

2017 ANALYSIS AND RECOMMENDATIONS

OREGON

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.*

Oregon's trafficking in persons law criminalizes child sex trafficking without requiring proof of force, fraud, or coercion when the victim is a minor. Or. Rev. Stat. § 163.266² (Trafficking in persons) states,

(1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(a) The person knows that the other person will be subjected to involuntary servitude as described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree] or 163.264 [Subjecting another person to involuntary servitude in the first degree];

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

² The text Or. Rev. Stat. § 163.266 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2740 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

- (b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or
 - (c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.
- (2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree) states,

- (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
- (a) Abusing or threatening to abuse the law or legal process;
 - (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
 - (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
 - (d) Threatening to collect an unlawful debt; or
 - (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.
- (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree) states,

- (1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
- (a) Causing or threatening to cause the death of or serious physical injury to a person; or
 - (b) Physically restraining or threatening to physically restrain a person.
- (2) Subjecting another person to involuntary servitude in the first degree is a Class B felony.

Or. Rev. Stat. § 163.261 (Definitions) provides the definition of “services” for § 163.263 (Subjecting another person to involuntary servitude in the second degree) and § 163.264 (Subjecting another person to involuntary servitude in the first degree) by stating, “As used in ORS § 163.263 and § 163.264, ‘services’ means activities performed by one person under the supervision or for the benefit of another person.” This definition limits application of Or. Rev. Stat. § 163.266(1)(a) to traffickers and facilitators.

A conviction under Or. Rev. Stat. §§ 163.266(1)(b) or (c) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b). A conviction under (1)(a) or (2) of this section is a Class B felony punishable by a maximum imprisonment of 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c). However, under Or. Rev. Stat. § 161.625(3)(a), “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized . . . may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

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.*

Three laws treat CSEC as distinct crimes in Oregon:

1. Or. Rev. Stat. § 167.017(1) (Compelling prostitution) makes it illegal if a person knowingly:
 - (a) Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;
 - (b) Induces or causes a person under 18 years of age to engage in prostitution;
 - (c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
 - (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

A conviction under Or. Rev. Stat. § 167.017(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. §§ 167.017(2), 161.605(2), 161.625(1)(c).

2. Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) states in part, “A person commits the crime of using a child³ in a display of sexually explicit conduct⁴ if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.”⁵ A conviction under Or. Rev. Stat. § 163.670 is punishable as a class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.670(2), 161.605(1), 161.625(1)(b).

3. Or. Rev. Stat. § 163.413 (Purchasing sex with a minor) states,

- (1) A person commits the crime of purchasing sex with a minor⁶ if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.
- (2) (a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325⁷ only if the minor or, in the case of a police officer or agent of a police

³ Or. Rev. Stat. § 163.665(1) (Definitions) defines “child” as “a person who is less than 18 years of age, and any reference to a child in relation to a visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording.”

⁴ Or. Rev. Stat. § 163.665(3) (Definitions) states,

“Sexually explicit conduct” means actual or simulated:

- (a) Sexual intercourse or deviant sexual intercourse;
- (b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;
- (c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;
- (d) Masturbation;
- (e) Sadistic or masochistic abuse; or
- (f) Lewd exhibition of sexual or other intimate parts.

⁵ Or. Rev. Stat. § 163.665(5) (Definitions) states, “‘Visual recording’ includes, but is not limited to, photographs, films, videotapes and computer and other digital pictures, regardless of the manner in which the recording is stored.”

⁶ “Minor” is defined as “a person under 18 years of age” under Or. Rev. Stat. § 163.413(4)(b).

⁷ Or. Rev. Stat. § 163.325 states, in relevant part,

- (1) In any prosecution under ORS 163.355 to 163.445 [Sexual offenses chapter] in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

officer posing as a minor, the age of the purported minor as reported to the defendant, was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325.

A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 [Renumbered as ORS 163A.005 (Definitions for 163A.005 to 163A.235)].” Or. Rev. Stat. § 163.413(3). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).⁸

Several other laws, although not expressly commercial in nature, also may be applicable in cases involving the commercial sexual exploitation of a child:

1. Or. Rev. Stat. § 163.355(1) (Rape in the third degree) states, “A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.” A conviction under Or. Rev. Stat. § 163.355(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.355(2), 161.605(3), 161.625(1)(d).
2. Or. Rev. Stat. § 163.365(1) (Rape in the second degree) states, “A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.” A conviction under Or. Rev. Stat. § 163.365(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000.” Or. Rev. Stat. §§ 163.365(2), 161.605(2), 161.625(1)(c).
3. Or. Rev. Stat. § 163.375(1) (Rape in the first degree) states,
 - (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:
 - (a) The victim is subjected to forcible compulsion by the person;
 - (b) The victim is under 12 years of age;

....

A conviction under Or. Rev. Stat. § 163.375(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.375(2), 161.605(1), 161.625(1)(b).

4. Or. Rev. Stat. § 163.408(1) (Unlawful sexual penetration in the second degree) states that “a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina,

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

⁸ A buyer is subject to mandatory minimum fines and penalties under Or. Rev. Stat. § 163.413(3) and a first conviction results in a fine no less than \$10,000, imprisonment for at least 30 days, and completion of a john school program. A second or subsequent conviction shall result in a fine no less than \$20,000 and the court's designation of the offense as a sex crime pursuant to Or. Rev. Stat. § 181.805 (Renumbered as ORS 163A.005 (Definitions for 163A.005 to 163A.235)). Or. Rev. Stat. § 163.413(3)(b)(A), (B).

anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.” A conviction under Or. Rev. Stat. § 163.408(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000.” Or. Rev. Stat. §§ 163.408(2), 161.605(2), 161.625(1)(c).

5. Or. Rev. Stat. § 163.411(1) (Unlawful sexual penetration in the first degree) states,

(1) Except as permitted under ORS 163.412 [Exceptions to unlawful sexual penetration prohibition], a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

A conviction under Or. Rev. Stat. § 163.411(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.411(2), 161.605(1), 161.625(1)(b).

6. Or. Rev. Stat. §163.415(1)(a)(B) (Sexual abuse in the third degree) makes it illegal if any person “subjects another person to sexual contact and . . . (B) The victim is incapable of consent by reason of being under 18 years of age.” A conviction under Or. Rev. Stat. § 163.415(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.415(2), 161.615(1), 161.635(a).

7. Or. Rev. Stat. § 163.427(1)(a)(A) (Sexual abuse in the first degree) makes it illegal if any person “[s]ubjects another person to sexual contact and: (A) The victim is less than 14 years of age.” A conviction under Or. Rev. Stat. § 163.427(1)(a)(A) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.427(2), 161.605(2), 161.625(1)(c).

8. Or. Rev. Stat. § 163.435(1) (Contributing to the sexual delinquency of a minor) states,

A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

- (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
- (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
- (c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.

A conviction under Or. Rev. Stat. § 163.435(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.435(2), 161.615(1), 161.635(a).

9. Or. Rev. Stat. § 163.445(1) (Sexual misconduct) states, “A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age. A conviction under Or. Rev. Stat. 163.445(1) is punishable as a Class C misdemeanor by imprisonment up to 30 days and a possible fine not to exceed \$1,250. Or. Rev. Stat. §§ 163.445(2), 161.615(3), 161.635(c).

10. Or. Rev. Stat. § 167.057 (Luring a minor) states in part that

(1) A person commits the crime of luring a minor if the person furnishes to, or uses with, a minor, a police officer posing as a minor or an agent of a police officer posing as a minor, a visual representation

or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor or purported minor to engage in sexual conduct.

....
(4) Luring a minor is a Class C felony.

A Class C felony is punishable by imprisonment for up to 5 years. Or. Rev. Stat. § 161.605(3).

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

Or. Rev. Stat. § 167.007⁹ (Prostitution) acknowledges the intersection of prostitution with trafficking victimization by providing trafficking victims with an affirmative defense to charges under this section. Or. Rev. Stat. § 167.007(3) states,

It is an affirmative defense to prosecution under this section that the defendant, at the time of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266 (1)(b) or (c) [Trafficking in persons].

Further, an affirmative defense provision in the trafficking chapter provides trafficking victims with an affirmative defense to prostitution charges, but force or threat of force must have been used to cause the prostitution. Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree], or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270 [Duress],¹⁰ if the person is prosecuted for conduct that constitutes services under ORS 163.261,¹¹ that the person was caused to provide.

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.

Oregon’s racketeering provision, Or. Rev. Stat. § 166.720 (Racketeering activity unlawful; penalties) states,

(1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity¹² or through the collection of an unlawful debt to use

⁹ The text Or. Rev. Stat. § 167.007 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 250 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

¹⁰ Pursuant to Or. Rev. Stat. § 161.270 (Duress),

(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

....

¹¹ Pursuant to Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264), “‘services’ means activities performed by one person under the supervision or for the benefit of another person.”

¹² Or. Rev. Stat. § 166.715(4) (Definitions) defines “pattern of racketeering activity” as

or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any real property or enterprise.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section.

(5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony.

....

Or. Rev. Stat. § 166.715(6)(a)¹³ (Definitions for ORS 166.715 to 166.735) defines “racketeering activity” to include:

....

(J) ORS 163.665 to 163.693, relating to sexual conduct of children [including, ORS 163.670 (Using child in display of sexually explicit conduct); ORS 163.684 – 163.687 (Encouraging child sexual abuse in the first, second or third degree); ORS 163.688 – 163.689 (Possession of materials depicting sexually explicit conduct of a child in the first or second degree)];

....

(T) ORS . . . 167.007 [Prostitution] to 167.017 [Compelling prostitution], 167.057 [Luring a minor], 167.062 [Sadomasochistic abuse or sexual conduct in live show] to 167.080 [Displaying obscene materials to minors] . . . ;

(QQ) ORS 163.355 to 163.427, relating to sexual offenses;

....

(DDD) ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons].

A conviction under the racketeering provisions is punishable by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 166.720(4), 161.605(1), 161.625(1)(b).

In addition, an offender convicted under the racketeering statute is subject to civil asset forfeiture.¹⁴ Or. Rev. Stat. §§ 166.720(4), 161.605(1), 161.625(1)(b). Or. Rev. Stat. § 166.725(2) (Remedies for violation of ORS 166.720; time limitation) states in part,

All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state.

engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity.

¹³ The text Or. Rev. Stat. § 166.715 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 302 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective April 21, 2017).

¹⁴ Or. Rev. Stat. §§ 166.715–.735.

The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons

Legal Components:

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

Legal Analysis:

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

Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) applies to buyers of sex with minors following federal precedent through the term “obtains.”¹⁵ However, the buyer must “know[] or recklessly disregard[] the fact that the other person is under 18 years of age and will be used in a commercial sex act.” Or. Rev. Stat. § 163.266(1)(c).¹⁶

- 2.1.1 Recommendation: Amend Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) to clarify that buyer conduct is included as a violation of Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons).

¹⁵ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F.3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

¹⁶ See *supra* note 2.

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

Or. Rev. Stat. § 163.413 (Purchasing sex with a minor) specifically criminalizes purchasing sex with a minor and states,

(1) A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.

(2) (a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325¹⁷ only if the minor or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant, was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325.

A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 [Renumbered as ORS 163A.005 (Definitions for 163A.005 to 163A.235)].” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).¹⁸

Several sexual offenses might apply to certain buyers of sex acts with a minor.¹⁹

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

Pursuant to Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), if a “person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor,” they commit a Class C felony, enhanced to a Class B felony if the offender has one or more prior convictions at the time of the offense. A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 [Renumbered as ORS 163A.005 (Definitions for 163A.005 to 163A.235)].” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).²⁰

¹⁷ See *supra* note 7.

¹⁸ See *supra* note 8.

¹⁹ See *supra* Component 1.2 for discussion of the sexual offenses that may apply to some buyers.

²⁰ See *supra* note 8.

In contrast, a conviction under Or. Rev. Stat. § 167.007(1)(b) (Prostitution), which criminalizes any person who “pays or offers or agrees to pay a fee to engage in sexual conduct²¹ or sexual contact,”²² is punishable as a Class A misdemeanor by up to 1 year imprisonment and a possible fine not to exceed \$ 6,250. Or. Rev. Stat. §§ 167.007(2), 161.615(1), 161.635(a).

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

A conviction under Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) is a Class A felony with a maximum imprisonment of 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b).

Pursuant to Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), the crime of purchasing sex with a minor is considered a Class C felony if a “person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.” A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 [Renumbered as ORS 163A.005 (Definitions for 163A.005 to 163A.235)].” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²³ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense²⁴ against a minor. 18 U.S.C. § 3559(e)(1). To the

²¹ Or. Rev. Stat. § 167.002(4) (Definitions) defines “sexual conduct” as “sexual intercourse or oral or anal sexual intercourse”

The text Or. Rev. Stat. § 167.002 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 247 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

²² Or. Rev. Stat. § 167.002(5) (Definitions) defines “sexual contact” as “any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.”

²³ 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.).

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

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

extent buyers can be prosecuted under other federal CSEC laws,²⁵ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁶

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

Using the Internet or electronic communications to engage in a sex act with a child under 16 years of age and offering or agreeing to meet the child is prohibited in two statutes although neither specifically refers to a commercial sexual arrangement. Pursuant to Or. Rev. Stat. § 163.432(1) (Online sexual corruption of a child in the second degree),

A person commits the crime of online sexual corruption of a child²⁷ in the second degree if the person is 18 years of age or older and:

- (a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication²⁸ to solicit²⁹ a child to engage in sexual contact³⁰ or sexually explicit conduct;³¹ and
- (b) Offers or agrees to physically meet with the child.

A conviction under Or. Rev. Stat. § 163.432(1) is punishable as a Class C felony punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.432(2), 161.605(3), 161.625(1)(d).

Pursuant to Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree), “A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 and intentionally takes a substantial step toward physically meeting with or encountering the child.” A conviction under Or. Rev. Stat. § 163.433 is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.433(2), 161.605(2), 161.625(1)(c).

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

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

²⁷ Pursuant to Or. Rev. Stat. § 163.431(1) (Definitions for ORS 16.431 to 163.434), “child” means “a person who the defendant reasonably believes to be under 16 years of age.”

²⁸ Pursuant to Or. Rev. Stat. § 163.431(2), “online communication” means “communication that occurs via telephone text messaging, electronic mail, personal or instant messaging, chat rooms, bulletin boards or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.”

²⁹ Pursuant to Or. Rev. Stat. § 163.431(5), “solicit” means “to invite, request, seduce, lure, entice, persuade, prevail upon, coax, coerce or attempt to do so.”

³⁰ Or. Rev. Stat. § 163.305(6) (Definitions) defines, for purposes of Or. Rev. Stat. § 163.431(3), “sexual contact” as “any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.”

³¹ Pursuant to Or. Rev. Stat. § 163.431(4) “sexually explicit conduct” has the meaning given that term in ORS 163.665; *see supra* note 4.

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

Mistake of age may not be a defense for purchasing sex with a minor depending on whether the buyer has a prior conviction. Under Or. Rev. Stat. § 163.413 (2) (Purchasing sex with a minor), “[i]f the person does not have a prior conviction under this section at the time of the offense, . . . the person may use a defense described in ORS 163.325 [Knowledge of victim’s age] only if the minor or, in case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant, was at least 16 years of age.” However, “[i]f the person has one or more prior convictions under this section at the time of the offense, . . . the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325 [Knowledge of victim’s age].”

Or. Rev. Stat. § 163.325(1) (Ignorance or mistake as a defense) states, “(1) In any prosecution under ORS § 163.355 to 163.445 [Sexual offenses] in which the criminality of conduct depends on a child’s being under the age of 16, it is no defense that the defendant did not know the child’s age or that the defendant reasonably believed the child to be older than the age of 16.” However, subsection (2) states, “(2) When criminality depends on the child’s being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.”

In fact, several offenses, including Or. Rev. Stat. § 163.266(1)(b)³² (Trafficking in person), expressly require the offender to know or recklessly disregard the fact that the victim is a minor, thereby allowing for a mistake of age defense. Further, Or. Rev. Stat. § 163.690 (Lack of knowledge of age of child as affirmative defense) provides “an affirmative defense to any prosecution under ORS 163.684 [Encouraging child sexual abuse in the first degree], 163.686 [Encouraging child sexual abuse in the second degree], 163.687 [Encouraging child sexual abuse in the third degree] or 163.693 [Failure to report child pornography] [if] the defendant, at the time of engaging in the conduct prohibited therein, did not know and did not have reason to know that the relevant sexually explicit conduct involved a child.”

2.6.1 Recommendation: Amend Or. Rev. Stat. § 163.413 (Purchasing sex with a minor) and Or. Rev. Stat. § 163.690 (Lack of knowledge of age of child as affirmative defense) to prohibit a mistake of age defense for buyers of sex with all minors, not just those under 16.

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

Oregon’s trafficking law, Or. Rev. Stat. § 163.266 (Trafficking in persons), does not stagger penalties based on a minor’s age, and penalties are sufficiently high. A conviction under Or. Rev. Stat. § 163.266(1)(c) is a Class A felony with a maximum imprisonment term of 20 years. Or. Rev. Stat. §§ 163.266(5), 161.605(1).

Similarly, Oregon’s buyer-applicable CSEC offense, Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), does not stagger penalties based on a minor’s age; however, penalties under this offense are not sufficiently high. A first conviction under Or. Rev. Stat. § 163.413 is a Class C felony, but the offense allows for a mandatory minimum sentence for a first conviction that includes “a term of incarceration of at least 30 days and completion of a john school program.” Or. Rev. Stat. § 163.413(2)(a), (3). Otherwise, a Class C felony is punishable by imprisonment for up to 5 years. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3).

³² See *supra* note 2.

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.*

A conviction under Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) is punishable as Class A felony and includes a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.625(1)(b). A conviction under Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree) is punishable as a Class B felony punishable by a possible fine not exceeding \$250,000. Or. Rev. Stat. § 161.625(1)(c). A conviction under Or. Rev. Stat. § 163.432 (Online sexual corruption of a child in the second degree) is punishable as a Class C felony punishable by a possible fine not to exceed \$125,000. Or. Rev. Stat. § 161.625(1)(d).

A buyer convicted under Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), is subject to a Class C or B felony which carry a possible fine not to exceed \$125,000 or \$200,000, respectively. Or. Rev. Stat. §§ 161.605(2), (3), 161.625(1)(c), (d). However, a mandatory minimum sentence for a first conviction is a fine in the amount of \$10,000, and the second or subsequent conviction is a fine in the amount of \$20,000. Or. Rev. Stat. § 163.413 (3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).

Buyers may also be subject to discretionary, criminal asset forfeiture. Or. Rev. Stat. § 131.553(1)(e) (Legislative findings; effect on local laws; remedy not exclusive) calls “for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons . . . that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

. . . .

(4) . . . all conveyances, including aircrafts, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct

(5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;

(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;

. . . .

(10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602³³ (Prohibited conduct for purposes of instrumentalities of crime) includes the following crimes:

. . . .

³³ The text Or. Rev. Stat. § 131.602 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 302 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective April 21, 2017).

- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
-
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
-
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
-
- (144) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (145) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (146) Trafficking in persons, as defined in ORS 163.266.
- (147) Luring a minor, as defined in ORS 167.057.
- (148) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- (149) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- (150) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (149) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597 which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered Or. Rev. Stat. § 131.597.

A buyer may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of human trafficking or CSEC offenses. The court is authorized to order restitution³⁴ as part of a criminal case when the victim “suffered economic damages.”³⁵ Or. Rev. Stat. § 137.106(1).

³⁴ “Restitution” is defined in Or. Rev. Stat. § 137.103(3) (Definitions for ORS 137.101 to 137.109) as “full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS § 137.101.”

³⁵ Or. Rev. Stat. § 137.103(2) states,

“Economic damages”:

- (a) Has the meaning given that term in ORS 31.710, except that “economic damages” does not include future impairment of earning capacity; and
- (b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes the greater of:
 - (A) The value to the defendant of the victim’s services as defined in ORS 163.261; or
 - (B) The value of the victim’s services, as defined in ORS 163.261, computed using the minimum wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

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

Or. Rev. Stat. § 163.686(1) (Encouraging child sexual abuse in the second degree) states,

A person commits the crime of encouraging child sexual abuse³⁶ in the second degree if the person:

- (a) (A) (i) Knowingly possesses or controls, or knowingly accesses with the intent to view, a visual recording³⁷ of sexually explicit conduct³⁸ involving a child³⁹ for the purpose of arousing or satisfying the sexual desires of the person or another person; or
- (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and
- (B) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse; or
- (b) (A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and
- (B) Knows or is aware of and consciously disregards the fact that the conduct constitutes child abuse.

A conviction under Or. Rev. Stat. § 163.686(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. § 163.686(2), 161.605(3), 161.625(1)(d).

Or. Rev. Stat. § 163.687(1) (Encouraging child sexual abuse in the third degree) states,

A person commits the crime of encouraging child sexual abuse in the third degree if the person:

- (a) (A) (i) Knowingly possesses or controls, or knowingly accesses with the intent to view, a visual recording⁴⁰ of sexually explicit conduct⁴¹ involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or
- (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and
- (B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation of the visual recording of sexually explicit conduct involved child abuse; or
- (b) (A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and
- (B) Knows or fails to be aware of a substantial and unjustifiable risk that the conduct constitutes child abuse.

A conviction under Or. Rev. Stat. § 163.687(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.687(2), 161.615(1), 161.635(a).

Or. Rev. Stat. § 163.688(1) (Possession of materials depicting sexually explicit conduct of a child in the first degree) states, “A person commits the crime of possession of materials depicting sexually explicit conduct of a

³⁶ Or. Rev. Stat. § 163.665(2) (Definitions) defines “child abuse” as “conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.”

³⁷ See *supra* note 5.

³⁸ See *supra* note 4.

³⁹ See *supra* note 3.

⁴⁰ See *supra* note 5.

⁴¹ See *supra* note 4.

child” if the person, “(a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and (b) Uses the visual depiction to induce a child to participate or engage in sexually explicit conduct.” A conviction under Or. Rev. Stat. § 163.688 is punishable as a Class B felony punishable by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.688(2), 161.605(2), 161.625(1)(c).

Or. Rev. Stat. § 163.689(1) (Possession of materials depicting sexually explicit conduct of a child in the second degree) states, “A person commits the crime of possession of materials depicting sexually explicit conduct” if the person, “(a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and (b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct.” A conviction under Or. Rev. Stat. § 163.689(1) is punishable as a Class C felony by imprisonment up to 5 years and possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.689(2), 161.605(3), 161.625(1)(d).

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)⁴² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁴

- 2.9.1 Recommendation: Amend Or. Rev. Stat. § 163.687(1) (Encouraging child sexual abuse in the third degree) and Or. Rev. Stat. § 163.689(1) (Possession of materials depicting sexually explicit conduct of a child in the second degree) to reflect the seriousness of each offense.

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

Pursuant to Or. Rev. Stat. §§ 163A.005–163A.235 (Sex offender reporting and classification), a sex offender, or a person who has been convicted of a sex crime, must register as a sex offender. The definition of “sex crime” under Or. Rev. Stat. § 163A.005(5) (Definitions for ORS 163A.005 to 163A.235) includes several provisions that could be applicable to certain buyers of commercial sex with a minor, including, but not limited to the following:

- (a) Rape in any degree;
- (b) Sodomy in any degree;
- (c) Unlawful sexual penetration in any degree;
- (d) Sexual abuse in any degree;
- (e) Incest with a child victim;

⁴² 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).

⁴³ 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).

⁴⁴ 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).

- (f) Using a child in a display of sexually explicit conduct;
- (g) Encouraging child sexual abuse in any degree;
- (h) Transporting child pornography into the state;
- (i) Paying for viewing a child's sexually explicit conduct;
-
- (l) Kidnapping in the first degree if the victim was under 18 years of age;
- (m) Contributing to the sexual delinquency of a minor;
- (n) Sexual misconduct if the offender is at least 18 years of age;
- (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
- (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender;
- (r) Luring a minor if,
 - (A) The offender reasonably believed the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor to be more than five years younger than the offender or under 16 years of age; and
 - (B) The court designates in the judgment that the offense is a sex crime;
-
- (u) Trafficking in persons as described in ORS 163.266(1)(b) or (c);
- (v) Purchasing sex with a minor if the court designates the offense a sex crime pursuant to [section 4(3)(d) of Or. Rev. Stat. § 163.413], or the defendant's second or subsequent conviction under [section 4(3)(b)(B) of Or. Rev. Stat. § 163.413];
- (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act [Enacted House Bill 2356];
- (x) Any attempt to commit any of the crimes listed in paragraphs (a) to (w) of this subsection;
-
- (z) Criminal conspiracy if the offender agrees with one or more persons to engage in or cause the performance of an offense listed in paragraphs (a) to (w) of this subsection.

Under Or. Rev. Stat. § 163A.010(2) (Reporting by sex offender discharged, paroled or released from correctional facility or another United States jurisdiction) sex offender registration also applies to a person who:

- (a) Is discharged, paroled or released on any form of supervised or conditional release from a jail, prison or other correctional facility or detention facility in this state at which the person was confined as a result of:
 - (A) Conviction of a sex crime or a crime for which the person would have to register as a sex offender under federal law; or
 - (B) Having been found guilty except for insanity of a sex crime;
- (b) Is paroled to this state under ORS 144.610 (Out-of-state supervision of parolees) after being convicted in another United States court of a crime:
 - (A) That would constitute a sex crime if committed in this state; or
 - (B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law⁴⁵, regardless of whether the crime would constitute a sex crime in this state

⁴⁵ Federal law requires sex offenders to register "and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student." 42 U.S.C.A. § 16913 (Registry requirements for sex offenders). Pursuant to 42 U.S.C.A. § 16911(1) (Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators), "The term "sex offender" means an individual who was convicted of a sex offense." Furthermore, 42 U.S.C.A. § 16911(5)(A) states that the term "sex offense" generally means: "(i) a criminal offense that has an element involving a sexual act or sexual contact with another; (ii) a criminal

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.

Traffickers of children for commercial sexual exploitation are subject to prosecution under several criminal statutes. A conviction under Or. Rev. Stat. § 163.266(1)(a), (2) (Trafficking in persons)⁴⁶ or § 167.017 (Compelling prostitution)⁴⁷ is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c).⁴⁸ A conviction under Or. Rev. Stat. § 163.266(1)(c) or § 163.670 (Using child in display of sexually explicit conduct)⁴⁹ is punishable as a Class A felony by imprisonment for up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b).

Traffickers could also face penalties under the money laundering provisions. Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) states,

offense that is a specified offense against a minor” Under 42 U.S.C.A. § 16911(7), the definition of “specified offense of against a minor” is expanded “to include all offenses by child predators” and “an offense against a minor that involves any of the following:

-
- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of Title 18.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

⁴⁶ See *supra* Component 1.1 for the substantive provisions of Or. Rev. Stat. § 163.266.

⁴⁷ See *supra* Component 1.2 for the substantive provisions of Or. Rev. Stat. § 167.017.

⁴⁸ Alternatively, under Or. Rev. Stat. § 161.625(3)(a), “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

⁴⁹ See *supra* Component 1.2 for the substantive provisions of Or. Rev. Stat. § 163.670.

- (1) A person commits the crime of engaging in a financial transaction⁵⁰ in property derived from unlawful activity⁵¹ if the person knowingly engages in or attempts to engage in a financial transaction in property that:
- (a) Constitutes, or is derived from, the proceeds of unlawful activity;
 - (b) Is of a value greater than \$ 10,000; and
 - (c) The person knows is derived from or represents the proceeds of some form, though not necessarily which form, of unlawful activity.
- (2) (a) Engaging in a financial transaction in property derived from unlawful activity is a Class C felony.
- (b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property involved in the unlawful transaction.

A conviction under the money laundering provisions is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 164.172(2)(a), 161.605(3), 161.625(1)(d).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵² 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 offense⁵³ against a minor. 18 U.S.C. § 3559(e)(1).

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

Traffickers who permit a child to be used in images of child sexual exploitation (ICSE) may be prosecuted under Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct), which states, “A person commits the crime of using a child⁵⁴ in a display of sexually explicit conduct⁵⁵ if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.”⁵⁶ Pursuant to Or. Rev. Stat. § 163.670(2) a conviction under Or. Rev. Stat. § 163.670(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 161.605(1), 161.625(1)(b).⁵⁷

Under Or. Rev. Stat. § 163.684(1) (Encouraging child sexual abuse in the first degree) states,

A person commits the crime of encouraging child sexual abuse in the first degree if the person:

⁵⁰ Or. Rev. Stat. § 164.172(3)(a) references 164.170 for the definition of “financial transaction.” Or. Rev. Stat. § 164.170(5)(d) states, “(d) ‘Financial transaction’ means a transaction involving: (A) The movement of funds by wire or other means; (B) One or more monetary instruments; (C) The transfer of title to any real property, vehicle, vessel or aircraft; or (D) The use of a financial institution.”

⁵¹ Pursuant to Or. Rev. Stat. § 164.172(3)(b), “unlawful activity” is defined by Or. Rev. Stat. § 164.170(5)(h), which states, “‘Unlawful activity’ means any act constituting a felony under state, federal or foreign law.”

⁵² See *supra* note 23.

⁵³ See *supra* note 24.

⁵⁴ See *supra* note 3.

⁵⁵ See *supra* note 4.

⁵⁶ See *supra* note 5.

⁵⁷ See *supra* note 48.

- (a) (A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording⁵⁸ of sexually explicit conduct⁵⁹ involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or (B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and
- (b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

Pursuant to Or. Rev. Stat. § 163.684(2), a conviction of Or. Rev. Stat. § 163.684 is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c).

In comparison, if the victim is under the age of 14, a conviction under the TVPA⁶⁰ 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 offense⁶¹ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of ICSE⁶² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁶³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁶⁴

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

Using the Internet or electronic communications to recruit a child under 16 years of age to engage in a sex act with another person while offering or agreeing to meet the child is prohibited in two statutes although neither specifically refers to a commercial sexual arrangement. Pursuant to Or. Rev. Stat. § 163.432(1) (Online sexual corruption of a child in the second degree),

⁵⁸ See *supra* note 5.

⁵⁹ See *supra* note 4.

⁶⁰ See *supra* note 23.

⁶¹ See *supra* note 24.

⁶² 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).

⁶³ 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).

⁶⁴ 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).

A person commits the crime of online sexual corruption of a child⁶⁵ in the second degree if the person is 18 years of age or older and:

- (a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication⁶⁶ to solicit⁶⁷ a child to engage in sexual contact⁶⁸ or sexually explicit conduct;⁶⁹ and
- (b) Offers or agrees to physically meet with the child.

A conviction under Or. Rev. Stat. § 163.432(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.432(2), 161.605(3), 161.625(1)(d).

Pursuant to Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree), “A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 [Online sexual corruption of a child in the second degree] and intentionally takes a substantial step toward physically meeting with or encountering the child.” A conviction under Or. Rev. Stat. § 163.433(1) is punishable as a class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.433(2), 161.605(2), 161.625(1)(c).

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

A conviction under Or. Rev. Stat. § 163.266(1)(a), (2) (Trafficking in persons) or § 167.017 (Compelling prostitution) is punishable as a Class B felony by a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.266(4), 161.625(1)(c).⁷⁰ A conviction under Or. Rev. Stat. § 163.266(1)(c) or § 163.670 (Using child in display of sexually explicit conduct) is punishable as a Class A felony by a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.625(1)(b). A conviction under Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) is punishable as a Class C felony by a possible fine not to exceed \$125,000. Or. Rev. Stat. § 161.625(1)(d).

Traffickers may also be subject to certain discretionary, criminal forfeiture provisions. Or. Rev. Stat. § 131.553(1)(e) (Legislative findings; effect on local laws; remedy not exclusive) calls “for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602⁷¹ (Prohibited conduct for purposes of instrumentalities of crime) includes the following crimes:

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- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

⁶⁵ See *supra* note 27.

⁶⁶ See *supra* note 28.

⁶⁷ See *supra* note 29.

⁶⁸ See *supra* note 30.

⁶⁹ See *supra* note 31.

⁷⁰ See *supra* note 48.

⁷¹ See *supra* note 33.

- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
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- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- (92) Promoting prostitution, as defined in ORS 167.012.
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
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- (144) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (145) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (146) Trafficking in persons, as defined in ORS 163.266.
- (147) Luring a minor, as defined in ORS 167.057.
- (148) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- (149) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- (150) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (149) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

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- (2) All raw materials, products and equipment of any kind that are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;
- (3) All property that is used, or intended for use, as a container for property described in subsection . . . (2) of this section;
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- (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . .
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;
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- (9) All property described in this section that is intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450; and
- (10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

Seizure of forfeitable property is governed by Or. Rev. Stat. § 131.561(4), (5), which states in relevant part,

(4) (a) A police officer may seize property pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

....

(5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the public records that impart constructive notice of matters relating to such property.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597, which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. Or. Rev. Stat. § 131.597.

A trafficker may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of human trafficking or CSEC offenses. The court is authorized to order restitution⁷² as part of a criminal case when the victim “suffered economic damages.”⁷³ Or. Rev. Stat. § 137.106(1).

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

Pursuant to Or. Rev. Stat. §§ 163A.005–163A.235 (Sex offender reporting and classification), a sex offender, or a person who has been convicted of a sex crime, must register as a sex offender. The definition of “sex crime” under Or. Rev. Stat. § 163A.005(5) (Definitions for ORS 163A.005 to 163A.235) includes several provisions that could be applicable to certain traffickers, including, but not limited to the following:

- (a) Rape in any degree;
- (b) Sodomy in any degree;
- (c) Unlawful sexual penetration in any degree;
- (d) Sexual abuse in any degree;
- (e) Incest with a child victim;
- (f) Using a child in a display of sexually explicit conduct;
- (g) Encouraging child sexual abuse in any degree;
- (h) Transporting child pornography into the state;
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- (j) Compelling prostitution;
- (k) Promoting prostitution;
- (l) Kidnapping in the first degree if the victim was under 18 years of age;
- (m) Contributing to the sexual delinquency of a minor;
- (n) Sexual misconduct if the offender is at least 18 years of age;
- (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
- (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender; . . .
- (r) Luring a minor if,
 - (A) The offender reasonably believed the [*child*] minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor to be more than five years younger than the offender or under 16 years of age; and
 - (B) The court designates in the judgment that the offense is a sex crime;
-

⁷² See *supra* note 34.

⁷³ See *supra* note 35.

- (u) Trafficking in persons as described in ORS 163.266(1)(b) or (c);
- (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to section 4(3)(d) of this 2013 Act [Or. Rev. Stat. § 163.413], or the offense is the defendant’s second or subsequent conviction under section 4(3)(b)(B) of this 2013 Act [Or. Rev. Stat. § 163.413];
- (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act;
- (x) Any attempt to commit any of the crimes listed in paragraphs (a) to (w) of this subsection;
- (v) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to (t) or (w) of this subsection;
-

Under Or. Rev. Stat. § 163A.010(2) (Reporting by sex offender discharged, paroled or released from correctional facility or another United States jurisdiction) sex offender registration also applies to a person who:

- (a) Is discharged, paroled or released on any form of supervised or conditional release from a jail, prison or other correctional facility or detention facility in this state at which the person was confined as a result of:
 - (A) Conviction of a sex crime or a crime for which the person would have to register as a sex offender under federal law; or
 - (B) Having been found guilty except for insanity of a sex crime;
- (b) Is paroled to this state under ORS 144.610 (Out-of-state supervision of parolees) after being convicted in another United States court of a crime:
 - (A) That would constitute a sex crime if committed in this state; or
 - (B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law,⁷⁴ regardless of whether the crime would constitute a sex crime in this state

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.*

Child sex trafficking and commercial sexual exploitation are grounds for terminating parental rights based on the definition of abuse.⁷⁵ Or. Rev. Stat. § 419B.502 (Termination upon finding of extreme conduct) states in part, “The rights of the parent or parents may be terminated as provided in ORS 419B.500 [Termination of parental rights generally] if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child.” The actions that the court is directed to consider in determining extreme conduct include, “[r]ape, sodomy or sex abuse of any child by the parent” and “[a]buse or neglect by the parent of any child resulting in death or serious physical injury.” Or. Rev. Stat. § 419B.502(1), (3).

Or. Rev. Stat. § 419B.504 (Termination upon finding of unfitness) allows for termination of parental rights upon a finding that “the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change.” “In determining such conduct and conditions” the court is directed to consider, among other things, “[c]onduct toward any child of an abusive, cruel or sexual nature” and “[c]riminal conduct that impairs the parent’s ability to provide adequate care for the child or ward.” Or. Rev. Stat. § 419B.504(2), (6).

⁷⁴ See *supra* note 45.

⁷⁵ See *infra* Component 5.5 for definition of “abuse.”

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.*

Or. Rev. Stat. § 163.266(2) states that “a person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263⁷⁶ or 163.264.”⁷⁷ If force or attempted force, fraud or coercion can be proven, facilitators may be in violation of Or. Rev. Stat § 163.263 (Subjecting another person to involuntary servitude in the second degree) or § 163.264 (Subjecting another person to involuntary servitude in the first degree), punishable as a Class C and a Class B felony respectively. Or. Rev. Stat §§ 163.263(2), 163.264(2). These offenses are underlying offenses for Or. Rev. Stat. § 163.266(1)(a) (Trafficking in persons), a Class B felony with a maximum imprisonment of 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c). A violation of Or. Rev. Stat. § 163.266(2) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c).⁷⁸

Or. Rev. Stat. § 167.017(1)(c) (Compelling prostitution) makes it a crime if any person “[a]ids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age.” A conviction under Or. Rev. Stat. § 167.017(1)(c) is punishable as a Class B felony by imprisonment up to ten years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c). Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) could be applied to facilitators by its statement, “A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.” A conviction under Or. Rev. Stat. § 163.670 is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 161.605(1), 161.625(1)(b).⁷⁹

Facilitators could also face penalties under the money laundering provisions. Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) states,

⁷⁶ See *supra* Component 1.1 for a full discussion of the provisions of Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree).

⁷⁷ See *supra* Component 1.1 for a full discussion of the provisions of Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree).

⁷⁸ See *supra* note 48.

⁷⁹ See *supra* note 48.

(1) A person commits the crime of engaging in a financial transaction⁸⁰ in property derived from unlawful activity⁸¹ if the person knowingly engages in or attempts to engage in a financial transaction in property that:

- (a) Constitutes, or is derived from, the proceeds of unlawful activity;
 - (b) Is of a value greater than \$ 10,000; and
 - (c) The person knows is derived from or represents the proceeds of some form, though not necessarily which form, of unlawful activity.
- (2) (a) Engaging in a financial transaction in property derived from unlawful activity is a Class C felony.
- (b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property involved in the unlawful transaction.

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 under Or. Rev. Stat. § 163.266(1)(a), (2) (Trafficking in persons) or § 167.017(1)(c) (Compelling prostitution) face Class B felonies punishable by a possible fine not to exceed \$250,000.⁸² Or. Rev. Stat. §§ 163.266(4), 161.625(1)(c). A conviction under Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) is punishable as a Class A felony by a possible fine not to exceed \$375,000. Or. Rev. Stat. §161.625(1)(b).

Under Oregon’s discretionary, criminal forfeiture provisions, Or. Rev. Stat. § 131.553(1)(c), (e) (Legislative findings; effect on local laws; remedy not exclusive) finds that “[p]erpetrators of crimes should not be allowed to keep the proceeds and instrumentalities of their crimes” and that “[t]here is a need to provide for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

-
- (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . . ;
-
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the

⁸⁰ See *supra* note 50.

⁸¹ See *supra* note 51.

⁸² See *supra* note 48.

commission of prohibited conduct;

....

(10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602 (Prohibited conduct for purposes of instrumentalities of crime) includes trafficking in persons. Or. Rev. Stat. § 131.602(146).⁸³ Notably for those facilitators providing common carrier transportation, Or. Rev. Stat. § 131.558(4) (Property subject to forfeiture) exempts any common carrier conveyance from seizure, stating,

All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct

Seizure of forfeitable property is governed by Or. Rev. Stat. § 131.561, which states in relevant part,

(4) (a) A police officer may seize property pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

....

(5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the public records that impart constructive notice of matters relating to such property.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597, which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. Of the remaining amount, 3% to the Asset Forfeiture Oversight Account, 7% to the Illegal Drug Cleanup Fund, 10% to the General Fund, 40% to the Dept. of State Police, 40% to the Drug Prevention and Education Fund. Where the seizing agency is not the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.594.

Facilitators may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court before sentencing evidence of economic damages suffered as a result of the crime. The court is authorized to order restitution⁸⁴ as part of a criminal case when the crime “has resulted in economic damages.”⁸⁵ Or. Rev. Stat. § 137.106(1).

In addition to these provisions, Oregon’s racketeering provisions provide for civil asset forfeiture.⁸⁶ Or. Rev. Stat. § 166.725(2) (Remedies for violation of ORS 166.720; time limitation) states in part,

All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons

⁸³ See *supra* note 33.

⁸⁴ See *supra* note 34.

⁸⁵ See *supra* note 35.

⁸⁶ Or. Rev. Stat. §§ 166.715–166.735.

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

There is no specific law prohibiting the promotion or sale of child sex tourism.

- 4.3.1 Recommendation: Enact a law prohibiting 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 occurring in Oregon.

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

Under Or. Rev. Stat. § 163.684(1) (Encouraging child sexual abuse in the first degree),

- (a) A person commits the crime of encouraging child sexual abuse in the first degree if the person:
- (A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording of sexually explicit conduct involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or
 - (B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and
- (b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

A conviction under Or. Rev. Stat. § 163.684 is punishable as a Class B felony punishable by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.684(2), 161.605(2), 161.625(1)(c).

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.*⁸⁷

Oregon’s trafficking in persons statute, Or. Rev. Stat. § 163.266 (Trafficking in Persons), includes all commercial sexual exploitation of minors. Under Or. Rev. Stat. § 163.266(1)(c),⁸⁸ means of force, fraud, or coercion are not required when the victim is a minor.⁸⁹ In addition, Oregon’s trafficking offense provides criminal liability for buyers of sex with minors following federal precedent through the term “obtains”; however, the buyer must “know[] or recklessly disregard[] the fact that the other person is under 18 years of age and will be used in a commercial sex act.” Or. Rev. Stat. § 163.266(1)(c).⁹⁰

Finally, identifying a trafficker or controlling third party is not required to establish the crime of sex trafficking under Or. Rev. Stat. § 163.266(1)(c), the subsection that applies to buyers of sex with minors. Contrastingly, Or. Rev. Stat. § 163.266(1)(a) requires third party control, as it applies only to traffickers and facilitators because the perpetrator must know that the victim will be subjected to § 163.264 (Subjecting another person to involuntary servitude in the first degree) or § 163.263 (Subjecting another person to involuntary servitude in the second degree), which involve “services” “performed by one person under the supervision or for the benefit of another person.” Or. Rev. Stat. §§ 163.261, 163.263, 163.264.⁹¹

⁸⁷ 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).

⁸⁸ See *supra* note 2.

⁸⁹ See *supra* Component 1.1.

⁹⁰ See *supra* Component 2.1 for discussion of buyer applicability of the human trafficking offense.

⁹¹ See *supra* Component 1.1.

Consequently, Oregon’s trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Or. Rev. Stat. § 163.266(1)(c).

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

Or. Rev. Stat. § 163.266 (Trafficking in persons) and Oregon’s CSEC laws are silent with regard to the availability of a defense based on the minor’s willingness to engage in the commercial sex act.

5.2.1 Recommendation: Amend Or. Rev. Stat. § 163.266 (Trafficking in persons) and Oregon’s CSEC laws to expressly prohibit a defense based on the minor’s willingness to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁹²

Or. Rev. Stat. § 167.007 (Prostitution) applies to adults as well as minors, leaving minors subject to prosecution for commercial sex acts committed pursuant to their victimization. However, Or. Rev. Stat. § 167.007(3)⁹³ provides trafficking victims with an affirmative defense to prostitution charges, stating,

It is an affirmative defense to prosecution under this section that the defendant, at the time of the alleged offense, was a victim of the crime of trafficking in persons as de-scribed in ORS 163.266 (1)(b) or (c) [Trafficking in persons].

Further, the trafficking chapter provides victims with an affirmative defense to prostitution charges if force or threat of force was used to cause the prostitution.⁹⁴ Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree], or 163.266 [Trafficking in persons] may assert the defense of duress, as

⁹² For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁹³ See *supra* note 9.

⁹⁴ To the extent that an affirmative defense is unsuccessful, Or. Rev. Stat. § 137.090(2)(b) (Considerations in determining aggravation or mitigation) states that a sentence may be mitigated if “the defendant committed the crime while under duress, compulsion, direction or pressure from another person who has: . . . Used force, intimidation, fraud or coercion to cause the defendant to engage, or at- tempt to engage, in a commercial sex act.” The text Or. Rev. Stat. § 137.090 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 3176 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

described in ORS 161.270 [Duress],⁹⁵ if the person is prosecuted for conduct that constitutes services under ORS 163.261 [Definitions for ORS 163.23 and 163.264],⁹⁶ that the person was caused to provide.

5.3.1 Recommendation: Amend Or. Rev. Stat. § 167.007 (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.*

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

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

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁹⁷

Oregon's child protection statutes include child sex trafficking and commercial sexual exploitation as types of abuse. Or. Admin. R. 413-015-0115(3) (Definitions) defines "child abuse or neglect" to mean "any form of child abuse, including abuse through neglect and abuse or neglect by a third party" Or. Rev. Stat. § 419B.005 (Definitions) is one of several statutes listed as statutory authority for Or. Admin. R. 413-015-0115. Or. Rev. Stat. § 419B.005(1)(a)⁹⁸ defines "abuse" as follows:

"Abuse" means:

- (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
- (B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
- (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.
- (D) Sexual abuse, as described in ORS chapter 163.
- (E) Sexual exploitation, including but not limited to:
 - (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or

⁹⁵ Pursuant to Or. Rev. Stat. § 161.270 (Duress),

- (1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.
- (2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

....

⁹⁶ Pursuant to Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264), "'services' means activities performed by one person under the supervision or for the benefit of another person."

⁹⁷ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁹⁸ The text Or. Rev. Stat. § 419B.005 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 302 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective April 21, 2017).

other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS 167.007 or a commercial sex act as defined in ORS 163.266 [Trafficking in persons], to purchase sex with a minor as described in Section 4 of this 2013 Act [Or. Rev. Stat. § 163.413] or to engage in commercial sexual solicitation as described in ORS 167.008

. . . .

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.*

Or. Admin. R. 413-015-0115(3) (Definitions) defines “child abuse or neglect” to mean “any form of child abuse, including abuse through neglect and abuse or neglect by a third party . . . ,” and pursuant to Or. Admin. R. 413-015-0115(56), the rules define “third-party abuse” as “abuse by a person who is not the child’s parent, not the child’s caregiver or other member of the child’s household, and not a person responsible for the child’s care, custody, and control.” The rules state that “[e]xamples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.”

Therefore, “third party abuse” under Or. Admin. R. 413-015-0115(56) is likely broad enough to encompass all non-familial offenders, allowing child victims of sex trafficking and exploitation to receive child welfare protection and services.

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

Victims of sexual exploitation may qualify for crime victims’ compensation under Oregon’s “Compensation of Crime Victims” statutes, codified at Or. Rev. Stat. § 147.005 et. seq., and are statutorily exempt from some, but not all, ineligibility criteria. Or. Rev. Stat. § 147.015⁹⁹ (Eligibility for compensation; generally) states,

- (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:
 - (a) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime that has resulted in or may result in a compensable loss;
 - (b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim, unless the Department of Justice finds good cause exists for the failure of notification;
 - (c) The notification described in paragraph (b) of this subsection occurred within 72 hours after the perpetration of the crime, unless the Department of Justice finds good cause exists for the failure of notification within 72 hours;
 - (d) The applicant cooperated with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant’s failure to cooperate was for good cause;
 - (e) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;
 - (f) The death or injury to the victim was not substantially attributable to the wrongful act of the victim; and
 - (g) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the department:

⁹⁹ The text Or. Rev. Stat. § 147.015 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2621 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

- (A) Within one year of the date of the injury to the victim; or
 - (B) Within such further extension of time as the department for good cause shown, allows.
- (2) (a) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005 . . . [or] sexual abuse as defined in ORS 163.760 . . . is prima facie evidence of good cause for the victim’s failure to notify law enforcement in a timely manner under subsection (1)(c) of this section, or for failure to cooperate with law enforcement under subsection (1)(d) of this section.
- (b) The requirement under subsection (1)(b) of this section to notify the appropriate law enforcement officials of the perpetration of the crime is satisfied if, as a result of the compensable crime for which the victim or applicant is applying for compensation, the victim or applicant obtained:
-
 - (B) A sexual abuse restraining order under ORS 163.760 to 163.777;
 - (C) An abuse prevent order under ORS 107.700 to 107.735 or 124.005 to 124.040; or
 - (D) A medical assessment, as defined in ORS 147.395, for sexual assault.

. . . .

If a claim is accepted, then, under the rules set out in Or. Rev. Stat. § 147.035(1)–(4)¹⁰⁰ (Compensable losses; rules), compensable losses include the following:

- (1) (a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be awarded under ORS 147.005 to 147.367 only for losses described in this section.
- (b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and the survivors and dependents of a deceased victim is \$ 47,000.
- (c) When a compensable crime results in:
- (A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are compensable.
-
- (2) When a claim for compensation is filed in a case of injury, compensation may be awarded for:
- (a) The victim’s reasonable medical and hospital expenses, including counseling expenses, up to a maximum amount of \$ 20,000;
 - (b) Loss of the victim’s earnings, at a maximum rate of \$ 600 per week, up to a maximum amount of \$ 20,000;
 - (c) The victim’s rehabilitation expenses, up to a maximum amount of \$ 4,000; and
 - (d) Expenses related to transportation for the victim’s medical care or counseling, at a rate determined by the Department of Justice, up to a maximum amount of \$ 3,000, when:
 - (A) The medical care or counseling is compensable under this section;
 - (B) The medical care or counseling is provided more than 30 miles away from the victim’s residence; and
 - (C) Adequate medical care or counseling is not available in closer proximity to the victim’s residence.
-
- (4) When a claim for compensation is filed in a case of:
- (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim’s family are compensable up to a maximum amount of \$ 20,000, less any amounts awarded for the victim’s medical or hospital expenses under subsection (2)(a) of this section.
-

¹⁰⁰ The text Or. Rev. Stat. § 147.035 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2621 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

5.7.1 Recommendation: Amend Or. Rev. Stat. § 147.015(2) (Eligibility for compensation; generally) to provide an exception to all ineligibility criteria when the applicant is a victim of child sex trafficking.

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

Several victim-friendly criminal justice procedures and protections are statutorily provided for minor victim-witnesses, although none specifically apply in cases of trafficking or compelled prostitution of a minor. Pursuant to Or. Rev. Stat. § 419B.112(1) (Court appointed special advocate), “[i]n every case under ORS chapter 419B [Juvenile Code: Dependency], the court shall appoint a court appointed special advocate”¹⁰¹

Or. Rev. Stat. § 45.400(1)¹⁰² permits remote location testimony, “[a] party to any civil proceeding or any proceeding under ORS chapter 419B [Juvenile Code: Dependency] may move that the party or any witness for the moving party may give remote location testimony.”

Or. Rev. Stat. § 44.547 supplies additional protections for child witnesses under 12 years of age, or developmentally disabled persons of any age. These protections may include the following: “[b]reak periods” during the trial proceedings; providing a “waiting area appropriate to the special needs of the witness”; “[r]elaxing the formalities of the proceedings”; “[c]onducting proceedings in clothing other than judicial robes”; “[a]djusting the layout of the courtroom for the comfort of the witness”; and “[c]onducting proceedings outside of the normal courtroom.” Or. Rev. Stat. § 44.547.

Or. Rev. Stat. § 40.460(18a), (24), Rule 803, which sets out exceptions to Oregon’s hearsay rule, codified at Or. Rev. Stat. § 40.455 Rule 802, permits closed circuit television testimony in certain criminal or juvenile proceedings involving a child witness under 12 years old as follows:

. . . .
(18a)

(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050,¹⁰³ or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

. . . .

(24) Notwithstanding the limits contained in subsection (18a)¹⁰⁴ of this section, in any proceeding in which a child under 12 years of age at the time of trial, or a person with a developmental disability as described in subsection (18a)(d) of this section, may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the child or person with a developmental disability by another, the testimony of the child or person with a developmental disability taken by contemporaneous examination and cross-examination in another place under the

¹⁰¹ Pursuant to Or. Rev. Stat. § 419A.004(9), a “[c]ourt appointed special advocate” means a person in a CASA Volunteer Program who is appointed by the court to act as a court appointed special advocate pursuant to ORS 419B.112.”

¹⁰² The text Or. Rev. Stat. § 45.400 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 131 during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective June 6, 2017).

¹⁰³ Pursuant to Or. Rev. Stat. § 124.050(2), "Elderly person" is defined as “any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.”

¹⁰⁴ Or. Rev. Stat. § 40.460 [Rule 803. Hearsay exceptions; availability of declarant immaterial] states in part, “The following are not excluded by ORS 40.455, even though the declarant is available as a witness: . . . (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005 . . . made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.”

supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child or person with a developmental disability will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a party, the child, the person with a developmental disability or the court in a civil proceeding, or on motion of the district attorney, the child or the person with a developmental disability in a criminal or juvenile proceeding, may order that the testimony of the child or the person with a developmental disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child or person with a developmental disability may be present during the testimony of the child or person with a developmental disability.

Or. Rev. Stat. § 40.210 Rule 412 (Sex offense cases; relevance of victim's past behavior or manner of dress), protects testifying victims of certain crimes “(1) . . . in a prosecution for a crime described in ORS 163.266 (1)(b) or (c) [Trafficking in persons], 163.355 to 163.427 [Sex offense chapter], 163.670 [Using child in display of sexually explicit conduct] or 167.017 [Compelling prostitution], or in a prosecution for an attempt to commit one of [these] those crimes” from the admission of “[r]eputation or opinion evidence of the past sexual behavior¹⁰⁵ of an alleged victim of the crime or a corroborating witness” or “[r]eputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim of the crime incited the crime or indicated consent to the sexual acts alleged in the charge.” The statute provides in part,

. . . .

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime in subsection (1) of this section, evidence of a victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

- (a) Is admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
 - (A) Relates to the motive or bias of the alleged victim;
 - (B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or
 - (C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section [ORS 163.266 (1)(b) or (c) [Trafficking in persons], 163.355 to 163.427 [Sex offense chapter], 163.670 [Using child in display of sexually explicit conduct] or 167.017 [Compelling prostitution]], evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime, is also not admissible, unless the evidence is:

- (a) Admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
 - (A) Relates to the motive or bias of the alleged victim;
 - (B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;
 - (C) Is necessary to establish the identity of the victim; or
 - (D) Is otherwise constitutionally required to be admitted.

¹⁰⁵ Or. Rev. Stat. § 40.210(5)(c) Rule 412 defines “past sexual behavior” as “sexual behavior other than:

- (A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged; or
- (B) In a proceeding conducted under ORS 163.760 [Definitions for ORS 163.760 to 163.777] to 163.777 [Fees or undertaking may not be required], the alleged sexual abuse.”

....

Under Or. Rev. Stat. § 192.822,¹⁰⁶ Oregon has also established the “Address Confidentiality Program,” in order to:

- (a) protect the confidentiality of the actual address¹⁰⁷ of a victim of domestic violence,¹⁰⁸ a sexual offense,¹⁰⁹ stalking or human trafficking;¹¹⁰ and
- (b) prevent assailants or potential assailants of the victim from finding the victim through public records.

As enumerated within Or. Rev. Stat. § 192.822, under the “Address Confidentiality Program,”¹¹¹

....

- (2) The Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of all legal process this state and receiving and forwarding first-class, certified or registered mail.
- (3) The Attorney General is not required to forward any packages or mail other than first-class, certified or registered mail to the program participant.
- (4) The Attorney General is not required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

Furthermore, Or. Rev. Stat. § 192.854(1) states that “[t]he Attorney General may designate employees of or volunteers serving public or private entities that provide counseling and shelter services to victims of domestic violence, a sexual offense, stalking or human trafficking as application assistants to assist individuals applying to participate in the Address Confidentiality Program.”¹¹²

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.*

Oregon law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and only juvenile records for prostitution offenses may be expunged without a waiting period.

¹⁰⁶ Lexis notes the following: “Or. Rev. Stat. §§ 192.820—192.868 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.”

¹⁰⁷ Or. Rev. Stat. § 192.820(1) defines “actual address” as: (a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or (b) The name of the county in which the program participant is registered to vote.”

¹⁰⁸ Or. Rev. Stat. § 192.820(9) defines a “victim of domestic violence” as “(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181.610 or 411.117; (b) An individual who has been a victim of abuse, as defined in ORS 107.705; or (c) Any other individual designated a victim of domestic violence by the Attorney General by rule.”

¹⁰⁹ Or. Rev. Stat. § 192.820(8) defines a “victim of a sexual offense as “(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or (b) Any other individual designated by the Attorney General by rule.”

¹¹⁰ Or. Rev. Stat. § 192.820 defines a “victim of human trafficking” as “(a) an individual against whom an offense described in ORS 163.263, 163.264 or 163.266 has been committed; or (b) Any other individual designated by the Attorney General by rule. In adopting rules under this subsection, the Attorney General shall consider individuals against whom an act recognized as a severe form of trafficking in persons under 22 U.S.C. 7102 has been committed.”

¹¹¹ Or. Rev. Stat. § 192.822.

¹¹² “Any assistance rendered to applicants for participation in the Address Confidentiality Program by the Attorney General or an application assistant is not considered legal advice.” Or. Rev. Stat. § 192.854.

Regarding expungement of juvenile records related to prostitution, Or. Rev. Stat. § 419A.262(3) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties) provides,

(a) Notwithstanding subsection (2) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after hearing when the matter is contested under subsection (13) of this section, shall order expunction if it finds that:

(A) The application requests expunction of only that part of a person's record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under ORS 167.007; and

(B) The person was under 18 years of age at the time of the conduct.

(b) Except provided in subsections (13) and (14) of this section, there is no waiting period required before the juvenile court orders expunction under this subsection.

Regarding expungement of juvenile records related to other offense, Or. Rev. Stat. § 419A.262(2), (5) provides,

(2) Upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

(a) At least five years have elapsed since the date of the person's most recent termination;

(b) Since the date of the most recent termination, the person has not been convicted of a felony or a Class A misdemeanor;

(c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pending against the person;

(d) The person is not within the jurisdiction of any juvenile court on the basis of a petition alleging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and

(e) The juvenile department is not aware of any pending investigation of the conduct of the person by any law enforcement agency.

....

(5) When a person who is the subject of a record kept by a juvenile court or juvenile department reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order expunction if:

(a) The person never has been found to be within the jurisdiction of the court; or

(b) The conditions of subsection (2) or (3) of this section have been met.

Regarding vacatur, Enacted Senate Bill 249, § 1¹¹³ allows a victim of sex trafficking to vacate a conviction for prostitution, stating,

(1) A court may vacate a judgment of conviction for the crime of prostitution under ORS 167.007 as described in this section.

(2) (a) A person may request vacation of a judgment of conviction for prostitution by filing a motion in the county of conviction. The motion may be filed at least 21 days after the judgment of conviction is entered.

....

(c) The motion must contain an explanation of facts supporting a claim that the person was the victim of sex trafficking at or around the time of the conduct giving rise to the prostitution conviction

....

¹¹³ Senate Bill 249, § 1 cited here and elsewhere in this report was enacted during the 2017 Regular Session of the 79th Oregon Legislative Assembly (effective January 1, 2018).

(5) If the court grants a motion under this section, the court shall vacate the judgment of conviction for prostitution and may make other orders as the court considers appropriate.

....

(7) As used in this section, “sex trafficking” means the use of force, intimidation, fraud or coercion to cause a person to engage, or attempt to engage, in a commercial sex act.

Because Enacted Senate Bill 249, § 1 applies specifically to “convictions,” however, this protection does not clearly extend to delinquency adjudications.

Further, Enacted Senate Bill 249, § 1(1) limits applicability to prostitution offenses, foreclosing the law’s applicability to other offense related to trafficking victimization. Finally, record expungement is not automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

5.9.1 Recommendation: Amend Enacted Senate Bill 249, § 1 to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.

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

Or. Rev. Stat. § 137.106 (Restitution to victims) requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of the crime. The court is authorized to order restitution as part of a criminal case when the crime “has resulted in economic damages.”¹¹⁴ Or. Rev. Stat. § 137.106(1). Restitution is defined in Or. Rev. Stat. § 137.103(3) (Definitions for ORS 137.101 to 137.109) as “full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS § 137.101.”

Or. Rev. Stat. § 30.867 (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) specifically provides the right to bring a civil action for damages suffered by a victim of human trafficking and involuntary servitude irrespective of the initiation or outcome of any criminal action. Victims of these crimes who prevail may recover “(a) Both special and general damages, including damages for emotional distress; and (b) Punitive damages,” as well as reasonable attorney fees. Or. Rev. Stat. § 30.867(2), (3). The statute gives victims six years from the date of the conduct to file a civil claim for damages. Or. Rev. Stat. § 30.867(4).

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.*

Or. Rev. Stat. § 131.125 (Time limitations) outlines the statute of limitations on bringing criminal actions for felonies. Or. Rev. Stat. § 131.125(2) provides a longer statute of limitations for certain sex crimes; it states,

A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

(a) Rape in the first degree under ORS 163.375.

....

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(d) Sexual abuse in the first degree under ORS 163.427.

¹¹⁴ See *supra* note 35.

However, an action can be commenced at any time if the “prosecuting attorney obtains corroborating evidence of the crimes of rape in the first degree . . . unlawful sexual penetration in the first degree or sexual abuse in the first degree” Or. Rev. Stat. § 131.125(12). The corroborating evidence in Or. Rev. Stat. § 131.125(12)(b) is listed as follows:

- (A) Physical evidence other than a DNA sample, including but not limited to audio, video, or other electronic recordings, text messages, guest book logs, telephone recordings and photographs
- (B) A confession, made by the defendant, to the crime the victim reported
- (C) An oral statement, made by the victim to another person in temporal proximity to the commission of the crime, corroborating the victim’s report of the crime to a law enforcement agency
- (D) A written statement, created by the victim in temporal proximity to the commission of the crime and subsequently delivered to another person or to a law enforcement agency, corroborating the victim’s report of the crime to a law enforcement agency.
- (E) A report made by a different victim to a law enforcement agency, made either before or after the victim’s report, alleging that the defendant committed another crime of the same or similar character such that the two crimes could be charged in the same charging instrument under ORS 132.560 [Joinder of counts and charges; consolidation of charging instruments.]

Regarding other felonies, Or. Rev. Stat. § 131.125(3) states,

A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim¹¹⁵ at the time of the crime was under 18 years of age, any time before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

-
- (i) Using a child in a display of sexual conduct under ORS 163.670.
- (j) Encouraging child sexual abuse in the second degree under ORS 163.684.
-
- (l) Promoting prostitution under ORS 167.012.
- (m) Compelling prostitution under ORS 167.017.
- (n) Luring a minor under ORS 167.057.

Or. Rev. Stat. § 131.125(4) states,

A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, any time before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human services, whichever occurs first:

-
- (b) Sexual abuse in the third degree under ORS 163.415.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

¹¹⁵ Or. Rev. Stat. § 131.125 (5) states,

In the case of crimes described in subsection 3(i) of this section [Using a child in a display of sexual conduct under ORS 163.670], the victim is the child engaged in sexual conduct In the case of crimes described in subsection 3(L) [Promoting prostitution under ORS 167.012]and (m) [Compelling prostitution under ORS 167.017] of this section, the victim is the child whose acts of prostitution are promoted or compelled.

By comparison, pursuant to Or. Rev. Stat. § 131.125(8), prosecutions for felonies must generally be commenced within 3 years and 2 years for misdemeanors.

Regarding civil claims, Or. Rev. Stat. § 30.867 (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) specifically provides the right to bring a civil action for damages suffered by a victim of human trafficking and involuntary servitude irrespective of the initiation or outcome of any criminal action. Victims of these crimes who prevail may recover “(a) Both special and general damages, including damages for emotional distress; and (b) Punitive damages,” as well as reasonable attorney fees. Or. Rev. Stat. § 30.867(2), (3). The statute gives victims six years from the date of the conduct to file a civil claim for damages. Or. Rev. Stat. § 30.867(4).

Or. Rev. Stat. § 12.117(1) (Actions based on child abuse) covers civil proceedings and provides a lengthened statute of limitations. Or. Rev. Stat. § 12.117(1) states,

(1) Notwithstanding ORS 12.110 [Actions for certain injuries to person not arising on contract], 12.115 [Action for negligent injury to person or property] or 12.160 [Suspension for minors and persons who are have a disabling mental condition], an action based on conduct that constitutes child abuse¹¹⁶ or conduct knowingly allowing, permitting or encouraging child abuse that occurs while the person is under 18 years of age must be commenced before the person attains 40 years of age, or if the person has not discovered the causal connection between the injury and the child abuse, nor in the exercise of reasonable care should have discovered the causal connection between the injury and the child abuse, not more than five years from the date the person discovers or in the exercise of reasonable care should have discovered the causal connection between the child abuse and the injury, whichever period is longer.

By comparison, under Or. Rev. Stat § 12.110, “an action for assault, battery, false imprisonment, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years”

5.11.1 Recommendation: Amend Or. Rev. Stat. § 131.125(2), (12) to include sex trafficking and CSEC offenses including Or. Rev. Stat. § 163.266 (Trafficking in persons), § 163.263 (Subjecting another person to involuntary servitude in the second degree), § 163.264 (Subjecting another person to involuntary servitude in the first degree), § 167.017(1) (Compelling prostitution), § 163.670(1) (Using child in display of sexually explicit conduct), and § 163.413 (Purchasing sex with a minor).

¹¹⁶ Or. Rev. Stat. § 12.117(2) (Actions based on child abuse) defines “child abuse” to include the following:

-
- (c) Sexual abuse, as defined in ORS Chapter 163, when the victim is a child; or
 - (d) Sexual exploitation of a child, including but not limited to:
 - (A) Conduct constituting a violation of ORS 163.435 and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact; and
 - (B) Allowing, permitting, encouraging or hiring a child to engage in prostitution or to engage in commercial sexual solicitation, as defined in ORS chapter 167.

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.*

Pursuant to Or. Rev. Stat. § 181A.480 (Training in human trafficking), “[t]he Board on Public Safety Standards and Training may require that all police officers and certified reserve officers are trained to recognize, investigate and report cases involving labor trafficking and sex trafficking of children and adults at any advanced training program operated or authorized by the Department of Public Safety Standards and Training.”

Additionally, Or. Rev. Stat. § 181A.460 (Training in missing persons cases) does state that “[s]ubject to the availability of funds, the Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to investigate and report cases of missing children and adults”

Or. Rev. Stat. § 147.480 (Establishment of Fund to End Commercial Sexual Exploitation of Children; administration of fund) finances the “[t]raining of investigators, service providers and others regarding the identification and treatment of children who have experienced commercial sexual exploitation.”

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

Or. Rev. Stat. § 165.543(1) (Interception of communications) states in part,

Except as provided in ORS 133.724 [Order for interception of communications; application; grounds for issuance; contents of order; progress reports] or as provided in ORS 165.540(2)(a), any person who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor.

Or. Rev. Stat. § 133.726(1) (Interception of oral communication without order; order for interception of oral communication; application; grounds for issuance; contents of order; penalties) states, “[A] law enforcement officer¹¹⁷ is authorized to intercept an oral communication to which the officer or person under direct

¹¹⁷ Under Or. Rev. Stat. § 133.726(11), “law enforcement officer” is

supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724” in certain situations. “[A] person is a party to an oral communication if the oral communication is made in the person’s immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.” Or. Rev. Stat. § 133.726(2).

Or. Rev. Stat. § 133.726(7)–(10) (Interception of oral communication without order; order for interception of oral communication; application; grounds for issuance; contents of order; penalties) also states,

- (7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:
 - (a) A crime punishable as a felony under ORS 475.752 (Prohibited acts generally), 475.806 (Unlawful manufacture of hydrocodone) to 475.894 (Unlawful possession of methamphetamine) or 475.906 (Penalties for unlawful delivery to minors) or as a misdemeanor under ORS 167.007 (Prostitution) or 167.008 (Patronizing a prostitute); or
 - (b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 (Order for interception of communications) or this section.
- (8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer’s direct supervision is a party to the oral communication.
- (9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:
 - (a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;
 - (b) To a magistrate;
 - (c) In a presentation to a federal or state grand jury; or
 - (d) In compliance with a court order.
- (10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer’s employment and as a part of assigned duties.

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

Or. Rev. Stat. § 133.724(c) (Order for interception of communications) outlines criteria for applying to intercept wire communications, stating that, among other things, the “application shall include . . .

-
- (a) [a]n officer employed to enforce criminal laws by:
 - (A) The United States, this state or a municipal government within this state;
 - (B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph;
 - (C) A police department established by a university under ORS 352.383 [Public universities; establishment of police departments; police officers] or 353.125 [Creation of police department and commission of police officers; rules]; or
 - (b) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011; or
 - (c) A liquor enforcement inspector as defined in ORS 471.001 [Definitions for ORS chapters 471 and 473].

A statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit:

- (A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;
- (B) A crime punishable as a felony under ORS 163.266 (1)(b) or (c) [Trafficking in persons], 166.720 [Racketeering activity], 167.012 [Promoting prostitution], 167.017 [Compelling prostitution], . . . or section 4 of this 2013 Act [Purchasing sex with a minor under Or. Rev. Stat. § 163.413] or as a misdemeanor under ORS 167.007 [Prostitution] or 167.008 [Commercial sexual solicitation]; or
- (C) Any conspiracy to commit any of the foregoing crimes

Or. Rev. Stat. § 133.726(3)–(6) (Interception of oral communications without order) also outlines criteria for ex parte orders for intercepting oral communications, including situations where the application states, among other things, that “[t]here is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007 [Prostitution] or section 3 of this 2011 Act [patronizing prostitution], and that intercepting the oral communication will yield evidence thereof.”

Or. Rev. Stat. § 133.733 does not permit “[t]he contents of any wire, electronic or oral communication intercepted under ORS 133.724, or evidence derived therefrom” from being “received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved.” This period may be judicially waived.

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.*

Under Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), a buyer-applicable CSEC offense, a defense based on the fact that an undercover officer was involved instead of an actual minor is prohibited. A person violates Or. Rev. Stat. § 163.413, “if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with . . . a police officer posing as a minor or an agent of a police officer posing as a minor.”¹¹⁸ Therefore, this defense would be unavailable for charges brought against buyers through reverse sting operations, which are the most likely situations in which a defendant would try to raise such a defense.

However, under Or. Rev. Stat. § 163.266(1)¹¹⁹ (Trafficking in persons), decoy defenses are likely permissible because defendants must either know that the victim “will be subjected to involuntary servitude” or act knowingly or in reckless disregard of the fact that the victim “is under 18 years of age” Additionally, there is no express prohibition to the defense under Or. Rev. Stat. § 167.017 (Compelling prostitution) or § 167.007 (Prostitution).

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

Or. Rev. Stat. § 163.434(2) (Provisions applicable to online sexual corruption of a child) states that “[i]t is not a defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was

¹¹⁸ Similarly, the non-commercial offense, Or. Rev. Stat. § 167.057¹¹⁸ (Luring a minor), prohibits the defense, as the statute includes conduct with “a police officer posing as a minor or an agent of a police officer posing as a minor.”

¹¹⁹ See *supra* note 2.

in fact communicating with a law enforcement officer . . . or a person working under the direction of a law enforcement officer, who is 16 years of age or older.”

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

Law enforcement must report information on missing, but not recovered, children. Or. Rev. Stat § 146.181(1) (Missing persons; police report; supplementary report) states,

When a person is reported as missing to any city, county or state police agency, the agency, within 12 hours thereafter, shall enter into state and federal records maintained for that purpose, a report of the missing person in a format and according to procedures established by the authorities responsible respectively for the state and federal records.

Or. Rev. Stat. § 181A.300(1) (Establishment and maintenance of missing persons clearinghouse) directs the Oregon State Police to “establish and maintain a missing children and adults clearinghouse that receives from and distributes to local law enforcement agencies, school districts, state and federal agencies and the general public information regarding missing children and adults.” Under Or. Rev. Stat § 181A.305(1), (4) (Duties of administrator of clearinghouse), the administrator of the clearinghouse is directed to, among other things, “[p]rovide information and training to local law enforcement agencies and child welfare agencies and to other state agencies having child welfare duties” and “[m]aintain a 24-hour hotline to receive and provide information on missing children and adults.”

6.6.1 Recommendation: Amend Or. Rev. Stat. § 146.181 (Missing persons; police report; supplementary report) to require law enforcement to promptly report information on recovered children.

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