

PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.

ANALYSIS AND RECOMMENDATIONS NEBRASKA*

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 Analysis¹:

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

Nebraska's human trafficking law specifically addresses minors trafficked for commercial sexual exploitation, and does not require force, fraud or coercion. Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) provides,

(2) No person shall knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempt to recruit, entice, harbor, provide, or obtain by any means a minor² for the purpose of having such minor engage in commercial sexual activity,³ sexually-explicit performance,⁴ or the production of

* This document has not been fully reviewed and approved by ACLJ.

¹ Unless otherwise specified, all references to Nebraska statutes were taken from Nebraska Revised Statutes Annotated (LEXIS current through the 2010 102d First Sess.) and all federal statutes were taken from United States Code (LEXIS current through PL 112-54, approved 11/12/2011).

² Neb. Rev. Stat. Ann. § 28-830(7) defines a "minor" as "a person younger than eighteen years of age."

³ Neb. Rev. Stat. Ann. § 28-830(2) defines "commercial sexual activity" as "any sex act on account of which anything of value is given, promised to, or received by any person."

⁴ Neb. Rev. Stat. Ann. § 28-830(10) defines "sexually-explicit performance" as "a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests."

pornography, or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography. A person who violates this subsection shall be punished as follows:

- (a) In cases in which the actor⁵ uses overt force or the threat of force, the actor is guilty of a Class II felony;
- (b) In cases in which the victim has not attained the age of fifteen years and the actor does not use overt force or the threat of force, the actor is guilty of a Class II felony; or
- (c) In cases involving a victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force, the actor is guilty of a Class III felony.

A Class II felony is punishable by imprisonment for 1–50 years,⁶ while Class III felonies are punishable by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both.⁷ Neb. Rev. Stat. Ann. § 28-105(1).

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.*

Nebraska has several statutes specifically criminalizing CSEC, including the following:

1. Neb. Rev. Stat. Ann. § 28-805(1) (Debauching a minor; penalty) provides,

(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by:

....

(b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration

....

A conviction under Neb. Rev. Stat. Ann. § 28-805(1) this statute is punishable as a Class I misdemeanor by imprisonment up to 1 year, imprisonment and/or a fine not to exceed fine of up to \$1,000, or both. Neb. Rev. Stat. Ann. § § 28-805(2), 28-106(1).

⁵ Neb. Rev. Stat. Ann. § 28-830(1) defines an “actor” as “a person who solicits, procures, or supervises the services or labor of another person.”

⁶ The format of Neb. Rev. Stat. Ann. § 28-105(1) on LEXIS makes it difficult to determine what mandatory minimum penalty applies to which statute. Therefore, an Internet version of Neb. Rev. Stat. Ann. § 28-105(1) was consulted in making these determinations. NEBRASKA LEGISLATURE, <http://nebraskalegislature.gov/laws/statutes.php?statute=28-105> (last visited Oct. 17, 2011).

⁷ Heightened penalties under Neb. Rev. Stat. Ann. § 29-2221 (Habitual criminal; defined; procedure for determination; hearing; penalties; effect of pardon) may apply. Neb. Rev. Stat. Ann. § 29-2221(1) states,

(1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be deemed to be a habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of . . . 28-313 [Kidnapping; penalties], . . . 28-319.01 [Sexual assault of a child; first degree; penalty], . . . and at least one of the habitual criminal’s prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

....

2. Neb. Rev. Stat. Ann. § 28-707 (Child abuse; privileges not available; penalties) states,

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

...

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions

....

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.⁸

(5) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

Pursuant to Neb. Rev. Stat. Ann. § 28-106(1), a Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. A Class IIIA felony is punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both; a Class II felony is punishable by imprisonment for 1–50 years; and a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

3. Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states,

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct⁹ which has a child as one of its participants or portrayed observers.

....

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

....

A violation of this statute by a person 18 years of age or younger is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1),(2), 28-105(1). A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.¹⁰ Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

⁸ Neb. Rev. Stat. Ann. § 28-109(20) (Terms, defined) defines “serious bodily injury” as “bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.”

⁹ Neb. Rev. Stat. Ann. § 28-1463.02(5) (Terms, defined) defines “sexually explicit conduct” as,

(a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved.

¹⁰ Pursuant to Neb. Rev. Stat. Ann. § 28-1463.04(3),

Several other laws, while not expressly commercial in nature, may also be applicable in cases involving the commercial sexual exploitation of a child. Some of those statutes are as follows:

1. Neb. Rev. Stat. Ann. § 28-805(1)(a) (Debauching a minor; penalty) provides, “(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by: (a) Lewdly inducing such boy or girl carnally to know any other person¹¹ A conviction under Neb. Rev. Stat. Ann. § 28-805(1) is punishable as a Class I misdemeanor by imprisonment up to 1 year, imprisonment and/or a fine not to exceed fine of up to \$1,000, or both. Neb. Rev. Stat. Ann. § § 28-805(2), 28-106(1).
2. Neb. Rev. Stat. Ann. § 28-833 (Enticement by electronic communication device; penalty) provides,
 - (1) A person commits the offense of enticement by electronic communication¹² device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:
 - (a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;
 - (b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02 [Terms, defined];¹³ or
 - (c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).

3. Neb. Rev. Stat. Ann. § 28-319.01(1) (Sexual assault of a child; first degree; penalty) states,
 - (1) A person commits sexual assault of a child in the first degree:
 - (a) When he or she subjects another person under twelve years of age to sexual penetration¹⁴ and the actor is at least nineteen years of age or older; or
 - (b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

A first conviction under this statute is punishable as a Class IB felony by imprisonment for 15 years to life. Neb. Rev. Stat. Ann. §§ 28-319.01(2), 28-105(1). The penalty is enhanced to 25 years to life

Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

¹¹ See *State v. Parmer*, 313 NW 2d 237, 240 (Sup. Ct. 1981) (“We therefore construe ‘any other person’ to mean any person other than the victim.”)

¹² For purposes of Neb. Rev. Stat. Ann. § 28-833, “electronic communication” is defined as “any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.” Neb. Rev. Stat. Ann. § 28-833(4).

¹³ See *supra* note 9.

¹⁴ Neb. Rev. Stat. Ann. § 28-318(6) (Terms, defined) defines “sexual penetration” as,

[S]exual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor’s or victim’s body or any object manipulated by the actor into the genital or anal openings of the victim’s body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.

imprisonment, however, if an offender has a prior conviction under this statute or a number of other specific statutes.¹⁵ Neb. Rev. Stat. Ann. §§ 28-319.01(3), 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-320.01 (Sexual assault of a child; second or third degree; penalties) states,

(1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact¹⁶ and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.

(3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.

....

A first conviction for second degree sexual assault of a child is a Class II felony punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-320.01(2), 28-105(1). A conviction is punishable as a class IC felony by imprisonment for 25–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.¹⁷ Neb. Rev. Stat. Ann. §§ 28-320.01(4), 28-105(1). A first conviction for third degree sexual assault of a child is a Class IIIA felony punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-320.01(3), 28-105(1). A conviction is punishable as a class IC felony punishable by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.¹⁸ Neb. Rev. Stat. Ann. §§ 28-320.01(5), 28-105(1).

¹⁵ Neb. Rev. Stat. Ann. § 28-319.01(3) provides,

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

¹⁶ Neb. Rev. Stat. Ann. § 28-318(5) defines “sexual contact” as,

[T]he intentional touching of the victim’s sexual or intimate parts or the intentional touching of the victim’s clothing covering the immediate area of the victim’s sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor’s sexual or intimate parts or the clothing covering the immediate area of the actor’s sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor’s sexual or intimate parts on any part of the child’s body for purposes of sexual assault of a child under sections 28-319.01 [Sexual assault of a child; first degree; penalty] and 28-320.01 [Sexual assault of a child; second or third degree; penalties];

¹⁷ Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(4),

Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

¹⁸ Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(5),

(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.

5. Neb. Rev. Stat. Ann. § 28-320.02 (1)(Sexual assault; use of electronic communication device; prohibited acts; penalties) provides,

No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833,¹⁹ to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty]²⁰

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes.²¹ Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Nebraska’s CSEC statutes do not refer to Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties).

- 1.3.1 Recommendation: Amend Nebraska’s CSEC laws to refer to Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) for cases of commercial sexual exploitation of a child to clarify the status of these victims as human trafficking victims.

¹⁹ See *supra* note 12.

²⁰ Neb. Rev. Stat. Ann. § 28-320.02(1) also states, “A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.”

²¹ Neb. Rev. Stat. Ann. § 28-320.02(2) states,

If a person who violates this section has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty], the person is guilty of a Class IC felony.

Legal Components:

- 2.1 *The state sex trafficking law can be applied to 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 of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet 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 is permitted for a buyer of commercial sex 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 buyers of commercial sex acts with a victim of domestic minor sex trafficking.*

Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) states in part, “No person shall knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempt to recruit, entice, harbor, provide, or obtain by any means a minor . . . to cause or attempt to cause a minor to engage in commercial sexual activity” which may be applicable to buyers of sex with minors.

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

Only one of Nebraska’s CSEC laws may apply to buyers of sex with minors. Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) may be used to prosecute a buyer who commits child abuse “by allowing, encouraging, or forcing such minor child to . . . engage in prostitution” A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(6). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

While not limited in application to the solicitation of minors, Nebraska’s age-neutral solicitation law, Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution), is the statute most likely to be used to prosecute buyers of sex with minors. Neb. Rev. Stat. Ann. § 28-801.01(1) states, “Any person who solicits another person not his

or her spouse to perform any act of sexual contact²² or sexual penetration,²³ as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.” A first conviction under this statute is punishable as a Class I misdemeanor by imprisonment up to 1 year and a fine of \$250–\$1,000;²⁴ a subsequent conviction, however, is a Class IV felony punishable by imprisonment up to 5 years and a fine of \$500–\$10,000.²⁵ Neb. Rev. Stat. Ann. § 28-801.01(2)(a)–(b), 28-106(1), 28-105(1).

Several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.²⁶ These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties).

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

Nebraska’s main solicitation law does not differentiate between buying sex with an adult and buying sex with a minor. Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty) provides, “Any person who solicits another person who is not his spouse to perform any act of sexual contact or sexual penetration . . . in exchange for money or other thing of value, commits solicitation of prostitution.” A first conviction under this statute is punishable as a Class I misdemeanor, regardless if the victim is an adult or a minor, by imprisonment up to 1 year and a fine of \$250–\$1,000.²⁷ Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). A subsequent conviction, however, is a Class IV felony punishable by imprisonment up to 5 years and a fine of \$500–\$10,000.²⁸ Neb. Rev. Stat. Ann. §§ 28-801.01(2)(b), 28-105(1).

- 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 Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution) to refer to Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) 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 high as federal penalties.*

If a victim is under 15 years of age or the offender “uses overt force or the threat of force,” a conviction under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(2)(a)–(b), 28-105(1). If the victim is 15 years of age or older and the buyer did not use force or the threat of force, however, a conviction is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1).

²² See *supra* note 16.

²³ See *supra* note 14.

²⁴ Neb. Rev. Stat. Ann. § 28-801.01(2)(a) also provides,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

²⁵ Neb. Rev. Stat. Ann. § 28-801.01(2)(b) similarly states,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

²⁶ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute some buyers.

²⁷ See *supra* note 24.

²⁸ See *supra* note 25.

However, if not identified as trafficking, a buyer convicted under Nebraska’s general solicitation law, Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution; penalty), is punishable as a Class I misdemeanor by imprisonment up to 1 year and a fine of \$250–\$1,000;²⁹ a subsequent conviction, however, is a Class IV felony punishable by imprisonment up to 5 years and a fine of \$500–\$10,000.³⁰ Neb. Rev. Stat. Ann. § 28-801.01(2)(a), (2)(b), 28-106(1), 28-105(1).

Lastly, a violation of Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is punishable as a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(6). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³¹ 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 offense³² against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,³³ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³⁴

- 2.4.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) to mandate a longer sentence closer to federal standards and more substantial fines consistent with fines for federal trafficking offenses.

²⁹ See *supra* note 24.

³⁰ See *supra* note 25.

³¹ 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.).

³² 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).

³³ 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).

³⁴ 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).

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.*

Although neither is expressly commercial in nature, two of Nebraska's laws criminalize the use of the Internet to lure, entice, or recruit a child to engage in sexual conduct.

Neb. Rev. Stat. Ann. § 28-833 (Enticement by electronic communication device; penalty) provides,

(1) A person commits the offense of enticement by electronic communication³⁵ device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

. . . .

(c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).

Additionally, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) provides,

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty]

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes.³⁶ Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

2.5.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties) and § 28-833 (Enticement by electronic communication device; penalty) to expressly make it illegal for a person to use the Internet to solicit a minor under the age of 18 for commercial sexual activity.

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

Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-707(1)(d) (Child abuse; privileges not available; penalties), and § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), do not expressly prohibit an offender from asserting a mistake of age defense.

Because the conduct under Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution) is illegal regardless of the age of the person solicited, a mistake of age defense is irrelevant to buyers prosecuted under this statute.

³⁵ See *supra* note 12.

³⁶ See *supra* note 21.

2.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-707(1)(d) (Child abuse; privileges not available; penalties) and § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) to expressly prohibit an offender from asserting a mistake of age defense.

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.*

Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) staggers its penalties and bases them, in part, on the age of the victim. If a victim is under 15 years of age or the offender “uses overt force or the threat of force,” a conviction is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(2)(a)–(b), 28-105(1). If the victim is 15 years of age or older and the buyer did not use force or the threat of force, however, a conviction is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1).

Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) applies when the victim is a “minor child,” a term which is not defined, but presumably applies to all minors under 18. Penalties under this statute are staggered not by age but by knowledge of the defendant; ranging from 1 year, 5 years–50 years, or 20 years to life. Neb. Rev. Stat. Ann. § 28-106(1), 105(1). Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) staggers penalties based, in part, on the age of the victim. If the child is a “participant” in the child pornography, the same penalties apply regardless of the age of the minor, but if the child is a “portrayed observer,” a penalty under this statute can only be applied if the victim is under 16 years of age.³⁷ Penalties start at 1–20 years when perpetrated by a person 18 or younger 3–50 years for others. Neb. Rev. Stat. Ann. §§ 28-1463.04(1),(2), 28-105(1).

Neb. Rev. Stat. Ann. § 28-833 (Enticement by electronic communication device; penalty) only applies if the child-victim is under 16 years of age, providing a penalty of up to 5 years imprisonment. Neb. Rev. Stat. Ann. § 28-833(2), 28-105(1).

2.7.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(2)(C) (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-707(1)(d) (Child abuse; privileges not available; penalties), § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), and § 28-833(1) (Enticement by electronic communication device; penalty) to punish perpetrators of offenses against victims of all ages under 18 equally.

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.*

To the extent a buyer may be prosecuted under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties), a buyer will not be required to pay a fine if the victim is under 15 years old or the buyer “use[d] overt force or the threat of force.” Neb. Rev. Stat. Ann. §§ 28-831(2)(a)–(b), 28-105(1). A buyer will be subject to a possible fine not to exceed \$25,000, however, if the victim is 15 years of age or older and the buyer did not use force or the threat of force. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1).

If not identified as trafficking, a buyer’s first conviction under Nebraska’s general solicitation law, Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution; penalty), requires a fine of \$250–\$1,000.³⁸ Neb. Rev. Stat.

³⁷ Neb. Rev. Stat. Ann. § 28-1463.02(1) (Terms, defined) defines “child” as “in the case of a participant, . . . any person under the age of eighteen years and, in the case of a portrayed observer, . . . any person under the age of sixteen years.”

Ann. §§ 28-801.01(2)(a), 28-106(1). Subsequent convictions, however, are subject to a fine of \$500–\$10,000.³⁹ Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), (b), 28-105(1). A buyer convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty) is subject to a possible fine not to exceed \$1,000. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

A buyer convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” while an offense “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child is not subject to any fine. Neb. Rev. Stat. Ann. §§ 28-707(1)(3)–(6), 28-106(1), 28-105(1).

Buyers also may be required to pay restitution. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. . . .

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

While other criminal laws in Nebraska authorize the seizure of contraband,⁴⁰ no similar asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws.

2.8.1 Recommendation: Enact a law requiring buyers who violate Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws to forfeit property used in commission of the crime.

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

Nebraska law prohibits both the possession and purchasing of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) makes it illegal for “a person knowingly to purchase rent . . . trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” A violation under this statute by a person 18 years of age or younger is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is a punishable as a Class IC felony by imprisonment for 5–50 years, however, if

⁴⁰ See, e.g., Neb. Rev. Stat. Ann. § 29-440(1)(a) (Domestic assault; weapons; seizure and disposition) (authorizing the seizure of “weapons that are alleged to have been involved or threatened to be used” in a domestic assault); Neb. Rev. Stat. Ann. § 37-809(3) (Violations; penalties; conservation or peace officer; powers and duties; regulations) (authorizing seizure of “business records, wildlife, wild plants, or other contraband taken, used, or possessed in connection with any violation of the Nongame and Endangered Species Conservation Act”).

a person has a prior conviction under this statute or a number of other specific statutes.⁴¹ Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Neb. Rev. Stat. Ann. § 28-813.01(1) (Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense) makes it illegal for a person “to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02,⁴² which has a child, as defined in such section,⁴³ as one of its participants or portrayed observers.” If the offender is under 19 year old, a first conviction under this statute is punishable as a Class IV felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-813.01(2)(a), 28-105(1). If the offender is 19 years of age or older, a first conviction is punishable as a Class III felony by imprisonment for 1–20 years, a fine up to \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-813.01(2)(b), 28-105(1). In instances where the offender has a prior conviction under this statute or other specific criminal statutes,⁴⁴ a conviction is punishable as a Class IC felony by imprisonment for 5–50 years.

In contrast, a federal conviction for possession of child pornography⁴⁵ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁷

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) (Operative Jan. 1, 2012)⁴⁸ states, “Any person subject to the Sex Offender

⁴¹ See *supra* note 10.

⁴² See *supra* note 9.

⁴³ “Child, in the case of a participant, means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years.” Neb. Rev. Stat. Ann. § 28-1463.02(1).

⁴⁴ Pursuant to Neb. Rev. Stat. Ann. § 28-813.01(2)(c),

Any person who violates this section and has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ The current version of Neb. Rev. Stat. Ann. § 29-4004 has been amended by 2010 Neb. Laws 147, effective Jan. 1, 2010. Because these amendments do not affect the substance of this discussion, the later version was used.

Registration Act⁴⁹ shall register within three working days after becoming subject to the act . . .” Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) provides,

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

...

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

...

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

....

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

...

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

....

Buyers convicted under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution), however, are not required to register as a sex offender under Nebraska law.

2.10.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) to make the Sex Offender Registration Act applicable to buyers convicted under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), or Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution) in instances where the person trafficked, abused, or solicited is a minor under the age of 18.

⁴⁹ Neb. Rev. Stat. Ann. §§ 29-4001–4014.

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.

If a victim is under 15 years of age or the offender “uses overt force or the threat of force,” a trafficker convicted under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) is guilty of a Class II felony punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(2)(a)–(b), 28-105(1). If the victim is 15 years of age or older and the trafficker did not use force or the threat of force, however, a conviction is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1).

Traffickers also may be convicted Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties)⁵⁰ may be used to prosecute a trafficker who commits child abuse by placing a child “in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to . . . engage in prostitution.” A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(6). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1). Lastly, a trafficker may be conviction under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty), which is punishable as a Class I misdemeanor by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

Additionally, traffickers may be prosecuted under Nebraska’s Public Protection Act.⁵¹ Specifically, Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts) provides,

(1) It shall be unlawful for any person⁵² who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity⁵³ or through collection of an

⁵⁰ See *supra* Section 1.2 for the provisions of Neb. Rev. Stat. Ann. § 28-707(1)(d).

⁵¹ Neb. Rev. Stat. Ann. §§ 28-1352 to 1356.

⁵² “Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property.” Neb. Rev. Stat. Ann. § 28-1354(3).

⁵³ Pursuant to Neb. Rev. Stat. Ann. § 28-1354(2),

unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise.⁵⁴

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

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

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Pursuant to Neb. Rev. Stat. Ann. § 28-1354(5)(j) (Terms, defined),

Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

. . . .

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; human trafficking or forced labor or services under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act,⁵⁵

. . . .

A conviction under Neb. Rev. Stat. Ann. § 28-1355 is punishable as a Class III felony by imprisonment for 1–20 years, the greater of a fine not to exceed \$25,000 or, in the case of pecuniary value to the defendant, or personal injury or property loss to the victim, up to “three times the gross value gained or three times the gross loss caused,” or both imprisonment and fine. Neb. Rev. Stat. Ann. §§ 28-1356(1)–(2), 28-105(1). Although Neb. Rev. Stat. Ann. § 28-1356(1) additionally states that “if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony,” a conviction is punishable as a Class IB felony, convictions for the offenses related to the commercial sexual exploitation of a minor included within the definition of “racketeering activity” are not punishable as Class I, IA, or IB felonies.

Lastly, Neb. Rev. Stat. Ann. § 28-1351(1) (Unlawful membership recruitment into an organization or association; penalty) makes it a crime if a person,

[K]nowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

⁵⁴ “Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities.” Neb. Rev. Stat. Ann. § 28-1354(1).

⁵⁵ Neb. Rev. Stat. Ann. §§ 28-1463.01 to 1463.05. This includes offenses under Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) or Neb. Rev. Stat. Ann. § 28-1463.05 (Visual depiction of sexually explicit acts related to possession; violation; penalty).

...
(r) Pandering under section 28-802 [Pandering; penalty];
....

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-1351(2), 28-105(1).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵⁶ 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 offense⁵⁷ against a minor.

3.1.1 Recommendation: Raise the penalties associated with trafficking crimes to align with federal guidelines for trafficking and CSEC violations.

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

Nebraska prohibits both the creation and distribution of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states,

- (1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct⁵⁸ which has a child⁵⁹ as one of its participants or portrayed observers.
- (2) It shall be unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.
- (4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

....

A violation of this statute by a person 18 years of age or younger is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.⁶⁰ Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

⁵⁶ 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.).

⁵⁷ See *supra* note 32.

⁵⁸ See *supra* note 9.

⁵⁹ See *supra* note 37.

⁶⁰ See *supra* note 10.

In contrast, 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 offense⁶¹ against a minor. Additionally, a federal conviction for distribution of child pornography⁶² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁶³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁶⁴

3.2.1 Recommendation: Raise the penalties for offenses under Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) to align with federal penalties.

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.*

While not expressly commercial in nature, Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties) may be used to prosecute a trafficker who uses the Internet to lure, entice, or recruit a child for use in commercial sex acts. Neb. Rev. Stat. Ann. § 28-320.02(1) states,

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833⁶⁵ to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty]

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes.⁶⁶ Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

3.3.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties) to carry heightened penalties for traffickers who use the Internet to lure, entice, recruit or sell commercial sex acts with minors.

⁶¹ See *supra* note 32.

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

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

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

⁶⁵ See *supra* note 12.

⁶⁶ See *supra* note 21.

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

Traffickers may be required to pay fines ranging from \$1,000–\$25,000. Traffickers convicted under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) is subject to a possible fine not to exceed \$25,000, if the victim is between 15–18 years of age and the trafficker did not use force or the threat of force in the commission of the crime. Neb. Rev. Stat. Ann. §§ 28-831(2)(b), 28-105(1). Traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty) are subject to a possible fine not to exceed \$1,000. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1). First time convictions under Neb. Rev. Stat. Ann. § 28-322.05(1) (Unlawful use of the Internet by a prohibited sex offender; penalties) are also subject to a possible fine not to exceed \$1,000, but subsequent convictions, however, are subject to a possible fine not to exceed \$10,000. Neb. Rev. Stat. Ann. §§ 28-322.05(2), 28-106(1), 28-105(1). A trafficker convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(1)(3)–(6), 28-106(1), 28-105(1). Traffickers convicted under Neb. Rev. Stat. Ann. § 28-1351 (Unlawful membership recruitment into an organization or association; penalty) are subject to a possible fine not to exceed \$10,000. Neb. Rev. Stat. Ann. §§ 28-802(2), 28-1351(2), 28-105(2). Lastly, traffickers convicted under Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts) are subject to the greater of a fine not to exceed \$25,000 or “three times the gross value gained or three times the gross loss caused” Neb. Rev. Stat. Ann. §§ 28-1356(1), (2), 28-105(1).

Additionally, traffickers who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).⁶⁷ The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

While other criminal laws in Nebraska authorize the seizure of contraband,⁶⁸ no similar asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws.

3.4.1 Recommendation: Allow for asset forfeiture in human trafficking and CSEC offenses.

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) (Operative Jan. 1, 2012)⁶⁹ states, “Any person subject to the Sex Offender Registration Act⁷⁰ shall register within three working days after becoming subject to the act” and Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) establishes when an offender becomes subject to the provisions of the Sex Offender Registration Act.⁷¹

Traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty), Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts);

⁶⁷ See *supra* Section 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

⁶⁸ See *supra* note 40.

⁶⁹ See *supra* note 48.

⁷⁰ See *supra* note 49.

⁷¹ See *supra* Section 2.10 for the provisions of Neb. Rev. Stat. Ann. § 29-4003(1).

affirmative defense), Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties), Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), Neb. Rev. Stat. Ann. § 28-1463.05(1) (Visual depiction of sexually explicit acts related to possession; violation; penalty), Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties), or Neb. Rev. Stat. Ann. § 28-802(1) (Pandering; penalty) (where the victim is a minor) are required to register as a sex offender. Neb. Rev. Stat. Ann. § 29-4003. Traffickers convicted under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or Neb. Rev. Stat. Ann. § 28-804(1) (Keeping a place of prostitution; penalty), however, are not required to register as a sex offender under Nebraska law.

3.5.1 Recommendation: Require sex offender registration for convictions under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-801.01 (Solicitation of prostitution), and § 28-804 (Keeping a place of prostitution; penalty) when a minor is involved.

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.*

Nebraska laws relating to the termination of parental rights do not include a violation of Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) or any of Nebraska's CSEC laws as grounds for terminating parental rights. However, Neb. Rev. Stat. Ann. § 43-292 (Termination of parental rights; grounds) provides,

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

...

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

...

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or a comparable crime in another state.

3.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 43-292(10) (Termination of parental rights; grounds) to include Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and Nebraska's CSEC laws as grounds for the termination of parental rights.

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 statute.*

Under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) it is illegal for a person to “knowingly recruit, entice, harbor, transport, provide, or obtain” a minor for commercial sexual activity. Although this statute is capable of reaching some facilitators, such as those who “harbor” or “transport” a minor, it may not reach all facilitators who “benefit,” “assist,” or “aid” in trafficking. To the extent Neb. Rev. Stat. Ann. § 28-831(2) is applicable to facilitators, if a victim is under 15 years of age or the offender “uses overt force or the threat of force,” a conviction is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(2)(a)–(b), 28-105(1). If the victim is 15 years of age or older and the buyer did not use force or the threat of force, however, a conviction is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1).

A facilitator may also be convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties).⁷² A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(6). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

Lastly, Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts)⁷³ may be used to prosecute facilitators found to have engaged in “racketeering activity.”⁷⁴

A conviction under Neb. Rev. Stat. Ann. § 28-1355 is punishable as a Class III felony by imprisonment for 1–20 years, the greater of a fine not to exceed \$25,000 or, in the case of pecuniary value to the defendant, or personal injury or property loss to the victim, up to “three times the gross value gained or three times the gross loss caused,” or both imprisonment and fine. Neb. Rev. Stat. Ann. §§ 28-1356(1), (2), 28-105(1). Although Neb. Rev. Stat. Ann. § 28-1356(1) additionally states that “if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony,” a conviction is punishable as a Class IB felony, convictions

⁷² See *supra* Section 1.2 for the provisions of Neb. Rev. Stat. Ann. § 28-707.

⁷³ See *supra* Section 3.1 for the provisions of Neb. Rev. Stat. Ann. § 28-1355.

⁷⁴ See *supra* Section 3.1 for the definition of “racketeering activity.”

for the offenses related to the commercial sexual exploitation of a minor included within the definition of “racketeering activity” are not punishable as Class I, IA, or IB felonies.

- 4.1.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) to include assisting, enabling, or financially benefitting from domestic minor sex trafficking as actions that violate the 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.*

To the extent that Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) can be used to prosecute facilitators, a facilitator convicted under Neb. Rev. Stat. Ann. § 28-831(2) is subject to a possible fine not to exceed \$25,000. Neb. Rev. Stat. Ann. §§ 28-831(2)(c), 28-105(1). A facilitator convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(1)(3)–(6), 28-106(1), 28-105(1). Neb. Rev. Stat. Ann. §§ 28-804(2), 28-802(2), 28-106(1), 28-105(1). Lastly, facilitators convicted under Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts) are subject to the greater of a fine not to exceed \$25,000 or “three times the gross value gained or three times the gross loss caused” Neb. Rev. Stat. Ann. §§ 28-1356(1), (2), 28-105(1).

Additionally, facilitators who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).⁷⁵ The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

While other criminal laws in Nebraska authorize the seizure of contraband,⁷⁶ no similar seizure or asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or Nebraska’s CSEC laws.

- 4.2.1 Recommendation: Add financial penalties to Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) to financially penalize facilitators convicted of trafficking, and enact asset forfeiture laws related to trafficking in order to reach the facilitator’s proceeds from the crimes committed.

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

There is no Nebraska law that addresses sex tourism.

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

⁷⁵ See *supra* Section 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

⁷⁶ See *supra* note 40.

4.4 Promoting and selling child pornography is illegal.

Nebraska prohibits both the promotion and distribution of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states it is “unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child⁷⁷ as one of its participants or portrayed observers.” A violation of this statute by a person 18 years of age or younger is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is a punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.⁷⁸ Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Furthermore, Neb. Rev. Stat. Ann. § 28-1463.05(1) (Visual depiction of sexually explicit acts related to possession; violation; penalty) makes it illegal “for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” A first conviction under this statute by an offender under 19 years of age is punishable as a Class IIIA felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both, while a first conviction by an offender 19 years of age or older is punishable as a Class III felony by imprisonment for 1–20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(a)–(b), 28-105(1). In instances where the offender has a prior conviction under this statute or other specific criminal statutes⁷⁹ a conviction is punishable as a Class IC felony by imprisonment for 5–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(c), 28-105(1).

⁷⁷ See *supra* note 37.

⁷⁸ See *supra* note 10.

⁷⁹ See *supra* note 10.

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 or sex trafficking 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 the 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 action 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.*

Neb. Rev. Stat. Ann. § 28-830(11) (Human trafficking; forced labor or services; terms, defined) defines a "trafficking victim" as "a person subjected to any act or acts prohibited by section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties]."

For purposes of crime victims' compensation, Neb. Rev. Stat. Ann. § 81-1801(7) (Terms, defined) defines "victim" as "a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted]." Neb. Rev. Stat. Ann. § 81-1818 (Personal injury or death; situations for which compensation is permitted) states,

The committee or hearing officer may order the payment of compensation from the Victim's Compensation Fund for personal injury or death which resulted from:

- (1) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his or her duties, or to aid a victim of a crime; or
- (2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

5.1.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 81-1801(7) to expressly include commercially sexually exploited minors under the age of 18 as victims for purposes of Nebraska Crime Victim’s Reparations Act.

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.*

Nothing in Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties), Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty), Neb. Rev. Stat. Ann. § 28-707 (Child abuse; privileges not available; penalties), or Neb. Rev. Stat. Ann. § 28-322.05(1) (Unlawful use of the Internet by a prohibited sex offender; penalties) expressly prohibits a consent defense in instances where a minor is a victim of a commercial sex act.

Neb. Rev. Stat. Ann. § 28-813.01(3)(b) (Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense), however, provides an affirmative defense based on the consent of a minor if the victim is 15–18 years old. Specifically, Neb. Rev. Stat. Ann. § 28-813.01(3)(b) provides,

It shall be an affirmative defense to a charge made pursuant to this section that:

....

(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

5.2.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) and Nebraska’s CSEC and child pornography laws to expressly prohibit a consent defense when the victim is a minor under the age of 18.

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

Neb. Rev. Stat. Ann. § 28-801(1) (Prostitution; penalty) does not expressly apply only to adults. Neb. Rev. Stat. Ann. § 28-801(1) simply provides that “[a]ny person who performs, offers, or agrees to perform any act of sexual contact⁸⁰ or sexual penetration,⁸¹ as those terms are defined in section 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.” First and second⁸² convictions under this statute are punishable as Class II misdemeanors by imprisonment up to 6 months, a fine not to exceed \$1,000, or both.⁸³ Neb. Rev. Stat. Ann. §§ 28-801(2)(a), 28-106(1). Subsequent convictions are punishable as Class I misdemeanors by imprisonment up to 1 year, a fine not to exceed \$1,000, or both.⁸⁴ Neb. Rev. Stat. Ann. §§ 28-801(2)(b), 28-106(1).

⁸⁰ See *supra* note 16.

⁸¹ See *supra* note 14.

⁸² “For purposes of this subsection, prior conviction means any conviction on or after July 14, 2006, for violation of subsection (1) of this section or any conviction on or after July 14, 2006, for violation of a city or village ordinance relating to prostitution.” Neb. Rev. Stat. Ann. § 28-801(2).

⁸³ “If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment” Neb. Rev. Stat. Ann. § 28-801(2)(a).

⁸⁴ “If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed

5.3.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-801(1) (Prostitution; penalty) to apply only to adults and to specify that minors under the age of 18 who are prostituted are not guilty of prostitution but are victims of a crime.

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.*

While no specific protective responses are expressly provided for victims of Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or Nebraska’s CSEC laws, some protections are afforded through Neb. Rev. Stat. Ann. § 28-832 (Human trafficking; Attorney General; Department of Health and Human Services; duties), which provides,

(1) The Attorney General, in consultation with the Department of Health and Human Services, shall, no later than one year after July 14, 2006, issue a report outlining how existing victim and witness laws and rules and regulations respond to the needs of trafficking victims and suggesting areas of improvement and modification.

(2) The Department of Health and Human Services, in consultation with the Attorney General, shall, no later than one year after July 14, 2006, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims and the interplay of such existing programs with federally funded victim service programs and suggesting areas of improvement and modification.

Existing laws related to abuse reporting and responses can protect some victims of domestic minor sex trafficking. Neb. Rev. Stat. Ann. § 28-711(1) (Child subjected to abuse or neglect; report; contents; toll-free number) states that medical professionals, social workers, school employees, and any “other person [who] has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect . . . shall” report the suspected abuse to law enforcement or the department. Pursuant to Neb. Rev. Stat. Ann. § 28-713(1) (Reports of child abuse or neglect; law enforcement agency; department; duties) it is the duty of law enforcement agencies that receive a child abuse report “to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate.” Neb. Rev. Stat. Ann. § 43-248 (Temporary custody of juvenile without warrant; when) authorizes a peace officer to take a child into temporary custody without a warrant under any of the following circumstances:

(1) A juvenile⁸⁵ has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile’s protection;

...

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

...

(6) The officer has reasonable grounds to believe the juvenile is truant from school.

Neb. Rev. Stat. Ann. § 43-249 (Temporary custody; not an arrest; exception) explains that a child taken into temporary custody without a warrant will not be considered to have been arrested. Pursuant to Neb. Rev. Stat. Ann. § 43-250(1) (Temporary custody; disposition; custody requirements), after taking a child into temporary custody under Neb. Rev. Stat. Ann. § 43-248(1), (4), or (5), the detaining officers must attempt to notify the child’s parent, guardian, custodian, or relative and take the steps set forth in the statute. If a child is taken into custody for being truant from school under Neb. Rev. Stat. Ann. § 43-

mental health professional or substance abuse professional authorized to complete such assessment” Neb. Rev. Stat. Ann. § 28-801(2)(b).

⁸⁵ Neb. Rev. Stat. Ann. § 43-245(7) (Terms; defined) defines “juvenile” as “any person under the age of eighteen.”

248(6), the detaining officer must return the child to the child's school. Neb. Rev. Stat. Ann. § 43-250(4). If a child is taken into temporary custody under Neb. Rev. Stat. Ann. § 43-248(2), Neb. Rev. Stat. Ann. § 43-250(2) provides,

[T]he peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

Pursuant to Neb. Rev. Stat. Ann. § 43-253(1), "Upon delivery to the probation officer of a juvenile who has been taken into temporary custody . . . the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody." If the officer "deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent," except that "[i]n no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile." Neb. Rev. Stat. Ann. § 43-253(4), (5). Neb. Rev. Stat. Ann. § 43-253(3) (Temporary custody; investigation; release; when) also prohibits a juvenile detained in custody pursuant to Neb. Rev. Stat. Ann. § 43-250(1)(c) to be held in secure detention for more than 24-hours "unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility"

With regard to a child taken into temporary custody pursuant to Neb. Rev. Stat. Ann. § 43-248(1), Neb. Rev. Stat. Ann. § 43-254 (Placement or detention pending adjudication; restrictions; assessment of costs) states,

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under subsections (1) through (4) of section 43-283.01 [Preserve and reunify the family; reasonable efforts; requirements].

In contrast, a child taken into temporary custody pursuant to Neb. Rev. Stat. Ann. § 43-248(1), (4) may be released or the child may be delivered to a probation officer who will "determine the need for detention of the juvenile as provided in section 43-260.01 [Detention; factors]." Neb. Rev. Stat. Ann. § 43-250(1)(c). Neb. Rev. Stat. Ann. § 43-260.01 (Detention; factors) states,

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated may be determined as follows:

- (1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

- (2) If the results indicate that secure detention⁸⁶ is not required, nonsecure detention⁸⁷ placement or supervision options shall be pursued; and
- (3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

If the probation officer determines that secure detention is necessary pursuant to Neb. Rev. Stat. Ann. § 43-260.01, Neb. Rev. Stat. Ann. § 43-250(1)(c)(i)–(iii) provides,

- (i) When a juvenile described in subdivision (1) or (2) of section 43-247 [Juvenile court; jurisdiction],⁸⁸ except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
- (ii) When a juvenile described in subdivision (1) or (2) of section 43-247 [Juvenile court; jurisdiction], except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
- (iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older.

Under Neb. Rev. Stat. Ann. § 43-250(1)(c)(iv), (1)(c)(vi), certain juveniles, including those under the age of 16, status offenders, and nonoffenders, “shall not be placed [or held] within a secure area of a jail or other facility intended or used for the detention of adults.”

Additionally, Neb. Rev. Stat. Ann. § 43-251.01 (Juveniles; placements and commitments; restrictions) states,

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

- (1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;
- (2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 [Juvenile court; jurisdiction] shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

⁸⁶ Neb. Rev. Stat. Ann. § 43-245(18) defines “secure detention” as “detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile’s movement.”

⁸⁷ Neb. Rev. Stat. Ann. § 43-245(13) defines “nonsecure detention” as “detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes.”

⁸⁸ Neb. Rev. Stat. Ann. § 43-247(1) gives the court jurisdiction over “[a]ny juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance,” which would include a violation of Neb. Rev. Stat. Ann. § 28-801(1) (Prostitution; penalty).

- (3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 [Juvenile court; jurisdiction] shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services; and
- (4) A juvenile under the age of twelve years shall not be placed with or committed to a youth rehabilitation and treatment center except as provided in section 43-286 [Juvenile violator or juvenile in need of special supervision; disposition; violation of probation; procedure].

Pursuant to Neb. Rev. Stat. Ann. § 43-255 (Detention or placement; release required; exceptions), any juvenile placed in custody under Neb. Rev. Stat. Ann. § 43-250 (Temporary custody; disposition; custody requirements) must be released within 48 hours of the detention or placement “unless within such period of time . . . (2) a petition has been filed pursuant to section 43-274 [County attorney; preadjudication powers and duties; juvenile court petition, pretrial diversion, or mediation; procedures], or (3) a criminal complaint has been filed in a court of competent jurisdiction.”

A pretrial diversion program may be available to a juvenile taken into custody for having violated a criminal law if established under Neb. Rev. Stat. Ann. § 43-260.02 (Juvenile pretrial diversion program; authorized). Neb. Rev. Stat. Ann. § 43-260.04(1) (Juvenile pretrial diversion program; requirements) sets out the requirements for the program and notes that the juvenile’s successful completion of the program will “[r]esult in dismissal of the juvenile petition or criminal charge.” Neb. Rev. Stat. Ann. § 43-260.04(5). Neb. Rev. Stat. Ann. § 43-260.06 (Juvenile diversion agreement; contents) provides,

A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

- (1) A letter of apology;
- (2) Community service, not to be performed during school hours if the juvenile offender is attending school;
- (3) Restitution;
- (4) Attendance at educational or informational sessions at a community agency;
- (5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and
- (6) Upon agreement of the victim, participation in juvenile offender and victim mediation.

Pursuant to Neb. Rev. Stat. Ann. § 43-279.01 (Juveniles in need of assistance; placement with association or institution; agreements; effect), for the court to determine whether the allegations in a petition alleging a juvenile to be within the provisions of Neb. Rev. Stat. Ann. § 43-247(3)(a)⁸⁹ are true, the court must first allow the parent or guardian to admit or deny the allegations, or plead no contest. Neb. Rev. Stat. Ann. § 43-279.01(1), (2). If the parent or guardian denies the allegations, the court will “proceed to determine the question of whether the juvenile falls under the provisions of section 43-247 [Juvenile court; jurisdiction] as alleged. . . . [and] shall make a finding and adjudication to be entered on the records of the court as to whether the allegations in the petition have been proven by a preponderance of the evidence.” Neb. Rev. Stat. Ann. § 43-279.01(3).

Similarly, under Neb. Rev. Stat. Ann. § 43-279(1), (2) (Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings) if a petition alleges that a juvenile falls under the provisions of

⁸⁹ Neb. Rev. Stat. Ann. § 43-247(3)(a) includes,

Any juvenile . . . who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile . . .

Neb. Rev. Stat. Ann. § 43-247(1) or (3)(b) [Juvenile court; jurisdiction],⁹⁰ “the court shall make a finding and adjudication, to be entered on the records of the court, whether or not the juvenile is a person described by” Neb. Rev. Stat. Ann. § 43-247(1) or (3)(b). Such finding and adjudication must be “based upon proof beyond a reasonable doubt.” Neb. Rev. Stat. Ann. § 43-279(2).

Pursuant to Neb. Rev. Stat. Ann. § 43-284 (Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions),

When any juvenile is adjudged to be under . . . [Neb. Rev. Stat. Ann. § 43-247(3)⁹¹], the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, . . . (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services.

. . . .
The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01 [Preserve and reunify the family; reasonable efforts; requirements].

For a juvenile adjudicated under Neb. Rev. Stat. Ann. § 43-247(1),⁹² Neb. Rev. Stat. Ann. § 43-286(1) (Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure) provides several dispositional alternatives including a continuing disposition “upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs.” Other dispositional alternatives which are “subject to the supervision of a probation officer” include placing the child on probation, permitting the child to remain in his or her home or “a suitable family home,” or placing the child in a suitable institution. Neb. Rev. Stat. Ann. § 43-286(1)(a)(i)–(iii).

Alternatively, pursuant to Neb. Rev. Stat. Ann. § 43-286(1)(b), “The court may commit such juvenile to the Office of Juvenile Services, but a juvenile under the age of twelve years shall not be placed at the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney unless he or she has violated the terms of probation or has committed an additional offense and the court finds that the interests of the juvenile and the welfare of the community demand his or her commitment. . . .”

“When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247 [Juvenile court; jurisdiction],⁹³ the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section or enter an order committing or placing the juvenile to the care and custody of the Department of Health and Human Services . . . [and] [w]hen any juvenile is adjudicated to

⁹⁰ Neb. Rev. Stat. Ann. § 43-247(1), (3)(b) includes,

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

. . . .
(3) Any juvenile . . . (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school . . .

⁹¹ See *supra* note 89 for relevant sections of Neb. Rev. Stat. Ann. § 43-247(3)(a) and *supra* note 90 for relevant sections of § 43-247(3)(b).

⁹² See *supra* note 90.

⁹³ See *supra* note 90.

be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 [Juvenile court; jurisdiction] because of a nonviolent act or acts and the juvenile has not previously been adjudicated to be such a juvenile because of a violent act or acts, the court may, with the agreement of the victim, order the juvenile to attend juvenile offender and victim mediation with a mediator or at an approved center” Neb. Rev. Stat. Ann. § 43-286(2), (3).

5.4.1 Recommendation: Enact a law to route commercially sexually exploited children directly into a child protective response system designed to meet the needs of commercially sexually exploited youth.

5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*

Commercial sexual exploitation is expressly identified as a type of abuse or neglect within Nebraska’s Child Protection Act.⁹⁴ Specifically, Neb. Rev. Stat. Ann. § 28-710(2)(a)(vi) defines “child abuse or neglect” to include,

[K]nowingly, intentionally, or negligently causing or permitting a minor child to be:

. . .

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.

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 the protection of child protective services.*

Nebraska’s child welfare statutes do not define the term “caregiver” or “custodian.” Nebraska’s Child Protection Act,⁹⁵ however, does refer to the “subject of the investigation or report of child abuse or neglect” and defines “subject of the report of child abuse or neglect” as “the person or persons identified in the report as responsible for the child abuse or neglect.” Neb. Rev. Stat. Ann. § 28-710(2)(e). It is feasible, therefore, that this definition could include a trafficker.

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

A commercially sexually exploited child may be eligible to receive compensation under Nebraska’s Crime Victim’s Reparation Act.⁹⁶ Specifically, Neb. Rev. Stat. Ann. § 81-1801(7) defines a “victim” as “a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted].” Neb. Rev. Stat. Ann. § 81-1818 (Personal injury or death; situations for which compensation is permitted) states,

The committee or hearing officer may order the payment of compensation from the Victim’s Compensation Fund for personal injury or death which resulted from:

. . .

(2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

⁹⁴ See *supra* note 95.

⁹⁵ Neb. Rev. Stat. Ann. §§ 28-710 to 28-727.

⁹⁶ Neb. Rev. Stat. Ann. §§ 81-1801 to 81-1842.

Neb. Rev. Stat. Ann. § 81-1807 (Victim; compensation; application) provides that “[a]ny person who may be eligible for compensation under the Nebraska Crime Victim’s Reparations Act may make application to the committee on forms provided by the committee.”

Neb. Rev. Stat. Ann. § 81-1819 (Payment of compensation; order; losses covered) provides that a victim may receive compensation for

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including expenses for mental health counseling and care;
- (2) Loss of wages and future earning capacity as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Funeral and burial expenses actually and reasonably incurred as a result of the death of the victim; and
- (5) Any other loss resulting from the personal injury or death of the victim which the committee determines to be reasonable.

Even if a commercially sexually exploited child suffers compensable losses, certain other eligibility requirements may make it difficult for a domestic minor sex trafficking victim to receive compensation. For example, Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) requires both that the crime be reported to law enforcement and a claim for compensation be filed within specified time limits. Specifically, Neb. Rev. Stat. Ann. § 81-1821 states,

No order for the payment of compensation shall be entered under the Nebraska Crime Victim’s Reparations Act unless the application has been submitted to the committee within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

Additionally, Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) provides,

No compensation shall be awarded from the Victim’s Compensation Fund:

- (1) If the victim aided or abetted the offender in the commission of the unlawful act;
...
- (3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;
...
- (5) If the victim incurs an economic loss which does not exceed ten percent of his or her net financial resources;
.....
.....

5.7.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) and Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) to create exceptions from ineligibility factors for commercially sexually exploited minors under the age of 18.

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

Children 11 years of age or younger, who are the victims of any crime under Nebraska’s laws are afforded limited trial protections under Nebraska law.⁹⁷ The testimony of a child who is 11 years of age or younger may be admitted through a videotaped deposition. Neb. Rev. Stat. Ann. § 29-1926(1)(a) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides in part, “(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need,⁹⁸ the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child.” Under the procedures set out for this type of testimony, only specified persons, including the defendant and a person who is familiar to the child, are permitted to be present during the child’s testimony.

Neb. Rev. Stat. Ann. § 81-1848 (Victims and witnesses of crimes; rights; enumerated) enumerates rights afforded to “[v]ictims as defined in section 29-119”⁹⁹ related to sexual assault offenses, which do not include victims of human trafficking. These rights include the right to receive information regarding the case, a schedule of hearings, protection from threats, and to be provided a secure waiting area. Neb. Rev. Stat. Ann. § 81-1848(1)(b),(2)(c), (2)(f).

While victims of sexual assault are eligible for additional protections, they do not apply specifically to domestic minor sex trafficking victims unless they are also victims of sexual assault.¹⁰⁰ Sexual assault victims may

⁹⁷ Neb. Rev. Stat. Ann. § 29-1926(1)(g) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides that “[f]or purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.”

⁹⁸ Pursuant to Neb. Rev. Stat. Ann. § 29-1926(1)(h),

Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child’s testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

- (i) The nature of the offense;
- (ii) The significance of the child’s testimony to the case;
- (iii) The likelihood of obtaining the child’s testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;
- (iv) The child’s age;
- (v) The child’s psychological maturity and understanding; and
- (vi) The nature, degree, and duration of potential injury to the child from testifying.

⁹⁹ Pursuant to Neb. Rev. Stat. Ann. § 29-119(2) (Plea agreement; terms, defined),

(2)(a) Victim means a person who, as a result of . . . a sexual assault of a child in the second or third degree under section 28-320.01, a sexual assault of a child in the first degree under section 28-319.01 . . . has had a personal confrontation with the offender . . .

. . . .
(c) In the case of a violation of section 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense], 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense], 28-1463.04 [Violation; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty], victim means a person who was a child as defined in section 28-1463.02 [Terms, defined] and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

¹⁰⁰ Neb. Rev. Stat. Ann. § 27-413 (Offense of sexual assault, defined) provides that sexual assault includes “sexual assault of a child under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or

receive certain additional protections. For example, in a criminal case, evidence of a sexual assault victim's past sexual behavior or sexual predisposition is inadmissible in sexual assault cases unless the information proves another source of semen or injury or other physical evidence, the victim consented, or the exclusion of such evidence would violate the constitutional rights of the accused. Neb. Rev. Stat. Ann. § 27-412(1), (2)(a). Additionally, pursuant to Neb. Rev. Stat. Ann. § 29-2028 (Sexual assault; testimony; corroboration not required), the testimony of victims of offenses under Neb. Rev. Stat. Ann. § 28-319.01 (Sexual assault of a child; first degree; penalty) to § 28-320.01 (Sexual assault of a child; second or third degree; penalties) does not require any corroborating evidence.

- 5.8.1 Recommendation: Expand Neb. Rev. Stat. Ann. § 29-1926 (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) to allow all eligible minors under 18 to testify via a videotaped deposition.
- 5.8.2 Recommendation: Specify application of the "rape shield" law in prosecutions of sex trafficking or prostitution to reduce trauma in the cross-examination of testifying victims.

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.*

Domestic minor sex trafficking victims can have their certain juvenile criminal records sealed pursuant to Neb. Rev. Stat. Ann. § 43-2,108.01 (Sealing of records; juveniles eligible). Neb. Rev. Stat. Ann. § 43-2,108.01 states,

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney (1) released the juvenile without filing a juvenile petition or criminal complaint, (2) offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code, (3) filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 [Juvenile court; jurisdiction], (4) filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia, or (5) filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense that may be waived.

Upon receiving notice pursuant to Neb. Rev. Stat. Ann. § 43-2,108.03(1)–(3) (Sealing of records; county attorney or city attorney; duties; motion to seal record authorized) that a juvenile arrested or brought into custody was not referred for prosecution, charges were dismissed, or the juvenile completed a diversion or mediation, Neb. Rev. Stat. Ann. § 43-2,108.03(4) states that "the government agency or court shall immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, or mediation."

Neb. Rev. Stat. Ann. § 43-2,108.03(5) further provides,

If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile's diversion or sentence in county court:

- (a) The court may initiate proceedings pursuant to section 43-2,108.04 [Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations] to seal the

third degree; penalties], [and] sexual assault by use of an electronic communication device under section 28-320.02 [Sexual assault; use of electronic communication device; prohibited acts; penalties]"

record pertaining to such disposition or adjudication under the juvenile code or sentence of the county court; and

(b) If the juvenile has attained the age of seventeen years, the court shall initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or diversion or sentence of the county court, except that the court is not required to initiate proceedings to seal a record pertaining to a misdemeanor or infraction not described in subdivision (4) of section 43-2,108.01 under a city or village ordinance that has no possible jail sentence. Such a record may be sealed under subsection (6) of this section.

Neb. Rev. Stat. Ann. § 43-2,108.03(6) allows a juvenile's parent or guardian to petition the court to seal the juvenile's records where the juvenile "has satisfactorily completed diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court." Pursuant to Neb. Rev. Stat. Ann. § 43-2,108.04(5), (6), a court will seal a juvenile's records

(5) . . . if it finds that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

- (a) The age of the juvenile;
- (b) The nature of the offense and the role of the juvenile in the offense;
- (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;
- (d) The education and employment history of the juvenile; and
- (e) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

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

Although no civil remedies are statutorily authorized for victims of Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) under the Exploited Children's Civil Remedy Act,¹⁰¹ Nebraska does statutorily provide a civil cause of action for sex trafficked minors who were sexually exploited through child pornography. Neb. Rev. Stat. Ann. § 25-21,292 (Civil action authorized; recovery; attorney's fees and costs; injunctive relief) provides,

(1) Any participant¹⁰² or portrayed observer¹⁰³ in a visual depiction of sexually explicit conduct¹⁰⁴ or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such participation or portrayed observation may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in this state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person aided or assisted was in this state.

¹⁰¹ Neb. Rev. Stat. Ann. §§ 25-21,290 to 25-21,296.

¹⁰² Neb. Rev. Stat. Ann. § 25-21,291(8) (Terms, defined) defines "participant" as "a child who appears in any visual depiction of sexually explicit conduct and is portrayed or actively engaged in acts of sexually explicit conduct appearing therein."

¹⁰³ Neb. Rev. Stat. Ann. § 25-21,291(9) (Terms, defined) defines "portrayed observer" as "a child who appears in any visual depiction where sexually explicit conduct is likewise portrayed or occurring within the child's presence or in the child's proximity."

¹⁰⁴ Pursuant to Neb. Rev. Stat. Ann. § 25-21,291(10), "Sexually explicit conduct has the same meaning as in section 28-1463.02." See *supra* note 9.

- (2) A plaintiff who prevails in a civil action brought pursuant to the Exploited Children’s Civil Remedy Act may recover his or her actual damages, which are deemed to be a minimum of one hundred fifty thousand dollars, plus any and all attorney’s fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.
- (3) This section does not create a cause of action if the participant was sixteen years of age or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

Restitution may also be available to a commercially sexually exploited child. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. . . .

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

5.10.1 Recommendation: Amend the Exploited Children’s Civil Remedy Act to include victims of domestic minor sex trafficking.

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.

While statutes of limitations are eliminated for some sexual offenses against children under 16 years of age,¹⁰⁵ Neb. Rev. Stat. Ann. § 29-110(1) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions) establishes a 3 year statute of limitations for prosecutions under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties). Neb. Rev. Stat. Ann. § 29-110(3) states,

Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defenses], or 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense] when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim’s sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or

¹⁰⁵ Neb. Rev. Stat. Ann. § 29-110(7) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions) provides, “There shall not be any time limitations for prosecution or punishment for . . . sexual assault of a child in the second or third degree under section 28-320.01 . . . or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.”

within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

To receive a civil remedy under the Exploited Children's Civil Remedy Act, Neb. Rev. Stat. Ann. § 25-21,293 (Time for bringing action; limitation) states that an action "shall be filed within three years of the later of" the conclusion of criminal prosecution of the offender, the date the victim is able to identify the offender, or the victim's 18 birthday.

- 5.11.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-110 (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions) to eliminate or substantially extend statutes of limitations for prosecutions under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) and other Nebraska CSEC crimes.

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.*

Although law enforcement in Nebraska are statutorily required to meet training requirements,¹⁰⁶ none specifically mandate that law enforcement receive training on human trafficking or domestic minor sex trafficking.

- 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.*

Neb. Rev. Stat. Ann. § 86-290(2)(b), (c) (Unlawful acts; penalty) permits single party consent to audiotaping by stating,

(b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

¹⁰⁶ See Neb. Rev. Stat. Ann. § 81-1402 (Nebraska law enforcement training center; created; purposes), Neb. Rev. Stat. Ann. § 81-1403 (Council; duties; administrative fine), Neb. Rev. Stat. Ann. § 81-1439 (Law enforcement reserve force; commission; duties; delegation of responsibilities; reserve force manual; contents).

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

An order authorizing wiretapping may be issued for investigations related to the sex trafficking of minors, including investigations related to child pornography, the sexual assault of a child, and the enticement of a child through the use of the Internet. Nebraska law, however, does not expressly authorize law enforcement to receive an order authorizing wiretapping in an investigation under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties). Neb. Rev. Stat. Ann. § 86-291 (Interception; court order) specifically provides,

The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections 86-271 to 86-295, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, . . . sexual assault of a child or a vulnerable adult, visual depiction or possessing a visual depiction of sexually explicit conduct of a child, or child enticement by means of a computer, or any conspiracy to commit any such offense.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

- 6.3.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 86-291 (Interception; court order) to include Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) and all other Nebraska CSEC laws.

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.*

Nebraska's laws do not specifically permit or forbid the use of a law enforcement decoy during investigations under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) or CSEC laws.

- 6.4.1 Recommendation: Enact a law expressly permitting the use of a law enforcement decoy during the investigation or prohibiting a defense to prosecution based on the "minor" being in fact a person posing as a minor for purposes of the investigation of a violation under Neb. Rev. Stat. Ann. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) and CSEC laws.

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

While neither is expressly commercial in nature, two of Nebraska's laws appear to authorize law enforcement to use the Internet in investigating buyers and traffickers. Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) makes it illegal for a person to knowingly and intentionally use "an

electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing . . . [o]ffers or solicits any indecent, lewd, or lascivious act.” Similarly, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) makes it illegal for a person to

solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device¹⁰⁷ . . . to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty]. . . .

The inclusion of the language “or a peace officer who is believed by such person to be a child” under 16 suggests that law enforcement may pose as a child on the Internet while investigating violations of Neb. Rev. Stat. Ann. § 28-833(1) and § 28-320.02(1).

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

Neb. Rev. Stat. Ann. § 29-214.01(1), (4) (Missing Persons Information Clearinghouse; Nebraska State Patrol; powers and duties) establishes a Missing Persons Information Clearinghouse (Clearinghouse) to serve as a central repository for information and investigation of missing persons. Neb. Rev. Stat. Ann. § 29-214.01(2) states that the Nebraska State Patrol shall,

(a) Collect, process, maintain, and disseminate information about missing persons in Nebraska through hard copy or electronic means;

. . . .

(c) Cooperate with other states and the National Crime Information Center in the exchange of information on missing persons;

(d) Maintain a statewide, toll-free telephone line, twenty-four hours a day, to receive and disseminate information related to missing persons;

(e) Maintain an Internet web site accessible to law enforcement agencies and to the public with information on missing persons and with information about the resources available through the clearinghouse. . . .

. . . .

(h) Distribute through hard copy or electronic means monthly missing persons bulletins to local law enforcement agencies and to other interested individuals, agencies, and media outlets which request such information. The bulletins shall contain information on missing persons in Nebraska, including names, photographs or other images, if available, descriptions of missing persons, the law enforcement agencies or persons to contact with information regarding missing persons, and the names of persons reported missing whose locations have been determined and confirmed;

. . . .

Neb. Rev. Stat. Ann. § 29-213 (Missing persons information clearinghouse; missing person report; law enforcement agency; duties) states that a law enforcement agency that receive a missing person report shall notify other law enforcement agencies and the Clearinghouse, and if the report “involves an unemancipated minor,” Neb. Rev. Stat. Ann. § 29-214 (Missing persons information clearinghouse; missing person report; unemancipated minor; law enforcement agencies; duties), states that the law enforcement agency that receives the report shall “immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse.” When a missing person has been found, Neb. Rev. Stat. Ann. § 29-214.01(5) provides

¹⁰⁷ See *supra* note 12.

that “[t]he Missing Persons Information Clearinghouse shall be notified after the location of a missing person has been determined and confirmed.”

Under the provisions of the Missing Children Identification Act,¹⁰⁸ additional requirements apply when the missing person is “sixteen years of age or younger reported to any law enforcement agency as abducted or lost.” Neb. Rev. Stat. Ann. § 43-2003(3). In such a case, law enforcement shall “immediately notify the patrol which shall notify the school in which such missing person is enrolled and the department. The department shall notify the county agency if such missing person was born in such county.” Neb. Rev. Stat. Ann. § 43-2004.

Neb. Rev. Stat. Ann. § 43-2005 (Flagging birth certificate) states that law enforcement shall flag the missing child’s birth certificate, “and if such person was born in a county where a county agency records and maintains birth certificates, such agency shall also flag the birth certificate in its custody.” Neb. Rev. Stat. Ann. § 43-2006 (Flagged birth certificate; inquiry and request; how handled) sets up a procedure for handling requests or inquires about flagged birth certificates. Neb. Rev. Stat. Ann. § 43-2007(1) (Schools; exempt school; duties) similarly states that schools in which the missing child was enrolled shall flag the child’s records and report any inquiry regarding the records. When the missing child is located, the flag on the child’s birth certificate and school records must be removed pursuant to Neb. Rev. Stat. Ann. § 43-2009 (Removal of flag).

- 6.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 43-2003(3) (Terms, defined) to include children older than 16 within the definition of a “missing person” for purposes of the Missing Children Identification Act.

NOTE: ENACTED LEGISLATION AS OF 8/1/11

¹⁰⁸ Neb. Rev. Stat. Ann. §§ 43-2001 to 43-2012.