

## 2017 ANALYSIS AND RECOMMENDATIONS

### RHODE ISLAND

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

##### *Legal Components:*

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

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

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

Rhode Island criminalizes child sex trafficking without requiring proof of force, fraud, or coercion when the victim is a minor. R.I. Gen. Laws Ann. § 11-67.1-3(a)(2)<sup>2</sup> (Trafficking an individual) states,

A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- ....  
(2) Sexual servitude in violation of §11-67.1-5.

<sup>1</sup> This report includes legislation enacted as of August 1, 2017.

<sup>2</sup> The text of R.I. Gen. Law Ann. § 11-67.1-3 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

R.I. Gen. Laws Ann. § 11-67.1-5(1)<sup>3</sup> (Sexual servitude) defines sexual servitude to include “maintain[ing] or mak[ing] available a minor<sup>4</sup> for the purpose of engaging the minor in commercial sexual activity<sup>5</sup> . . . .”

When the victim is a minor, a violation of R.I. Gen. Laws Ann. § 11-67.1-3 or § 11-67.1-5 is a felony punishable by imprisonment up to 50 years, a fine not to exceed \$40,000, or both.<sup>6</sup> R.I. Gen. Laws Ann. §§ 11-67.1-3(b), 11-67.1-5(c).

The trafficking chapter also provides penalties for patronizing a minor for commercial sex. Under R.I. Gen.

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<sup>3</sup> The text of R.I. Gen. Law Ann. § 11-67.1-5 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>4</sup> R.I. Gen. Laws Ann. § 11-67.1-2(8) (Definitions) defines “minor” as “an individual less than eighteen (18) years of age).

The text of R.I. Gen. Law Ann. § 11-67.1-2 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>5</sup> R.I. Gen. Laws Ann. § 11-67.1-2(3) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received, by a person.”

<sup>6</sup> Enhanced penalties apply if an aggravating circumstance occurred. Pursuant to R.I. Gen. Laws Ann. § 11-67.1-9 (Aggravating circumstances),

(a) An aggravating circumstance during the commission of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 occurs when:

- (1) The defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless; or
- (2) Kidnaps, holds hostage or otherwise keeps the victim against their will.

....  
(d) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under §§ 11-67.1-3, 11-67.1-4, or 11-67.1-5, the defendant may be imprisoned for up to five (5) years in addition to the period of imprisonment prescribed for the offense. Any such sentence may run consecutively to any other sentence imposed.

Enhanced penalties also apply to “habitual criminals” under R.I. Gen. Laws Ann. § 12-19-21 (Habitual criminals). A “habitual criminal” is defined in R.I. Gen. Laws Ann. § 12-19-21(a) as

any person who has been previously convicted in this or any other state of two (2) or more felony offenses arising from separate and distinct incidents and sentenced on two (2) or more occasions to serve a term in prison [who] is, after the convictions and sentences, convicted in this state of any offense punished by imprisonment for more than one year.

A hearing must be held after the conviction of the most recent offense to determine if the person is a habitual criminal. R.I. Gen. Laws Ann. § 12-19-21(b). A finding that a person is a habitual criminal subjects that person to imprisonment up to 25 years, “in addition to any sentence imposed for the offense of which he or she was last convicted.” R.I. Gen. Laws Ann. § 12-19-21(a). Rhode Island law also provides that “[a]s a part of or in lieu of the sentences otherwise provided by law,” unless a statute specifies to the contrary, the court may sentence a person to conditional or unconditional probation, supervised probation, intensive supervision probation, community confinement, a minimum security facility, a fine, or any combination of those already listed. R.I. Gen. Laws Ann. § 12-19-23.2(a).

The text of R.I. Gen. Law Ann. § 11-67.1-9 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

Laws Ann. § 11-67.1-6<sup>7</sup> (Patronizing a victim of sexual servitude),

(a) A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

(b) Every person who shall patronize a minor for purposes of sexual servitude of a minor shall be guilty of a felony, subject to not more than twenty (20) years imprisonment, a fine of up to twenty thousand dollars (\$20,000), or both.

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Further, R.I. Gen. Laws Ann. § 11-67.1-7<sup>8</sup> (Patronizing a minor for commercial sexual activity) provides,

(a) A person commits the offense of patronizing a minor for commercial sexual activity if:

(1) With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

(2) The person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor.

(b) Every person who shall patronize a minor for purposes of commercial sexual activity with a minor shall be guilty of a felony, subject to not more than ten (10) years imprisonment, a fine up to twenty thousand dollars (\$20,000), or both.

A business entity may also be liable for trafficking-related conduct under R.I. Gen. Laws Ann. § 11-67.1-8<sup>9</sup> (Business entity liability), which states,

(a) A person that is a business entity may be prosecuted for an offense under §§11-67.1-3 through 11-67.1-7 of this chapter only if:

(1) The entity knowingly engages in conduct that constitutes human trafficking; or

(2) An employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this chapter for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

(b) When a person that is a business entity is prosecuted for an offense under §§11-67.1-3 through 11-67.1-7, the court may consider the severity of the entity's conduct and order penalties in addition to those otherwise provided for the offense, including:

(1) A fine of not more than fifty thousand dollars (\$50,000) per offense;

(2) Disgorgement of profit from activity in violation of this chapter; and

(3) Debarment from state and local government contracts.

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<sup>7</sup> The text of R.I. Gen. Law Ann. § 11-67.1-6 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>8</sup> The text of R.I. Gen. Law Ann. § 11-67.1-7 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>9</sup> The text of R.I. Gen. Law Ann. § 11-67.1-8 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

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

The following laws treat CSEC as a distinct crime in Rhode Island:

1. R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) makes it illegal for a person to “exhibit, use, employ or . . . in any manner or under pretense so exhibit, use, or employ any child under the age of eighteen (18) years to any person for the purpose of prostitution or for any other lewd or indecent act.” A violation of R.I. Gen. Laws Ann. § 11-9-1(c) is punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-9-1(c).
2. R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) makes it illegal for a person to “take, receive, hire, employ, exhibit, or have in custody, or . . . cause to be taken, hired, employed, exhibited, or held in custody, any child under the age of sixteen (16) years, for any of the purposes prohibited in § 11-9-1 [Exploitation for commercial or immoral purposes].” A violation of R.I. Gen. Laws Ann. § 11-9-2 is a misdemeanor punishable “for every such offense in the manner provided in that section.” R.I. Gen. Laws Ann. § 11-9-2.
3. R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) provides that “[a] person is guilty of indecent solicitation of a child if he or she knowingly solicits<sup>10</sup> another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.” A violation is punishable by imprisonment of at least 5 years. R.I. Gen. Laws Ann. § 11-37-8.9 (Penalty for indecent solicitation of a child).

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

1. R.I. Gen. Laws Ann. § 11-37-6 (Third degree sexual assault) states, “A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years.” A violation is punishable by imprisonment up to 5 years. R.I. Gen. Laws Ann. § 11-37-7.
2. R.I. Gen. Laws Ann. § 11-37-8.1 (First degree child molestation sexual assault) states, “A person is guilty of first degree child molestation sexual assault if he or she engages in sexual penetration with a person fourteen (14) years of age or under.” A violation is punishable by imprisonment between 25 years to life.<sup>11</sup> R.I. Gen. Laws Ann. § 11-37-8.2.<sup>12</sup>

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<sup>10</sup> R.I. Gen. Laws Ann. § 11-37-8.8(b) defines “solicit” and “solicitation” as “to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.”

<sup>11</sup> Additionally, a person who commits first degree child molestation assault against a child 12 or under after January 1, 2007 “shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior.” R.I. Gen. Laws Ann. § 11-37-8.2.1(b)(1). The same requirements may apply if a person commits the offense against a child 14 or under if that person has previously been convicted of first or second degree child molestation sexual assault. R.I. Gen. Laws Ann. § 11-37-8.2.1(b)(2), (g).

<sup>12</sup> Pursuant to R.I. Gen. Laws Ann. § 11-37-10 (Subsequent offenses),

If a person is convicted of a second or subsequent offense under the provisions of §§ 11-37-2 (First degree sexual assault), 11-37-4 (Second degree sexual assault), 11-37-8 (Indecent solicitation of a child), 11-37-

3. R.I. Gen. Laws Ann. § 11-37-8.3 (Second degree child molestation sexual assault) states, “A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact<sup>13</sup> with another person fourteen (14) years of age or under.” A violation is punishable by imprisonment between 6–30 years.<sup>14</sup> R.I. Gen. Laws Ann. § 11-37-8.4.

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

Although Rhode Island’s prostitution offense, R.I. Gen. Laws Ann. § 11-34.1-2 (Prostitution), does not refer to the trafficking law, R.I. Gen. Laws Ann. § 11-67.1-15<sup>15</sup> (Immunity of a minor) acknowledges the intersection of prostitution with trafficking victimization. R.I. Gen. Laws Ann. § 11-67.1-15(a) states,

An individual is not criminally liable or subject to a delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense and committed the offense as a direct result of being a [trafficking] victim.

In addition, R.I. Gen. Laws Ann. § 11-67.1-16<sup>16</sup> (Affirmative defense of victim) states, “An individual charged with prostitution or solicitation to commit a sexual act, committed as a direct result of being a [trafficking] victim may assert an affirmative defense that the individual is a victim.”

*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.*

The racketeering law includes commercial sexual exploitation of children as predicated activity; however, Rhode Island’s trafficking offenses are not included. R.I. Gen. Laws Ann. § 7-15-2(a)–(c) (Prohibited activities) states,

(a) It is unlawful for any person who has knowingly received any income derived directly or indirectly from a racketeering activity or through collection of an unlawful debt, to directly or indirectly use or invest any part of that income, or the proceeds of that income in the acquisition of an interest in, or the establishment or operation of any enterprise.<sup>17</sup>

(b) It is unlawful for any person through a racketeering activity or through collection of an unlawful debt to directly or indirectly acquire or maintain any interest in or control of any enterprise.

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8.1 (First degree child molestation sexual assault), and 11-37-8.3 (Second degree child molestation sexual assault), the sentence imposed under these sections for the second or subsequent offenses shall not be less than twice the minimum number of years of sentence for the most recent offense.

<sup>13</sup> R.I. Gen. Laws Ann. § 11-37-1(7) defines “sexual contact” as “the intentional touching of the victim’s or accused’s intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.”

<sup>14</sup> See *supra* note 12.

<sup>15</sup> The text of R.I. Gen. Law Ann. § 11-67.1-15 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>16</sup> The text of R.I. Gen. Law Ann. § 11-67.1-16 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>17</sup> R.I. Gen. Laws Ann. § 7-15-1(a) defines an “enterprise” as “any sole proprietorship, partnership, corporation, association, or other legal entity, and any union or group of individuals associated for a particular purpose although not a legal entity.”

(c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.

R.I. Gen. Laws Ann. § 7-15-1(c) (Definitions) defines “racketeering activity” to include “any act or threat involving . . . prostitution, or . . . child exploitation for commercial or immoral purposes in violation of § 11-9-1(b) or (c) [Exploitation for commercial or immoral purposes] or § 11-9-1.1 [Child nudity prohibited in publications].”

A violation of R.I. Gen. Laws Ann. § 7-15-2 is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. R.I. Gen. Laws Ann. § 7-15-3(a). Additionally, a conviction subjects the offender to asset forfeiture. Pursuant to R.I. Gen. Laws Ann. § 7-15-3(a), an offender forfeits all of the following:

- (1) Any property acquired or maintained in violation of this chapter [Racketeer influenced and corrupt organizations];
- (2) Any property constituting, or derived from, any proceeds which were obtained directly or indirectly from the commission of an offense in violation of this chapter;
- (3) Any: (i) interest in; (ii) security of; (iii) claim against; or (iv) property or contractual right of any kind affording a source of influence over; any enterprise that the person has established, participated in, operated, controlled, or conducted in violation of this chapter; provided that the value of the property forfeited shall not exceed the sum of the money invested in violation [sic] of § 7-15-2(a) plus the appreciated value of the money.

**Legal Components:**

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

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

Two offenses within the trafficking chapter specifically criminalize patronizing a minor for commercial sex. R.I. Gen. Laws Ann. § 11-67.1-7(a)<sup>18</sup> (Patronizing a minor for commercial sexual activity) states,

A person commits the offense of patronizing a minor for commercial sexual activity if:

- (1) With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
- (2) The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

Similarly, R.I. Gen. Laws Ann. § 11-67.1-6(a)<sup>19</sup> (Patronizing a victim of sexual servitude) provides,

A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

R.I. Gen. Laws Ann. § 11-67.1-6(b) enhances the penalty when the victim is a minor; however, the buyer must know that the minor is a victim of sexual servitude and, thus, under a third party's control.

Following federal precedent, Rhode Island's core trafficking offense, R.I. Gen. Laws Ann. § 11-67.1-3<sup>20</sup>

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<sup>18</sup> See *supra* note 8.

<sup>19</sup> See *supra* note 7.

<sup>20</sup> See *supra* note 2.

(Trafficking an individual), could also apply to buyers of sex with minors based on the term “obtains.”<sup>21</sup> However, the minor must be obtained in furtherance of sexual servitude, which is defined as “maintain[ing] or mak[ing] available a minor for the purpose of engaging the minor in commercial sexual activity . . . .” R.I. Gen. Laws Ann. § 11-67.1-5(a)(1)<sup>22</sup> (Sexual servitude). Accordingly, an offender must obtain a minor to make him or her available for commercial activity rather than to directly engage in a commercial sex act.

2.1.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual) to clarify that the conduct of all buyers of sex with children is included as a violation of R.I. Gen. Laws Ann. § 11-67.1-3.

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

The CSEC offense of R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies to buyers by making it illegal for a person to solicit<sup>23</sup> a child “or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.” R.I. Gen. Laws Ann. § 11-37-8.9 (Penalty for indecent solicitation of a child).

Several sex offenses may also apply to buyers of sex with minors.<sup>24</sup>

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

Rhode Island law differentiates between buying sex with an adult and buying sex with a minor. R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies where a buyer “solicits” a child under 18 for prostitution.<sup>25</sup> Solicitation of a child is punishable by imprisonment for at least 5 years.

In contrast, Rhode Island’s age-neutral solicitation statute, R.I. Gen. Laws Ann. § 11-34.1-3(a) (Procurement of sexual conduct for a fee), is punishable by imprisonment up to 1 year, a fine of \$250–\$1,000, or both. A

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<sup>21</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>22</sup> See *supra* note 3.

<sup>23</sup> See *supra* note 10 for definition of “solicit.”

<sup>24</sup> See *supra* Component 1.2.

<sup>25</sup> See *supra* Component 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a), § 11-9-1, and § 11-9-2.

subsequent violation is punishable by imprisonment up to 1 year, a fine of \$500–\$1,000, or both. R.I. Gen. Laws Ann. § 11-34.1-3(a), (b).

Additionally, R.I. Gen. Laws Ann. § 11-34.1-6(a) (Soliciting from motor vehicles for indecent purposes—Forfeiture of motor vehicle) may apply regardless of the age of the person solicited, making it “unlawful for any person, while an operator or passenger in a motor vehicle to stop, or attempt to stop another vehicle or pedestrian, or to engage or attempt to engage persons in another vehicle or pedestrians in conversation, for the purposes of prostitution or other indecent act, or to patronize, induce, or otherwise secure another person to commit any commercial sexual activity.” A violation is punishable by imprisonment up to 6 months, a fine of \$500–\$1,000, or both. A subsequent violation is punishable by imprisonment up to 1 year and a fine of \$750–\$1,000. The fine for a subsequent conviction may not be suspended. R.I. Gen. Laws Ann. § 11-34.1-6(a), (b).

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

Penalties for buyers of sex acts with minors are comparable to federal penalties. A violation of R.I. Gen. Laws Ann. § 11-67.1-7<sup>26</sup> (Patronizing a minor for commercial sexual activity) is a felony punishable by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-67.1-7(b). When the victim is a minor, a violation of R.I. Gen. Laws Ann. § 11-67.1-6<sup>27</sup> (Patronizing a victim of sexual servitude) is a felony punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-67.1-6(b). Finally, a violation of R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) is punishable by imprisonment of at least 5 years. R.I. Gen. Laws Ann. § 11-37-8.9 (Penalty for indecent solicitation of a child).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA),<sup>28</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>29</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>30</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>31</sup>

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<sup>26</sup> See *supra* note 8.

<sup>27</sup> See *supra* note 7.

<sup>28</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>29</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>30</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>31</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years

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.*

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) makes it a crime when a person “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.”<sup>32</sup> This statute applies when a buyer solicits a child “by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.” A conviction for solicitation is punishable by imprisonment of at least 5 years, and there is no separate or heightened penalty for using the Internet or other electronic communication as opposed to any other communication method. R.I. Gen. Laws Ann. §§ 11-37-8.8, 11-37-8.9.

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

R.I. Gen. Laws Ann. § 11-67.1-7<sup>33</sup> (Patronizing a minor for commercial sexual activity), § 11-67.1-6<sup>34</sup> (Patronizing a victim of sexual servitude), and § 11-37-8.8(a) (Indecent solicitation of a child) are silent regarding the availability of a mistake of age defense.<sup>35</sup>

2.6.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-7 (Patronizing a minor for commercial sexual activity), § 11-67.1-6 (Patronizing a victim of sexual servitude), and Rhode Island’s CSEC laws to expressly provide that the mistake of age defense is not available to a buyer of commercial sex with a 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.*

Rhode Island’s buyer-applicable trafficking laws do not stagger penalties based on a minor’s age and provide sufficiently high penalties. A conviction under R.I. Gen. Laws Ann. § 11-67.1-7<sup>36</sup> (Patronizing a minor for commercial sexual activity) is punishable by imprisonment for up to 10 years. R.I. Gen. Laws Ann. § 11-67.1-7(b). If the victim is a minor, a conviction under R.I. Gen. Laws Ann. § 11-67.1-6<sup>37</sup> (Patronizing a victim of sexual servitude) is punishable by imprisonment for up to 20 years. R.I. Gen. Laws Ann. § 11-67.1-6(b).

Similarly, a conviction under Rhode Island’s buyer-applicable CSEC law does not stagger penalties based on a minor’s age, but penalties may not be sufficient. A conviction under R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) is punishable by imprisonment of at least 5 years. R.I. Gen. Laws Ann. §§ 11-9-1(c), 11-37-8.9.

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and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>32</sup> *See supra* Component 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a) and the definition of “solicit” provided in R.I. Gen. Laws Ann. § 11-37-8.8(b).

<sup>33</sup> *See supra* note 8.

<sup>34</sup> *See supra* note 7.

<sup>35</sup> R.I. Gen. Laws Ann. § 11-67.1-5(b) (Sexual servitude) prohibits a mistake of age defense, stating, “It is not a defense in a prosecution under subsection (a)(1) of this section that . . . the defendant believed the minor was an adult.” However, this offense is inapplicable to buyers of commercial sex acts with minors.

*See supra* note 3.

<sup>36</sup> *See supra* note 8.

<sup>37</sup> *See supra* note 7.

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.*

Financial penalties include fines, asset forfeiture, and restitution. Buyers convicted of violating either R.I. Gen. Laws Ann. § 11-67.1-7(a)<sup>38</sup> (Patronizing a minor for commercial sexual activity) or § 11-67.1-6(a)<sup>39</sup> (Patronizing a victim of sexual servitude) face fines up to \$20,000. R.I. Gen. Laws Ann. §§ 11-67.1-7(b), 11-67.1-6(b). Further, buyers convicted of violating R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) (Child pornography prohibited) face fines up to \$5,000. R.I. Gen. Laws Ann. §§ 11-9-1(c), 11-9-2, 11-9-1.3(b)(2). However, no fine is imposed upon buyers convicted of violating R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child). R.I. Gen. Laws Ann. § 11-37-8.9 (Penalty for indecent solicitation of a child).

R.I. Gen. Laws Ann. § 11-34.1-6(c) (Soliciting from motor vehicles for indecent purposes—Forfeiture of motor vehicle), Rhode Island’s age-neutral solicitation from motor vehicles statute, provides for the discretionary, criminal forfeiture of any motor vehicle used by a buyer in committing the crime upon a buyer’s subsequent conviction. Forfeiture is within the court’s discretion and proceeds go to the victims of crimes identity fund. R.I. Gen. Laws Ann. § 11-34.1-6(c). However, no forfeiture provisions apply for violations of R.I. Gen. Laws Ann. § 11-67.1-7(a), § 11-67.1-6(a), or § 11-37-8.8(a).

Buyers are also subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that “[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution,” and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that “a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount.”

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

R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) (Child pornography prohibited) makes it illegal for a person to “[k]nowingly possess any book, magazine, periodical, film, videotape, computer disk, computer file or any other material that contains an image of child pornography.” R.I. Gen. Laws Ann. § 11-9-1.3(c)(1) defines “child pornography” as

any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

- (i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;<sup>40</sup>
- (ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct; or

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<sup>38</sup> See *supra* note 8.

<sup>39</sup> See *supra* note 7.

<sup>40</sup> R.I. Gen. Laws Ann. § 11-9-1.3(c)(6) defines “sexually explicit conduct” as

- (i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;
- (ii) Bestiality;
- (iii) Masturbation;
- (iv) Sadistic or masochistic abuse; or
- (v) Graphic or lascivious exhibition of the genitals or pubic area of any person . . . .

(iii) Such visual depiction has been created, adapted, or modified to display an identifiable minor<sup>41</sup> engaging in sexually explicit conduct.

A violation of R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) is punishable by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(2).

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)<sup>42</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>43</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>44</sup>

2.9.1 Recommendation: Raise the penalty for possessing images of child sexual exploitation to reflect the seriousness of the offense.

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

Buyers of sex with minors will be required to register as sex offenders. R.I. Gen. Laws Ann. § 11-37.1-3(a) (Registration required, persons covered) states,

Any person who, in this or any other jurisdiction: (1) has been convicted of a criminal offense against a victim who is a minor, (2) has been convicted of a sexually violent offense, (3) has been determined to be a sexually violent predator,<sup>45</sup> (4) has committed an aggravated offense as defined in § 11-37.1-2, or (5) is a recidivist, as defined in § 11-37.1-4, shall be required to register his or her current address with the local law enforcement agency having jurisdiction over the city or town in which the person having

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<sup>41</sup> R.I. Gen. Laws Ann. § 11-9-1.3(c)(4) defines an “identifiable minor” as the following:

(i) Means a person:

(A) (I) Who was a minor at the time the visual depiction was created, adapted, or modified; or  
(II) Whose image as a minor was used in creating, adapting, or modifying the visual depiction;  
and

(ii) Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) Shall not be construed to require proof of the actual identity of the identifiable minor.

<sup>42</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>43</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>44</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>45</sup> R.I. Gen. Laws Ann. § 11-37.1-2(l) defines a “sexually violent predator” as “a person who has been convicted of a sexually violent offense and who has a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.”

the duty to register resides for the time period specified in § 11-37.1-4.

R.I. Gen. Laws Ann. § 11-37.1-2(e)<sup>46</sup> (Definitions) defines a “criminal offense against a victim who is a minor” to include the following:

....

(2) Enticement of a child in violation of § 11-26-1.5 [Enticement of children] with the intent to violate §§ 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault];

(3) Any violation of § 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], or 11-37-8.3 [Second degree child molestation sexual assault];

....

(6) Any violation of § 11-9-1.3 [Child pornography prohibited];

(7) Any violation of § 11-37.1-10 [Penalties];

(8) Any violation of § 11-37-8.8 [Indecent solicitation of a child];

....

(12) Any violation of §§ 11-67-6 [Repealed], 11-67.1-3(b) [Trafficking an individual], 11-67.1-4(b) [Forced labor], 11-67.1-5(c) [Sexual servitude], 11-67.1-6(b) [Patronizing a victim of sexual servitude], or 11-67.1-7 [Patronizing a minor for commercial sexual activity].

R.I. Gen. Laws Ann. § 11-37.1-2(k) defines a “sexually violent offense” as

any violation of § 11-37-2 [First degree sexual assault], 11-37-4 [Second degree sexual assault], 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault], or 11-5-1 [Assault with intent to commit specified felonies], . . . 11-67.1-3(c) [Trafficking an individual], (where the victim was subject to sexual servitude), 11-67.1-5(d) [Sexual servitude], 11-67.1-6(c) [Patronizing a victim of sexual servitude]; or . . . where the specified felony is sexual assault . . . .

Additionally, an “aggravated offense” is defined as including “offenses involving sexual penetration of victims of any age through the use of force or the threat of use of force or offenses involving sexual penetration of victims who are fourteen (14) years of age or under.” R.I. Gen. Laws Ann. § 11-37.1-2(a). Therefore, some buyers may still be required to register as sex offenders even if the crimes they committed are not otherwise listed.

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<sup>46</sup> The text of R.I. Gen. Law Ann. § 11-37.1-2 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

***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.*

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***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. When the victim is a minor, a violation of either R.I. Gen. Laws Ann. § 11-67.1-3<sup>47</sup> (Trafficking an individual) or § 11-67.1-5<sup>48</sup> (Sexual servitude) is a felony punishable by imprisonment up to 50 years, a fine not to exceed \$40,000, or both.<sup>49</sup> R.I. Gen. Laws Ann. §§ 11-67.1-3(b), 11-67.1-5(c).

Further, R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) prohibits “employ[ing] any child under the age of eighteen (18) years to any person for the purpose of prostitution.” A conviction is punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-9-1(c). A trafficker who does the same with a child under 16 in violation of R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) is guilty of a misdemeanor that is punishable “for every such offense in the manner provided in [11-9-1(c)].”<sup>50</sup> R.I. Gen. Laws Ann. § 11-9-2.

Lastly, R.I. Gen. Laws Ann. § 11-9.1-15 (Laundering of monetary instruments) may be used to prosecute traffickers. R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) makes it a crime when a trafficker

(a) . . . conducts or attempts to conduct a financial transaction: (1) with the intent to promote the carrying on of specified unlawful activity; or . . .

(b) . . . conducts or attempts to conduct a financial transaction: (1) knowing that the property involved in the transaction represents the proceeds of some form of unlawful activity, or has been or is being used to conduct or facilitate some form of unlawful activity; or (2) involving property represented as the proceeds of some form of unlawful activity, by a law enforcement officer or other person working at the direction or with the approval of an official authorized to investigate or prosecute violations of this section . . . .

“Specified unlawful activity” is defined in part under R.I. Gen. Laws Ann. § 11-9.1-15(d)(6)(C), (D) as

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<sup>47</sup> See *supra* note 2.

<sup>48</sup> See *supra* note 3.

<sup>49</sup> See *supra* Component 1.1 for a full discussion of both R.I. Gen. Laws Ann. § 11-67.1-3 and § 11-67.1-5.

<sup>50</sup> See *supra* Component 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(c) and § 11-9-2.

- (C) Any act or acts prohibited by the Rhode Island Racketeer Influenced and Corrupt Organizations Act (RICO), chapter 15 [Racketeer influenced and corrupt organizations] of title 7 [Corporations, associations, and partnerships];
- (D) Any act constituting a felony pursuant to this title [Criminal offenses].

This definition of “specified unlawful activity” could be used to make R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) applicable to a trafficker who violates R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), § 11-9-1(c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), or § 7-15-2(a)–(c) (Prohibited activities). Violations of R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) are punishable by imprisonment up to 20 years, fines up to the greater of \$500,000 or “twice the value of the property involved in the transaction,” or both fine and imprisonment. R.I. Gen. Laws Ann. § 11-9.1-15(a), (b). A trafficker convicted of R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) also will be civilly liable to Rhode Island for “the greater of: (1) The value of the property, funds, or monetary instruments involved in the transaction; or (2) Ten thousand dollars (\$ 10,000).” R.I. Gen. Laws Ann. § 11-9.1-15(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>51</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>52</sup> 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 distribute images of child sexual exploitation (ICSE) or permit a child to be used in ICSE may be prosecuted under R.I. Gen. Laws Ann. § 11-9-1(b) (Exploitation for commercial or immoral purposes).<sup>53</sup> A first violation of R.I. Gen. Laws Ann. § 11-9-1(b) is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both, while a subsequent violation is punishable by imprisonment up to 15 years, a fine not to exceed \$15,000, or both. R.I. Gen. Laws Ann. § 11-9-1(b).

Additionally, it is a crime to “[k]nowingly produce” or to “[k]nowingly mail, transport, deliver or transfer by any means” ICSE. R.I. Gen. Laws Ann. § 11-9-1.3(a)(1), (2) (Child pornography prohibited). Violations are punishable by imprisonment up to 15 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>54</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of ICSE<sup>55</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed

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<sup>51</sup> See *supra* note 28.

<sup>52</sup> See *supra* note 29.

<sup>53</sup> See *supra* Component 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(b).

<sup>54</sup> See *supra* note 29.

<sup>55</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

\$250,000.<sup>56</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>57</sup>

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.*

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) makes it a crime when a person “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9 [Children], 34 [Prostitution and lewdness][Repealed],<sup>58</sup> or 37 [Sexual assault] of this title.”<sup>59</sup> This statute applies when a trafficker solicits a child “by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.” R.I. Gen. Laws Ann. § 11-37-8.8(b). A violation is punishable by imprisonment of at least 5 years, and there is no separate or heightened penalty for using the Internet or electronic communications as opposed to any other communication method. R.I. Gen. Laws Ann. §§ 11-37-8.8, 11-37-8.9.

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

Financial penalties include fines, asset forfeiture, and restitution. Traffickers convicted of violating either R.I. Gen. Laws Ann. § 11-67.1-3(a)<sup>60</sup> (Trafficking an individual) or § 11-67.1-5(a)<sup>61</sup> (Sexual servitude) face fines up to \$40,000. R.I. Gen. Laws Ann. §§ 11-67.1-3(b), 11-67.1-5(b). Further, traffickers convicted of violating R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) or § 11-9-2 (Employment of children for unlawful purposes) face fines up to \$20,000. R.I. Gen. Laws Ann. §§ 11-9-1(c), 11-9-2. In contrast, traffickers convicted under R.I. Gen. Laws Ann. § 11-9-1.3(a)(1) (Child pornography prohibited) only face fines up to \$5,000. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

Restitution is mandatory for traffickers who violate R.I. Gen. Laws Ann. § 11-67.1-3 or § 11-67.1-5. R.I. Gen. Laws Ann. § 11-67.1-10(a)<sup>62</sup> (Restitution) states,

The court shall order a person convicted of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to

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<sup>56</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>57</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>58</sup> This law was last amended in 2004 and appears to not have been updated to refer to 11-34.1 (Commercial sexual activity), which replaced 11-34 in 2009.

<sup>59</sup> *See supra* Component 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a); *see supra* note 10 the definition of “solicit.”

<sup>60</sup> *See supra* note 2.

<sup>61</sup> *See supra* note 3.

<sup>62</sup> The text of R.I. Gen. Law Ann. § 11-67.1-10 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

pay restitution to the victim of the offense for:

- (1) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorneys' fees and costs; and
- (2) An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
  - (i) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
  - (ii) The amount the defendant contracted to pay the victim; or
  - (iii) The value of the victim's labor or services or sexual activity, calculated under the minimum-wage and overtime provisions of the "Fair Labor Standards Act", 29 U.S.C. §201 et seq., or subsection (a)(2) of this section, whichever is greater, even if the provisions do not apply to the victim's labor or services or sexual activity.

Traffickers who commit other crimes are subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that "[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution," and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that "a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount."

Traffickers are also subject to mandatory criminal asset forfeiture. R.I. Gen. Laws Ann. § 11-67.1-11(a)<sup>63</sup> (Forfeiture) states,

On motion, the court shall order a person convicted of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to forfeit any interest in real or personal property that:

- (1) Was used or intended to be used to commit or facilitate the commission of the offense; or
- (2) Constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

Notably, although R.I. Gen. Laws Ann. § 11-34.1-2(c) (Prostitution) requires prostituted persons to forfeit "[a]ny proceeds derived directly from a violation of" R.I. Gen. Laws Ann. § 11-34.1-2, no similar forfeiture provisions are imposed on traffickers under R.I. Gen. Laws Ann. § 11-34.1-7 (Pandering or permitting prostitution—not allowed).

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

Traffickers convicted of violating Rhode Island's trafficking laws or certain CSEC laws will be required to register as a sex offender pursuant to R.I. Gen. Laws Ann. § 11-37.1-3(a) (Registration required, persons covered), which provides,

Any person who, in this or any other jurisdiction: (1) has been convicted of a criminal offense against a victim who is a minor, (2) has been convicted of a sexually violent offense, (3) has been determined to be a sexually violent predator,<sup>64</sup> (4) has committed an aggravated offense as defined in § 11-37.1-2, or (5) is a recidivist, as defined in § 11-37.1-4, shall be required to register his or her current address with the local law enforcement agency having jurisdiction over the city or town in which the person having the duty to register resides for the time period specified in § 11-37.1-4.

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<sup>63</sup> The text of R.I. Gen. Law Ann. § 11-67.1-11 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>64</sup> See *supra* note 45.

R.I. Gen. Laws Ann. § 11-37.1-2(e)<sup>65</sup> (Definitions) defines a “criminal offense against a victim who is a minor” to include the following:

- ....
- (2) Enticement of a child in violation of § 11-26-1.5 [Enticement of children] with the intent to violate §§ 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault];
  - (3) Any violation of § 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], or 11-37-8.3 [Second degree child molestation sexual assault];
  - ....
  - (5) Any violation of § 11-9-1(b) or (c) [Exploitation for commercial or immoral purposes]; or
  - (6) Any violation of § 11-9-1.3 [Child pornography prohibited];
  - (7) Any violation of § 11-37.1-10 [Penalties];
  - (8) Any violation of § 11-37-8.8 [Indecent solicitation of a child];
  - ....
  - (12) Any violation of §§ 11-67-6 [Repealed], 11-67.1-3(b) [Trafficking an individual], 11-67.1-4(b) [Forced labor], 11-67.1-5(c) [Sexual servitude], 11-67.1-6(b) [Patronizing a victim of sexual servitude], or 11-67.1-7 [Patronizing a minor for commercial sexual activity].

R.I. Gen. Laws Ann. § 11-37.1-2(k) defines a “sexually violent offense” as

any violation of § 11-37-2 [First degree sexual assault], 11-37-4 [Second degree sexual assault], 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault], or 11-5-1 [Assault with intent to commit specified felonies], . . . 11-67.1-3(c) [Trafficking an individual], (where the victim was subject to sexual servitude), 11-67.1-5(d) [Sexual servitude], 11-67.1-6(c) [Patronizing a victim of sexual servitude]; or . . . where the specified felony is sexual assault . . . .

Additionally, an “aggravated offense” is defined as including “offenses involving sexual penetration of victims of any age through the use of force or the threat of use of force or offenses involving sexual penetration of victims who are fourteen (14) years of age or under.” R.I. Gen. Laws Ann. § 11-37.1-2(a). Therefore, some traffickers may be required to register as sex offenders even if the crimes they committed are not otherwise listed.

*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.*

R.I. Gen. Laws Ann. § 15-7-7(a) (Termination of parental rights) does not expressly include violations of Rhode Island’s trafficking or CSEC laws as grounds for terminating parental rights. Instead, R.I. Gen. Laws Ann. § 15-7-7(a)(2) authorizes the court to terminate parental rights to a child where

The parent is unfit by reason of conduct or conditions seriously detrimental to the child; such as, but not limited to, the following:

- (i) Institutionalization of the parent, including imprisonment, for a duration as to render it

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<sup>65</sup> See *supra* note 46.

improbable for the parent to care for the child for an extended period of time;

(ii) Conduct toward any child of a cruel or abusive nature;

....

(iv) The child has been placed with the department for children, youth, and families and the court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child's age and the need for a permanent home;

(v) The parent has subjected the child to aggravated circumstances, which circumstances shall be abandonment, torture, chronic abuse and sexual abuse;

....

(vii) The parent has exhibited behavior or conduct that is seriously detrimental to the child, for a duration as to render it improbable for the parent to care for the child for an extended period of time.

- 3.6.1 Recommendation: Amend R.I. Gen. Laws Ann. § 15-7-7(a)(2) (Termination of parental rights) to include a violation of R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), and Rhode Island's CSEC laws as grounds for terminating parental rights.

## Framework Issue 4: Criminal provisions for facilitators

### *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.*

Rhode Island's trafficking offenses do not prohibit the acts of assisting, enabling, or financially benefitting from child sex trafficking. Rather, R.I. Gen. Laws Ann. § 11-67.1-3(a)(2)<sup>66</sup> (Trafficking an individual) prohibits an individual from “recruit[ing], transport[ing], transfer[ing], harbor[ing], provid[ing], obtain[ing], isolat[ing], maintain[ing], or entic[ing] an individual in furtherance of . . . sexual servitude . . . .” While this language could reach some facilitators, it does not include terms such as benefitting, assisting, or aiding, which are more broadly applicable to facilitators.

Similarly, R.I. Gen. Laws Ann. § 11-67.1-5<sup>67</sup> (Sexual servitude) prohibits an individual from “maintain[ing] or mak[ing] available a minor for the purpose of engaging the minor in commercial sexual activity . . . .” To the extent that either R.I. Gen. Laws Ann. § 11-67.1-3 or § 11-67.1-5 apply to facilitators, a conviction is punishable by imprisonment up to 50 years, a fine not to exceed \$40,000, or both, when the victim is a minor. R.I. Gen. Laws Ann. §§ 11-67.1-3(b), 11-67.1-5(c).

Further, R.I. Gen. Laws Ann. § 11-9.1-15 (Laundering of monetary instruments)<sup>68</sup> may be used to prosecute a facilitator who commits a violation of R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), § 11-34.1-7(a) or (b) (Pandering or permitting prostitution—not allowed), or § 7-15-2 (Prohibited activities). A violation is punishable by imprisonment up to 20 years, a fine up to the greater of \$500,000 or “twice the value of the property involved in the transaction,” or both. R.I. Gen. Laws Ann. § 11-9.1-15(a), (b). A facilitator would also be civilly liable to Rhode Island for “the greater of: (1) The value of the property, funds, or monetary instruments involved in the transaction; or (2) Ten thousand dollars (\$ 10,000).” R.I. Gen. Laws Ann. § 11-9.1-15(c).

Lastly, a business entity may be liable for facilitating trafficking-related conduct under R.I. Gen. Laws Ann. § 11-67.1-8 (Business entity liability), which states,

- (a) A person that is a business entity may be prosecuted for an offense under §§11-67.1-3 through 11-67.1-7 of this chapter only if:
  - (1) The entity knowingly engages in conduct that constitutes human trafficking; or
  - (2) An employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this chapter for the benefit

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<sup>66</sup> See *supra* note 2.

<sup>67</sup> See *supra* note 3.

<sup>68</sup> See *supra* Component 3.1 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9.1-15.

of the entity, which the entity knew was occurring and failed to take effective action to stop.  
(b) When a person that is a business entity is prosecuted for an offense under §§11-67.1-3 through 11-67.1-7, the court may consider the severity of the entity's conduct and order penalties in addition to those otherwise provided for the offense, including:

- (1) A fine of not more than fifty thousand dollars (\$50,000) per offense;
- (2) Disgorgement of profit from activity in violation of this chapter; and
- (3) Debarment from state and local government contracts.

4.1.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual) to include "aiding," "assisting," or "knowingly benefitting" from human trafficking to ensure that R.I. Gen. Laws Ann. § 11-67.1-3 expressly applies to facilitators.

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.*

Financial penalties include fines, asset forfeiture, and restitution. To the extent that either R.I. Gen. Laws Ann. § 11-67.1-3<sup>69</sup> (Trafficking an individual) or § 11-67.1-5<sup>70</sup> (Sexual servitude) apply, facilitators face fines up to \$40,000 when the victim is a minor. R.I. Gen. Laws Ann. §§ 11-67.1-3(b), 11-67.1-5(c).

Facilitators are subject to mandatory restitution for violations of R.I. Gen. Laws Ann. § 11-67.1-3 and § 11-67.1-5. R.I. Gen. Laws Ann. § 11-67.1-10(a)<sup>71</sup> (Restitution) states,

The court shall order a person convicted of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to pay restitution to the victim of the offense for:

- (1) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorneys' fees and costs; and
- (2) An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
  - (i) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
  - (ii) The amount the defendant contracted to pay the victim; or
  - (iii) The value of the victim's labor or services or sexual activity, calculated under the minimum-wage and overtime provisions of the "Fair Labor Standards Act", 29 U.S.C. §201 et seq., or subsection (a)(2) of this section, whichever is greater, even if the provisions do not apply to the victim's labor or services or sexual activity.

Facilitators who commit other crimes are subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that "[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution," and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that "a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount."

Additionally, facilitators are subject to mandatory criminal asset forfeiture. R.I. Gen. Laws Ann. § 11-67.1-11(a)<sup>72</sup> (Forfeiture) states,

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<sup>69</sup> See *supra* note 2.

<sup>70</sup> See *supra* note 3.

<sup>71</sup> See *supra* note 62.

<sup>72</sup> See *supra* note 63.

On motion, the court shall order a person convicted of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to forfeit any interest in real or personal property that:

- (1) Was used or intended to be used to commit or facilitate the commission of the offense; or
- (2) Constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

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

Rhode Island does not have a law related to sex tourism.

- 4.3.1 Recommendation: Enact a law making it a crime to sell or offer to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor or prostitution of a minor, if the offer, sale, or travel occurs in Rhode Island.

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

A facilitator who distributes images of child sexual exploitation (ICSE) may be prosecuted under R.I. Gen. Laws Ann. § 11-9-1(b) (Exploitation for commercial or immoral purposes).<sup>73</sup> A first violation is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both, while a subsequent violation is punishable by imprisonment up to 15 years, a fine not to exceed \$15,000, or both. Additionally, R.I. Gen. Laws Ann. § 11-9-1.3(a)(2) (Child pornography prohibited) makes it illegal for a facilitator to “[k]nowingly mail, transport, deliver or transfer by any means, including by computer, any child pornography.” A violation is punishable by imprisonment up to 15 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

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<sup>73</sup> See *supra* Component 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(b).

***Legal Components:***

- 5.1 *Victims under the core 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 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.*

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***Legal Analysis:***

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>74</sup>

R.I. Gen. Laws Ann. § 11-67.1-3<sup>75</sup> (Trafficking an individual), Rhode Island’s core trafficking offense, does not include all commercially sexually exploited children as victims of trafficking.

R.I. Gen. Laws Ann. § 11-67.1-3(a) does not require means of force, fraud, or coercion when the victim is a minor.<sup>76</sup> Further, following federal precedent, R.I. Gen. Laws Ann. § 11-67.1-3(a) includes language that is applicable to buyers (“obtains”).<sup>77</sup> However, R.I. Gen. Laws Ann. § 11-67.1-3(a)(2) requires that a minor be obtained in furtherance of sexual servitude. “Sexual servitude” is defined to include “maintain[ing] or mak[ing] available a minor for the purpose of engaging the minor in commercial sexual activity . . . .” R.I. Gen. Laws Ann. § 11-67.1-5(a)(1)<sup>78</sup> (Sexual servitude). Accordingly, an offender must “obtain” a minor to make him or her available for commercial sexual activity, rather than for directly engaging in a commercial sex act. As such, R.I. Gen. Laws Ann. § 11-67.1-3(a) requires involvement by a trafficker or controlling third party.

Consequently, all commercially sexually exploited children will not be identified as human trafficking victims

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<sup>74</sup> See generally **SHARED HOPE INTERNATIONAL**, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>75</sup> See *supra* note 2.

<sup>76</sup> See *supra* Component 1.1.

<sup>77</sup> See *supra* discussion of buyer applicability in Component 2.1.

<sup>78</sup> See *supra* note 3.

based on the third party control requirement.

5.1.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual) so that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor to engage in the commercial sex act.*<sup>79</sup>

R.I. Gen. Laws Ann. § 11-67.1-5(b)<sup>80</sup> (Sexual servitude) prohibits a defense based on the minor’s willingness to engage in the commercial sex act, stating, “[i]t is not a defense in a prosecution under subsection (a)(1) of this section that the minor consented to engage in commercial sexual activity . . . .”

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>81</sup>

Although Rhode Island’s prostitution offense, R.I. Gen. Laws Ann. § 11-34.1-2 (Prostitution), is age-neutral, R.I. Gen. Laws Ann. § 11-67.1-15<sup>82</sup> (Immunity of a minor) prohibits the criminalization of minors for prostitution. R.I. Gen. Laws Ann. § 11-67.1-15 states,

(a) An individual is not criminally liable or subject to a delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.<sup>83</sup>

(b) An individual who has engaged in commercial sexual activity is not criminally liable or subject to delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense.

. . . .

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

R.I. Gen. Laws Ann. § 11-67.1-15<sup>84</sup> (Immunity of minor) prohibits a juvenile sex trafficking victim from being adjudicated delinquent for prostitution.<sup>85</sup> Instead, the child will be identified as abused or neglected and, thus, connected to services; R.I. Gen. Laws Ann. § 11-67.1-15(c) states,

A minor who under subsection (a) or (b) of this section is not subject to criminal liability or delinquency proceedings in family court is presumed to be an abused and/or neglected<sup>86</sup> child as

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<sup>79</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>80</sup> See *supra* note 3.

<sup>81</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>82</sup> See *supra* note 15.

<sup>83</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>84</sup> See *supra* note 15.

<sup>85</sup> See *supra* Component 5.3 for a full discussion of the non-criminalization of minors.

<sup>86</sup> A commercially sexually exploited child may also be identified as neglected pursuant to R.I. Gen. Laws Ann. § 11-9-3 (Seizure and custody of exploited child—proceedings as against neglected child), which states,

The town sergeant of any town, the chief of police of any city, or any agent of the director of children, youth and families may enter any place where any child may be held, detained or employed in violation of §§ 11-9-1 [Exploitation for commercial or immoral purposes]—11-9-8 [Appropriations for prevention of cruelty to children], and, without process of law, seize and detain the child and hold him or her as a witness to testify upon

defined in §40-11-2 [Definitions].

In addition, several provisions within the trafficking chapter address a victim’s access to services. R.I. Gen. Laws Ann. § 11-67.1-19(c)(1)<sup>87</sup> (Council on human trafficking) establishes the council on human trafficking and tasks the council with “develop[ing] a coordinated and comprehensive plan to provide victims with services.” Further, the council “may make a grant to or contract with a unit of state or local government, or nongovernmental victim’s service organization to develop or expand service programs for victims.” R.I. Gen. Laws Ann. § 11-67.1-23(a)<sup>88</sup> (Grant to or contract with service provider). Finally, R.I. Gen. Laws Ann. § 11-67.1-21(c)<sup>89</sup> (Eligibility for benefit or service) states,

As soon as practicable after a first encounter with an individual who reasonably appears to any state or local agency, to be a victim or a minor who has engaged in commercial sexual activity, the agency shall notify the department of the attorney general, a state or local law enforcement agency or the department of health that the individual may be eligible for a . . . service pursuant to this chapter.

Unfortunately, none of these provisions require that services be specialized to the needs of these victims.

## Summary

Although Rhode Island law allows delinquency adjudications to be avoided based on immunity for prostitution offenses and provides a mechanism for connecting juvenile sex trafficking victims with services, services are not required to be specialized.

5.4.1 Recommendation: Amend Rhode Island’s protective response for juvenile sex trafficking victims to require specialized services.<sup>90</sup>

## 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>91</sup>

Although child sex trafficking is not identified as a type of abuse and neglect within Rhode Island’s child protection statutes, the definition of “abused and/or neglected child” does include victims of commercial sexual exploitation. R.I. Gen. Laws Ann. § 40-11-2(1) (Definitions) defines an “abused and/or neglected child” as

a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

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the trial of any person charged with violating the provisions of §§ 11-9-1—11-9-8; and if prior to or upon conviction of the offender, no person shall appear who is entitled to the custody of the child, the officer having the child in custody may bring proceedings against the child as a neglected child under the provisions of chapter 1 [Proceedings in family court] of title 14 [Delinquent and dependent children].

<sup>87</sup> The text of R.I. Gen. Law Ann. § 11-67.1-19 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>88</sup> The text of R.I. Gen. Law Ann. § 11-67.1-23 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>89</sup> The text of R.I. Gen. Law Ann. § 11-67.1-21 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>90</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>91</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

....  
(iii) Commits or allows to be committed, against the child, an act of sexual abuse; or

....  
(vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled “Commercial Sexual Activity”; or

(viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

(ix) Commits or allows to be committed any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 [Sexual assault] of title 11 [Criminal offenses], entitled “Sexual Assault”, as amended; or

(x) Commits or allows to be committed against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator . . . .

Child sex trafficking victims are presumed to be abused or neglected under R.I. Gen. Laws Ann. § 11-67.1-15(c)<sup>92</sup> (Immunity of minor) however. R.I. Gen. Laws Ann. § 11-67.1-15(c) states,

A minor who under subsection (a) or (b) of this section<sup>93</sup> is not subject to criminal liability or delinquency proceedings in family court is presumed to be an abused and/or neglected<sup>94</sup> child as defined in §40-11-2 [Definitions].

5.5.1 Recommendation: Amend R.I. Gen. Laws Ann. § 40-11-2(1) (Definitions) to expressly include victims of R.I. Gen. Laws Ann. § § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), § 11-67.1-6 (Patronizing a victim of sexual servitude), and § 11-67.1-7 (Patronizing a minor for commercial sexual activity) within the definition of an “abused and/or neglected child.”<sup>95</sup>

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.*<sup>96</sup>

The definition of an “abused and/or neglected child” under R.I. Gen. Laws Ann. § 40-11-2(1) (Definitions)

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<sup>92</sup> See *supra* note 15.

<sup>93</sup> See *supra* Components 5.3 and 5.4 for a full discussion of R.I. Gen. Laws Ann. § 11-67.15.

<sup>94</sup> A commercially sexually exploited child may also be identified as neglected pursuant to R.I. Gen. Laws Ann. § 11-9-3 (Seizure and custody of exploited child—proceedings as against neglected child), which states,

The town sergeant of any town, the chief of police of any city, or any agent of the director of children, youth and families may enter any place where any child may be held, detained or employed in violation of §§ 11-9-1 [Exploitation for commercial or immoral purposes]—11-9-8 [Appropriations for prevention of cruelty to children], and, without process of law, seize and detain the child and hold him or her as a witness to testify upon the trial of any person charged with violating the provisions of §§ 11-9-1—11-9-8; and if prior to or upon conviction of the offender, no person shall appear who is entitled to the custody of the child, the officer having the child in custody may bring proceedings against the child as a neglected child under the provisions of chapter 1 [Proceedings in family court] of title 14 [Delinquent and dependent children].

<sup>95</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>96</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

specifically requires that the perpetrator of abuse is the child’s “parent or other person responsible for his or her welfare,” creating a barrier to child welfare involvement on a behalf of a child sex trafficking victim who is exploited by a non-family member.

Nor is the definition of “person responsible for child’s welfare” under R.I. Gen. Laws Ann. § 40-11-2(10) broad enough to include any non-familial perpetrator of abuse who commercially sexually exploits a child. Pursuant to R.I. Gen. Laws Ann. § 40-11-2(10),

“Person responsible for child's welfare” means the child’s parent, guardian, any individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to a child, foster parent, an employee of a public or private residential home or facility, or any staff person providing out-of-home care (out-of-home care means child day care to include family day care, group day care, and center-based day care) . . . .

5.6.1 Recommendation: Amend R.I. Gen. Laws Ann. § 40-11-2(10) (Definitions) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.<sup>97</sup>

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

Crime victims’ compensation is specifically available to child sex trafficking victims; however, ineligibility criteria create barriers to accessing these funds. R.I. Gen. Laws Ann. § 11-67.1-21<sup>98</sup> (Eligibility for benefit or service) states,

(a) A victim is eligible for a benefit or service available through the state in any plan established by the council on human trafficking . . . , including compensation under the criminal injuries compensation act pursuant to chapter 25 of title 12, regardless of immigration status.

(b) A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state in any plan established by the council on human trafficking, regardless of immigration status.

Pursuant to R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies), other offenses for which crime victims’ compensation is authorized include:

. . . .

(7) Kidnapping;

. . . .

(11) First or second degree sexual assault;

(12) Child molestation, first or second degree;

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<sup>97</sup> R.I. Gen. Laws Ann. § 14-1-3(6) (Definitions) provides some access to services for “dependent” whose caregiver is not at fault due to limited reasons; R.I. Gen. Laws Ann. § 14-1-3(6) states,

“Dependent” means any child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed or threatened with harm due to the inability of the parent or guardian, through no fault of the parent or guardian, to provide the child with a minimum degree of care or proper supervision because of:

(i) The death or illness of a parent; or

(ii) The special medical, educational, or social service needs of the child which the parent is unable to provide.

<sup>98</sup> See *supra* note 89.

....  
(18) Any other crime excluding motor vehicle offenses other than those enumerated in this section which results in personal injury<sup>99</sup> or death;  
....

Although R.I. Gen. Laws Ann. § 12-25-20 does not expressly mention violations of R.I. Gen. Laws Ann. § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), or § 11-9-1.3(a)(4) (Child pornography prohibited), the phrase “[a]ny other crime . . . which results in personal injury or death” should include these offenses. Accordingly, victims who are “injured or killed by any act . . . within the description of” one of these offenses “may apply to the office for compensation.” R.I. Gen. Laws Ann. § 12-25-19(a) (Awarding compensation).

However, barriers to accessing crime victims’ compensation exist. R.I. Gen. Laws Ann. § 12-25-22(a)<sup>100</sup> (Limitations upon awarding compensation) requires a victim to both report the crime to law enforcement within 10 days of the crime’s occurrence and commence an “action for compensation” within 3 years of the occurrence of the crime. A claim may be allowed, however, where the “victim was below the age of eighteen (18) years of age or of unsound mind, or for good cause shown.” The office of the general treasurer also “may reduce or deny” a victim’s award based on “compliance by the victim with the reasonable requests of law enforcement,” and the victim’s behavior “which directly or indirectly contributed to his or her injury or death.” R.I. Gen. Laws Ann. § 12-25-19(d)(1)(i), (d)(1)(iv).

5.7.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-25-22(a) (Limitations upon awarding compensation) to provide a specific exemption to ineligibility factors for child sex trafficking victims.

## 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*<sup>101</sup>

Rhode Island law provides child sex trafficking victims with specific, victim-friendly procedures and protections during the trial process. Pursuant to R.I. Gen. Laws Ann. § 11-67.1-14<sup>102</sup> (Past behavior of victim),

In a prosecution for an offense under this chapter [Uniform Act on the Prevention of and Remedies for Human Trafficking] or a civil action under § 11-67.1-18 [Civil action], evidence of a specific instance of the alleged victim’s past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

- (1) Admitted in accordance with § 11-37-13 [Prior sexual conduct of complainant—Admissibility of evidence]; or
- (2) Offered by the prosecution to prove a pattern of human trafficking by the defendant.

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<sup>99</sup> R.I. Gen. Laws Ann. § 12-25-17(7) defines “personal injury” as “actual bodily harm, mental or nervous shock, and a pregnancy resulting from sexual attack.”

<sup>100</sup> The text of R.I. Gen. Law Ann. § 12-25-22 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5452 and Senate Bill 566 during the 2017 Regular Session of the Rhode Island Legislature (effective June 30, 2017).

<sup>101</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>102</sup> The text of R.I. Gen. Law Ann. § 11-67.1-14 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

Further, R.I. Gen. Laws Ann. § 11-67.1-13<sup>103</sup> (Victim confidentiality) provides,

In an investigation of or a prosecution for an offense under this chapter [Uniform Act on the Prevention of and Remedies for Human Trafficking], every agency of state or local government shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

- (1) Necessary for the purpose of investigation or prosecution;
- (2) Required by law or court order; or
- (3) Necessary to ensure provision of services or benefits to the victim or the victim's family.

In addition to these trafficking-specific protections, R.I. Gen. Laws Ann. § 12-28-8(b), (c) (Child victims) provides the following rights to children under 15 years old who are victims of felonies:

- (1) To have explanations, in language understandable to a child of the victim's age, of all investigative and judicial proceedings in which the child will be involved;
- (2) To be accompanied at all investigative and judicial proceedings by a relative, guardian, or other person who will contribute to the child's sense of well being, unless it is determined by the party conducting the proceeding that the presence of the particular person would substantially impede the investigation or prosecution of the case;
- (3) To have all investigative and judicial proceedings in which the child's participation is required arranged so as to minimize the time when the child must be present;
- (4) To be permitted to testify at all judicial proceedings in the manner which will be least traumatic to the child, consistent with the rights of the defendant;
- (5) To be provided information about and referrals to appropriate social service programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

Additional rights are provided to children under R.I. Gen. Laws Ann. § 42-72-15 (Children's bill of rights); those rights include the following:

- ....
- (g) Each child may receive his or her clergyman, attorney, guardian ad litem, special advocate, or child advocate at any reasonable time.
- ....
- (i) Each child under the supervision of the department shall have the right to counsel, and the right to receive visits from physicians and mental health professionals.
- ....
- (n) A child victim or witness shall be afforded the protections of § 12-28-9 [Victims' services unit] under the direction of the department of children, youth, and families, and the department shall advise the court and the police and the prosecutor on the capacity of the child victim to understand and participate in the investigation and in the court proceedings and of the potential effect of the proceedings on the child.
- ....

Rhode Island's general victim rights, under R.I. Gen. Laws Ann. § 12-28-3(a) (General rights), further provide the following rights, among others, to all crime victims:

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<sup>103</sup> The text of R.I. Gen. Law Ann. § 11-67.1-13 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

....  
(3) To receive protection from harm and threats of harm arising out of the victim’s cooperation with law enforcement and prosecution efforts, and to be provided with information as to the means of protection available;

....  
(5) To be provided, whenever feasible, with a secure waiting area during court proceedings that does not require the victim to be in close proximity to the defendant and the family and friends of the defendant;

....

Additionally, R.I. Gen. Laws Ann. § 12-28-9(a)(4) (Victims’ services unit) establishes a victims’ services unit whose services include, among others, “Assistance in preparing for and making court appearances and in making victim impact statements . . . .”

Victims of sexual assault are provided additional protection. Under R.I. Gen. Laws Ann. § 11-37-13.2(a) (Alternative methods of victim testimony—child victim), victims of sexual assault who are under 18 years of age may provide testimony via videotape or closed circuit television, “upon a showing that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm.” If the child victim is 14 years old or younger, “there shall be a rebuttable presumption that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm.” R.I. Gen. Laws Ann. § 11-37-13.2(a). When the court permits a child to give testimony outside the court room, “[o]nly the judge, attorneys for the parties, persons necessary to operate the recording or broadcasting equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his or her testimony.” R.I. Gen. Laws Ann. § 11-37-13.2(a).

Under R.I. Gen. Laws Ann. § 11-37-13 (Prior sexual conduct of complainant—admissibility of evidence) and R.I. R. Evid. 412, where a defendant is charged with sexual assault, evidence of the victim’s past sexual behavior with persons other than the defendant may be admissible, provided that specified notice requirements are met and the evidence is relevant. Additionally, under R.I. Gen. Laws Ann. § 11-34.1-10 (Reputation testimony as evidence), “In the trial of any person charged with a violation of this chapter [Chapter 11-34.1 (Commercial sexual activity)], testimony concerning the reputation of the place where the violation occurred or of persons who frequent or reside in it shall be admissible in evidence in support of the charge.”

Last, abused or neglected children are afforded the right to “have a guardian ad litem appointed by the court to represent this child.” R.I. Gen. Laws Ann. § 40-11-14(a)<sup>104</sup> (Right to representation in court proceedings).

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.*

Rhode Island law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, but juvenile records may be sealed without a waiting period.

Under R.I. Gen. Laws Ann. § 14-1-6.1 (Records), juvenile records will be sealed upon sentence completion. Specifically, R.I. Gen. Laws Ann. § 14-1-6.1(a)(i)–(ii) provides,

- (i) All police records relating to the arrest, detention, apprehension and disposition of the juvenile and all records of identification maintained pursuant to chapter 12-1 of the general laws shall be treated as

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<sup>104</sup> The text of R.I. Gen. Law Ann. § 40-11-14 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5733 and Senate Bill 614 during the 2017 Regular Session of the Rhode Island Legislature (effective July 5, 2017).

family court records in accordance with §§ 14-1-64 [Disposition of juvenile records] and 38-2-2 [Definitions] of the general laws . . . and

(ii) All court records of such proceedings shall be sealed upon final disposition of the case in the event of a no information, dismissal or not guilty finding or upon the completion of any sentence, probation and/or parole imposed therein.

R.I. Gen. Laws Ann. § 14-1-64(a) (Disposition of juvenile records) further states,

All police records relating to the arrest, detention, apprehension, and disposition of any juveniles shall be kept in files separate and apart from the arrest records of adults and shall be withheld from public inspection, but the police report relating to the arrest or detention of a juvenile shall be open to inspection and copying upon request and upon payment of copying costs . . . by the parent, guardian, or attorney of the juvenile involved. After disposition of an offense and upon execution of an appropriate release and upon payment of copying costs . . . by the parent, guardian or attorney of the juvenile involved, records relating to the arrest, detention, apprehension and disposition of the juveniles shall be open to inspection and copying by the parent, guardian, or attorney of the juvenile involved.

Regarding vacatur, R.I. Gen. Laws Ann. § 11-67.1-17<sup>105</sup> (Motion to vacate and expunge conviction) allows a victim of human trafficking to vacate a conviction for prostitution or solicitation, stating,

(a) An individual convicted of prostitution or solicitation to commit a sexual act, committed as a direct result of being a victim may apply by motion to the court having jurisdiction over the offense, to vacate the conviction and seal or expunge the record of conviction. The court may grant the motion after a hearing and upon a finding that the individual's participation in the offense was the direct result of being a victim.

(b) An official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

. . . .

Pursuant to R.I. Gen. Laws Ann. § 14-1-40(a) (Adjudication not having effect of conviction), an adjudication shall not be deemed a conviction. Because R.I. Gen. Laws Ann. § 11-67.1-17 applies specifically to "convictions," a delinquency adjudication cannot be vacated and related records cannot be expunged under this law.

Further, R.I. Gen. Laws Ann. § 11-67.1-17 applies only to Rhode Island's prostitution and solicitation offenses, foreclosing the law's applicability to other offenses related to trafficking victimization.

5.9.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-17 (Motion to vacate and expunge conviction) 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.<sup>106</sup>

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<sup>105</sup> The text of R.I. Gen. Law Ann. § 11-67.1-17 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>106</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

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.*<sup>107</sup>

Rhode Island law authorizes civil actions and mandates restitution for victims of certain offenses found within the trafficking chapter.

Regarding restitution, R.I. Gen. Laws Ann. § 11-67.1-10<sup>108</sup> (Restitution) states,

(a) The court shall order a person convicted of an offense under §§11-67.1-3 [Trafficking an individual], 11-67.1-4 [Forced labor], or 11-67.1-5 [Sexual servitude] to pay restitution to the victim of the offense for:

(1) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorneys' fees and costs; and

(2) An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(i) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;

(ii) The amount the defendant contracted to pay the victim; or

(iii) The value of the victim's labor or services or sexual activity, calculated under the minimum-wage and overtime provisions of the "Fair Labor Standards Act", 29 U.S.C. §201 et seq., or subsection (a)(2) of this section, whichever is greater, even if the provisions do not apply to the victim's labor or services or sexual activity.

(b) The court shall order restitution under subsection (a) of this section even if the victim is unavailable to accept payment of restitution.

...

However, R.I. Gen. Laws Ann. § 11-67.1-10 does not mandate restitution for violations of R.I. Gen. Laws Ann. § 11-67.1-6<sup>109</sup> (Patronizing a victim of sexual servitude) or § 11-67.1-7<sup>110</sup> (Patronizing a minor for commercial sexual activity), the buyer-applicable trafficking offenses. Restitution may be ordered for these and other offenses under R.I. Gen. Laws Ann. § 12-19-32 (Restitution), which provides that "[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution." If the court orders a defendant to make restitution, pursuant to R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution), "a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount."

Regarding civil actions, R.I. Gen. Laws Ann. § 11-67.1-18<sup>111</sup> (Civil action) states,

(a) A victim may bring a civil action against a person that commits an offense against the victim under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 of this chapter for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(b) If a victim prevails in an action under this section, the court shall award the victim reasonable attorneys' fees and costs.

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<sup>107</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>108</sup> See *supra* note 62.

<sup>109</sup> See *supra* note 7.

<sup>110</sup> See *supra* note 8.

<sup>111</sup> The text of R.I. Gen. Law Ann. § 11-67.1-18 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

....

(d) Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to §11-67.1-10.

(e) This section does not preclude any other remedy available to a victim under federal law or other general or public law of this state other than this chapter.

Further, R.I. Gen. Laws Ann. § 9-1-2 (Civil liability for crimes and offenses), Rhode Island’s general civil liability statute, states,

Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made . . . .

*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.*

Rhode Island law lengthens the statute of limitations for civil and criminal actions related to trafficking. Regarding criminal prosecutions, R.I. Gen. Laws Ann. § 11-67.1-12<sup>112</sup> (Statute of limitations) states, “A prosecution for an offense under this chapter [Uniform Act on the Prevention of and Remedies for Human Trafficking] must be commenced not later than ten (10) years after the commission of the offense.” Accordingly, prosecutions for R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), § 11-67.1-6 (Patronizing a victim of sexual servitude), or § 11-67.1-7 (Patronizing a minor for commercial sexual activity) must commence within 10 years.

The statutes of limitations for other criminal prosecutions are governed by R.I. Gen. Laws Ann. § 12-12-17(a)–(c)<sup>113</sup> (Statute of limitations), which provides,

- (a) There shall be no statute of limitations for the following offenses: . . . first degree child molestation sexual assault, second degree child molestation sexual assault . . . .
- (b) The statute of limitations for the following offenses shall be ten (10) years: . . . any violation of chapter 15 of title 7 (racketeer influenced and corrupt organizations); any violation of chapter 57 of title 11 (racketeer violence) . . . .
- (c) The statute of limitations for any other criminal offense shall be three (3) years unless a longer statute of limitations is otherwise provided for in the general laws.

Because no statute of limitations is provided for violations of R.I. Gen. Laws Ann. § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), or § 11-9-1.3(a)(4) (Child pornography prohibited), prosecutions for these crimes must commence within 3 years of the commission of the offense.

Regarding civil liability, R.I. Gen. Laws Ann. § 11-67.1-18(c)<sup>114</sup> (Civil actions) requires a civil action based

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<sup>112</sup> The text of R.I. Gen. Law Ann. § 11-67.1-12 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5300 and Senate Bill 73 during the 2017 Regular Session of the Rhode Island Legislature (effective July 18, 2017 and July 19, 2017, respectively).

<sup>113</sup> The text of R.I. Gen. Law Ann. § 12-12-17 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 5695 and Senate Bill 835 during the 2017 Regular Session of the Rhode Island Legislature (effective July 5, 2017).

<sup>114</sup> See *supra* note 111.

upon a violation of R.I. Gen. Laws Ann. § 11-67.1-3, § 11-67.1-4, or § 11-67.1-5 to commence within “10 years after the later of the date on which the victim: (1) No longer was subject to human trafficking; or (2) Attained eighteen (18) years of age.”

For other civil actions involving a minor victim, R.I. Gen. Laws Ann. § 9-1-19 (Disability postponing running of statute) tolls the civil statute of limitations until the minor turns 18. However, pursuant to R.I. Gen. Laws Ann. § 9-1-51 (Limitation on actions based on sexual abuse or exploitation of a child),

(a) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever period expires later.

(b) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents cause the injury complained of, but may compute the date of discovery from the date of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.

(c) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen (18) years.

(d) For purposes of this section, “child” means a person under the age of eighteen (18) years.

(e) As used in this section, “childhood sexual abuse” means any act committed by the defendant against a complainant who was less than eighteen (18) years of age at the time of the act and which act would have been a criminal violation of chapter 37 [Sexual assault] of title 11 [Criminal offenses].

R.I. Gen. Laws Ann. § 9-1-51 supersedes the tolling provisions under R.I. Gen. Laws Ann. § 9-1-19; R.I. Gen. Laws Ann. § 9-1-24 (Special limitations provisions unaffected) states, “The provisions of §§ 9-1-14–9-1-23 shall not apply to any case in which a different time is limited by special provisions.”

5.11.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67.1-12 (Statute of limitations) to eliminate the statute of limitations for prosecutions of offenses under the trafficking chapter.

5.11.2 Recommendation: Amend R.I. Gen. Laws Ann. § 12-12-17(a) (Statute of limitations) to include R.I. Gen. Laws Ann. § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), and § 11-9-1.3(a)(4) (Child pornography prohibited).

***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 other electronic communication 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.*

R.I. Gen. Laws Ann. § 11-67.1-19(c)(4) (Council on human trafficking) authorizes the council on human trafficking to “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators . . . .” Accordingly, training on human trafficking may be available to law enforcement officers.

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

Rhode Island allows single party consent to audiotaping. R.I. Gen. Laws Ann. § 11-35-21(a) (Unauthorized interception, disclosure or use of wire, electronic, or oral communication) generally makes it a crime for a “person to intercept or attempt to intercept, any wire, electronic, or oral communication.” However, pursuant to R.I. Gen. Laws Ann. § 11-35-21(c)(2), (3), it is not a crime for

(2) A person acting under color of law to intercept a wire, electronic, or oral communication, where that person is a party to the communication, or where one of the parties to the communication has given prior consent to the interception; or

(3) A person not acting under color of law to intercept a wire, electronic, or oral communication, where the person is a party to the communication, or one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in the violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

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

State law does not expressly authorize the use of wiretapping in the investigation of Rhode Island’s trafficking and CSEC offenses. R.I. Gen. Laws Ann. § 12-5.1-2(a) (Application for orders) states that “[t]he attorney general, or an assistant attorney general specially designated by the attorney general, may apply ex parte to the presiding justice of the superior court of competent jurisdiction for an order authorizing the interception of any wire, electronic, or oral communications.” R.I. Gen. Laws Ann. § 12-5.1-4(a) (Issuance of orders) allows an

order authorizing wiretapping if

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular designated offense;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried, or to be too dangerous;
- (4) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted, are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the individual.

The only crime included in the definition of “designated offense” in R.I. Gen. Laws Ann. § 12-5.1-1(4) (Definitions) that could be relevant to domestic minor sex trafficking is kidnapping. No other trafficking or CSEC crime is listed among the designated offenses.

6.3.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-5.1-1(4) (Definitions) to include violations of R.I. Gen. Laws Ann. § 11-67.1-3 (Trafficking an individual), § 11-67.1-5 (Sexual servitude), § 11-67.1-6 (Patronizing a victim of sexual servitude), § 11-67.1-7 (Patronizing a minor for commercial sexual activity), § 11-9-1 (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), and § 11-37-8.8(a) (Indecent solicitation of a child) as “designated offenses” for purposes of using wiretapping in an investigation.

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.*

Rhode Island’s trafficking laws do not expressly prohibit a defense based on the use of a law enforcement decoy, but a decoy may be used in an investigation under R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child), a CSEC offense, which applies when a defendant “knowingly solicits<sup>115</sup> another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution” or another specified crime. Because a violation of R.I. Gen. Laws Ann. § 11-37-8.8(b) occurs where the defendant believes the person solicited is a minor, the defendant would be prohibited from asserting a defense to prosecution even if an actual minor was not involved.

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

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies where a defendant “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution” or another specified crime. R.I. Gen. Laws Ann. § 11-37-8.8(b) defines “solicit” as “to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to . . . by computer, [or] through the Internet.” Because a violation of R.I. Gen. Laws Ann. § 11-37-8.8(a) occurs where the defendant believes the person solicited is a minor, Rhode Island appears to permit the use of the Internet to investigate buyers and traffickers.

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<sup>115</sup> See *supra* note 10 for the definition of “solicit.”

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

Rhode Island has established a missing children's information center, pursuant to R.I. Gen. Laws Ann. § 42-28.8-1 (Missing children's information center), with the responsibility, pursuant to R.I. Gen. Laws Ann. § 42-28.8-2 to

- (1) Coordinate, file, and promptly investigate all missing children cases in the state and create a central office on missing children.
- (2) Collect and maintain data on missing children in the state and throughout the United States.
- (3) Coordinate with other states and with the federal government in investigating cases of missing children and unidentified bodies.
- (4) Provide special training to law enforcement officers and medical examiners to help them expeditiously handle cases of missing children and to prohibit any regulation requiring a twenty-four (24) hour waiting period prior to conducting a preliminary investigation of a complaint of a missing child.
- (5) Developing recommendations for better reporting and use of computer systems.
- (6) Providing the necessary equipment for the use of the national crime information center by state and municipal police departments.

Pursuant to R.I. Gen. Laws Ann. § 42-28.8-3 (Reporting and distribution of information), law enforcement must "immediately enter the information on the missing person into the National Crime Information Center computer of the Federal Bureau of Investigation and inform the National Center for Missing and Exploited Children" and "provide to the parents or guardians of the missing child information release forms from the National Center for Missing and Exploited Children and advise them of the services of the National Center for Missing and Exploited Children." R.I. Gen. Laws Ann. § 42-28.8-3 also states,

The missing children's information center shall send a report to the missing children's information center of the state police. The missing children's information center shall distribute the names of and other descriptive information about these children to the state registrar of vital statistics in the department of health, the commissioner of education, the school districts of the state, all branches of the United States Postal Service in the state, and all law enforcement agencies in the state.

Notice must be provided to "any school in which the person is currently or was previously enrolled" and "the local registrar" where the missing child was born in Rhode Island, so that the child's school records and birth certificate records may be flagged to alert the school and the local registrar that the child is missing whenever anyone requests the records. R.I. Gen. Laws Ann. §§ 42-28.8-7(a) (School records, flagging required), 42-28.8-8(a) (Birth certificates, flagging required).

Rhode Island law also requires that preventative measures be taken, by providing "statewide educational and public informational seminars for the purpose of developing public awareness of the problems regarding missing children" and establishing a hotline to "receive reports on missing children." R.I. Gen. Laws Ann. §§ 42-28.8-4 (Hotline), 42-28.8-6 (Public education and information).

- 6.6.1 Recommendation: Enact a requirement that law enforcement promptly report information about recovered children.

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