ann. § 13-1421(A) (Evidence relating to victim's chastity; pretrial hearing) provides protection to victims of sexual offenses who wish to testify against their perpetrators. This provision, however, appears to be limited to Chapter 14 (Sexual offenses). It states in part that

Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence

⁷⁵ See *supra* note 2.

falls into one of five categories, including “[e]vidence of the victim’s past sexual conduct with the defendant” and “[e]vidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.”

Ariz. Rev. Stat. Ann. § 13-4253(A) (Out of court testimony; televised; recorded) provides authority for the court to order “the testimony of the minor [under 15⁷⁶] be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding.” Also, subsection (B)⁷⁷ permits the court to “order that the testimony of the minor be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding.” In either case, “the minor shall not be required to testify in court at the proceeding for which the testimony was taken.” Ariz. Rev. Stat. Ann. § 13-4253(C).

Ariz. Rev. Stat. Ann. § 13-4252 (Recording of testimony) also allows for the admissibility of recorded statements by a minor under 15 or a person who is developmentally disabled. However, the minor must still be available to testify. If the recording is admitted, “[E]ither party may call the minor to testify and the opposing party may cross-examine the minor.”⁷⁸

Under Ariz. Rev. Stat. Ann. § 13-4251 (Applicability; definition), the article on child witnesses, which contains § 13-4252 and § 13-4253, “applies to the testimony or statements of a minor in criminal proceedings involving acts committed against the minor or involving acts witnessed by the minor whether or not those acts are charged and in civil proceedings including proceedings involving a dependency or a termination of parental rights.”

A court appointed special advocate program is established in Ariz. Rev. Stat. Ann. § 8-523 (Special advocate program). Ariz. Rev. Stat. Ann. § 8-221(I) (Counsel right of juvenile, parent or guardian; waiver; appointment; reimbursement; guardian ad litem) states in part that “[i]n all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile’s best interests. This guardian may be an attorney or a court appointed special advocate.”

5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*

Arizona law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be destroyed after a waiting period.

⁷⁶ Ariz. Rev. Stat. Ann. § 13-4251(B).

⁷⁷ In *State v. Vincent*, 768 P.2d 150, 161 (Ariz. 1989), the Supreme Court of Arizona strictly limited the applicability of this provision: “Thus, we hold, section 13-4253(B) requires the trial judge to condition the substitution of videotaped testimony for live testimony upon an individualized showing of necessity.” With regard to the question of whether “even an individualized showing of probable trauma to a child witness justifi[ed] abridgment of the defendant’s constitutional right to a face-to-face courtroom encounter,” *id.*, the court held that “[a]n exception [to face-to-face testimony] exists . . . under both the state and federal constitutions, where the state sustains its burden of proving by an individualized showing to the trial court that face-to-face testimony would so traumatize a child witness as to prevent the child from reasonably communicating.” *Id.* at 164. Even though the case focused on subsection (B), it is likely that the court’s reasoning would also apply to subsection (A), since subsection (A) also denies face-to-face confrontation.

⁷⁸ In *State v. Taylor*, 2 P.3d 674, 677 (Ariz. Ct. App. 1999) (citation omitted), an Arizona Court of Appeals held Ariz. Rev. Stat. Ann. § 13-4252 “constitutional only if it can be construed as being consistent with the court’s rules.” In analyzing the statute, the court stated, “The statute creates additional procedural requirements for the admissibility of statements that would otherwise be admissible under the supreme court’s rules and makes admissible statements that are excluded by the rules. Because § 13-4252 expands on, conflicts with, and engulfs the court’s rules, it is unconstitutional.” *Id.* at 678.

Regarding record destruction, Ariz. Rev. Stat. Ann. § 8-349(A) (Destruction of juvenile records; electronic research records) permits “[a] person who has been referred to juvenile court [to] apply for destruction of the person’s juvenile court and department of juvenile corrections records” under certain conditions. Pursuant to Ariz. Rev. Stat. Ann. § 8-349(B), for records that

.....
[C]oncern a referral or citation that did not result in further action or that resulted in diversion, placement in a community based alternative program or an adjudication for an offense other than an offense listed in section 13-501, subsection A or B⁷⁹ or title 28, chapter 4 [Driving under the influence],” the person must “certify under oath that all of the following apply:

1. The person is at least eighteen years of age.
2. The person has not been convicted of a felony offense or adjudicated delinquent for an offense that would be an offense listed in section 13-501, subsection A or B or title 28, chapter 4.
3. A criminal charge is not pending.
4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
5. All restitution and monetary assessments have been paid in full.

If the juvenile court finds all of the above to be true, and that “[t]he destruction of the records is in the interests of justice” and it “would further the rehabilitative process of the applicant,” the juvenile court may order the records destroyed. Ariz. Rev. Stat. Ann. § 8-349(C).

However, Ariz. Rev. Stat. Ann. § 8-349(D) states,

If the records concern a referral that resulted in an adjudication of delinquency for an offense not subject to subsection B of this section the person shall file the application with the juvenile court and

⁷⁹ Ariz. Rev. Stat. Ann. § 13-501 (Persons under eighteen years of age; felony charging) states,

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

shall serve a copy of the application on the county attorney in the county in which the referral was made. The person shall certify under oath that all of the following apply:

1. The person is at least twenty-five years of age.
2. The person has not been convicted of a felony offense.
3. A criminal charge is not pending.
4. The person has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan.
5. All restitution and monetary assessments have been paid in full.

If the county attorney does not object within ninety days after the date of the notice and the court finds” the above conditions to be true and that “[t]he destruction of the records is in the interests of justice” and “would further the rehabilitative process of the applicant . . . ,” the court may order the destruction of the records. Ariz. Rev. Stat. Ann. § 8-349(E).

Accordingly, minors must attain a specified age before juvenile records may be destroyed. During this waiting period, a child sex trafficking victim may face collateral consequences associated with having an accessible delinquency record.

Regarding vacatur, Ariz. Rev. Stat. Ann. § 13-907.01(A)⁸⁰ (Vacating conviction of a sex trafficking victim) provides,

A person who was convicted of a violation of § 13-3214 [Prostitution; classification] or a city or town ordinance that has the same or substantially similar elements as section 13-3214 committed prior to July 24, 2014 may apply to the court that pronounced sentence to vacate the person’s conviction. The court shall grant the application and vacate the conviction if the court finds by clear and convincing evidence that the person’s participation in the offense was a direct result of being a victim of sex trafficking pursuant to § 13-1307.

However, the vacatur law applies only to “convictions,” and Ariz. Rev. Stat. Ann. § 8-207(A) (Order of adjudication; noncriminal; use as evidence) states, “an order of the juvenile court in proceedings under this chapter shall not be deemed a conviction of a crime” Accordingly, a child sex trafficking victim would be unable to vacate a delinquency adjudication under this law.

Further, Ariz. Rev. Stat. Ann. § 13-907.01(A) applies only to violations of Arizona’s prostitution offense, foreclosing the law’s applicability to other offenses related to trafficking victimization.⁸¹ Additionally, Ariz. Rev. Stat. Ann. § 13-907.01 does not make record expungement automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

- 5.9.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-907.01(A) (Vacating conviction of a sex trafficking victim) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.

⁸⁰ The text of Ariz. Stat. Ann. § 13-907.01 cited here and elsewhere in this report, includes amendments made by the enactment of Senate Bill 1422 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

⁸¹ Under Ariz. Rev. Stat. Ann. § 13-921 (Probation for defendants under eighteen years of age; dual adult juvenile probation), a non-trafficking specific vacatur law, a judgment of guilt may be set aside if the minor was placed on probation and successfully completed its terms. Related records may be expunged. Ariz. Rev. Stat. Ann. § 13-921.

5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

Arizona law authorizes victim restitution and civil remedies for victims of child sex trafficking. Mandatory restitution is specifically available in cases of child sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309⁸² (Restitution), which states,

The court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services] or 13-3212, subsection A, paragraph 9 or 10 [Child sex trafficking; classification; increased punishment; definition], including the greater of either the gross income or value to the defendant of the victim's labor or services or the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.

Ariz. Rev. Stat. Ann. § 13-804(A) (Restitution for offense causing economic loss; fine for reimbursement of public monies) provides another form of discretionary restitution.

On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

....

Child sex trafficking victims likely will have difficulty obtaining restitution under Ariz. Rev. Stat. Ann. § 13-804(A) because of its limitation to economic damages.

Regarding civil actions, under Ariz. Rev. Stat. Ann. § 13-807 (Civil actions by victims or other persons),

A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this state against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order.

Under the racketeering provisions of Ariz. Rev. Stat. Ann. § 13-2314(A)⁸³ (Racketeering; civil remedies by this state),

The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain or remedy racketeering . .

..

Ariz. Rev. Stat. Ann. § 13-2314(D) states that “[f]ollowing a determination of liability” the court can issue orders, including “[o]rdering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.” Furthermore, Ariz. Rev. Stat. Ann. § 13-2314(L) provides,

⁸² See *supra* note 33.

⁸³ See *supra* note 13.

A civil action authorized by this section, including proceedings pursuant to chapter 39 of this title, is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.

Ariz. Rev. Stat. Ann. § 13-2314.04(A) (Racketeering; unlawful activity; civil remedies by private cause of action) states in part,

A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity,⁸⁴ or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation.

The Arizona Crime Victims' Bill of Rights located in the State Constitution, art. II, sec. 2.1 includes in its list of victims' rights the right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." However, as noted above, paragraph (C) of this section could operate as a barrier to identification of child sex trafficking victims as victims. It states, "(C) 'Victim' means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused."

5.11 Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Arizona law eliminates the criminal statutes of limitations for certain CSEC offenses, but not for child sex trafficking, and provides lengthened statutes of limitations for civil actions.

Regarding criminal prosecutions, Ariz. Rev. Stat. Ann. § 13-107(A) (Time limitations) states,

A prosecution for any homicide, any offense that is listed in chapter 14 [Sexual offenses⁸⁵] or 35.1 [Sexual exploitation of children⁸⁶] of this title and that is a class 2 felony, any violent sexual

⁸⁴ Ariz. Rev. Stat. Ann. § 13-2314.04(T)(3) states,

"Pattern of racketeering activity" means either:

- (a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:
 - (i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.
 - (ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.
 - (iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.
- (b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

⁸⁵ Relevant offenses include: Ariz. Rev. Stat. Ann. § 13-1402 (Indecent exposure; exception; classification); § 13-1404 (Sexual abuse; classification); § 13-1405 (Sexual conduct with a minor; classification); § 13-1406 (Sexual assault; classification; increased punishment); § 13-1410 (Molestation of a child; classification); § 13-1411

assault pursuant to section 13-1423, . . . or any attempt to commit an offense listed in this subsection may be commenced at any time.

Under Ariz. Rev. Stat. Ann. § 13-107(B), however, the statute of limitations for Class 2 to Class 6 felonies, including child sex trafficking, is 7 years, while the statute of limitations for misdemeanors is one year. Further, Ariz. Rev. Stat. Ann. § 13-107(F) states, “[t]he time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting attorney designates the offense as a misdemeanor.”

Additionally, Arizona law lengthens the civil statutes of limitations for child sex trafficking and certain CSEC offenses. Ariz. Rev. Stat. Ann. § 12-511 (Civil action arising from criminal conduct; definitions) states in part, “Notwithstanding sections 12-505 and 12-542, if a defendant is charged by a criminal complaint or indictment the statute of limitations for any civil cause of action that is brought by a victim against the defendant for criminal conduct against the victim is extended for one year from the final disposition of the criminal proceedings, regardless of whether the defendant is convicted of criminal conduct against the victim.” The provision defines “criminal conduct” to include,

[A]ny act, including all preparatory offenses, in violation of section . . . 13-1304 [Kidnapping], 13-1404 [Sexual abuse], 13-1405 [Sexual conduct with a minor], 13-1406 [Sexual assault], 13-1410 [Molestation of a child], 13-1417 [Continuous sexual abuse of a child], 13-2314.04 [Racketeering], . . . 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation], . . . 13-3601 [Domestic violence] or 13-3601.02 [Aggravated domestic violence].

For civil actions related to child sex trafficking, Ariz. Rev. Stat. Ann. § 13-2314(I) (Racketeering; civil remedies by this state; definitions) states in part,

Notwithstanding any law creating a lesser period, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312, including procedures pursuant to chapter 39 of this title, shall be commenced within seven years after actual discovery of the violation.

Because Arizona law includes child sex trafficking within the definition of racketeering activity and does not set a lesser statute of limitations period, civil actions based on child sex trafficking seemingly may be brought within 7 years. Ariz. Rev. Stat. Ann. §§ 13-2314(I), 2301(D)(4)(b)(xxxi).⁸⁷

By comparison, Ariz. Rev. Stat. Ann. § 12-550 (General limitation), “Actions other than for recovery of real property for which no limitation is otherwise prescribed shall be brought within four years after the cause of action accrues and not afterward.”

(Bestiality; classification; definition); § 13-1412 (Unlawful sexual conduct; peace officers; classification; definitions); § 13-1417 (Continuous sexual abuse of a child; classification); and § 13-1423 (Violent sexual assault; natural life sentence).

⁸⁶ Relevant offenses include: Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor; classification); § 13-3553 (Sexual exploitation of a minor; evidence; classification); § 13-3554 (Luring a minor for sexual exploitation; classification); § 13-3555 (Portraying adult as minor; classification); § 13-3560 (Aggravated luring a minor for sexual exploitation; classification; definitions); and § 13-3561 (Unlawful age misrepresentation; classification; definition).

⁸⁷ See *supra* note 11.

Finally, most of these civil causes of action will be tolled during minority. Ariz. Rev. Stat. Ann. § 12-502 (Effect of minority or insanity) states,

If a person entitled to bring an action other than those set forth in article 2 [Real actions] of this chapter is at the time the cause of action accrues either under eighteen years of age or of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.

Legal Components:

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

Legal Analysis:

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

Ariz. Rev. Stat. Ann. § 41-1781 (Training and education) establishes a division of training and education for law enforcement personnel. Although training is not mandated, it is available through the Arizona Department of Public Safety/Arizona Law Enforcement Academy (ALEA), according to an ALEA representative. According to the basic curriculum guide for post-academy training, one of the stated objectives is to be able to identify examples of various crimes against children, including commercial sexual exploitation of a minor, sexual exploitation of a minor, dangerous crimes against children,⁸⁸ child abuse, child neglect, public sexual indecency to a minor, sexual conduct with a minor, and child molestation.⁸⁹

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

Ariz. Rev. Stat. Ann. § 13-3005 (Interception of wire, electronic and oral communications; installation of pen register or trap and trace device) prohibits the interception of communications without consent of a party who is present at the communication. However, Ariz. Rev. Stat. Ann. § 13-3012(9) (Exemptions) expressly permits the interception of communications where a single party who is “a party to the communication or a person who is present during the communication” consents thereto, which allows law enforcement to intercept such communications outside the typically required court order. Ariz. Rev. Stat. Ann. § 13-3012(1) also exempts, among other things, the

[I]nterception of wire, electronic or oral communications, . . . the providing of information, facilities or technical assistance to an investigative or law enforcement officer pursuant to a subpoena or an ex parte order granted pursuant to sections 13-3010, 13-3015, 13-3016, 13-3017 and 13-3018 or an emergency interception made in good faith pursuant to section 13-3015, including any of the foregoing acts by a communication service provider or its officers, agents or employees.

⁸⁸ The relevant offense, Ariz. Rev. Stat. Ann. § 13-705 (Dangerous crimes against children; sentences; definitions), includes child sex trafficking.

⁸⁹ ARIZONA PEACE OFFICER STANDARDS & TRAINING BOARD, BASIC TRAINING CURRICULUM 23, available at <https://aleaonline.az.gov/sites/default/files/documents/files/585%20Basic%20Training%20Curriculum%20January%202011.pdf> (July 2016).

Ariz. Rev. Stat. Ann. § 13-3010 (Ex parte order for interception; definition) provides procedures for an ex parte order for interception, stating in subsection A,

On application of a county attorney, the attorney general or a prosecuting attorney whom a county attorney or the attorney general designates in writing, any justice of the supreme court, judge of the court of appeals or superior court judge may issue an ex parte order for the interception of wire, electronic or oral communications if there is probable cause to believe both:

1. A crime has been, is being or is about to be committed.
2. Evidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.

“Crime” is defined in Ariz. Rev. Stat. Ann. § 13-3010(P) as

[M]urder, gaming, kidnapping, robbery, bribery, extortion, theft, an act in violation of chapter 23 of this title [Organized crime, fraud and terrorism], dealing in narcotic drugs, marijuana or dangerous drugs, sexual exploitation of children in violation of chapter 35.1 of this title or any felony that is dangerous to life, limb or property. Crime includes conspiracy to commit any of the offenses listed in this subsection.

Ariz. Rev. Stat. Ann. § 13-3015(A) (Emergency interception), states in part,

Notwithstanding any other provision of this chapter, if the attorney general or a county attorney or such prosecuting attorneys as they may designate in writing reasonably determines that an emergency situation exists involving immediate danger of death or serious physical injury to any person, and that such death or serious physical injury may be averted by interception of wire, electronic or oral communications before an order authorizing such interception can be obtained, the attorney general or a county attorney or his designee may specially authorize a peace officer or law enforcement agency to intercept such wire, electronic or oral communications.

If this provision is used, the person authorizing the emergency interception must apply “for an order authorizing the interception, in accordance with the provisions of section 13-3010. The application shall be made as soon as practicable, and in no event later than forty-eight hours after commencement of the emergency interception.”

Ariz. Rev. Stat. Ann. § 13-3015(B).

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

Ex parte orders for intercepting communications require probable cause that “[a] crime has been, is being or is about to be committed” and that “[e]vidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.” Ariz. Rev. Stat. Ann. § 13-3010(A). Evidence gathered through an emergency interception may be admissible, although Ariz. Rev. Stat. Ann. § 13-3015(C) (Emergency interception) requires the prosecutor to request authorization within 48 hours of the emergency interception by stating

if the prosecuting attorney fails to obtain an authorization within forty-eight hours after commencement of the emergency interception, or if authorization to intercept communications is denied, the interception shall immediately terminate and any communications intercepted without judicial authorization may not be used as evidence in any criminal or civil proceeding against any person.

6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*

Arizona’s child sex trafficking statute, Ariz. Rev. Stat. Ann. § 13-3212(C)⁹⁰ (Child sex trafficking; classification; increased punishment; definition), expressly prohibits a defense based on the use of a law enforcement decoy. Under the law,

It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.

Similar prohibitions on using such a defense to the prosecution of a trafficker or buyer of sex with a minor are found in Ariz. Rev. Stat. Ann. § 13-3560(B) (Aggravated luring a minor for sexual exploitation) and Ariz. Rev. Stat. Ann. § 13-3554(B) (Luring a minor for sexual exploitation). Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.” Ariz. Rev. Stat. Ann. § 13-3554(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor.”

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

Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) makes it a crime when a person “[k]nowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor” and “[b]y means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.” Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.”

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

Ariz. Rev. Stat. Ann. § 8-810 (Missing children; notification; entry into databases) mandates reporting certain missing children by DCS, stating in relevant part in subsection A, “If the department receives a report made pursuant to section 13-3620⁹¹ or receives information during the course of providing services that indicates a

⁹⁰ See *supra* note 2.

⁹¹ Ariz. Rev. Stat. Ann. § 13-3620 (Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions) states,

A. Any person [as defined later in the statute] who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature . . . shall immediately report or cause reports to be made of this information to a peace officer, to the department of child safety, , or to a tribal law enforcement or social service agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only

. . . .

P. For purposes of this section:

. . . .

4. “Reportable offense” means any of the following:

(a) Any offense listed in chapters 14 [Sexual offenses] and 35.1 [Sexual exploitation of children] of this title or section 13-3506.01 [Furnishing harmful items to minors; internet activity].

child is at risk of serious harm and the child’s location is unknown, the department shall notify the appropriate law enforcement agency and provide the information required to make the record entry into the Arizona crime information center and the national crime information center missing person databases.” Under subsection (B), “The appropriate law enforcement agency shall immediately enter the information provided by the department pursuant to subsection A of this section into the Arizona crime information center and the national crime center missing persons database.”

Ariz. Rev. Stat. Ann. § 15-829 (Missing child; notification of school; flagging records) requires that upon receiving a missing child⁹² report from parents or guardians, law enforcement shall notify the missing child’s school or, if home-schooled, the county school superintendent. The school is then required to flag the records of the missing child. The law enforcement agency reporting to the school must also notify the school or county school superintendent if the missing child is recovered in order to have the flag on the child’s record removed. A similar process is required under Ariz. Rev. Stat. Ann. § 36-339 (Missing children; notification; flagging birth certificate records) with respect to notification by the receiving law enforcement agency in Arizona of a missing child report to the state registrar in the child’s birth state who is then required to flag the child’s birth certificate. If the missing child is found, the law enforcement agency that reported the child missing must notify the state registrar so they can remove the flag from the child’s registered birth certificate.

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- (b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.
 - (c) Child sex trafficking pursuant to section 13-3212.
 - (d) Incest pursuant to section 13-3608.

The text of Ariz. Stat. Ann. § 13-3620, cited here and elsewhere in this report, includes amendments made by the enactment of House Bill 2238 during the 2017 1st Regular Session of the Arizona Legislature (effective August 9, 2017).

⁹² Ariz. Rev. Stat. Ann. § 15-829(D)(2) defines “missing child” as “a person who is under the age of eighteen years, whose temporary or permanent residence is in this state or is believed to be in this state, whose location has not been determined and who has been reported as missing to a law enforcement agency.”

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