

# PROTECTED INNOCENCE INITIATIVE

Creating A Uniform Standard Across States to Combat Domestic Minor Sex Trafficking

## ANALYSIS AND RECOMMENDATIONS ALASKA

### 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 *CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

#### *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.*

Alaska has a stand-alone human trafficking law that explicitly mentions both sex trafficking and other forms of human trafficking. The state law criminalizes human trafficking in the first degree and human trafficking in the second degree. Alaska Stat. § 11.41.360 (Human trafficking in the first degree) states that it is a class A felony when a “person compels or induces another person to come to this state to engage in sexual conduct,<sup>2</sup> adult entertainment,<sup>3</sup> or labor in the state by force or threat of force against any person, or by deception.”<sup>4</sup> Alaska

<sup>1</sup> Unless otherwise specified, all references to Alaska statutes were taken from Alaska Statutes (LEXIS through 2010 Reg. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/11).

<sup>2</sup> “Sexual conduct” in Alaska Stat. § 11.41.360(b)(3) refers to Alaska Stat. § 11.66.150, which defines the term as “genital or anal intercourse, cunnilingus, fellatio, or masturbation of one person by another person.” Alaska Stat. §§ 11.66.150(3), 11.41.360(b)(3).

<sup>3</sup> “Adult entertainment” is defined in Alaska Stat. § 11.41.360(b)(1) by referring to Alaska Stat. § 23.10.350(f)(1)-(3), which states,

Stat. § 11.41.365(a) (Human trafficking in the second degree) states that “[a] person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.360 [Human trafficking in the first degree], with reckless disregard that the benefit is a result of the trafficking.” This crime is a class B felony. Alaska Stat. § 11.41.365(b).

1.1.1 Recommendation: The state human trafficking laws should be amended to differentiate between the trafficking of a minor and the trafficking of an adult, eliminate the requirement to prove force, threat of force, or deception in the sex trafficking of a minor, and to remove the requirement of movement.<sup>5</sup>

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 sex offenses against minors.*

The following laws criminalize CSEC in Alaska:

1. A violation of Alaska Stat. § 11.66.110(a)(2) (Promoting prostitution in the first degree), which states that it is a crime when a person “as other than a patron of a prostitute, induces or causes a person under 18 years of age to engage in prostitution,” is an unclassified felony that may be punishable by imprisonment for 20–35 years, depending on the victim’s age, and a possible fine not to exceed \$500,000.<sup>6</sup> Alaska Stat.

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(f) A minor under the age of 18 may not be employed or allowed to work in any capacity on the premises of a business that offers adult entertainment. In this subsection, “business that offers adult entertainment” means a business in which one or more individuals are employed or contracted to, wholly or in part, or permitted to entertain others by

- (1) removing clothes or other items that clothe or hide the person’s body;
- (2) dancing or in any other manner exhibiting the individual’s body in a completely or almost completely unclothed state;
- (3) participating in an actual or simulated illegal, indecent, or lewd exhibition, act, or practice including
  - (A) sexual penetration;
  - (B) the lewd exhibition or touching of a person’s genitals, anus, or breast; or
  - (C) bestiality.

<sup>4</sup> “Deception” is defined in Alaska Stat. § 11.41.360(b)(2) by referring to Alaska Stat. § 11.46.180, which states in subsection (c), “As used in this section, ‘deception’ has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or ‘puffing’ by statements unlikely to deceive reasonable persons in the group addressed.” Alaska Stat. § 11.81.900(18) states,

- (18) “deception” means to knowingly
  - (A) create or confirm another’s false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;
  - (B) fail to correct another’s false impression that the defendant previously has created or confirmed;
  - (C) prevent another from acquiring information pertinent to the disposition of the property or service involved;
  - (D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or
  - (E) promise performance that the defendant does not intend to perform or knows will not be performed;

<sup>5</sup> Subsequent recommendations in this report that advise to amend a law to refer any case of a commercial sex offense against a child to Alaska Stat. § 11.41.360 (Human trafficking in the first degree) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

<sup>6</sup> Unless otherwise specified, the sentences of imprisonment for all felonies provided throughout this report are based on the assumption that the defendant has no prior felony convictions, and that none of the aggravating or mitigating factors listed in Alaska Stat. §§ 12.55.155–12.55.175 or in the sentencing provisions themselves are present. A defendant with prior felony convictions will be subject to a greater minimum sentence of imprisonment. Alaska Stat. § 12.55.125. The presence of aggravating factors, such as where “the defendant was the leader of a group of three or more persons who participated in the offense” or “the offense was [certain sexual offenses or distribution of indecent material to minors] and the defendant was 10 or more years older than the victim” “may allow imposition of a sentence above the presumptive range,” while the presence of mitigating factors “may allow imposition of a sentence below the presumptive range . . . .” Alaska Stat. § 12.55.155(c)(3), (18)(E), (d).

§§ 11.66.110(d), 12.55.125(i)(1)(A), 12.55.035(b)(1).<sup>7</sup> On the other hand, it is a Class A felony if a person “(1) induces or causes a person to engage in prostitution through the use of force; . . . or (3) induces or causes a person in that person’s legal custody to engage in prostitution.” Alaska Stat. § 11.66.110(a), (c). Class A felonies are punishable by imprisonment for 5–8 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 12.55.125(c)(1), 12.55.035(b)(2).

2. Alaska Stat. § 11.66.120(a) (Promoting prostitution in the second degree) makes it a crime when a person “(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; (2) procures or solicits a patron for a prostitute; or (3) offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel . . . .”<sup>8</sup> Promoting prostitution in the second degree is a Class B felony and is punishable by imprisonment for 1-3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.125(d)(1), 12.55.035(b)(3).

3. Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) states in part,

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording,<sup>9</sup> photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1)–(7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person’s genitals, anus, or breast;
- (3) the lewd touching by another person of the child’s genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child’s genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

This crime is a Class B felony that is punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.455(c)(1), 12.55.125(i)(3)(A), 12.55.035(b)(3). Pursuant to Alaska Stat. § 11.41.455(c)(2), the crime is a “class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.”

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

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<sup>7</sup> Here and elsewhere in this report that Alaska Stat. § 12.55.125 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 127. 2011 Alaska Sess. Laws 20 (effective July 1, 2011). As of August 2, 2011, Lexis does not indicate that House Bill 127 has amended Alaska Stat. § 12.55.125.

<sup>8</sup> “Commercial sexual conduct” is defined as “sexual conduct for which anything of value is given or received by any person.” Alaska Stat. § 11.66.120(a)(3).

<sup>9</sup> Under Alaska Stat. § 11.41.455(d), “audio recording” is defined as “a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.”

1. Alaska Stat. § 11.41.434(a)(1) (Sexual abuse of a minor in the first degree) states, “(a) An offender commits the crime of sexual abuse of a minor in the first degree if (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person.” Sexual abuse of a minor in the first degree is an unclassified felony and is punishable by imprisonment for 20–35 years, depending on the age of the victim, and a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A), 12.55.035(b)(1).
2. Alaska Stat. § 11.41.436(a) (Sexual abuse of a minor in the second degree) is a Class B felony if
  - (1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person;
  - (2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;
  - ...
  - (4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2)–(6);<sup>10</sup>
  - ...
  - (7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

An offense is punishable by imprisonment for 5-15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.436(b), 12.55.125(i)(3)(A), 12.55.035(b)(3).

1.2.1 Recommendation: Amend CSEC and sexual offense laws to refer cases of commercial sexual exploitation of minors to Alaska Stat. § 11.41.360 (Human trafficking in the first degree) to ensure parity of penalties and treatment of victims.

1.3 *CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Alaska’s CSEC statutes (listed above) do not refer to Alaska Stat. § 11.41.360 (Human trafficking in the first degree) or § 11.41.365 (Human trafficking in the second degree).

1.3.1 Recommendation: Add specific references to Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree) in the CSEC statutes to ensure that CSEC victims are properly identified as human trafficking victims.

<sup>10</sup> Alaska Stat. § 11.41.455 (a)(2)–(6) states, “(2) the lewd touching of another person’s genitals, anus, or breast; (3) the lewd touching by another person of the child’s genitals, anus, or breast; (4) masturbation; (5) bestiality; (6) the lewd exhibition of the child’s genitals.”

**Legal Components:**

- 2.1 *The state sex trafficking law can be applied to the buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.*
- 2.3 *Solicitation laws differentiate buying sex acts with an adult and buying sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet 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 are sufficiently high for all minors under 18 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 child pornography carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*

**Legal Analysis:**

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

It seems unlikely that Alaska Stat. § 11.41.360 (Human trafficking in the first degree) would be interpreted to apply to buyers of commercial sex with minors. Subsection (a) states that “[a] person commits the crime of human trafficking in the first degree if the person compels or induces another person to come to this state to engage in sexual conduct, adult entertainment, or labor in the state by force or threat of force against any person, or by deception.” Thus, the terms “compels” and “induces” would need to be interpreted to apply to the act of buying a commercial sex act and there would need to be movement into the state. Furthermore, force, threat of force, or deception would need to be shown.

Alaska Stat. § 11.41.365(a) (Human trafficking in the second degree) provides that “[a] person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.360 [Human trafficking in the first degree], with reckless disregard that the benefit is a result of the trafficking.” It is possible that the term “benefit” could be applicable to a buyer who benefits from the trafficking of a minor.<sup>11</sup> If applicable, proof that the buyer engaged in the commercial sex act “with reckless disregard that the benefit is a result of the trafficking” would be required.

- 2.1.1 Recommendation: Amend Alaska Stat. § 11.41.360 (Human trafficking in the first degree) by including language to clarify that it applies to the act of buying commercial sex with a minor.

<sup>11</sup> Alaska Stat. § 11.81.900(b)(4) (Definitions) states, “In this title [11 (Criminal law)], unless otherwise specified or unless the context requires otherwise, . . .(4) ‘benefit’ means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.”

## 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.*

Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) is unlikely to apply to most, if not all, buyers, and does not refer to the state human trafficking statutes as the applicable law in cases of commercial sexual exploitation.

Alaska's relevant sexual offense laws, Alaska Stat. § 11.41.434 (Sexual abuse of a minor in the first degree) and § 11.41.436 (Sexual abuse of a minor in the second degree), could be applied to certain buyers in cases of domestic minor sex trafficking. However, the minor would not be properly identified as a commercial sexual exploitation victim or a trafficking victim if these provisions were used because neither of these statutes refers to the state human trafficking statute. Furthermore, these statutes do not protect older minors.

- 2.2.1 Recommendation: Amend sexual offense laws to refer cases of commercial sexual abuse of a minor to Alaska Stat. § 11.41.360 (Human trafficking in the first degree).

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

Under Alaska Stat. § 11.66.100(a) (Prostitution), “A person commits the crime of prostitution if the person (1) engages in or agrees or offers to engage in sexual conduct in return for a fee; or (2) offers a fee in return for sexual conduct.” The statutory text does not differentiate between buying sex with an adult and a minor. A violation is a Class B misdemeanor, regardless of age. Alaska Stat. § 11.66.100(b).

- 2.3.1 Recommendation: Make buying or attempting to buy sex with a minor a separate crime from solicitation of an adult for prostitution. In addition, amend Alaska Stat. § 11.66.100 (Prostitution) to refer to the state human trafficking statutes for purposes of classifying a minor victimized through prostitution as a trafficking victim.

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

Penalties for buyers of commercial sex acts with minors vary depending on what statute is used to prosecute the buyer. Although unlikely, if Alaska Stat. § 11.41.360 (Human trafficking in the first degree) can be used to prosecute buyers, a buyer faces a Class A felony, which may be punishable by imprisonment for 5-8 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.125(c)(1), 12.55.035(b)(2).<sup>12</sup> A violation of Alaska Stat. § 11.41.365 (Human trafficking in the second degree), if applicable to buyers, is a Class B felony punishable by imprisonment for 1-3 years and a possible fine up to \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.125(d)(1), 12.55.035(b)(3).

However, if convicted of soliciting prostitution under Alaska Stat. § 11.66.100(a)(2) (Prostitution), a buyer would be guilty of a Class B misdemeanor, which is punishable by up to 90 days' imprisonment and possible fine not to exceed \$2,000, regardless of the age of the person solicited. Alaska Stat. §§ 11.66.100(b), 12.55.135(b), 12.55.035(b)(6).

If the act of purchasing commercial sex with a minor is prosecuted as a sexual offense, a violation of Alaska Stat. § 11.41.434 (Sexual abuse of a minor in the first degree) is an unclassified felony that is punishable by imprisonment for 20–35 years, depending on the victim's age, and a maximum possible fine of \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A), 12.55.035(b)(1). Alaska Stat. § 11.41.436 (Sexual abuse of a minor in the second degree) is a Class B felony and is punishable by imprisonment for 5–15 years and a possible maximum fine of \$100,000. Alaska Stat. §§ 11.41.436(b), 12.55.125(i)(3)(A), 12.55.035(b)(3).

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<sup>12</sup> See *supra* note 7.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>13</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>14</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>15</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>16</sup>

- 2.4.1 Recommendation: Amend Alaska Stat. § 11.66.100 (Prostitution) to include a separate provision criminalizing the solicitation of minors and referring those cases to the human trafficking statutes, Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree), to identify the minors as trafficking victims, and to make it a Class A felony to solicit sex with a minor.

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

Using the Internet to “entice, solicit, or encourage” a minor under 16 years of age to engage in one of the sexual acts listed in Alaska Stat. § 11.41.455<sup>17</sup> (Unlawful exploitation of a minor statute) is prohibited pursuant to Alaska Stat. § 11.41.452 (Online enticement of a minor).<sup>18</sup> However, the online enticement of a minor statute does not refer specifically to a commercial sexual arrangement. The statute states in part that a person is guilty of the online enticement of a minor if a person who is “18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7) [Unlawful exploitation of a minor] and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.” Alaska Stat. § 11.41.452(a).

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<sup>13</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>14</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>15</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>16</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(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both.); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>17</sup> The acts described in Alaska Stat. § 11.41.455(a)(1)–(7) are, “(1) sexual penetration; (2) the lewd touching of another person’s genitals, anus, or breast; (3) the lewd touching by another person of the child’s genitals, anus, or breast; (4) masturbation; (5) bestiality; (6) the lewd exhibition of the child’s genitals; or (7) sexual masochism or sadism.”

<sup>18</sup> Here and elsewhere in this report that Alaska Stat. § 11.41.452 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 127. 2011 Alaska Sess. Laws 20 (effective July 1, 2011).

Online enticement of a minor is a Class B felony and is punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.452(d), 12.55.125(i)(3)(A), 12.55.035(b)(3). It is a Class A felony, punishable by imprisonment for 15–30 years, depending on the age of the victim, and a \$250,000 fine, “if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.” Alaska Stat. §§ 11.41.452(e), 12.55.125(i)(2)(A), 12.55.035(b)(2).

2.5.1 Recommendation: Amend the statute to provide protection to all minors under the age of 18.

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

The human trafficking and CSEC statutes that apply to buyers<sup>19</sup> are silent on the availability of a defense based on age mistake; however, affirmative defenses are available to defendants in the sexual abuse statutes. Alaska Stat. § 11.41.445(b) (General provisions) states in part that, “[i]n a prosecution under AS 11.41.410–11.41.440 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees], whenever a provision of law defining an offense depends upon a victim’s being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant (1) reasonably believed the victim to be that age or older; and (2) undertook reasonable measures to verify that the victim was that age or older.”

2.6.1 Recommendation: Amend Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree) to prohibit a defense based on mistake of age.

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

Alaska Stat. § 11.41.360 (Human trafficking in the first degree), if applicable to buyers, does not differentiate between the human trafficking of a minor and the trafficking of an adult, providing a single penalty for the trafficking of adult and minor victims. It is a Class A felony, which is punishable by imprisonment for 5–8 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.125(c)(1), 12.55.035(b)(2). In addition, Alaska Stat. § 11.41.365 (Human trafficking in the second degree), if applicable to buyers, is a Class B felony, which is punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.125(d)(1), 12.55.035(b)(3).

Alaska Stat. § 11.66.100(a)(2) (Prostitution) makes no distinction between soliciting prostitution from a minor or from an adult. A conviction under Alaska Stat. § 11.66.100(a)(2) is punishable as a Class B misdemeanor by imprisonment for up to 90 days and a possible fine not to exceed \$2,000. Alaska Stat. §§ 11.66.100(b), 12.55.135(b), 12.55.035(b)(6).

Alaska’s statutes on sexual abuse of a minor provide staggered penalties based on the victim’s and perpetrator’s ages. Pursuant to Alaska Stat. § 11.41.434(a)(1), if a person 16 or older engages in sexual penetration with a person under the age of 13, it is an unclassified felony and is punishable by imprisonment for 25–35 years and a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A)(i), 12.55.035(b)(1). If, however, under Alaska Stat. § 11.41.436(a)(1) a person 17 or older “engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender,” it is a Class B felony that is punishable by imprisonment for 5–15 years, with a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.436(a)(1), 12.55.125(i)(3)(A), 12.55.035(b)(3).

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<sup>19</sup> Alaska Stat. § 11.66.110(b) (Promoting prostitution in the first degree), while not applicable to buyers, states, “In a prosecution under (a)(2) of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 18 years of age or older.”

Some first degree sexual abuse cases can, however, involve minors over the age of 13, such as when the offender (age 18 or older) occupies a position of authority over the victim who is under 16, pursuant to Alaska Stat. § 11.41.434(a)(3). In these cases, a violation is still an unclassified felony, but a first offense is punishable by imprisonment for 20–30 years. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A)(ii).

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

A buyer convicted under Alaska Stat. § 11.41.360 (Human trafficking in the first degree) commits a Class A felony and is subject to a fine not to exceed \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.035(b)(2). If found guilty under Alaska Stat. § 11.41.365 (Human trafficking in the second degree), a buyer of sex with a minor would be guilty of a Class B felony and a maximum penalty of \$100,000 may be assessed. Alaska Stat. §§ 11.41.365(b), 12.55.035(b)(3).

If the act of commercially purchasing sex is prosecuted as a sexual offense, a violation of Alaska Stat. § 11.41.434 (Sexual abuse of a minor in the first degree) is an unclassified felony that is punishable by a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.035(b)(1). A violation of Alaska Stat. § 11.41.436 (Sexual abuse of a minor in the second degree) is a Class B felony and punishable by a maximum fine of \$100,000. Alaska Stat. §§ 11.41.436(b), 12.55.035(b)(3).

Alaska Stat. § 11.41.468(a) (Forfeiture of property used in sexual offense) provides that “[p]roperty<sup>20</sup> used to aid a violation of AS 11.41.410–11.41.458 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees; Incest; Online enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410–11.41.458 may be forfeited to the state upon the conviction of the offender.”

Likewise, Alaska Stat. § 11.61.129(a) (Forfeiture of property used in indecent viewing or photography or child pornography) provides that “[p]roperty<sup>21</sup> used to aid a violation of AS 11.61.123–11.61.128<sup>22</sup> [Indecent viewing or photography; Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123–11.61.128 may be forfeited to the state upon the conviction of the offender.”

In addition, a court may order a buyer to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides in part that “[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or

<sup>20</sup> “Property” is defined in Alaska Stat. § 11.41.468(b) as

computer equipment, telecommunications equipment, photography equipment, video or audio equipment, books, magazines, photographs, videotapes, audiotapes, and any equipment or device, regardless of format or technology employed, that can be used to store, create, modify, receive, transmit, or distribute digital or analog information, including images, motion pictures, and sounds.

<sup>21</sup> In Alaska Stat. § 11.61.129, “property” is given the same meaning as in Alaska Stat. § 11.41.468(b) (Forfeiture of property used in a sexual offense). Alaska Stat. § 11.61.129(b).

<sup>22</sup> Alaska Stat. § 11.61.128 was found unconstitutional in *Am. Booksellers Foundation for Free Expression v. Sullivan*, No. 3:10-cv-0193-RRB, 2011 U.S. Dist. LEXIS 70414 (D. Alaska June 30, 2011), on First Amendment grounds because, “[T]here could be a chilling effect on protected speech under the . . . statute . . . . Individuals who fear the possibility of a minor receiving speech intended for an adult may refrain from exercising their right to free speech at all—an unacceptable result. The Government may not reduce the adult population to only what is fit for children.” *Id.* at 12 (citing *Reno v. ACLU*, 521 U.S. 844, 875 (1997)).

shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.” The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a).

- 2.8.1 Recommendation: Enact a statute to provide for impoundment of vehicles used in the commission of Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree) and Alaska Stat. § 11.66.100(a)(2) (Prostitution) in the solicitation of prostitution.

2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*

Alaska Stat. § 11.61.127(a) (Possession of child pornography) states, “A person commits the crime of possession of child pornography if the person knowingly possesses or knowingly accesses on a computer with intent to view any material that visually depicts conduct described in AS 11.41.455(a) [Unlawful exploitation of a minor] knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct.” The statute provides in subsection (c) that “[e]ach film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) [Unlawful exploitation of a minor] that is possessed or accessed in violation of (a) of this section is a separate violation of this section.” Possession of child pornography is a Class C felony that is punishable by imprisonment for 2-12 years and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.61.127(g), 12.55.125(i)(4)(A), 12.55.035(b)(3).

Alaska Stat. § 11.61.123 (Indecent viewing or photography) states,

- (a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of
- (1) the parent or guardian of the person viewed, or who is shown in the picture, if the person who is viewed or shown is under 16 years of age; and
  - (2) the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age.
- (b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.<sup>23</sup>

If the victim is a minor, a violation is a Class C felony that is punishable by imprisonment up to 2 years and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.61.123(f)(1), 12.55.125(e)(1), 12.55.035(b)(3).

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<sup>23</sup> Alaska Stat. § 11.61.123(e) states in part,

- (1) “picture” means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and
- (2) “private exposure” means that a person has exposed the person’s body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person’s body or body parts being (A) viewed by the defendant; or (B) produced in a picture; “private exposure” does not include the exposure of a person’s body or body parts in a law enforcement facility, correctional facility, designated treatment facility, or a juvenile detention facility . . . .

In comparison, a federal conviction for possession of child pornography<sup>24</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>25</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>26</sup>

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

Under Alaska Stat. § 12.63.010(a) (Registration of sex offenders and related requirements), “A sex offender or child kidnapper who is physically present in the state shall register as provided in this section.” Alaska Stat. § 12.63.100(5) defines “sex offender” as “a person convicted of a sex offense . . . in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999.”

The definition of “sex offense” in Alaska Stat. § 12.63.100(6)(C) (Definitions) includes “a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:”

- (i) AS 11.41.410–11.41.438 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through third degrees];
- (ii) AS 11.41.440(a)(2) [Sexual abuse of a minor in the fourth degree];
- (iii) AS 11.41.450–11.41.458 [Incest; Online enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree];
- (iv) AS 11.41.460 [Indecent exposure in the second degree] if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;
- (v) AS 11.61.125–11.61.128 [Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors];
- (vi) AS 11.66.110 [Promoting prostitution in the first degree] or 11.66.130(a)(2) [Promoting prostitution in the third degree] if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense;
- . . . .

“Aggravated sex offense” is defined in Alaska Stat. § 12.63.100(1)(C) (Definitions) as including “a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410 [Sexual assault in the first degree], 11.41.434 [Sexual abuse of a minor in the first degree], or a similar law of another jurisdiction or a similar provision under a former law of this state.”

### 2.10.1 Recommendation: Add Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree) where the trafficking involves a minor used

<sup>24</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>25</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>26</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).

in a commercial sex act to the list of “sex offense” crimes in Alaska Stat. § 12.63.100(6)(C) (Definitions) for which a convicted person must register as a sex offender.

### FRAMEWORK ISSUE 3: CRIMINAL PROVISIONS FOR TRAFFICKERS

#### **Legal Components:**

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*
- 3.3 *Using the Internet 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 for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.*

#### **Legal Analysis:**

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

A violation of Alaska Stat. § 11.41.360 (Human trafficking in the first degree) is a Class A felony, which is punishable by imprisonment for 5–8 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.125(c)(1), 12.55.035(b)(2).<sup>27</sup>

A violation of Alaska Stat. § 11.66.110(a)(1), (3) (Promoting prostitution in the first degree) is a Class A felony that occurs when a person “(1) induces or causes a person to engage in prostitution through the use of force; . . . or (3) induces or causes a person in that person’s legal custody to engage in prostitution.” Class A felonies are punishable by imprisonment for 5-8 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 12.55.125(c)(1), 12.55.035(b)(2). A person who “as other than a patron of a prostitute, induces or causes a person under 18 years of age to engage in prostitution” is guilty of an unclassified felony, which is punishable by imprisonment for 20-35 years, depending on the victim’s age, and a maximum possible fine of \$500,000. Alaska Stat. §§ 11.66.110(a)(2), (d), 12.55.125(i)(1)(A), 12.55.035(b)(1).

A first time violation of Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) is a Class B felony that may be punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.455(c)(1), 12.55.125(i)(3)(A), 12.55.035(b)(3). Under subsection (c)(2), “Unlawful exploitation of a minor is a . . . class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.”

Alaska Stat. § 11.41.434(a)(1) (Sexual abuse of a minor in the first degree) states, “(a) An offender commits the crime of sexual abuse of a minor in the first degree if (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person.” Sexual abuse of a minor in the first degree is an unclassified felony and is punishable by imprisonment for 20–35 years, depending on the victim’s age, and a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A), 12.55.035(b)(1).

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

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 trafficker has a prior conviction for a federal sex offense<sup>29</sup> against a minor.

3.1.1 Recommendation: Refer cases of promoting prostitution of a minor under Alaska Stat. § 11.66.110 (Promoting prostitution in the first degree) to Alaska Stat. § 11.41.360 (Human trafficking in the first degree) to ensure minor victims of prostitution are correctly identified as sex trafficking victims.

### 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*

Alaska Stat. § 11.61.123 (Indecent viewing or photography) states,

- (a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of
  - (1) the parent or guardian of the person viewed, or who is shown in the picture, if the person who is viewed or shown is under 16 years of age; and
  - (2) the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age.
- (b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.<sup>30</sup>

If the victim is a minor, a violation is a Class C felony that is punishable by imprisonment up to 2 years and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.61.123(f)(1), 12.55.125(e)(1), 12.55.035(b)(3).

Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor), is a Class B felony that is punishable by 5–15 imprisonment for years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.455(c)(1), 12.55.125(i)(3)(A), 12.55.035(b)(4). Pursuant to Alaska Stat. § 11.41.455(c)(2), the crime is a “class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.”

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>31</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>32</sup>

<sup>28</sup> See *supra* note 13.

<sup>29</sup> See *supra* note 14.

<sup>30</sup> See *supra* note 23.

<sup>31</sup> See *supra* note 14.

<sup>32</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).

is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>33</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>34</sup>

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

Alaska Stat. § 11.41.452(a)<sup>35</sup> (Online enticement of a minor) provides that “[a] person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7) and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.” Online enticement is a Class B felony that is punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000.<sup>36</sup> Alaska Stat. §§ 11.41.452(d), 12.55.125(i)(3)(A), 12.55.035(b)(3).

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

A convicted trafficker under Alaska Stat. § 11.41.360 (Human trafficking in the first degree) commits a Class A felony and is subject to a possible fine not exceeding \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.035(b)(2). Unlawful exploitation of a minor under Alaska Stat. § 11.41.455, a Class B felony, is punishable by a maximum penalty of \$100,000. Alaska Stat. §§ 11.41.455(c)(1), 12.55.035(b)(3).

A violation of Alaska Stat. 11.66.110(a)(2) (Promoting prostitution in the first degree) is an unclassified felony and carries a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.66.110(d), 12.55.035(b)(1). A trafficker convicted under Alaska Stat. 11.66.120 (Promoting prostitution in the second degree) may be assessed a Class B felony with a possible maximum fine of \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.035(b)(3).

Alaska provides for forfeiture for promoting prostitution offenses in some instances. Alaska Stat. § 11.66.145 (Forfeiture) states that “[p]roperty used to institute, aid, or facilitate, or received or derived from, a violation of AS 11.66.110–11.66.135 [Promoting prostitution in the first through fourth degrees] shall be forfeited.”

In addition, Alaska Stat. § 11.41.468 (Forfeiture of property used in sexual offense) provides that “[p]roperty<sup>37</sup> used to aid a violation of AS 11.41.410–11.41.458 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees; Incest; Online enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410–11.41.458 may be forfeited to the state upon the conviction of the offender.”

<sup>33</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>34</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>35</sup> *See supra* note 18.

<sup>36</sup> However, Alaska Stat. § 11.41.452(e) provides that “[o]nline enticement is a class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.”

<sup>37</sup> *See supra* note 20.

A trafficker convicted for child pornography offenses may also be subject to asset forfeiture. Alaska Stat. § 11.61.129 (Forfeiture of property used in indecent viewing or photography or child pornography) states, “Property<sup>38</sup> used to aid a violation of AS 11.61.123–11.61.128 [Indecent viewing or photography; Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123–11.61.128 may be forfeited to the state upon the conviction of the offender.”

In addition, a court may order a trafficker to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides in part that “[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.”

The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a)(1), (2).

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

Under Alaska Stat. § 12.63.010(a) (Registration of sex offenders and related requirements), “A sex offender or child kidnapper who is physically present in the state shall register as provided in this section.” Alaska Stat. § 12.63.100(5) defines “sex offender” as “a person convicted of a sex offense . . . in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999.”

The definition of “sex offense” in Alaska Stat. § 12.63.100(6)(C) (Definitions) includes the following:

a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

- (i) AS 11.41.410–11.41.438 [Sexual assault in the first through fourth degree; Sexual abuse of a minor in the first through third degree];
- (ii) AS 11.41.440(a)(2) [Sexual abuse of a minor in the fourth degree];
- (iii) AS 11.41.450–11.41.458 [Incest; Online enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree];
- (iv) AS 11.41.460 [Indecent exposure in the second degree] if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;
- (v) AS 11.61.125–11.61.128 [Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors];
- (vi) AS 11.66.110 [Promoting prostitution in the first degree] or 11.66.130(a)(2) [Promoting prostitution in the third degree] if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense;

. . . .

“Aggravated sex offense” is defined in Alaska Stat. § 12.63.100(1)(C) (Definitions) as including “a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410 [Sexual assault in the first degree], 11.41.434 [Sexual abuse of a minor in the first degree], or a similar law of another jurisdiction or a similar provision under a former law of this state.”

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<sup>38</sup> See *supra* note 21.

3.5.1 Recommendation: Add Alaska Stat. § 11.41.360 (Human trafficking in the first degree) and § 11.41.365 (Human trafficking in the second degree) where the trafficking involves a minor used in a commercial sex act to the list of “sex offense” crimes in Alaska Stat. § 12.63.100 (Definitions) for which a convicted person must register as a sex offender.

3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.*

Alaska Stat. § 47.10.088(a) (Involuntary termination of parental rights and responsibilities) states,

(a) Except as provided in AS 47.10.080(o) [concerning incarcerated parent], the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court finds by clear and convincing evidence that

- (1) the child has been subjected to conduct or conditions described in AS 47.10.011 [Children in need of aid];
- (2) the parent
  - (A) has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or
  - (B) has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; and
- (3) the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

Alaska Stat. § 47.10.011 (Children in need of aid) provides, subject to certain limitations, that “the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse,<sup>39</sup> or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; . . . .”

Alaska Stat. §§ 47.10.088 or 47.10.011 does not specifically list violations of Alaska Stat. § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human trafficking in the second degree), § 11.41.455 (Unlawful exploitation of a minor), or §§ 11.66.110–11.66.120 (Promoting prostitution in the first or second degrees) as grounds for an involuntary termination of parental rights.

3.6.1 Recommendation: Amend Alaska Stat. § 47.10.011 (Children in need of aid) to include as conditions a child may be subject to establishing the child as on in need of aid Alaska Stat. § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human trafficking in the

<sup>39</sup> Alaska Stat. § 47.10.990(31) defines “sexual abuse” as “the conduct described in AS 11.41.410–11.41.460 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees; Incest; Online enticement of a minor; Unlawful exploitation of a minor; Indecent exposure]; conduct constituting ‘sexual exploitation’ as defined in AS 47.17.290, and conduct prohibited by AS 11.66.100–11.66.150 [Promoting prostitution in the first through fourth degrees].” “Sexual exploitation” is defined in Alaska Stat. § 47.17.290(16) as including “(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100–11.66.150 [Promoting prostitution in the first through fourth degrees], by a person responsible for the child’s welfare; (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child’s welfare.” “[U]nless the context otherwise requires,” the definitions in Alaska Stat. § 47.10.990 apply to chapter 10 (Children in need of aid).

second degree), § 11.41.455 (Unlawful exploitation of a minor), and §§ 11.66.110–11.66.120 (Promoting prostitution in the first or second degrees)

## 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 child pornography is illegal.*

### *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 law.*

The state human trafficking law makes benefiting from the crime of sex trafficking a crime. Alaska Stat. § 11.41.365(a) (Human trafficking in the second degree) states, “A person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.360 [Human trafficking in the first degree], with reckless disregard that the benefit is a result of the trafficking.” A violation of Alaska Stat. § 11.41.365 is a Class B felony, which is punishable by imprisonment for 1-3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.125(d)(1), 12.55.035(b)(3).<sup>40</sup>

Facilitators of prostitution with minors or adults may also be prosecuted under Alaska Stat. § 11.66.120(a) (Promoting prostitution in the second degree), which makes it a crime when a person “(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; (2) procures or solicits a patron for a prostitute; or (3) offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel . . .”<sup>41</sup> Promoting prostitution in the second degree is a Class B felony and is punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.125(d)(1), 12.55.035(b)(3).

Also, a facilitator could be charged under Alaska Stat. § 11.66.130(a) (Promoting prostitution in the third degree), which provides that a person who “(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution; (2) as other than a patron of a prostitute, induces or causes a person 18 years of age or older to engage in prostitution; (3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or (4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise” is guilty of a Class C felony, which is punishable by imprisonment up to 2 years and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.66.130(b), 12.55.125(e)(1), 12.55.035(b)(4).

Furthermore, a facilitator of prostitution may also be found guilty under Alaska Stat. § 11.66.135(a) (Promoting prostitution in the fourth degree) if he “engages in conduct that institutes, aids, or facilitates prostitution under

<sup>40</sup> See *supra* note 7.

<sup>41</sup> See *supra* note 8.

circumstances not proscribed under AS 11.66.130(a)(4).” This crime is a Class A misdemeanor, which is punishable by up to 1 year imprisonment and a possible fine not to exceed \$10,000. Alaska Stat. §§ 11.66.135(b), 12.55.135(a), 12.55.035(b)(5).

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.*

A facilitator convicted under Alaska Stat. § 11.41.365 (Human trafficking in the second degree) may be assessed a maximum fine of \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.035(b)(3). In addition, a facilitator convicted under Alaska Stat. § 11.66.110 (Promoting prostitution in the first degree) may face a possible maximum fine of \$500,000, and a conviction under Alaska Stat. § 11.66.120 (Promoting prostitution in the second degree) may result in a maximum fine of \$100,000. Alaska Stat. §§ 11.66.110(d), 11.66.120(b), 12.55.035(b)(1), (3).

A court may also order a facilitator to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides that “[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.”

The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a)

In addition, facilitators of prostitution may be subject to forfeiture under Alaska Stat. § 11.66.145 (Forfeiture). The statute provides that “[p]roperty<sup>42</sup> used to institute, aid, or facilitate, or received or derived from, a violation of AS 11.66.110–11.66.135 [Promoting prostitution in the first through fourth degrees] shall be forfeited.”

Likewise, a facilitator convicted under Alaska Stat. § 11.61.125 (Distribution of child pornography) may also be subject to asset forfeiture. Alaska Stat. § 11.61.129(a) (Forfeiture of property used in indecent viewing or photography or child pornography) states, “Property<sup>43</sup> used to aid a violation of AS 11.61.123–11.61.128 [Indecent viewing or photography; Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123–11.61.128 may be forfeited to the state upon the conviction of the offender.”

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

Alaska Stat. § 11.66.120(a)(3) (Promoting prostitution in the second degree) makes it a Class B felony when a person “offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel,” and the provision defines “commercial sexual conduct” to mean “sexual conduct for which anything of value is given or received by any person.” Alaska Stat. § 11.66.120(b).

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<sup>42</sup> See *supra* note 20.

<sup>43</sup> See *supra* note 21.

#### 4.4 *Promoting and selling child pornography is illegal.*

Under Alaska Stat. § 11.61.125 (Distribution of child pornography), “A person commits the crime of distribution of child pornography if the person distributes in this state or advertises, promotes, solicits, or offers to distribute in this state any material that is proscribed under AS 11.61.127 [Possession of child pornography].”<sup>44</sup> Subsection (c) explains, “The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.” A violation of Alaska Stat. § 11.61.125 is a Class B felony that may be punishable by imprisonment for 2-12 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.61.125(e)(1), 12.55.125(i)(4)(A), 12.55.035(b)(3).

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<sup>44</sup> “Distribution” is defined in Alaska Stat. § 11.61.125(d) as including “whether or not for monetary or other consideration: delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, placing on a computer network or computer system, and providing billing collection, or other ancillary services for or otherwise supporting these activities.”

**Legal Components:**

- 5.1 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of "caregiver" (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into protection of child protective services.*
- 5.7 *Crime victims' compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile arrest or criminal records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies are authorized by law for minor victims of sex trafficking or CSEC.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or CSEC offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal actions and legal remedies.*

**Legal Analysis:**

- 5.1 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.*

Article 1, Section 24 of the Constitution of Alaska lists the following rights of crime victims:

Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

Alaska Stat. § 24.65.010 (Office of victims' rights) establishes an office of victims' rights, which is directed by the victims' advocate. Pursuant to Alaska Stat. § 24.65.100(a) (Jurisdiction; duties), "The victims' advocate has jurisdiction to advocate on behalf of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41 [Offenses against the person, including human trafficking in the first and second degrees, sexual abuse of a minor in the first through fourth degrees; Online enticement of a minor; and Unlawful exploitation of a minor], in the courts

of the state and to investigate the complaints of crime victims of felony offenses or class A misdemeanors, if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41, that they have been denied their rights under the constitution and the laws of the state.”

Additionally, a domestic minor sex trafficking victim could be considered a “child in need of aid” under Alaska Stat. § 47.10.011(a) (Children in need of aid), which provides, subject to certain limitations,<sup>45</sup> that “the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse,<sup>46</sup> or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; . . . .”

5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

The Alaska Code does not specifically prohibit a defendant from raising a defense that the minor consented to the commercial sex act.

5.2.1 Recommendation: Enact a provision specifically prohibiting a consent defense to the human trafficking offenses when the victim is a minor.

5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*

Alaska Stat. § 11.66.100(a) (Prostitution) applies to both minors and adults and states, “A person commits the crime of prostitution if the person (1) engages in or agrees or offers to engage in sexual conduct in return for a fee; or (2) offers a fee in return for sexual conduct.”

5.3.1 Recommendation: Amend Alaska Stat. § 11.66.100 (Prostitution) to make a commercially exploited minor immune from a charge for prostitution and to refer to any minor involved in prostitution as a victim of Alaska Stat. § 11.41.360 (Human trafficking in the first degree).

5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

No statute explicitly states that a commercially sexually exploited child should always be directed through the child protective response system. However, certain procedures allow for immediate intervention through the juvenile court system or through the Office of Children’s Services (OCS).

Alaska Stat. § 47.10.142(a) (Emergency custody and temporary placement hearing) states,<sup>47</sup>

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<sup>45</sup> Alaska Stat. § 47.10.019 (Limitations on determinations) states, “Notwithstanding other provisions of this chapter, the court may not find a minor to be a child in need of aid under this chapter solely on the basis that the child’s family is poor, lacks adequate housing, or exhibits a lifestyle that is different from the generally accepted lifestyle standard of the community where the family lives. However, this section may not be construed to prevent a court from finding that a child is in need of aid if the child has been subjected to conduct or conditions described in AS 47.10.011–47.10.015 [Children in need of aid; Abandonment; Neglect; Physical harm].”

<sup>46</sup> See *supra* note 39.

<sup>47</sup> Under Alaska Stat. § 47.10.142(b), “The department shall offer available counseling services to the person having legal custody of a minor described in AS 47.10.141 [Runaway and missing minors] and to the members of the minor’s household if it determines that counseling services would be appropriate in the situation. If, after assessing the situation, offering available counseling services to the legal custodian and the minor’s household, and furnishing appropriate social services to the minor, the department considers it necessary, the department may take emergency custody of the minor.”

(a) The Department of Health and Social Services may take emergency custody of a child upon discovering any of the following circumstances:

- (1) the child has been abandoned as abandonment is described in AS 47.10.013 [Abandonment];
- (2) the child has been neglected by the child's parents or guardian, as "neglect" is described in AS 47.10.014 [Neglect], and the department determines that immediate removal from the child's surroundings is necessary to protect the child's life or provide immediate necessary medical attention;
- (3) the child has been subjected to physical harm by a person responsible for the child's welfare, and the department determines that immediate removal from the child's surroundings is necessary to protect the child's life or that immediate medical attention is necessary; or
- (4) the child or a sibling has been sexually abused under circumstances listed in AS 47.10.011(7) [Children in need of aid].<sup>48</sup>

In addition, Alaska Stat. § 47.10.142(c) states in part that "[w]hen a child is taken into custody under (a) or (b) of this section or when the department is notified of a child's presence in either a program for runaway children AS 47.10.300–47.10.390 or a shelter for runaway children under AS 47.10.392–47.10.399, the department shall immediately, and in no event more than 24 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child. If the department determines that continued custody is necessary to protect the child, the department shall notify the court of the emergency custody by filing, within 24 hours after custody was assumed, a petition alleging that the child is a child in need of aid."<sup>49</sup>

After notification, the court must hold a temporary custody hearing within 48 hours, absent a transportation problem. Alaska Stat. § 47.10.142(d). At the hearing, "the court shall make a preliminary determination of whether continued placement in the home of the child's parent or guardian would be contrary to the welfare of the child. If a court determines that continued placement in the home of the child's parent or guardian would not be contrary to the welfare of the child, the court shall return the authority to place the child to the child's parent or guardian pending a temporary custody hearing under (e) of this section." Alaska Stat. § 47.10.142(d).

Alaska Stat. § 47.10.142(e) then provides that during the temporary custody hearing, the court will determine whether there is probable cause that the child is "a child in need of aid." If so, the court will "order the child committed to the department for temporary placement, or order the child returned to the custody of the child's parents or guardian, subject to the department's supervision of the child's care and treatment." Alaska Stat. § 47.10.142(e).

Upon receiving a request, Alaska Stat. § 47.10.141 (Runaway and missing minors) allows a police officer to take a minor into protective custody as long as the minor is not subject to arrest or detention. Once taken into protective custody, Alaska Stat. § 47.10.141(b) provides in part,

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<sup>48</sup> Under Alaska Stat. § 47.10.011(7) (Children in need of aid) a court may determine that a child is in need of aid if it finds that "the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child." The determination must be made by a preponderance of the evidence. Alaska Stat. § 47.10.011.

<sup>49</sup> The remainder of Alaska Stat. § 47.10.142(c) explains, "If the department releases the child within 24 hours after taking the child into custody and does not file a child in need of aid petition, the department shall, within 24 hours after releasing the child, file with the court a report explaining why the child was taken into custody, why the child was released, and to whom the child was released."

- (1) the peace officer shall
- (A) return the minor to the minor’s parent or guardian at the parent’s or guardian’s residence if the residence is in the same community where the minor was found and if the minor’s parent or guardian consents to the return, except that the officer may not use this option if the officer has reasonable cause to believe that the minor has experienced physical or sexual abuse in the parent’s or guardian’s household;
  - (B) take the minor to a nearby location agreed to by the minor’s parent or guardian if the parent or guardian does not consent to return of the minor under (A) of this paragraph and the officer does not have reasonable cause to believe that the minor has experienced physical or sexual abuse in the parent’s or guardian’s household; or
  - (C) if disposition of the minor is not made under (A) or (B) of this paragraph, take the minor to
    - (i) an office specified by the Department of Health and Social Services;
    - (ii) a program for runaway minors licensed by the department under AS 47.10.310;
    - (iii) a shelter for runaways that has a permit from the department under AS 47.32 that agrees to shelter the minor;
    - (iv) a facility or contract agency of the department; or
    - (v) another suitable location and promptly notify the department if an office specified by the department, a licensed program for runaway minors, a shelter for runaways that will accept the minor, or a facility or contract agency of the department does not exist in the community;
- (2) if the peace officer plans to take the minor to an office, program, shelter, or facility under (1)(C) of this subsection, the peace officer shall give the highest priority to taking the minor to an office, program, shelter, or facility that is semi-secure;
- ...

Additionally, Alaska Stat. § 47.10.141(b)(3) (Runaway and missing minors) states that “a minor under protective custody may not be housed in a jail or other detention facility but may be housed in a semi-secure portion of an office, program, shelter, or other facility under (1)(C) of this subsection.”

However, Alaska Stat. § 47.10.141(c) provides an exception to subsection (b) and permits a minor to be placed in temporary detention in a local juvenile detention home “if there has been an order issued by a court under a finding of probable cause that (1) the minor is a runaway in wilful violation of a valid court order issued under AS 47.10.080(c)(1) [Judgments and orders], 47.10.142(f) [Emergency custody and temporary placement hearing], AS 47.12.120(b)(1) or (3) [Judgments and orders], or 47.12.250(d) [Temporary detention and detention hearing], (2) the minor’s current situation poses a severe and imminent risk to the minor’s life or safety, and (3) no reasonable placement alternative exists within the community.”<sup>50</sup>

Pursuant to Alaska Stat. § 47.10.080(c) (Judgments and orders), which discusses adjudication hearings,

- (c) If the court finds that the child is a child in need of aid, the court shall
  - (1) order the child committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event not to extend past the date the child becomes 19

<sup>50</sup> Alaska Stat. § 47.10.141(c) further states, “A minor detained under this subsection shall be brought before a court on the day the minor is detained, or if that is not possible, within 24 hours after the detention for a hearing to determine the most appropriate placement in the best interests of the minor. A minor taken into emergency protective custody under this subsection may not be detained for more than 24 hours, except as provided under AS 47.12.250 [Temporary detention and detention hearing]. Emergency protective custody may not include placement of a minor in a jail or secure facility other than a juvenile detention home, nor may an order for protective custody be enforced against a minor who is residing in a licensed program for runaway minors, as defined in AS 47.10.390 [Definitions].”

years of age, except that the department, the child, or the child’s guardian ad litem may petition for and the court may grant in a hearing

- (A) one-year extensions of commitment that do not extend beyond the child’s 19th birthday if the extension is in the best interests of the child; and
  - (B) additional one-year extensions of commitment past 19 years of age that do not extend beyond the person’s 21st birthday if the continued state custody is in the best interests of the person and the person consents to it;
- (2) order the child released to a parent, adult family member, or guardian of the child or to another suitable person, and, in appropriate cases, order the parent, adult family member, guardian, or other person to provide medical or other care and treatment . . . ;
- ...
- (3) order, under the grounds specified in (o) of this section or AS 47.10.088, the termination of parental rights and responsibilities of one or both parents and commit the child to the custody of the department, and the department shall report quarterly to the court on efforts being made to find a permanent placement for the child.

However, it is possible that a minor may be routed through the juvenile justice system instead. Alaska Stat. § 47.12.245(a)(1)(A) (Arrest) provides that a minor may be arrested “for the commission of an act that subjects the minor to the provisions of this chapter<sup>51</sup> under the same circumstances and in the same manner as would apply to the arrest of an adult for violation of a criminal law of the state or a municipality of the state.”

Moreover, under Alaska Stat. § 47.12.250(a) (Temporary detention and detention hearing) a peace officer who has arrested a minor may do any of the following:

- (1) have the minor detained in a juvenile detention facility if in the opinion of the peace officer making or continuing the arrest it is necessary to do so to protect the minor or the community; however, the department may direct that a minor who was arrested or whose arrest was continued be released from detention before the hearing required by (c) of this section;
- (2) before taking the minor to a juvenile detention facility, release the minor to the minor’s parents or guardian if detention is not necessary to
  - (A) protect the minor or the community; or
  - (B) ensure the minor’s attendance at subsequent court hearings.

Similarly, pursuant to Alaska Stat. § 47.12.250, the following procedures must be followed:

- (b) A peace officer who has a minor detained under (a) of this section shall immediately, and in no event more than 12 hours later, notify the court and make reasonable efforts to notify the minor’s parents or guardian, the minor’s foster parent, and the department of the officer’s action. The department may file with the court a petition alleging delinquency before the detention hearing.
- (c) The court shall immediately, and in no event more than 48 hours later, hold a hearing at which the minor and the minor’s parents or guardian if they can be found shall be present. For those minors held securely in correctional facilities that house adult prisoners, the court shall immediately, and in no event

<sup>51</sup> Chapter 12 addresses “delinquent minors.” Pursuant to Alaska Stat. § 47.12.990(4), “delinquent minor” is defined as “a minor found to be within the jurisdiction of the court under AS 47.12.020.” Alaska Stat. § 47.12.020 states,

- (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.
- (b) Except as otherwise provided in this chapter, proceedings relating to a person who is 18 years of age or over are governed by this chapter if the person is alleged to have committed a violation of the criminal law of the state or a municipality of the state, the violation occurred when the person was under 18 years of age, and the period of limitation under AS 12.10 has not expired.

more than 24 hours after the custody begins, hold a hearing at which the minor and the minor’s parents or guardian if they can be found shall be present. The court shall determine whether probable cause exists for believing the minor to be delinquent. The court shall inform the minor of the reasons alleged to constitute probable cause and the reasons alleged to authorize the minor’s detention. The minor is entitled to counsel. The court shall give the minor’s foster parent the opportunity to be heard at the hearing.

(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing, a minor may be detained only by court order.

Alaska Stat. § 47.12.120 (Judgments and orders) provides the judicial process framework that is to be followed depending on whether the court finds the minor delinquent or not delinquent. If the minor is found delinquent, the department’s options include placing “the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility.” Alaska Stat. § 47.12.120(b)(1).

5.4.1 Recommendation: Enact a law to route commercially sexually exploited children directly into a protective response system.

## 5.5 *Commercial sexual exploitation is identified as a type of abuse and neglect within child protection statutes*

For purposes of the chapter on “children in need of aid,” Alaska Stat. § 47.10.011(a) (Children in need of aid) provides, subject to certain limitations,<sup>52</sup> that “the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse,<sup>53</sup> or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; . . .”

Alaska Stat. § 47.10.014 allows “neglect” of a child to be found by a court, for purposes of chapter 10 (Children in need of aid), “if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child’s physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.”

Under Alaska Stat. § 47.17.290(2), “child abuse or neglect” is defined as “the physical injury or neglect, mental injury,<sup>54</sup> sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.” Alaska Stat. § 47.17.290(10) defines “neglect” as “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”

<sup>52</sup> See *supra* note 45.

<sup>53</sup> See *supra* note 39.

<sup>54</sup> “Mental injury” is defined as “injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child’s ability to function.” Alaska Stat. § 47.17.290(2).

5.5.1 Recommendation: Amend Alaska Stat. § 47.17.290(16) to include the following: “(C) allowing, permitting, encouraging, or engaging in any activity prohibited by Alaska Stat. § 11.41.360 [Human trafficking in the first degree].”

5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into protection of child protective services.*

For the chapter on “child protection,” which contains statutes on mandatory child abuse reporters, Alaska Stat. § 47.17.290(12) defines “person responsible for the child’s welfare” as the “the child’s parent, guardian, foster parent, a person responsible for the child’s care at the time of the alleged child abuse or neglect, or a person responsible for the child’s welfare in a public or private residential agency or institution.”

For purposes of the chapter on “children in need of aid,” Alaska Stat. § 47.10.011(a) (Children in need of aid) provides, subject to certain limitations,<sup>55</sup> that “the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse,<sup>56</sup> or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; . . .” “Custodian” is defined in Alaska Stat. 47.10.990(7), as “a natural person 18 years of age or older to whom a parent or guardian has transferred temporary physical care, custody, and control of the child for a period of time.”

5.6.1 Recommendation: Amend Alaska Stat. § 47.17.290(12) to include as a “person responsible for the child’s welfare” a person in control of a child at the time of the abuse or neglect and amend § 47.10.990(7) to include as a “custodian” a person who has assumed “temporary physical care, custody, and control” of the child with or without parental consent.

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.*

Pursuant to Alaska Stat. § 18.67.101, the Alaska Violent Crimes Compensation Board “may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from (1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or (2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: . . . (F) sexual assault in any degree; (G) sexual abuse of a minor; . . . (I) threats to do bodily harm . . .”

The Violent Crimes Compensation program contains ineligibility criteria that could operate to bar a domestic minor sex trafficking victim’s claim for compensation. Not only are the human trafficking and CSEC statutes not included as crimes whose victims are eligible for compensation, but Alaska Stat. § 18.67.080 (Awarding Compensation) also provides,

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the victim that directly or indirectly contributed to the victim’s injury or death, the prior case or social

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<sup>55</sup> See *supra* note 45.

<sup>56</sup> See *supra* note 39.

history, if any, of the victim, the victim’s need for financial aid, and any other relevant matters. In applying this subsection,

- (1) the board may not deny an order based on the factors in this subsection, unless those factors relate significantly to the occurrence that caused the victimization and are of such a nature and quality that a reasonable or prudent person would know that the factors or actions could lead to the crime and the victimization;
- (2) with regard to circumstances in which the victim consented to, provoked, or incited the criminal act, the board may consider those circumstances only if the board finds that it is more probable than not that those circumstances occurred and were the cause of the crime and the victimization;
- ...
- (4) if a claim is based on a crime involving domestic violence or on a crime of sexual abuse of a minor or sexual assault and the offender is
  - (A) convicted of one of those crimes, notwithstanding (1)–(3) of this subsection, the board may not deny an order based on considerations of provocation, the use of alcohol or drugs by the victim, or the prior social history of the victim; or
  - (B) not convicted of one of those crimes, the board may not deny an order based on the involvement or behavior of the victim.

In addition, Alaska Stat. § 18.67.130 (Limitations on awarding compensation) sets limits on the victim’s ability to receive compensation. Under subsection (a)(1), an application must be made within two years of the injury. Alaska Stat. § 18.67.130(a)(1). Pursuant to subsection (a)(2), the victim cannot receive compensation under Alaska Stat. § 18.67.080 unless, “the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made.” Alaska Stat. § 18.67.130(a)(2). Subsection (a)(3) states that victim compensation will not be granted unless “in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.” The provision goes on to say that compensation will not be awarded in the event that the victim “violated a penal law of the state, which violation caused or contributed to the victim’s injuries or death.” Alaska Stat. § 18.67.130(b)(3).

5.7.1 Recommendation: Amend Alaska Stat. § 18.67.101 defining offenses for which a victim is eligible for compensation to include minor victims of Alaska Stat. § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human trafficking in the second degree), § 11.66.110(a)(2), (Promoting prostitution in the first degree), Alaska Stat. § 11.66.120(a) (Promoting prostitution in the second degree), and § 11.41.455 (Unlawful exploitation of a minor). Amend Alaska Stat. § 18.67.080 and § 18.67.130(a)(1)–(2), (b) to include an exception to ineligibility factors for child victims of human trafficking, prostitution offenses, and commercial sexual exploitation of children in recognition of the challenges these victims face through trauma-bonding, denial, and delayed disclosure. Amend Alaska Stat. § 18.67.130(a)(3) to include a good cause exception for domestic minor sex trafficking victims.

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

Several victim-friendly criminal justice procedures and protections are statutorily provided in Alaska. Alaska Stat. § 11.66.140 provides that in cases of promoting prostitution in the first through third degrees, “it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence.”

In criminal proceedings, Alaska Stat. § 12.45.046(a) (Testimony of children in criminal proceedings) provides victim-sensitive protections for victims and witnesses under 16. The court may appoint a guardian ad litem and “may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child’s inability to effectively communicate.”<sup>57</sup> If the court determines that one-way mirrors should be used, “[t]he attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.” Alaska Stat. § 12.45.046(e). Further, pursuant to Alaska Stat. § 12.45.046(f), if the court determines that the child victim should proceed under relatively normal courtroom procedures, the court may still do the following:

- (1) allow the child to testify while sitting on the floor or on an appropriately sized chair;
- (2) schedule the procedure in a room that provides adequate privacy, freedom from distraction, informality, and comfort appropriate to the child’s developmental age; and
- (3) order a recess when the energy, comfort, or attention span of the child warrants

Alaska Stat. § 12.45.045 (Evidence of past sexual conduct in trials of certain sexual offenses) states in part,

- (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence of the complaining witness<sup>58</sup> previous sexual conduct may not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant shall apply for an order of the court at any time before or during the trial or preliminary hearing. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.
- (b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness’ sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

This provision does not apply to the state human trafficking statutes, Alaska Stat. §§ 11.41.360 and 11.41.365, nor to the promoting prostitution statutes, Alaska Stat. §§ 11.66.110–11.66.135. Therefore, victims of these crimes may be subjected to traumatic cross-examinations in the trials of their traffickers, buyer-exploiters, or both.

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<sup>57</sup> Alaska Stat. § 12.45.046(b) states that in determining whether the child’s testimony will be taken by closed circuit television or one-way mirrors, the court is to consider factors it determines to be relevant, including,

- (1) the child’s chronological age;
- (2) the child’s level of development;
- (3) the child’s general physical health;
- (4) any physical, emotional, or psychological injury experienced by the child; and
- (5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

<sup>58</sup> “Complaining witness” is defined as “the alleged victim of the crime charged, the prosecution of which is subject to this section.” Alaska Stat. § 12.45.045(c).

When a court finds that a child is a “child-in-need-of-aid,” additional victim-friendly provisions may apply, including the appointment of a guardian ad litem or attorney in proceedings under the “children in need of aid” chapter.<sup>59</sup> Alaska Stat. § 47.10.050(a). Further, Alaska Stat. § 47.10.070(c) (Hearings) provides that in “child-in-need-of-aid” cases, the following hearings are closed to the public:

- (1) the initial court hearing after the filing of a petition to commence the child-in-need-of-aid case;
- (2) a hearing following the initial hearing in which a parent, child, or other party to the case is present but has not had an opportunity to obtain legal representation;
- (3) a hearing, or a part of a hearing, for which the court issues a written order finding that allowing the hearing, or part of the hearing, to be open to the public would reasonably be expected to
  - (A) stigmatize or be emotionally damaging to a child;
  - (B) inhibit a child’s testimony in that hearing;
  - (C) disclose matters otherwise required to be kept confidential by state or federal statute or regulation, court order, or court rule; or
  - (D) interfere with a criminal investigation or proceeding or a criminal defendant’s right to a fair trial in a criminal proceeding . . . .

5.8.1 Recommendation: Expressly state that the sex offense shield law applies to cases of testifying victims of sex trafficking or prostitution.

5.8.2 Recommendation: Raise the age of victim friendly procedures in Alaska Stat. § 12.45.046 (Testimony of children in criminal proceedings) to apply to minors under the age of 18 at the time of the offense.

5.9 *Expungement or sealing of juvenile arrest or criminal records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Alaska Stat. § 47.12.300(d) (Court records) provides that the court shall order a minor’s records sealed “within 30 days of the date of a minor’s 18th birthday or, if the court retains jurisdiction of a minor past the minor’s 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor.” This extends to all “records pertaining to that minor in a proceeding under this chapter [Delinquent minors] sealed, as well as records of all . . . criminal proceedings against the minor, and punishments assessed against the minor.” Alaska Stat. § 47.12.300(d). This provision does not apply if the minor was tried as an adult or if the records were made public. Alaska Stat. § 47.12.300(d), (f).

5.10 *Victim restitution and civil remedies are authorized by law for victims of sex trafficking or CSEC.*

Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides that a court shall order a convicted defendant to make restitution to the victim of the offense, including “to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim.” Furthermore, the statute states that restitution does not limit the defendant’s civil liability and that it may be ordered by means other than a monetary payment. Alaska Stat. § 12.55.045(b), (h).

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<sup>59</sup> A court may determine that a child is a “child-in-need-of-aid” if it makes a finding by a preponderance of the evidence that the child has been subjected to one of several situations, including the following: “the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child . . . .” Alaska Stat. § 47.10.011.

If a civil claim is based on the sexual abuse of a minor who is under the age of 16 at the time of the offense, Alaska Stat. § 09.55.650(a) (Claim based on sexual abuse to a minor under 16 years of age) states that the victim “may maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator’s intentional conduct for an injury or condition suffered as a result of the sexual abuse.”<sup>60</sup>

5.10.1 Recommendation: Amend the definition of “sexual abuse” in Alaska Stat. § 09.55.650 to include the offenses of Alaska Stat. § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human Trafficking in the second degree), and § 11.66.110(a)(2) (Promoting prostitution in the first degree).

5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or CSEC offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Alaska Stat. § 12.10.010 outlines the statutes of limitations for criminal procedures.<sup>61</sup> Prosecutions for “felony sexual abuse of a minor” and for violations of Alaska Stat. §§ 11.66.110–11.66.130 (Promoting prostitution in the first through fourth degrees) and § 11.41.452<sup>62</sup> (Online enticement of a minor) or § 11.41.455 (Unlawful exploitation of a minor) may be brought at any time if the victim was younger than 18 when the offense was committed. Alaska Stat. § 12.10.010(a)(3), (5). However, for the crime of human trafficking, pursuant to Alaska Stat. §§ 11.41.360–11.41.365, the statute of limitations is “10 years after the commission” of the offense. Alaska Stat. § 12.10.010(b)(1).

In the Code of Civil Procedure, Alaska Stat. § 09.10.065(a) (Commencement of actions for acts constituting sexual offenses) provides that “(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses: (1) felony sexual abuse of a minor; (2) felony sexual assault; or (3) unlawful exploitation of a minor.” Under Alaska Stat. § 09.10.065(b), “Unless the action is commenced within three years of the accrual of the claim for relief, a person may not bring an action for conduct that would have, at the time the conduct occurred, violated the provisions of any of the following offenses: (1) misdemeanor sexual abuse of a minor; (2) misdemeanor sexual assault; (3) incest; or (4) felony indecent exposure.”

Pursuant to Alaska Stat. § 09.10.140(a)<sup>63</sup> (Disabilities of minority and incompetency), “Except as provided under (c) of this section, if a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b)<sup>64</sup> of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.”

<sup>60</sup> “Sexual abuse” is defined in Alaska Stat. § 09.55.650(c) as “an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant’s conduct would have violated a provision of AS 11.41.410–11.41.440 [sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees] or 11.41.450–11.41.458 [Incest; Online enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree] . . . at the time it was committed.”

<sup>61</sup> The cited and quoted text of Alaska Stat. § 12.10.010 is the current version of the statute and reflects the amendments made by the passage of House Bill 127. 2011 Alaska Sess. Laws 20 (effective July 1, 2011).

<sup>62</sup> See *supra* note 18.

<sup>63</sup> Alaska Stat. § 09.10.140(c) was found unconstitutional by the Supreme Court of Alaska in *Sands v. Green*, 156 P.3d 1130, 1136 (Alas. 2007) because it “violates the due process rights of minors to access the court.” *Id.*

<sup>64</sup> Alaska Stat. § 09.10.140(b) states,

(b) An action based on a claim of sexual abuse under AS 09.55.650 that is subject to AS 09.10.065(b) may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

Under Alaska Stat. § 09.10.070, “Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.” All other actions that do not fall under any of the categories above must be commenced within 10 years after the cause of action pursuant to Alaska Stat. § 09.10.100.

- 5.11.1 Recommendation: Amend Alaska Stat. § 12.10.010 (General time limitations) to include human trafficking in the list of offenses for which there is no statute of limitations if the victim of the offense was a minor at the time of the crime.

## FRAMEWORK ISSUE 6: CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

### *Legal Components:*

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.*
- 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 to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

### *Legal Analysis:*

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

No Alaska statute mandates training on human trafficking. However, Alaska Stat. § 47.17.020(a)(3) provides that “peace officers and officers of the Department of Corrections” are required to report immediately if, in the course of their employment duties, they “have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect . . . .”<sup>65</sup> Alaska Stat. § 47.17.022(a) states, “A person employed by the state or

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(1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;

(2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff’s first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff’s discovery of the effect of the series of acts.

<sup>65</sup> Alaska Stat. § 47.17.290(2) defines “child abuse or neglect” as “the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby; in this paragraph, ‘mental injury’ means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child’s ability to function.” Alaska Stat. § 47.17.290(16) defines “sexual exploitation” as including “(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100–11.66.150, by a person responsible for the child’s welfare; (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a) [Unlawful exploitation of a minor], by a person responsible for the child’s welfare.”

by a school district who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect.” Additionally, each department of the state that employs people who are required to report abuse must “file a current copy of its training curriculum and materials with the Council on Domestic Violence and Sexual Assault. A department or school district may seek the technical assistance of the council or the Department of Health and Social Services in the development of its training program.” Alaska Stat. §47.17.022(d).

Alaska also directs the creation and implementation of training for peace officers and law enforcement agencies in the use of protocols and sexual assault examination kits. Alaska Stat. § 18.68.030.

6.1.1 Recommendation: Mandate training on domestic minor sex trafficking for law enforcement.

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

Alaska Stat. § 42.20.310(a)(1) (Eavesdropping) prohibits the use of an eavesdropping device “to hear or record all or any part of an oral conversation without the consent of a party to the conversation.”<sup>66</sup> The requirement for consent “of a party” indicates that audio-recording with a single party’s consent is legal.

Alaska Stat. § 12.37.400 (Police use of body wire) states,

(a) A peace officer may intercept an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if

- (1) the interception and monitoring occurs
  - (A) during the investigation of a crime or the arrest of a person for a crime; and
  - (B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;
- (2) the peace officer intercepting the conversation is a party to the oral communication and has consented to the interception; and
- (3) the communication intercepted is not recorded.

(b) A peace officer monitoring a receiving unit under (a) of this section, or any other person intercepting an oral communication transmitted under (a) of this section, is not competent to testify in a criminal proceeding involving a party to the oral communication about the contents of the oral communication that was intercepted or the fact that the communication occurred.

6.3 *Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.*

Alaska Stat. § 12.37.010 (Authorization to intercept communications) states,

The attorney general, or a person designated in writing or by law to act for the attorney general, may authorize, in writing, an ex parte application to a court of competent jurisdiction for an order authorizing the interception of a private communication if the interception may provide evidence of, or may assist in the apprehension of persons who have committed, are committing, or are planning to commit, the following offenses:

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<sup>66</sup> Alaska Stat. § 42.20.310(b) defines “eavesdropping device” as “any device capable of being used to hear or record oral conversation whether the conversation is conducted in person, by telephone, or by any other means; provided that this definition does not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing.”

- (1) murder in the first or second degree under AS 11.41.100–11.41.110;
- (2) kidnapping under AS 11.41.300; or
- (3) a class A or unclassified felony drug offense under AS 11.71.

Under Alaska Stat. § 12.37.030(b) (Requirements for an order authorizing a communications interception),

(b) In addition to exercising authority under (a) of this section, on consideration of an application relating to a private communication of a minor, the court may enter an ex parte order authorizing the interception of the private communication. The court may enter the order only if the court determines, after making appropriate findings of fact and on the basis of the application, that there is probable cause to believe that

- (1) a party to the private communication
  - (A) has committed, is committing, or is about to commit a felony or misdemeanor;
  - (B) has been, is, or is about to be a victim of a felony or misdemeanor; or
  - (C) has been, is, or is about to be a witness to a felony or misdemeanor;
- (2) the health or safety of a minor is in danger; or
- (3) a parent of a minor has consented in good faith to the interception of a communication of the minor based on the parent’s objectively reasonable belief that it is necessary for the welfare of the minor and is in the best interest of the minor.<sup>67</sup>

This provision would permit the use of wiretapping in some domestic minor sex trafficking investigations.

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.*

There is no law in place that explicitly permits law enforcement to use a decoy to investigate prostitution or sex trafficking cases. However, Alaska Stat. § 11.41.452(b)<sup>68</sup> (Online enticement of a minor) states, “In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.”

This is distinguished from the affirmative defense of entrapment in Alaska Stat. § 11.81.450, which provides that “it is an affirmative defense that, in order to obtain evidence of the commission of an offense, a public law enforcement official or a person working in cooperation with the official induced the defendant to commit the offense by persuasion or inducement as would be effective to persuade an average person, other than one who is ready and willing, to commit the offense. Inducement or persuasion which would induce only a person engaged in an habitual course of unlawful conduct for gain or profit does not constitute entrapment.”

- 6.4.1 Recommendation: Enact a law explicitly permitting the use of a decoy to investigate domestic minor sex trafficking related crimes.
- 6.4.2 Recommendation: Amend Alaska Stat. §§ 11.41.360–11.41.365 (Human trafficking in the first and second degrees), § 11.41.455 (Unlawful exploitation of a minor), and § 11.66.100 (Prostitution) to include a provision preventing a defense based on a supposed minor actually being law enforcement or someone acting on behalf of law enforcement.

<sup>67</sup> Alaska Stat. § 42.20.390(8) (Definitions) defines “minor” as “a child under 18 years of age who has not had the disabilities of a minor removed as described in AS 09.55.590 [Removal of disabilities of minority].”

<sup>68</sup> See *supra* note 18.

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

Although it does not specifically apply to commercial sexual exploitation of minors, Alaska Stat. § 11.41.452(a) (Online enticement of a minor) makes it a crime if an individual 18 or older “knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7) and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.”<sup>69</sup> Subsection (b) explicitly prohibits the use of the defense “that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.” Although not expressly promoting law enforcement decoys as an investigative technique, the statute does not prohibit such techniques.

6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

Alaska Stat. § 47.10.141(a) (Runaway and missing minors) provides that upon receiving a request to locate a missing child, “a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person’s report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. The report shall also be submitted to the missing persons information clearinghouse under AS 18.65.620.”

Once the minor has been located, Alaska Stat. § 47.10.141(a) also provides that “[a]s soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.”

Alaska Stat. § 18.65.610 lists the duties of the missing persons information clearinghouse, which is “established as a central repository of information regarding missing persons.” Alaska Stat. § 18.65.640 states, “A person who has filed a missing person report with the clearinghouse or a law enforcement agency shall immediately notify the clearinghouse or the law enforcement agency when the location of the missing person is determined.”

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<sup>69</sup> See *supra* note 17.