

2017 ANALYSIS AND RECOMMENDATIONS

MAINE

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.*

Maine has enacted a human trafficking law that does not require proof of force, fraud, or coercion when involving an offense against a minor. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking), “a person is guilty of aggravated sex trafficking if the person knowingly:

- (A) Promotes prostitution by compelling a person to enter, engage in or remain in prostitution;
- (B) Promotes prostitution of a person less than 18 years old.

“Promotes prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(2) (Definitions) as

- A. Causing or aiding another to commit or engage in prostitution,² other than as a patron;

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

² “Prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(1) (Definitions) as

- B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution includes, but is not limited to, an offer, made in a public place, to engage in a sexual act³ or sexual contact⁴, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person;
- C. Providing persons for purposes of prostitution;
- D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
- E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

“Compelling” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 852(2) (Definitions) as:

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- C. Making material false statements, misstatements or omissions;
 - D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person’s freedom of movement;
 - E. Requiring prostitution to be performed to retire, repay or service an actual or purported debt; and
 - F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in prostitution, the actor or another person will:
 - (1) Cause physical injury or death to a person;
 - (2) Cause damage to property, other than property of the actor
 - (3) Engage in other conduct constituting a Class A, B or C crime, kidnapping or criminal restraint;
 - (4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;

engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person.

³ “Sexual act” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 251(1)(C) (Definitions and general provisions) as

- (1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;
- (2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or
- (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

⁴ “Sexual contact” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 251(1)(D) (Definitions and general provisions) as

any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

- (5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;
- (6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;
- (7) Use a position as a public servant to perform some act related to that person's official duties or fail to refuse to perform an official duty in a manner that adversely affect some other person; or
- (8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

A violation of Me. Rev. Stat. Ann. tit. 17-A, § 852 is a Class B crime punishable by imprisonment up to 10 years, a possible fine not to exceed \$20,000, and an additional fine of \$1,000 to be deposited in the Victims' Compensation Fund.⁵ Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(A), (B), 1301(1-A)(A), (B)), 5, 3360-I.

Me. Rev. Stat. Ann. tit. 17-A, § 853(1)⁶ (Sex trafficking) also provides,

A person is guilty of sex trafficking if:

- A. The person knowingly promotes prostitution. Violation of this paragraph is a Class D crime; or
- B. The person violates paragraph A and has 2 or more prior convictions in this State for any combination of the Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this paragraph in another jurisdiction. The Maine offenses are any violation of this section [Sex trafficking] or section 852 [Aggravated sex trafficking], 853-A [Engaging in prostitution], 853-B [Engaging a prostitute] or 855 [Patronizing prostitution of minor or person with mental disability] or attempts to commit any of these crimes Violation of this paragraph is a Class C crime.

A violation of Me. Rev. Stat. Ann. tit. 17-A, § 853(1)(A) is punishable as a Class D crime by imprisonment up to 1 year in county jail, a possible fine not to exceed \$2,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 853(1)(A), (2)(D), 1301(1-A)(D), 5, § 3360-I. A violation of Me. Rev. Stat. Ann. tit. 17-A, § 853(1)(B) is punishable as a Class C crime by imprisonment up to 5 years, a possible fine not to exceed \$5,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 853(1)(B), 1252(2)(C), 1301(1-A)(C), 5, § 3360-I.

⁵ For all classes of crimes discussed in this report, the court may impose a fine greater than the specified amount as long as it "does not exceed twice the pecuniary gain derived from the crime by the defendant." Me. Rev. Stat. Ann. tit. 17-A, § 1301(1-A)(F). Me. Rev. Stat. Ann. tit. 17-A, § 1301(2) defines "pecuniary gain" as,

the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed.

⁶ While Me. Rev. Stat. Ann. tit. 17-A, § 853 (Sex trafficking) provides criminal liability to any person who promotes prostitution, the statute is not minor-specific and does not provide heightened penalties when the victim is a child.

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.*

Five laws make CSEC distinct crimes.

1. Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) makes it unlawful if a person “in return for another’s prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age.” A conviction under Me. Rev. Stat. Ann. Tit. 17-A, § 855 is punishable as a Class D crime by up to 1 year in county jail, a possible fine not to exceed \$2,000, and an additional fine of \$500 to be deposited in the Victims’ Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D) 5, § 3360-I. However, when a defendant is aware that the minor is under the age of 18 it is punishable as a Class C crime by imprisonment up to 5 years, a possible fine not to exceed \$5,000, and an additional fine of \$500 to be deposited in the Victims’ Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C), 5, § 3360-I.
2. Me. Rev. Stat. Ann. tit. 17A, § 554(1)(A) (Endangering the welfare of a child) states, “1. A person is guilty of endangering the welfare of a child if that person: A. Knowingly permits a child to enter or remain in a house of prostitution. Violation of this paragraph is a Class D crime.” A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 554(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D).
3. Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of a minor) states that a person commits a crime if he does any of the following:
 - A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades, or uses another person, not that person’s spouse, who has not in fact attained 16 years of age, to engage in sexually explicit conduct, except that it is not a violation of this paragraph if the other person is 14 or 15 years of age and the person is less than 5 years older than the other person. Violation of this paragraph is a Class B crime;
 - A-1. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly compels or induces by any threat another person, not that person’s spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;
 - B. The person violates paragraph A or A-1 and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;
 - C. The person violates paragraph A or A-1 and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;
 - D. Being a parent, legal guardian or other person having care or custody of another person who has not in fact attained 16 years of age, that person knowingly or intentionally permits that person who has not in fact attained 16 years of age to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed. Violation of this paragraph is a Class B crime;
 - E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or
 - F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

Class B crimes are punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000, while Class A crimes are punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(A), (B), 1301(1-A)(A), (B).

4. Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act) criminalizes the solicitation, in any manner, of minors under the age of 14 by individuals over the age of 16. Me. Rev. Stat. Ann. tit. 17-A, § 259-A states:

A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Know or believes that the other person is less than 14 years of age; and
- 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

“Prohibited act” is defined to include “sexual exploitation of a minor pursuant to section 282.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(2)(A), (B), (C).

Class D crimes are punishable by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).⁷ Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C).

5. Me. Rev. Stat. Ann. tit. 17-A, § 259-B⁸ (Solicitation of a child to engage in prostitution) criminalizes the solicitation of a child to engage in prostitution, stating,

(1) A person is guilty of soliciting a child to engage in prostitution if the actor knowingly solicits directly or indirectly by any means a person the actor knows or believes is under 18 years of age to engage in prostitution, as defined in section 851.

(2) Violation of this section is a Class D crime.

Class D crimes are punishable by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).

Certain sexual offenses also may apply in cases involving the commercial sexual exploitation of a child. These include the following:

⁷ Unless otherwise noted, the fines listed in this document reflect the fine structure for natural persons convicted of crimes pursuant to Me. Rev. Stat. tit. 17-A, § 1301(1-A).

⁸ The text of Me. Rev. Stat. Ann. tit. 17-A § 259-B cited here and elsewhere in this report includes amendments made by the enactment of Legislative Document 1261 during the 128th Maine Legislature (effective September 25, 2017).

1. Me. Rev. Stat. Ann. tit. 17-A, § 254(1)(A) (Sexual abuse of minors) provides that a Class D crime occurs when a person “engages in a sexual act⁹ with another person, not the actor’s spouse, who is either 14 or 15 years of age and the actor is at least 5 years older than the other person.” A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the offender is 10 or more years older than the victim, then it is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 254(1)(A-2), 1252(2)(C), 1301(1-A)(C).
2. A defendant can be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) for engaging in a “sexual act”¹⁰ with a minor under 14 who is not his or her spouse. Me. Rev. Stat. Ann. tit. 17-A, § 253(1)(B). Gross sexual conduct is a Class A crime, punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 253(1)(B), 1252(2)(A), 1301(1-A)(A).
3. Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) makes it illegal if a person “intentionally subjects another person to any sexual contact”¹¹ when, among other circumstances, the offender is at least 3 years older than the victim who is under the age of 14. Me. Rev. Stat. Ann. tit. 17-A, § 255-A(1)(E). When the victim is 12-14, a violation is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000; however, when the victim is younger than 12 the violation increases to a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(E), (E-1), 1252(2)(B), (C), 1301(1-A)(B), (C). The violation increases further when the sexual contact includes penetration. Defendants who engage in sexual contact that includes penetration with a victim 12-14 years old will be guilty of a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000; however, when the victim is under 12 and the act includes penetration, defendants will face a Class A crime punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(F), (F-1), 1252(2)(A), (B), 1301(1-A)(A), (B).
4. Under Me. Rev. Stat. Ann. tit. 17-A, § 260(1)(C) (Unlawful sexual touching), a person who is at least 5 years older than his victim and intentionally subjects a child under 14 (who is not his spouse) to sexual touching¹² will be guilty of a Class D crime. When found guilty of a Class D crime, defendants face up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).
5. Under Me. Rev. Stat. Ann. tit. 17-A, § 256(1)(A) (Visual sexual aggression against child),

A person is guilty of visual sexual aggression against a child if:

- A. For the purpose of arousing or gratifying sexual desire or for the purpose of causing affront or alarm, the actor, having in fact attained 18 years of age, exposes the actor’s genitals to another person or causes the other person to expose that person’s genitals to the actor and the other person, not the actor’s spouse, has not in fact attained 14 years of age. Violation of this paragraph is a Class D crime.

⁹ See *supra* note 3.

¹⁰ See *supra* note 3.

¹¹ Me. Rev. Stat. Ann. tit 17-A, § 251(1)(D) (Definitions and general provisions) defines “sexual contact” as “any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.”

¹² “Sexual touching” is defined as “any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.” Me. Rev. Stat. Ann. tit. 17-A, § 251(G).

Class D crimes are punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann., tit. 17-A, §§ 1252(2)(D), 1301(1-A)(D). However, when the victim is less than 12 years old, defendants will be guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 256(1)(B), 1252(2)(C), 1301(1-A)(C).

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

Me. Rev. Stat. Ann. tit. 17-A, § 853-A(4) (Engaging in prostitution) refers to Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) to clarify that minors engaged in commercial sex are victims of trafficking crimes by providing an affirmative defense to victims of aggravated sex trafficking. Me. Rev. Stat. Ann. tit. 17-A, § 853-A(4) (Engaging in prostitution) states that “[i]t is an affirmative defense to prosecution under this section that the person engaged in prostitution because the person was compelled to do so as described in section 852, subsection 2.”

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.

Maine has not enacted a racketeering statute.

1.4.1 Recommendation: Enact a racketeering statute that includes human trafficking and CSEC offenses as predicate crimes so the racketeering statute may be used to prosecute trafficking enterprises.

Legal Components:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
- 2.3 *Solicitation of prostitution laws differentiate between 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.*

Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) does not apply to buyers of commercial sex with minors, as the definition of “Promotes prostitution” under Me. Rev. Stat. Ann. tit. 17-A, § 851(2) (Definitions) specifically excludes buyers. Under Me. Rev. Stat. Ann. tit. 17-A, § 851(2)(A), “Promotes prostitution” is defined as, “Causing or aiding another to commit or engage in prostitution, other than a patron.”¹³

- 2.1.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) to make the statute applicable to the actions of buyers of commercial sex with minors.¹⁴

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

Buying sex with a minor is illegal under Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) (Patronizing prostitution of minor or person with mental disability), which states that it is illegal when a person “in return for another’s prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age.” This offense is a Class D crime except that subsection (1)(B) enhances the penalty to a Class C crime when the buyer “knows that the person whose prostitution is sought has not yet attained 18 years of age.” A Class D crime is punishable by up to 1 year in county jail, a possible fine not to exceed \$2,000, and an additional fine of \$500 to

¹³ See discussion of relevant provisions *supra* Component 1.1.

¹⁴ 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 buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

be deposited in the Victims' Compensation Fund, while a Class C crime is punishable by imprisonment up to 5 years, a possible fine not to exceed \$5,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund, Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D), 5 § 3360-I.

Further, Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1)¹⁵ (Solicitation of a child to engage in prostitution) criminalizes the solicitation of a minor for prostitution, stating,

A person is guilty of soliciting a child to engage in prostitution if the actor knowingly solicits directly or indirectly by any means a person the actor knows or believes is under 18 years of age to engage in prostitution, as defined in section 851.

A violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1) is punishable as a Class D crime by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-B(2), 1252(1)(A), (2)(D), 1301(1-A)(D).

Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the purchase of commercial sex acts with a minor.

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

Solicitation laws make buying sex with a minor a separate crime from that of buying sex with an adult.

Me. Rev. Stat. Ann. tit 17-A, § 853-B(1)(A) (Engaging a prostitute) makes it a Class E crime if a person “engages a prostitute” who is an adult. “Engages a prostitute” is defined for the purpose of this statute in Me. Rev. Stat. Ann. tit. 17-A, § 851(1-A) as “providing or agreeing to provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact.” Class E crimes are punishable by up to 6 months in county jail and a possible fine not to exceed \$1,000.¹⁶ Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(E), 1301(1-A)(E). An offender convicted under Me. Rev. Stat. Ann. tit 17-A, § 853-B(1)(A) (Engaging a prostitute) is also required to pay a fine of \$500 to be deposited in the Victims' Compensation Fund pursuant to Me. Rev. Stat. Ann. tit 5, § 3360-I (Funding sources).

In contrast, under Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability), the buyer will be guilty of, at a minimum, a Class D crime punishable by up to 1 year in county jail, a possible fine not to exceed \$2,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D), 5 § 3360-I. When the buyer “knows that the person whose prostitution is sought has not yet attained 18 years of age,” the violation increases to a Class C crime punishable by imprisonment up to 5 years, a possible fine not to exceed \$5,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C), 5, § 3360-I.

Maine law further criminalizes the solicitation of a minor for prostitution under Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1)¹⁷ (Solicitation of a child to engage in prostitution), which states,

¹⁵ See *supra* note 8.

¹⁶ If the defendant has been convicted of Me. Rev. Stat. Ann. tit. 17-A, § 853-B within the prior 2 years, the violation increases to a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 853-B(1)(B), 1252(1)(A), (2)(D), 1301(1-A)(D).

¹⁷ See *supra* note 8.

A person is guilty of soliciting a child to engage in prostitution if the actor knowingly solicits directly or indirectly by any means a person the actor knows or believes is under 18 years of age to engage in prostitution, as defined in section 851.

A violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1) is a Class D crime punishable by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-B(2), 1252(1)(A), (2)(D), 1301(1-A)(D).

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

A conviction under Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) is punishable as a Class D crime by up to 1 year in county jail, a possible fine not to exceed \$2,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D), 5, § 3360-I¹⁸. However, when the buyer "knows that the person whose prostitution is sought has not yet attained 18 years of age," the crime is punishable as a Class C crime by imprisonment up to 5 years, a possible fine not to exceed \$5,000, and an additional fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C), 5, § 3360-I. A conviction under Me. Rev. Stat. Ann. tit. 17-A, § 259-B¹⁹ (Solicitation of a child to engage in prostitution) is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, § 259-B(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²⁰ 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 offense²¹ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²² a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²³

¹⁸ *Id.*

¹⁹ *See supra* note 8.

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

²¹ 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).

²² 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).

²³ 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.);

- 2.4.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) and § 259-B (Solicitation of a child to engage in prostitution) to raise penalties to reflect the seriousness of the offense.

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.*

Maine does not have a law that criminalizes use of the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor. Although broad enough to potentially apply to use of the Internet to entice or solicit any sexual act from a minor under the age of 14, including solicitation for the purpose of committing sexual exploitation of a minor, Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of minor), § 259-B(1)²⁴ (Solicitation of a child to engage in prostitution), and § 259-A (Solicitation of a child to commit a prohibited act) do not specify use of the Internet to accomplish these crimes as a specific criminal action. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 259-A,²⁵

A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Know or believes that the other person is less than 14 years of age; and
- 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

“Prohibited act” means a sexual act, sexual contact or sexual exploitation of a minor pursuant to section 282. Me. Rev. Stat. Ann. tit. 17-A, § 259-A(2)(A), (B), (C).

Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C). A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the victim is under 12, the buyer is guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-A(1)(B), 1252(2)(C), 1301(1-A)(C). In addition, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A) (Subject property), buyers may

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).

²⁴ *See supra* note 8.

²⁵ Legislative Document 1673 enacted during the Second Regular Session of the 125th Legislative Assembly repealed Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) which expressly prohibited use of “a computer knowingly to solicit, entice, persuade or compel another person” under the age of 14 with “the intent to engage in any one of the following prohibited acts with the other person: (1) A sexual act; (2) Sexual contact; or (3) Sexual exploitation of a minor pursuant to section 282.” During 2012, L.D. 1673 reenacted this provision as Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act), however, as re-enacted, this offense no longer contains an express reference to solicitation of a minor through use of a computer or the Internet.

be ordered to forfeit all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A.

2.5.1 Recommendation: Enact a separate law that criminalizes the use of the Internet or electronic communications to lure, entice, recruit or purchase commercial sex acts with a minor.

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

Buyers of sex with minors can be convicted of Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) (Patronizing prostitution of minor or person with mental disability) without regard to whether they knew that the child was under 18 years old. Subsection (1)(B), however, establishes that knowledge of age results in an enhanced crime classification. Therefore, a mistake of age defense could be asserted to avoid the enhanced crime classification, but not ultimate liability. Finding that Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) mandates an enhanced penalty when the offender has knowledge of the minor's status, the offense is presumed to be one of strict liability.

2.6.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking) to expressly prohibit a mistake of age defense for buyers who purchase sex with a minor under 18 years old.²⁶

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

Maine's buyer-applicable CSEC law, Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability), does not stagger penalties based on a minor's age, but buyers face minimal penalty under this provision. Patronizing prostitution of a minor is a Class D crime punishable by up to 1 year in county jail, or a Class C crime punishable by imprisonment up to 5 years if the defendant "knows that the person whose prostitution is sought has not yet attained 18 years of age." Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D), 5, § 3360-I.

2.7.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) to raise penalties for purchasing sex with a minor to reflect the seriousness of the offense.

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

Buyers convicted of sexual offense crimes may be required to pay fines or make restitution to the victim.

Under Maine's criminal laws, buyers of sex with minors may be required to pay fines between \$500 and \$50,000. A buyer convicted of Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) may be required to pay a fine up to \$2,000 or, if the buyer knows the victim is under 18, the fine may be increased to \$5,000, and in either case the buyer must pay a fine of \$500 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), (B), 1301(1-A)(D), (C), 5, § 3360-I. Sexual offenses carry possible fines of \$2,000 to \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1301(1-A)(A), (D), 254(1)(A), 253(1)(B)-(C), 255-A(1)(F), (F-1). A violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-B²⁷ (Solicitation of a child to engage in prostitution) is a punishable by a fine up to \$2,000. Me. Rev. Stat. Ann. tit. 17-A, § 259-B(2).

²⁶ This recommendation in this component is predicated on previous or simultaneous enactment of the recommendation in Component 2.1.

²⁷ See *supra* note 8.

While it may not be applicable in all cases of buyers, some buyers may fall under Maine’s discretionary restitution provisions. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.

Me. Rev. Stat. Ann. tit. 17-A, § 1322(3) states in part,

“Economic loss” includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense,²⁸ work loss, replacement services loss and, if injury causes death, dependent’s economic loss and dependent’s replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. “Economic loss” includes expenses of an emergency response by any public agency and critical investigation expenses.

However, Me. Rev. Stat. Ann. tit. 17-A, § 1325(2) prohibits the award of restitution, among others,

-
- B. To a victim who is an accomplice of the offender;
- C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and
- D. When the amount and method of payment of monetary restitution or the performance of service restitution creates an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors must be considered . . .
-

If buyers of sex with minors are found guilty of Me. Rev. Stat. Ann. tit. 17-A, § 284 (Possession of sexually explicit material), a prosecutor may request that the court order forfeiture “to the State of any equipment, including computers, that may have facilitated the commission of the offense” if the State can prove “by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation.” Me. Rev. Stat. Ann. tit. 17-A, § 285(1), (3), (4). In addition, any image of child sexual exploitation (ICSE) in the possession of a buyer “that depicts a person who has not attained 18 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4). Also, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A) (Subject property), buyers may be ordered to forfeit

²⁸ Me. Rev. Stat. Ann. tit. 17-A, § 1322(3)(A) defines “allowable expense” as,

reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, counseling services and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act).

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

Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material),

A person is guilty of possession of sexually explicit material if that person:

A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

- 1) The other person has not in fact attained 16 years of age; or
- 2) The person knows or has reason to know that the other person has not attained 16 years of age.

Possession of sexually explicit material is a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000, but, if the defendant has a prior conviction for “engaging in substantially similar conduct,” the classification is increased to a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Stat. Rev. Ann. tit. 17-A, §§ 284(1)(A), (B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D). In addition, if the sexually exploited minor is under 12, or the defendant believes the person to be under 12, the defendant will be guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000, or a Class B crime if the defendant has a prior conviction, punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(C), (D), 1252(2)(B), (C), 1301(1-A)(B), (C).

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)²⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³¹

²⁹ 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).

³⁰ 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).

³¹ 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).

- 2.9.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material) to raise the age of protected minors to 18 and increase the penalties to reflect the seriousness of the offense.

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

Maine’s Sex Offender Registration and Notification Act of 1999, Me. Rev. Stat Ann. title 34-A, requires buyers sentenced for sex offenses and sexually violent offenses to register as sex offenders, unless they fall under the exceptions in Me. Rev. Stat. Ann. tit. 34-A, § 11202-A.³² Me. Rev. Stat. Ann. tit. 34-A, § 11202. “Sex offenses” is defined as “a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct.” Me. Rev. Stat. Ann. tit. 34-A, § 11203(6). The listed offenses include Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) (certain provisions), § 852(1) (Aggravated sex trafficking), § 256 (Visual sexual aggression against child), § 258 (Sexual misconduct with a child under 14 years of age), § 259 (Solicitation of a child to commit a prohibited act), § 284 (Possession of sexually explicit material), and § 855 (Patronizing prostitution of minor or person with mental disability). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-A) further labels the following offenses as qualifying as a “sex offense”: Me. Rev. Stat. Ann. tit. 17-A, § 253(2)(J)–(L) (Gross sexual assault), § 255-A(1)(C), (G), (Q), (R), (R-1), (R-2), (W), and (X) (Unlawful sexual conduct). “Sexually violent offense” is defined as including, “A conviction for one of the offenses or for an attempt to commit” certain offenses, including Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) and certain provisions of § 255-A (Unlawful sexual contact). Me. Rev. Stat. Ann. tit. 34-A, § 11203 (7)(A). In addition, Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-B) provides,

For persons convicted and sentenced on or after October 1, 2012, “sex offense” means, in addition to the offenses listed in subsections 6 and 6-A:

³² Me. Rev. Stat. Ann. tit. 34-A, § 11202-A(1) (Exception) states,

1. EXCEPTION. Notwithstanding section 11202, a person is not required to register under this chapter if that person submits to the bureau, in a form to be determined by the bureau, documentation to establish the following:

....

B. The person’s convictions do not include more than one Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an offense that contains the essential elements of a Class A sex offense or sexually violent offense, whether or not the convictions occurred on the same date;

C. At the time of the offense, the person had not been previously sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense;

D. At the time of the offense, the person had not been previously sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an offense that contains the essential elements of a sex offense or a sexually violent offense;

E. Subsequent to the conviction for the sex offense or sexually violent offense, the person has not been convicted of and sentenced for a crime under Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more; and

F. Subsequent to the conviction for the sex offense or sexually violent offense, the person has not been convicted of and sentenced for a crime under the laws of any other jurisdiction that is punishable by a term of imprisonment exceeding one year. This paragraph does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less.

- A. A conviction for an offense under Title 17-A, section 259-A or for an attempt or conspiracy to commit an offense under Title 17-A, section 259-A;
- B. A violation in another jurisdiction that includes the essential elements of an offense listed under Title 17-A, section 259-A; or
- C. A conviction for a military, tribal or federal offense requiring registration pursuant to:
 - (1) The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, also known as the Jacob Wetterling Act, Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, as amended; or
 - (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248.

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.

Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) is a Class B crime punishable by imprisonment up to 10 years, a possible fine not to exceed \$20,000, and an additional fine of \$1,000 to be deposited in the Victims' Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(A), (B), 1301(1-A)(A), (B), 5, § 3360-I.

A trafficker convicted under Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act) will be guilty of a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000 if the minor is, or is believed to be, under 14, or a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000 if the minor is, or is believed to be, under 12. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-A(A), (B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

Me. Rev. Stat. Ann. tit. 17A, § 554(1)(A) (Endangering the welfare of a child) states, "1. A person is guilty of endangering the welfare of a child if that person: A. Knowingly permits a child to enter or remain in a house of prostitution. Violation of this paragraph is a Class D crime;" a Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (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 offense³³ against a minor. 18 U.S.C. § 3559(e)(1).

³³ See *supra* note 21.

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

A trafficker who “[k]nowing or intending that the conduct will be photographed . . . intentionally or knowingly employs, solicits, entices, persuades, or uses another person, not that person’s spouse, who has not in fact attained 16 years of age to engage in sexually explicit conduct” will be guilty of sexual exploitation of a minor. Me. Rev. Stat. Ann. tit. 17-A, § 282(1)(A) (Sexual exploitation of a minor). Additionally, a trafficker who “[k]nowing or intending that the conduct will be photographed, the person intentionally or knowingly compels or induces by any threat another person, not that person’s spouse, who is in fact a minor, to engage in sexually explicit conduct will be guilty of sexual exploitation of a minor. Me. Rev. Stat. Ann. tit. 17-A, § 282(1)(A-1). A violation Me. Rev. Stat. Ann. tit. 17-A, § 282 is a Class B crime, except in situations where the trafficker has a prior conviction “for engaging in substantially similar conduct” or where the victim is less than 12 years old, the violation increases to a Class A crime. Me. Rev. Stat. Ann. tit. 17-A, § 282(1)(B), (C).

In addition, a parent-trafficker “or other person having care or custody” of a child younger than 16 who knowingly or intentionally permits the a child younger than 16 to engage in “sexually explicit conduct, knowing or intending that the conduct will be photographed” will be guilty of a Class B crime punishable by an imprisonment term of 5–10 years, with a mandatory minimum of 5 years, and a possible fine not to exceed \$20,000, which can increase to a Class A crime punishable by an imprisonment term of 10-30 years, with a mandatory minimum of 10 years, and a fine not to exceed \$50,000 if the defendant has a prior conviction for “substantially similar conduct” or if the child is under 12. Me. Rev. Stat. Ann. tit. 17-A, §§ 282(1)(D), (F), (2) (Sexual exploitation of a child), 1252(2)(A), (B), 1301(1-A)(A), (B).

Additionally, a trafficker may be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(A) (Dissemination of sexually explicit material) is the trafficker:

intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any person who has not in fact attained 16 years of age who the person knows or has reason to know is a person under 16 years of age engaging in sexually explicit conduct, except that it is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted.

A violation is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000, except if the trafficker has a prior conviction “for engaging in substantially similar conduct” or if the victim is less than 12 years old, the violation increases to a Class B crime punishable by imprisonment up to 10 years and a fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 283(1)(A)–(C), 1252(2)(B), (C), 1301(1-A)(B), (C). In addition, if the defendant both has a prior conviction for “substantially similar conduct” and the child is under 12, the violation increases to a Class A crime punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 283(1)(D), 1252(2)(A), 1301(1-A)(A).

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 offense³⁴ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for

³⁴ See *supra* note 21.

distribution of images of child sexual exploitation (ICSE)³⁵ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁷

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

Although potentially broad enough to apply to the use of the Internet or electronic communications to entice or solicit any sexual act from a minor under the age of 14, including solicitation for the purpose of committing sexual exploitation of a minor, Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of minor) and § 259-A (Solicitation of a child to commit a prohibited act) do not specify use of the Internet. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 259-A,

A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Know or believes that the other person is less than 14 years of age; and
- 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the victim is under 12, the trafficker is guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-A(1)(B), 1252(2)(C), 1301(1-A)(C). In addition, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A) (Subject property), traffickers may be ordered to forfeit all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A.

³⁵ 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).

³⁶ 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).

³⁷ 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).

- 3.3.1 Recommendation: Enact a law that expressly criminalizes the conduct of traffickers who use the Internet or other electronic communications to lure, entice, recruit, or sell commercial sex acts with a minor under 18.

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

Traffickers convicted of offenses related to their involvement in domestic minor sex trafficking face a number of financial penalties, including fines, restitution, and forfeiture.

As violators of Class B through Class D crimes, traffickers convicted of Me. Rev. Stat. Ann. tit. 17-A, §§ 852 (Aggravated sex trafficking), § 282 (Sexual exploitation of a minor), or § 259-A (Solicitation of a child to commit a prohibited act) may be required to pay fines ranging from \$500–\$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§, 852(3), 282, 259-A, 1301(1-A)(B)–(D), 5, § 3360-I.

Additionally, a trafficker convicted of any crime under Maine law can be ordered to make restitution to a victim at the court’s discretion.³⁸ Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.³⁹ In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.

Restitution will not be granted:

- A. To a victim without that victim’s consent;
- B. To a victim who is an accomplice of the offender;
- C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and
- D. When the amount and method of payment of monetary restitution or the performance of service restitution creates an excessive financial hardship on the offender or dependent of the offender.” Me. Rev. Stat. Ann. tit. 17-A, § 1325(2).

³⁸ Restitution may also be ordered in cases of familial abuse, including trafficking, under Me. Rev. Stat. Ann. tit. 19-A, § 4007(1)(O) (Relief), which states in part,

Relief granted under this section may include:

. . . .
With regard to conduct described as aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively, entering any other orders determined necessary or appropriate in the discretion of the court, including, but not limited to, requiring the defendant to pay economic damages related to . . . any debts of the [victim] arising from the trafficking relationship;
. . . .

The text of Me. Rev. Stat. Ann. tit. 19-A § 4007 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Document 1616 during the 128th Maine Legislature (effective July 15, 2017).

³⁹ See *supra* Component 2.8 for definition of “economic loss.”

Several civil, discretionary asset forfeiture provisions also apply to traffickers. Pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(9) (Subject property), “All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C [Remedies for human trafficking]” are subject to forfeiture. These assets may be seized upon process or without process where the seizure is incident to a lawful arrest, a search under a valid search warrant or inspection under a valid inspection warrant, where the property has been the subject of a prior judgment in favor of the state, or where there is probable cause to believe that the property is dangerous or has been used or intended to be used in violation of criminal law. Me. Rev. Stat. Ann. tit. 15 § 5822(6). The property is then deposited in the General Fund. Me. Rev. Stat. Ann. tit. 15 § 5822(4).

In addition, if traffickers are convicted of Me. Rev. Stat. Ann. tit. 17-A, § 282 (Sexual exploitation of minor) or § 283 (Dissemination of sexually explicit material), they shall be subject to mandatory, criminal forfeiture. A prosecutor may request that the court order the forfeiture of “any equipment, including computers, that may have facilitated the commission of the offense,” pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 285(1) (Forfeiture of equipment used to facilitate violations). If a preponderance of the evidence shows that the equipment “was used to facilitate the commission of a violation” of Me. Rev. Stat. Ann. tit. 17-A, § 282 or § 283, the court shall order that the equipment be forfeited to the state and may provide for “the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.” Me. Rev. Stat. Ann. tit. 17-A, § 285(4). In addition, any image of child sexual exploitation (ICSE) “that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4).

A trafficker convicted of a “human trafficking offense” is subject to civil liability under Me. Rev. Stat. Ann. tit. 5, § 4701 (Remedies for human trafficking). Me. Rev. Stat. Ann. tit. 5, § 4701(1)(C)(1), (2) states that a “human trafficking offense” includes “aggravated sex trafficking and sex trafficking under Title 17-A, sections 852⁴⁰ and 853,⁴¹ respectively” and

the destruction, concealment, removal, confiscation or possession of any actual or purported passport or other immigration document or other actual or purported government identification document of the other person or done using any scheme, plan or pattern intended to cause the other person to believe that if that person does not perform certain labor or services, including prostitution, that the person or a 3rd person will be subject to a harm to their health, safety or immigration status.

Further, Me. Rev. Stat. Ann. tit. 5, § 4701(2) provides that

a trafficked person⁴² may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief. A prevailing plaintiff is entitled to an award of attorney’s fees and costs.

⁴⁰ See discussion of relevant provisions *supra* Component 1.1.

⁴¹ See *supra* note 6 for a discussion on the limitations in applicability of Me. Rev. Stat. Ann. tit. 17-A, § 853 to domestic minor sex trafficking.

⁴² Me. Rev. Stat. Ann. tit. 5, § 4701(1)(A) defines “trafficked person” as a “victim of a human trafficking offense.”

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

Maine’s Sex Offender Registration and Notification Act of 1999, Me. Rev. Stat Ann. title 34-A, requires traffickers sentenced for sex offenses and sexually violent offenses to register as sex offenders, unless they fall under the exceptions in Me. Rev. Stat. Ann. tit. 34-A, § 11202-A.⁴³ “Sex offenses” is defined as “a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct.” Me. Rev. Stat. Ann. title 34-A, § 11203(6) (Definitions). The listed offenses include Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) (certain provisions), § 256 (Visual sexual aggression against child), § 258 (Sexual misconduct with a child under 14 years of age), § 259 (Solicitation of a child to commit a prohibited act), § 282 (Sexual exploitation of a minor), § 283 (Dissemination of sexually explicit material), § 284 (Possession of sexually explicit material), § 852(1)(B) (Aggravated sex trafficking), and § 855 (Patronizing prostitution of minor or person with mental disability). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-A) further labels the following offenses as qualifying as a “sex offense”: Me. Rev. Stat. Ann. tit. 17-A, § 253(2)(J)–(L) (Gross sexual assault), § 255-A(1)(C), (G), (Q), (R), (R-1), (R-2), (W), (X) (Unlawful sexual conduct). “Sexually violent offense” is defined as including “A conviction for one of the offenses or for an attempt to commit” certain offenses, including Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) and certain provisions of § 255-A (Unlawful sexual contact). Me. Rev. Stat. Ann. tit. 34-A, § 11203 (7)(A).

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.*

Me. Rev. Stat. Ann. tit. 22, § 4055(1) (Grounds for termination) states, among other things,

The court may order termination of parental rights if:

A. One of the following conditions has been met:

1) Custody has been removed from the parent under:

- a) Section 4035 [Hearing on jeopardy order petition] or 4038 [Mandated review; review on motion];
- b) Title 19-A, section 1502 [Either parent dead or guilty of abandonment, rights devolve on other] or 1653 [Parental rights and responsibilities];
- c) Section 3792 [Repealed] prior to the effective date of this chapter; or
- d) Title 15, section 3314, subsection 1, paragraph C-1 [Disposition]; or

2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX [Adoption]; and

B. Either:

- 1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or
- 2) The court finds, based on clear and convincing evidence, that:
 - a) Termination is in the best interest of the child; and
 - b) Either:
 - i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs;
 - ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child’s needs

⁴³See *supra* note 32.

....

Subsection (1-A) states that “[t]he court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs if,” among other things, under (1-A)(B),

The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

....

7) Gross sexual misconduct or gross sexual assault;

8) Sexual abuse of minors;

....

10) Kidnapping;

11) Promotion of prostitution, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking; or

12) A comparable crime in another jurisdiction.

Additionally, and while not commercial in nature, “[t]he parental rights and responsibilities with respect to a specific child conceived as a result of sexual assault by the parent of that child must be terminated in accordance with this section.” Me. Rev. Stat. Ann. 19-A, § 1658 (Termination of parental rights and responsibilities in cases involving sexual assault). Acts constituting sexual assault under Me. Rev. Stat. Ann. 19-A, §§ 1658 include Me. Rev. Stat. Ann. 17-A, § 253 (Gross sexual assault), § 254 (Sexual abuse of minors), or § 556 (Incest).

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.*

Facilitators may be charged under Me. Rev. Stat. Ann. tit. 17-A, § 852(1)(A), (B) (Aggravated sex trafficking), which makes it illegal if a person knowingly “[p]romotes prostitution by compelling⁴⁴ a person to enter into, engage in, or remain in prostitution,” or who “[p]romotes prostitution of a person less than 18 years old.”

“Promoting prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(2) as,

- A. Causing or aiding another to commit or engage in prostitution, other than as a patron;
-
- D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
- E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

Violation of Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) is a Class B crime punishable by imprisonment up to 10 years, a possible fine not to exceed \$20,000, and an additional fine of \$1,000 to be deposited in the Victims’ Compensation Fund. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(B), 1301(1-A)(B), 5, 3306-I.

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

Facilitators convicted of Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) may be required to pay a fine up to \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1301(1-A)(B). Me. Rev. Stat. Ann. tit. 5, § 3360-I imposes additional fines for sex trafficking between \$500 and \$1000 and requires that they be deposited in the Victims’ Compensation Fund.

⁴⁴ See *supra* Component 1.1 for full discussion of Me. Rev. Stat. Ann. tit. 17-A, § 852(1)(B) (Aggravated sex trafficking) and definition of “compelling.”

Additionally, facilitators convicted of any crime under Maine law may be ordered to make restitution to a victim.⁴⁵ Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.⁴⁶ In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.⁴⁷

Facilitators are subject to civil liability for human trafficking offenses. Me. Rev. Stat. Ann. tit. 5, § 4701(1)(C)(1), (2) (Remedies for human trafficking). Similarly, the asset forfeiture provisions applicable to human trafficking offenders under Me. Rev. Stat. Ann. tit. 15, § 5821(9)⁴⁸ (Subject property) are likely applicable to facilitators.

Limited, but mandatory, criminal forfeiture provisions also apply to facilitators. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 285(1) (Forfeiture of equipment used to facilitate violations), a prosecutor may request the court order the forfeiture of “any equipment, including computers, that may have facilitated the commission of” Me. Rev. Stat. Ann. tit. 17-A, § 282 (Sexual exploitation of minor) or § 283 (Dissemination of sexually explicit material) if the State can prove “by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation.” Me. Rev. Stat. Ann. tit. 17-A, § 285(1), (3), (4). Where that is proven, the court “shall order the equipment forfeited.” Me. Rev. Stat. Ann. tit. 17-A, § 285. The court “may, upon the written recommendation of the attorney for the State, provide in its order for the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.” Me. Rev. Stat. Ann. tit. 17-A, § 285. In addition, any image of child sexual exploitation (ICSE) in the possession of a facilitator “that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4).

⁴⁵ Restitution may also be ordered in cases of familial abuse, including trafficking, under Me. Rev. Stat. Ann. tit. 19-A, § 4007(1)(O) (Relief), which states in part,

Relief granted under this section may include:

-
- With regard to conduct described as aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively, entering any other orders determined necessary or appropriate in the discretion of the court, including, but not limited to, requiring the defendant to pay economic damages related to . . . any debts of the [victim] arising from the trafficking relationship;
-

See supra note 38.

⁴⁶ *See supra* Component 2.8 for the definition of “economic loss.”

⁴⁷ *See infra* Component 5.10 for limitations on access to restitution by domestic minor sex trafficking victims.

⁴⁸ Me. Rev. Stat. Ann. tit. 15, § 5821(9) (Subject property) states that “[a]ll assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C [Remedies for human trafficking]” are subject to forfeiture.

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

Maine has no law prohibiting child sex tourism.

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

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

Me. Rev. Stat. Ann. tit 17-A, § 283(1)(A) (Dissemination of sexually explicit material) criminalizes the act of

intentionally or knowingly disseminat[ing] or possess[ing] with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any person who has not in fact attained 16 years of age who the person knows or has reason to know is a person under 16 years of age engaging in sexually explicit conduct, except that it is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted.

Dissemination of sexually explicit material is a Class C crime, but where the facilitator has a prior conviction for “engaging in substantially similar conduct” or where the victim is less than 12 years old, the violation increases to a Class B crime. Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(B), (C). If the crime involves a child under 12 years of age and the facilitator has a prior conviction for “engaging in substantially similar conduct,” the violation increases further to a Class A crime. Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(D). Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C). Class B crimes are punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000, while Class A crimes are punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(A), (B), 1301(1-A)(A), (B).

Me. Rev. Stat. Ann. tit. 17-A, § 284 (Possession of sexually explicit material) also applies to those who “[i]ntentionally or knowingly” transport or exhibit images of child sexual exploitation (ICSE) depicting a child the facilitator knows or has reason to know is under 16 years of age. Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A). Facilitators who violate Me. Rev. Stat. Ann. tit. 17-A, § 284 may be convicted of a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D). If the facilitator has a prior conviction for “engaging in substantially similar conduct,” or the child is less than 12 years old, the violation will be a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(B), (C), 1252(2)(C), 1301(1-A)(C). If the crime involves a child under 12 and the facilitator has a prior conviction, then the violation increases further to a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(D), 1252(2)(B), 1301(1-A)(B).

- 4.4.1 Recommendation: Amend both Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(A) (Dissemination of sexually explicit material) and Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material) to raise the age of protected minors to 18 and increase penalties to reflect the seriousness of the offense.

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.⁴⁹*

Maine’s sex trafficking law Me. Rev. Code Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking) does not include all commercial sexual exploitation of minors. Under Me. Rev. Code Ann. tit. 17-A, § 852(1), when the victim is a minor, the means of force, fraud or coercion are not required.⁵⁰ However, the offense of sex trafficking law does not apply to buyers; thus, buying sex with a child under eighteen does not constitute human trafficking. Consequently, the offense of human trafficking under Me. Rev. Code Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking) requires that a trafficker or controlling third party be identified.

- 5.1.1 **Recommendation:** Amend Me. Rev. Code. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) to ensure that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

⁴⁹ 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).

⁵⁰ See *supra* discussion in Component 1.1.

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 commercial sex act.*

Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking), § 853 (Sex trafficking), § 855 (Patronizing prostitution of minor or person with mental disability), and § 282 (Sexual exploitation of minor) are silent regarding the availability of a defense based on the willingness of a minor to engage in a commercial sex act.

A general defense of consent is available to defendants pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 109(1) (Consent), which states in subsection (1) “It is a defense that, when a defendant engages in conduct which would otherwise constitute a crime against the person or property of another, such other consented to the conduct and an element of the crime is negated as a result of such consent.” Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 109(3),

Consent is not a defense within the meaning of this section if:

- A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is
- B. It is given by a person who, by reason of intoxication, mental illness or defect, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or
- C. It is induced by force, duress or deception.

- 5.2.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking), § 853 (Sex trafficking), and § 855 (Patronizing prostitution of minor or person with mental disability) to expressly prohibit a defense based on the willingness of a minor to engage in a commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offense.⁵¹*

Me. Rev. Stat. Ann. tit. 17-A, § 853-A (Engaging in prostitution) is age-neutral and allows for the arrest and prosecution of a minor for the Class E or D crime of engaging in prostitution. Specifically, Me. Rev. Stat. Ann. tit. 17-A, § 853-A(1)(A) (Engaging in prostitution) states in part, “A person is guilty of engaging in prostitution if: A. The person engages in prostitution as defined in section 851.”⁵²

- 5.3.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 853-A (Engaging in prostitution) to ensure that all minors are protected from criminalization for prostitution offenses.

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

System response to child engaged in commercial sex act

Although specialized services are available to sexually exploited children who are identified as homeless youth⁵³ or as runaways, there is no formal process for connecting youth with these services. Pursuant to Me. Rev. Stat. Ann. tit. 22, § 4099-E(1) (Comprehensive program for homeless youth),

⁵¹ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁵² See *supra* note 2.

⁵³ Me. Rev. Stat. Ann. tit. 22, § 4099-D(1) defines “homeless youth” as,

a person 21 years of age or younger who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling

The department shall establish and support a comprehensive program for homeless youth in the State by contracting with organizations and agencies licensed by the department that provide street outreach, shelter and transitional living services for homeless youth. The department shall by rule establish licensure requirements and shall establish performance-based contracts with organizations and agencies to provide the following programs and services:

1. **STREET AND COMMUNITY OUTREACH AND DROP-IN PROGRAMS.** Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide information, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities.
2. **EMERGENCY SHELTER PROGRAM.** Emergency shelter programs to provide homeless youth and runaways with referrals and walk-in access to short-term residential care on an emergency basis. The program must provide homeless youth and runaways with safe, dignified, voluntary housing, including private shower facilities, beds and at least one meal each day, and assist a runaway with reunification with family or a legal guardian when required or appropriate. The services provided at emergency shelters may include, but are not limited to, family reunification services or referral to safe, dignified housing; individual, family and group counseling; assistance obtaining clothing; access to medical and dental care and mental health counseling; education and employment services; recreational activities; case management, advocacy and referral services; independent living skills training; and aftercare, follow-up services and transportation; and
3. **TRANSITIONAL LIVING PROGRAMS.** Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.

Summary

In addition to not providing a method for connecting juvenile sex trafficking victims with existing specialized services, Maine law does not mandate immunity for offenses committed as a result of the trafficking victimization.

to provide shelter and care or who lacks a fixed, regular and adequate nighttime residence. "Homeless youth" does not include a person incarcerated or otherwise detained under federal or state law.

- 5.4.1 Recommendation: Amend Maine’s protective response for juvenile sex trafficking victims to include both a method for connecting these children 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.*⁵⁴

Child victims of sex trafficking and sexual exploitation are included within the definition of abuse and neglect under Maine’s Child and Family Services and Child Protection Act. Me. Rev. Stat. Ann. tit. 22, § 4002(1) (Definitions) defines “abuse or neglect” as “a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation including under Title 17-A, sections 282 [Sexual exploitation of minor], 852 [Aggravated sex trafficking], 853 [Sex trafficking], and 855 [Patronizing prostitution of minor or person with mental disability], deprivation of essential needs or lack of protection from these or failure to ensure compliance with [specified] school attendance requirements . . . by a person responsible for the child.”

This chapter also regularly uses the phrase, “jeopardy to health or welfare,” which is defined as “serious abuse or neglect,” as indicated by the following:

- A. Serious harm or threat of serious harm;⁵⁵
- B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;
- B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
- C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or
- D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

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.*

Within Maine’s Child and Family Services and Child Protection Act, Me. Rev. Stat. Ann. tit. 22, § 4002(5) (Definitions) defines “custodian” as “the person who has legal custody and power over the person of a child.” Additionally, Me. Rev. Stat. Ann. tit. 22, § 4002(9) defines the term “person responsible for the child,” as “a person with responsibility for a child’s health or welfare, whether in the child’s home or another home or a facility which, as a part of its function, provides for care of the child. It includes the child’s custodian.” Finding that this definition is not broad enough to include all third party, non-familiar offenders who commercially sexually exploit minor victims, child victims of CSEC and trafficking will likely face obstacles in accessing protective services and care.

⁵⁴ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁵⁵ “Serious harm” is defined in Me. Rev. Stat. Ann. tit. 22, § 4002(10) as,

- A. Serious injury;
- B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or
- C. Sexual abuse or exploitation.

5.6.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 22, § 4002 (Definitions) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.⁵⁶

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

Pursuant to Me. Rev. Stat. Ann. tit. 5, § 3360-B(1)(A), (B) (Award of compensation; eligibility), victim compensation may be awarded to a person who, among other things,

- A. Suffers personal injury⁵⁷ as a direct result of a crime specified in section 3360,⁵⁸ committed within the jurisdiction of the State;
- B. Has been sexually assaulted within this State in violation of Title 17-A, chapter 11⁵⁹ without regard to whether bodily injury or the threat of bodily injury occurred.

Several requirements in Me. Rev. Stat. Ann. tit. 5, § 3360-C(1) (Requirements and exclusions) could present difficulties for domestic minor sex trafficking victims, such as requiring that the crime be reported to law enforcement “within 5 days of the occurrence or discovery of the crime or of the resultant injury” and that a claim for compensation be filed within 3 years of the crime’s occurrence. However, Me. Rev. Stat. Ann. tit. 5, § 3360-C(3) states that “[t]he board may waive the time requirements of subsection 1 for good cause shown and shall waive the time requirements on behalf of a child or when the claimant is a child and the crime and the claim have been properly reported to law enforcement officers and the board by an adult who becomes aware of the crime and of the compensable injury.” Other ineligibility factors, including, under subsection (2)(A) a claimant’s failure to “fully cooperate with the board or with the reasonable requests of law enforcement officers or prosecution authorities,” or, under subsection (2)(B), the claimant’s violation of “a criminal law that caused or contributed to the injury or death for which compensation is sought,” are not subject to waiver. Me. Rev. Stat. Ann. tit. 5, § 3360-C(2), (3).

5.7.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 5, § 3360-C(3) to provide an exception to the listed ineligibility factors for victims of domestic minor sex trafficking.⁶⁰

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

In both civil and criminal cases in which the defendant is accused of sexual misconduct, reputation or opinion evidence of the victim’s past sexual behavior is not admissible under Me. R. Evid. 412(a) (Past sexual behavior of victim). However, pursuant to Me. R. Evid. 412(b),

⁵⁶ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁵⁷ “Personal injury” is defined in Me. Rev. Stat. Ann. tit. 5, § 3360(6) as “bodily injury as defined in Title 17-A, section 2, subsection 5 or psychological injury incurred by a victim who has sustained the threat of bodily injury.”

⁵⁸ “Crime” is defined in Me. Rev. Stat. Ann. § 3360(3) as including the following: “A. Offenses against the person as described in Title 17-A, chapter 9; B. Sexual assaults as described in Title 17-A, chapter 11; C. Kidnapping and criminal restraint as described in Title 17-A, chapter 13; . . . H. Sexual exploitation of a minor as described in Title 17-A, chapter 12.”

⁵⁹ Offenses in this chapter include Me. Rev. Stat. Ann. tit. 17-A, § 254 (Sexual abuse of minors), § 253 (Gross sexual assault), and § 255-A (Unlawful sexual contact).

⁶⁰ The recommendation in this component is predicated upon the recommendation in 5.1 being previously or simultaneously enacted.

In a criminal case in which a person is accused of sexual misconduct toward a victim the only evidence of the alleged victim's past sexual behavior that may be admitted is the following:

- (1) Evidence, other than reputation or opinion evidence, of sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or
- (2) Evidence, other than reputation or opinion evidence, of sexual behavior with the accused offered by the accused on the issue of whether the alleged victim consented to the sexual behavior with respect to which the accused is charged.
- (3) Evidence the exclusion of which would violate the constitutional rights of the defendant.

In civil cases, "evidence of specific instances of sexual behavior by the individual may only be admitted if the court finds that the probative value of such evidence on a controverted issue outweighs the danger of unfair prejudice, confusion of the issues, misleading the jury and unwarranted harm" to the victim. Me. R. Evid. 412(c).

Additionally, in criminal cases, hearsay statements made by children under the age of sixteen that describe "any incident involving a sexual act or sexual conduct performed with or on the minor or person by another, may not be excluded as evidence" if the court finds that the "mental or physical well-being [of the child under sixteen] will more likely than not be harmed if that person were to testify in open court." Me. Rev. Stat. Ann. tit. 15, § 1205(1). However, the statement still must be "made under oath, subject to all of the rights of confrontation secured to an accused by the Constitution of Maine or the United States Constitution and the statement has been recorded by any means approved by the court, and is made in the presence of a judge or justice." Me. Rev. Stat. Ann. tit. 15, § 1205(2).

In addition, Maine's Victims' Rights Act affords victims of crimes several additional protections. Records relating to a victim's address or location generally must be kept confidential. Me. Rev. Stat. Ann. tit. 17-A, § 1176(1). Communications between a victim of sexual assault and sexual assault counselors, and coordinators also are confidential and privileged from disclosure. Me. Rev. Stat. Ann. tit. 17-A, § 1177. Crime victims are to be informed, if practicable, of the details of any plea agreement reached, the time and place of trial and sentencing, and may participate in sentencing and comment on any plea agreement or proposed early termination of probation. Me. Rev. Stat. Ann. tit. 17-A, §§ 1172-1174. Attorneys for crime victims are permitted to submit a written statement or make an oral statement on the victim's behalf. Me. Rev. Stat. Ann. tit. 17-A, § 1174(1)(B).

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.*

Maine law does not provide a mechanism for minors to vacate delinquency adjudications related to their trafficking victimization, and juvenile records may only be sealed after a 3 year waiting period.

Pursuant to Me. Rev. Stat. Ann. tit. 15, § 3308(8) (Court records; inspection),

(A) A person adjudicated to have committed a juvenile crime may petition the court to seal from public inspection all records pertaining to the juvenile crime and its disposition, and to any prior juvenile records and their dispositions if:

- (1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;
- (2) Since the date of disposition, the person has not been adjudicated to have committed a juvenile crime and has not been convicted of committing a crime; and
- (3) There are no current adjudicatory proceedings pending for a juvenile or other crime.

....

(D) If the petition is granted, the person may respond to inquiries from other than the courts and criminal justice agencies about that person’s juvenile crimes, the records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions.

However, sealed records may still be accessed by the courts, criminal justice agencies, and the Victim’s Compensation Board. Me. Rev. Stat. Ann. tit. 15, § 3308(8)(C), (9). Accordingly, child sex trafficking victims may face collateral consequences associated with having accessible delinquency records.⁶¹

5.9.1 Recommendation: Enact a law that allows child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses related to trafficking victimization, without a waiting period.⁶²

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.*

Me. Rev. Stat. Ann. tit. 5, § 4701(2) authorizes victims of human trafficking offenses to “bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief. A prevailing plaintiff is entitled to an award of attorney’s fees and costs.”

Additionally, victims of any crime under Maine law may be entitled to restitution.⁶³ Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Me. Rev. Stat. Ann. tit. 17-A, § 1323(1) (Mandatory consideration of restitution) states that “[t]he court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim’s financial loss, and shall order restitution when appropriate.” Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.⁶⁴ In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and

⁶¹ Maine has a process for reviewing and challenging information in a criminal record. However, this does not appear to be similar to expungement. In fact, while a person may file a Petition for Executive Clemency and request that the Governor grant a pardon for criminal offenses and offenses of juvenile delinquency pursuant to the authority granted in Me. Const. Art. V, Part First, Section 11, a pardoned conviction will still not be expunged from a person’s record. *See Criminal Record Challenge Process*, MAINE STATE BUREAU OF IDENTIFICATION, <http://www.maine.gov/dps/Sbi/challenge.html> (last visited Nov. 9, 2015).

⁶² The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁶³ Restitution may also be ordered in cases of familial abuse, including trafficking, under Me. Rev. Stat. Ann. tit. 19-A, § 4007(1)(O) (Relief), which states in part,

Relief granted under this section may include:

....

With regard to conduct described as aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively, entering any other orders determined necessary or appropriate in the discretion of the court, including, but not limited to, requiring the defendant to pay economic damages related to . . . any debts of the [victim] arising from the trafficking relationship;

....

See supra note 38.

⁶⁴ *See supra* Component 2.8 for definition of “economic loss.”

C. The present and future financial capacity of the offender to pay restitution.

However, Me. Rev. Stat. Ann. tit. 17-A, § 1330-B (Restitution for benefit of victim) states,

When compensation is awarded from the Victims' Compensation Fund pursuant to Title 5, chapter 316-A, the amount of any restitution ordered to be paid to or for the benefit of the victim and collected as part of a sentence imposed must be paid by the agency collecting the restitution in an amount not to exceed the amount of the payments from the fund, directly to the fund if, when added to the payments from the fund, the restitution exceeds the victim's actual loss.

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.

The civil cause of action available to victims of human trafficking offenses under Me. Rev. Stat. Ann. tit. 5, § 4701 (Remedies for human trafficking) is subject to a 10-year statute of limitations that begins on the date the trafficking victim “was freed from the trafficking situation.” Me. Rev. Stat. Ann. tit. 5, § 4701(3). The statute of limitation also tolls while the plaintiff is a minor and “during the pendency of any criminal proceedings against the trafficked person.” Me. Rev. Stat. Ann. tit. 5, § 4701(3)(B), (D). In addition, the defendant cannot raise a statute of limitations defense if the victim's reason for not filing the claim was because of “1) Conduct by the defendant inducing the plaintiff to delay the filing of the action or preventing the plaintiff from filing the action; or 2) Threats made by the defendant that caused duress to the plaintiff.” Me. Rev. Stat. Ann. tit. 5, § 4701(3)(C).

Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 8(1) (Statute of limitations),

a prosecution for murder or criminal homicide in the first or 2nd degree, or, if the victim had not attained the age of 16 years at the time of the crime, a prosecution for: incest; unlawful sexual contact; sexual abuse of a minor; rape or gross sexual assault, formerly denominated as gross sexual misconduct, may be commenced at any time.

Prosecutions for Class A, B, or C crimes⁶⁵ must be commenced within 6 years after commission of the crime. Me. Rev. Stat. Ann. tit. 17-A, § 8(2)(A). Prosecutions for Class D or E crimes⁶⁶ must be commenced within 3 years after commission of the crime. Me. Rev. Stat. Ann. tit 17-A, § 8(2)(B).

- 5.11.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 8(1) (Statute of limitations) to apply to all minors under 18 years of age at the time of the offense and expressly include Me. Rev. Stat. Ann. tit. 17-A, § 852(1) (Aggravated sex trafficking) as an offense for which the criminal statute of limitations is eliminated.⁶⁷

⁶⁵ Class A-C crimes include the following: criminal restraint of a victim under 8, kidnapping, aggravated promotion of prostitution, patronizing prostitution of someone that defendant knows is a minor, visual sexual aggression against child under 12, solicitation of child under 12 by computer to commit a prohibited act, dissemination of sexually explicit material, possession of sexually explicit material depicting child under 12, and sexual exploitation of a minor.

⁶⁶ Class D or E crimes include the following: criminal restraint of a victim at least 8 years old, patronizing prostitution of someone defendant does not know is a minor, sexual abuse of minors over 16, unlawful sexual touching, visual sexual aggression against child between 12 and 14, solicitation of child between 12 and 14 by computer to commit a prohibited act, and possession of sexually explicit material depicting child between 12 and 16.

⁶⁷ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

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.*

Law enforcement officers in Maine must complete a “basic training course at the Maine Criminal Justice Academy approved by the board” within their first year of employment. Me. Rev. Stat. Ann. tit. 25, § 2804-C(1). While Me. Rev. Stat. Ann. tit. 25, § 2804-C (Basic law enforcement training; core curriculum requirements) does not impose any training requirements regarding human trafficking or domestic minor sex trafficking, the statute does mandate training on other issues, such as homelessness and mental illness. Me. Rev. Stat. Ann. tit. 25, § 2804-C(2-B), (2-D). Although it is not statutorily mandated, the Maine Criminal Justice Academy’s current basic training curriculum includes training on both child abuse and domestic violence,⁶⁸ and training documents regarding human trafficking have already been prepared for use by the Maine Criminal Justice Academy.⁶⁹

- 6.1.1 Recommendation: Enact a law that authorizes or mandates training for law enforcement on human trafficking in Maine.

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

Single party consent to audio recording and interception of oral communications is permitted in Maine. “Interception” in general is forbidden by Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses). However, Me. Rev. Stat. Ann. tit. 15, § 709(4) (Definitions) defines the term “intercept” as “to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than: A. The sender or receiver of that communication; B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or C. A person given prior authority by the sender or receiver.” Because recording the contents of a conversation by one of the parties to the conversation

⁶⁸ See *Curriculum*, MAINE CRIMINAL JUSTICE ACADEMY, <http://www.maine.gov/dps/mcja/training/preservice/curriculum.htm> (last visited Nov. 21, 2012).

⁶⁹ See JOHN B. ROGERS, MAINE CRIMINAL JUSTICE ACADEMY, HUMAN TRAFFICKING LESSON PLAN (2010), available at <http://www.maine.gov/dps/mcja/training/mandatory/documents/HumanTraffickingLessonPlanfor2010MandatoryTraining3-1-2010.doc>

is not considered an actual “interception,” single party consent to audio-taping does not appear to be forbidden. Therefore, in an investigation by law enforcement, the consent of the officer as a party to the communication is sufficient to remove the intercepted communication from the restrictions contained in Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses).

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

Me. Rev. Stat. Ann. tit. 15, § 709(4) (Definitions) defines the term “intercept” as “to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than: A. The sender or receiver of that communication; B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or C. A person given prior authority by the sender or receiver.” Therefore, in an investigation by law enforcement, the consent of the officer as a party to the communication is sufficient to remove the intercepted communication from the restrictions contained in Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses).

However, Me. Rev. Stat. Ann. tit. 15, § 713 (Evidence) states,

The contents of an interception are not admissible in court, except that the contents of an interception of any oral or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred or that has been legally obtained pursuant to section 712, subsection 2 or 3 [interception of communications within a Department of Correction (DOC) facility or a county jail by an investigative officer or DOC staff] is admissible in the courts of this State, subject to the Maine Rules of Evidence.

- 6.3.1 Recommendation: Maine should enact a law authorizing wiretapping by law enforcement in investigations related to Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking), § 853 (Sex trafficking), § 855 (Patronizing prostitution of minor or person with mental disability), and § 282(1) (Sexual exploitation of minor).

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.*

Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1)⁷⁰ (Solicitation of a child to engage in prostitution) prohibits a defense based on the use of a law enforcement decoy posing as a minor to investigate attempts to buy commercial sex acts with a child; specifically, Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1) prohibits an offender from soliciting “a person the actor knows or believes is under 18 years of age” Because an offender need only “believe” the person solicited to be a minor, a law enforcement decoy may be used, and a defense based on such would not be permitted.

Similarly, Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated sex trafficking) prohibits the solicitation of a person when the offender “knows or believes that the other person is less than 14 years of age.” However, this offense is inapplicable to the actions of buyers.

⁷⁰ See *supra* note 8.

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

Me. Rev. Stat. Ann. tit. 17-A, § 259-A(1)(A)(2) (Solicitation of a child to commit a prohibited act) makes it a crime when a person “with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and . . . knows or believes that the other person is less than 14 years of age.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(1)(A). Similarly, Me. Rev. Stat. Ann. tit. 17-A, § 259-B(1)⁷¹ (Solicitation of a child to engage in prostitution) prohibits an offender from soliciting “by any means a person the actor knows or believes is under 18 years of age” Although not explicit, the phrases “by any means” and “knows or believes” to be a minor, when taken together, suggest that law enforcement may use the Internet or electronic communications to investigate offenders.⁷²

6.5.1 Enact a law or amend Maine’s CSEC laws to expressly permit use of the Internet or electronic communications to investigate these crimes.

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

Maine does not mandate the reporting of rescued domestic minor sex trafficking victims; however, pursuant to Maine’s Missing Children Act, Me. Rev. Stat. Ann. tit. 25, § 2154 (Missing child reports), law enforcement agencies that receive notification of a missing child⁷³ are required to immediately do the following:

- A. Inform all on-duty law enforcement officers of the missing child report;
- B. Communicate the report to every other law enforcement agency having jurisdiction in the county in which the report was filed;
- C. Enter or cause the report to be entered for inclusion in the State Police and National Crime Information Center computer files on missing children; and
- D. Submit information in the missing child report to the clearinghouse.

Additional requirements apply when a missing child is considered a victim or possible victim of Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) or § 302 (Criminal restraint). In such cases, law enforcement shall also inform the child’s school (if instate), the “municipality in which the child’s birth records are kept,” and the Vital Records Unit of the Division of Data Research and Vital Statistics in the Department of Health and Human Services that the agency has received a missing child report. Me. Rev. Stat. Ann. tit. 24, § 2154-A(1).

Pursuant to Me. Rev. Stat. Ann. tit. 25, § 2155(3) (Missing Children Information Clearinghouse), Maine has established the Missing Children Information Clearinghouse (Clearinghouse), and the Director has the duty to:

- A. Establish a system of intrastate communication of information related to missing children who are determined missing by their parents, guardians, legal custodians or by a law enforcement agency;

⁷¹ See *supra* note 8.

⁷² In *State v. Webster*, 955 A.2d 240, 241 (Me. 2008), a person associated with the South Portland Police Department did in fact communicate with the defendant “through various means on the Internet” as part of an investigation, which ultimately resulted in the defendant’s arrest, prosecution, and conviction under Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) and an attempted violation of § 253 (Gross sexual assault). The holding dismissed an entrapment defense by stating, “[W]e find that there was sufficient evidence for the jury to conclude that government action did not induce Webster to commit the crimes of which he was convicted and/or that Webster was predisposed to commit the crimes.” *Id.* at 244.

⁷³ “Missing child” is defined in Me. Rev. Stat. Ann. tit. 25, § 2153(5) as “an individual: A. Who is under 18 years of age; B. Whose temporary or permanent residence is in or is believed to be in this State; C. Whose location is not determined; and D. Who has been reported as missing to a law enforcement agency.”

- B. Provide a centralized file for the exchange of information on missing children within the State;
- C. Interface with the National Crime Information Center, or its successor, for the exchange of information; and
- D. Collect, process, maintain and disseminate information on missing children and strive to maintain or disseminate accurate and complete information.

Additionally, under Me. Rev. Stat. Ann. tit. 22, § 4008(3)(M), (Records; confidentiality; disclosure) Maine's Health and Human Services Department is mandated to report to:

Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigations and to a national information clearinghouse for missing and exploited children operated pursuant to 42 U.S.C. § 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 U.S.C. § 671(a)(35)(B).

Lastly, Me. Rev. Stat. Ann. tit. 25, § 2156(1) (Location of child) states, "The parent, guardian or legal custodian who is responsible for notifying the clearinghouse or a law enforcement agency about a missing child shall immediately notify the clearinghouse or the agency of any child whose location has been determined."

Subsection (2) requires "[i]nformation received about a missing child pursuant to section 2154 that has been included in the clearinghouse must be purged from the data base by the appropriate law enforcement agency immediately upon location of the child."

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