

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2016 ANALYSIS AND RECOMMENDATIONS VERMONT

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

#### *Legal Components:*

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

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

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

Vermont's human trafficking law distinguishes between trafficking adults and children. When children are trafficked, the elements of force, fraud, or coercion are not required. Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) states in part,

No person shall knowingly:

- (1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;<sup>2</sup>

<sup>1</sup> This report includes legislation enacted as of August 1, 2016.

<sup>2</sup> Vt. Stat. Ann. tit. 13, § 2651(3) (Definitions) defines a "commercial sex act" as "any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person."

- (2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion<sup>3</sup> for the purpose of having the person engage in a commercial sex act;
- (3) compel a person through force, fraud, or coercion to engage in a commercial sex act;
- (4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.<sup>4</sup>

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A conviction under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) is punishable as a felony<sup>5</sup> by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b).

Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking) imposes a heightened penalty if the victim of human trafficking is under the age of 18. Vt. Stat. Ann. tit. 13, § 2653(a) states,

A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

- (1) the offense involves a victim of human trafficking<sup>6</sup> who is a child under the age of 18;
- (2) the person has previously been convicted of a violation of section 2652 of this title;
- (3) the victim of human trafficking suffers serious bodily injury or death; or
- (4) the actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

A conviction under Vt. Stat. Ann. tit. 13, § 2653(a) is punishable as a felony by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). An attempt to commit either human

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<sup>3</sup> Vt. Stat. Ann. tit. 13, § 2651(2) defines “coercion” as,

- (A) threat of serious harm, including physical or financial harm, to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily or financial harm to or physical restraint of any person;
- (C) the abuse or threatened abuse of law or the legal process;
- (D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;
- (E) providing a drug, including alcohol, to another person with the intent to impair the person’s judgment or maintain a state of chemical dependence;
- (F) wrongfully taking, obtaining, or withholding any property of another person;
- (G) blackmail;
- (H) asserting control over the finances of another person;
- (I) debt bondage; or
- (J) withholding or threatening to withhold food or medication.

<sup>4</sup> Vt. Stat. Ann. tit. 13, § 2651(12) defines “venture” as “any group of two or more individuals associated in fact, whether or not a legal entity.”

<sup>5</sup> Pursuant to Vt. Stat. Ann. tit. 13, § 1 (Felonies and misdemeanors defined), “Any other provision of law notwithstanding any offense whose maximum term of imprisonment is more than two years, for life or which may be punished by death is a felony. Any other offense is a misdemeanor.”

<sup>6</sup> Vt. Stat. Ann. tit. 13, § 2651(13) defines “victim of human trafficking” as “a victim of a violation of section 2652 [Human trafficking] of this title.”

trafficking or aggravated human trafficking is punishable to the same extent as the completed offense. Vt. Stat. Ann. tit 13, § 9(a).

Additionally, Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking) states,

No person shall knowingly:

- (1) permit a place, structure, or building owned by the person or under the person's control to be used for the purpose of human trafficking;<sup>7</sup>
- (2) receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or
- (3) permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

A conviction under Vt. Stat. Ann. tit. 13, § 2654(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2654(b).

Lastly, Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) makes it illegal for a person to “knowingly solicit a commercial sex act<sup>8</sup> from a victim of human trafficking.” A conviction under Vt. Stat. Ann. tit. 13, § 2655(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2655(b).

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

The following laws criminalize CSEC in Vermont:

1. Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance) states,

No person shall, with knowledge of the character and content, promote<sup>9</sup> a sexual performance<sup>10</sup> by a child<sup>11</sup> or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.” A first conviction under Vt. Stat. Ann. tit. 13, § 2822(a) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or §

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<sup>7</sup> Vt. Stat. Ann. tit. 13, § 2651(6) defines “human trafficking” as the following: “(A) to subject a person to a violation of section 2652 [Human trafficking] of this title; or (B) ‘severe form of trafficking’ as defined by 22 U.S.C. § 7105.” The text of Vt. Stat. Ann. tit. 13 § 2651(6) cited here and elsewhere in this report includes amendments made by the enactment of House Bill 858 during the 2016 Regular Session of the Vermont Legislature (effective July 1st, 2016).

<sup>8</sup> See *supra* note 2.

<sup>9</sup> Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.”

<sup>10</sup> Vt. Stat. Ann. tit. 13, § 2821(4) defines “sexual performance” as “any performance or any part of a performance, which includes sexual conduct by a child.” Vt. Stat. Ann. tit. 13, § 2821(3) defines “performance” as “(A) an event which is photographed, filmed or visually recorded; or (B) a play, dance or other visual presentation or exhibition before an audience.”

<sup>11</sup> Vt. Stat. Ann. tit. 13, § 2821(1) defines “child” as “any person under the age of 16 years.”

2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

2. Vt. Stat. Ann. tit. 13, § 2823 (Consenting to a sexual performance) states,

No person who is the parent, legal guardian, or custodian of a child<sup>12</sup> may, with knowledge of the character and content, consent to the participation of that child in a sexual performance<sup>13</sup> or a performance including a lewd exhibition of the genitals by that child.

A first conviction under Vt. Stat. Ann. tit. 13, § 2823 is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

Other laws may be applicable to sexual exploitation of children although they do not specify commercial sexual exploitation:

1. Pursuant to Vt. Stat. Ann. tit. 13, § 2828 (Luring a child),

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 [Definitions] of this title<sup>14</sup> or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.<sup>15</sup>

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(e).

2. Vt. Stat. Ann. tit. 13, § 2602(a) (Lewd or lascivious conduct with child) provides,

(1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.

(2) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A first conviction under Vt. Stat. Ann. tit. 13, § 2602(a) is punishable as a felony by imprisonment for 2–15 years and a possible fine not to exceed \$5,000, a second conviction is punishable by imprisonment for 5

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<sup>12</sup> See *supra* note 11.

<sup>13</sup> See *supra* note 10.

<sup>14</sup> Vt. Stat. Ann. tit. 13, § 3251(1) (Definitions) defines “sexual act” as “conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another.”

<sup>15</sup> See *infra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2602 (Lewd or lascivious conduct with child).

years to life and a possible fine not to exceed \$25,000, and subsequent convictions are punishable by imprisonment for 10 years to life and a possible fine not to exceed \$25,000. Vt. Stat. Ann. tit. 13, §§ 1, 2602(b). Additionally, sentences for second and subsequent convictions “shall be served and may not be suspended, deferred, or served as a supervised sentence” and the offender “shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or 10-year term of imprisonment.” Vt. Stat. Ann. tit. 13, § 2602(c). The court may, however, depart from the 5 and 10-year minimums required for second and subsequent convictions and may “impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety.” Vt. Stat. Ann. tit. 13, § 2602(c)(1), (2). Lastly, “A person convicted of violating subdivision (b)(2) or (3) of this section shall be sentenced under section 3271 [Indeterminate life sentence]<sup>16</sup> of this title” and “[a]ny prior conviction for sexual assault or aggravated sexual assault shall be considered a prior offense for purposes of sentencing enhancement.” Vt. Stat. Ann. tit. 13, § 2602(d), (e).

3. Vt. Stat. Ann. tit. 13, § 3252(c) (Sexual assault) prohibits the following:

No person shall engage in a sexual act<sup>17</sup> with a child who is under the age of 16, except:

- (1) where the persons are married to each other and the sexual act is consensual; or
- (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 3252(c) is punishable as a felony by imprisonment up to 20 years and a possible fine not to exceed \$10,000. Vt. Stat. Ann. tit. 13, §§ 1, 3252(f)(2).

4. Vt. Stat. Ann. tit. 13, § 3253(a) (Aggravated sexual assault of a child) states,

A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 [Sexual assault] of this title and at least one of the following circumstances exists:

....

- (2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.
- (3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.
- (4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of

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<sup>16</sup> Vt. Stat. Ann. tit. 13, § 3271(b)–(d) (Indeterminate life sentence) states,

- (b) If a person is sentenced under this section, the person’s maximum sentence shall be imprisonment for life.
- (c) If a person sentenced under this section receives a sentence that is wholly or partially suspended, sex offender conditions and treatment shall be a condition of the person’s probation agreement.
- (d) If a person sentenced under this section receives a sentence for an unsuspended term of incarceration, the person shall not be released until the person successfully completes all sex offender treatment and programming required by the department of corrections, unless the department determines that the person poses a sufficiently low risk of reoffense to protect the community or that a program can be implemented which adequately supervises the person and addresses any risk the person may pose to the community.

<sup>17</sup> See *supra* note 14.

this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

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A conviction under Vt. Stat. Ann. tit. 13, § 3253a(a) is punishable as a felony by imprisonment for 25 years to life and a possible fine not to exceed \$50,000. Vt. Stat. Ann. tit. 13, §§ 1, 3253a(b). Vt. Stat. Ann. tit. 13, § 3253a(b) further states, “The 25-year term of imprisonment . . . shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.”

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

While Vermont’s prostitution statute Vt. Stat. Ann. tit. 13, § 2632 (Prohibited acts) does not refer to the human trafficking statute when the person charged is minor, the human trafficking statute, does not allow minors to be prosecuted under the prostitution statute. Pursuant to Vt. Stat. Ann. tit. 13, § 2652(c)(1)(B) (Human trafficking),

Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under 33 V.S.A. chapter 52 [Delinquency provisions] or referred to the department for children and families for treatment under 33 V.S.A. chapter 53[Children in need of care or supervision].

*1.4 The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Vermont has not enacted a racketeering or gang crimes statute.

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

### ***Legal Components:***

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

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

Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) contains language applicable to buyers of commercial sex acts with a minor following federal precedent,<sup>18</sup> as the statute criminalizes conduct that includes “obtaining by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act.” To the extent that buyers may be convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) for obtaining commercial sex with a minor, buyers may also be convicted under § 2653(a)<sup>19</sup> (Aggravated human trafficking).

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

<sup>19</sup> See *supra* Component 1.1 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2653(a).

Additionally, Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation), which is codified in the human trafficking chapter (Chapter 60, Human Trafficking), makes it illegal for a person to “knowingly solicit a commercial sex act<sup>20</sup> from a victim of human trafficking.

- 2.1.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking)<sup>21</sup> to clarify buyer culpability anytime a buyer engages in commercial sex with a minor victim of sex trafficking, regardless of actual knowledge of such.

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

While buyers of sex with minors face substantial penalties under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) in the human trafficking chapter, if the victim is not identified as a trafficking victim, no CSEC law applies, leaving a buyer subject only to prosecution under Vermont’s general prostitution law, Vt. Stat. Ann. tit. 13, § 2632(a) (Prohibited acts), which states,

A person shall not:

....

- (6) Procure or solicit or offer to procure or solicit a person for the purpose of prostitution,<sup>22</sup> lewdness<sup>23</sup> or assignation;<sup>24</sup>
- (7) Reside in, enter or remain in a place, structure or building or enter or remain in a conveyance for the purpose of prostitution, lewdness or assignation;
- (8) Engage in prostitution, lewdness or assignation; or
- (9) Aid or abet prostitution, lewdness or assignation, by any means whatsoever.

A buyer’s first conviction under Vt. Stat. Ann. tit. 13, § 2632(a) is punishable as a misdemeanor by imprisonment up to 1 year or a fine not to exceed \$100 while subsequent convictions are punishable as a felony by imprisonment up to 3 years. Vt. Stat. Ann. tit. 13, § 1, 2632(b).

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

Vermont’s prostitution statute, Vt. Stat. Ann. tit. 13, § 2632(a)(6) (Prohibited acts), is age-neutral and does not differentiate between buying sex with an adult and buying sex with a minor. Instead, Vt. Stat. Ann. tit. 13, § 2632(a)(6) only makes it illegal for a person to “[p]rocure or solicit or offer to procure or solicit a person for the purpose of prostitution,<sup>25</sup> lewdness<sup>26</sup> or assignation.”<sup>27</sup> Similarly, Vt. Stat. Ann. tit. 13, § 2655 (Solicitation) is

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<sup>20</sup> See *supra* note 2 for the definition of “commercial sex act.”

<sup>21</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

<sup>22</sup> Pursuant to Vt. Stat. Ann. tit. 13, § 2631(1) (Definitions), “The term ‘prostitution’ shall be construed to include the offering or receiving of the body for sexual intercourse for hire and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire.”

<sup>23</sup> Vt. Stat. Ann. tit. 13, § 2631(2) (Definitions) defines “lewdness” as “open and gross lewdness.”

<sup>24</sup> Pursuant to Vt. Stat. Ann. tit. 13, § 2631(3) (Definitions), “The term ‘assignation’ shall be construed to include the making of an appointment or engagement for prostitution or lewdness as defined in this section.”

<sup>25</sup> See *supra* note 22 for the definition of “prostitution.”

<sup>26</sup> See *supra* note 23 for the definition of “lewdness.”



also age-neutral and does not distinguish between soliciting commercial sex from an adult victim of human trafficking and a minor victim of human trafficking. Vt. Stat. Ann. tit. 13, § 2655(a) states only that “[n]o person shall knowingly solicit a commercial sex act from a victim of human trafficking.” The definition of “victim of human trafficking” in Vt. Stat. Ann. tit. 13, § 2651(13) (Definitions), however, refers to Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), which does differentiate between minors and adults.

- 2.3.1 Recommendation: Revise Vt. Stat. Ann. tit. 13, § 2632(a)(6) (Prohibited acts) to clarify that when commercial sex acts are purchased with a minor under 18 years of age, heightened penalties apply and the case should be prosecuted under Vt. Stat. Ann. tit. 13, § 2655 (Solicitation) in the human trafficking chapter so that the statutes differentiate between buying sex with an adult and buying sex with a minor.

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

Buyers face penalties under several of Vermont’s statutes related to human trafficking and prostitution. A conviction under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) is punishable as a felony by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b). A conviction under Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking) is a felony punishable by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). Attempts to commit either human trafficking or aggravated human trafficking are punishable to the same extent as the completed offense. Vt. Stat. Ann. tit. 13, § 9(a) (Attempts). A conviction under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2655(b). Lastly, a buyer’s first conviction under Vt. Stat. Ann. tit. 13, § 2632(a) (Prohibited acts) is punishable by imprisonment up to 1 year or a fine up to \$100, while subsequent convictions are punishable by imprisonment up to 3 years. Vt. Stat. Ann. tit. 13, § 2632(b).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Vt. Stat. Ann. tit. 13, § 2653.<sup>28</sup>

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>29</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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<sup>27</sup> See *supra* note 24 for the definition of “assignment.”

<sup>28</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

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

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

extent buyers can be prosecuted under other federal CSEC laws,<sup>30</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>31</sup>

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

Although Vt. Stat. Ann. tit. 13, § 2828 (Luring a child) is not expressly commercial or limited in application to offenses involving the use of the Internet or electronic communications, the statute may be used to convict a buyer who uses the Internet or electronic communications to lure, entice, recruit, or purchase commercial sex acts with a minor. Vt. Stat. Ann. tit. 13, § 2828 states,

- (a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 [Definitions]<sup>32</sup> of this title or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.<sup>33</sup>
- (b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.
- (c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, § 2825(e) (Penalties).

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

Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), § 2655(a) (Solicitation), and § 2653 (Aggravated human trafficking) do not expressly prohibit a mistake of age defense. Additionally, because a conviction under Vermont's age-neutral solicitation law, Vt. Stat. Ann. tit. 13, § 2632(a) (Prohibited acts), does not depend on the age of the person solicited, the defense of age mistake is irrelevant.

Vt. Stat. Ann. tit. 13, § 2827(c)(1) (Possession of child pornography),<sup>34</sup> however, does permit the use of an affirmative defense if “the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the depiction was made.” Additionally, although not applicable to buyers, Vt. Stat. Ann. tit. 13, § 2822(b) (Use of a child in a sexual performance), states,

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

<sup>31</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>32</sup> *See supra* note 14 for the definition of “sexual act.”

<sup>33</sup> *See supra* Component 1.2 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2602(a).

<sup>34</sup> *See infra* Component 2.9 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2827(c)(1).

In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained the age of 16; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.

Similarly, Vt. Stat. Ann. tit. 13, § 2824(b)(3) (Promoting a recording of sexual conduct)<sup>35</sup> allows the defendant to assert an affirmative defense when “the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the recording was made.”

2.6.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), § 2653 (Aggravated human trafficking), and Vermont’s CSEC laws to expressly prohibit the mistake of age defense.

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

Vt. Stat. Ann. tit. 13, § 2652(b) (Human trafficking) and § 2653(b) (Aggravated human trafficking) do not reduce penalties for older minors. Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) applies to buyers of sex with any “victim of trafficking.” “Victim of trafficking” is defined in Vt. Stat. Ann. tit. 13, § 2651(13) (Definitions) by referring to § 2652, which differentiates between adults and minors under 18.

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

Buyers of commercial sex with minors face fines, restitution, and civil penalties; however, buyers will not have to forfeit assets used in or acquired through a violation of Vermont’s human trafficking or CSEC laws.

Buyers convicted under Vermont’s CSEC laws are subject to possible fines not to exceed \$500,000. A buyer convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) may be required to pay a fine not to exceed \$ 500,000. Vt. Stat. Ann. tit. 13, § 2652(b). Buyers convicted under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) or § 2653(a) (Aggravated human trafficking) are subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2653(b), 2655(b). Lastly, a buyer’s conviction under Vt. Stat. Ann. tit. 13, § 2632(a) (Prohibited acts) is subject to a possible fine not to exceed \$100. Vt. Stat. Ann. tit. 13, § 2632(b).

Buyers convicted of violating Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2655(a) shall be ordered to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

(a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.

(b) If the victim of human trafficking<sup>36</sup> to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim’s heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim’s right to receive restitution pursuant to this section.

In a case involving a buyer convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

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<sup>35</sup> See *infra* Component 3.2 for the substantive provisions of Vt. Stat. Ann. tit. 13, § 2824.

<sup>36</sup> See *supra* note 6 for the definition of “victim of human trafficking.”

- (1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,<sup>37</sup> has suffered a material loss.
- (2) For purposes of this section, “material loss” means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
- (3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:
  - (A) attorney’s fees and costs; and
  - (B) the greater of either:
    - (i) the gross income or value of the labor performed for the offender by the victim; or
    - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) states that “[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.”

- 2.8.1 Recommendation: Enact a law requiring buyers who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2655(a) (Solicitation), or Vermont’s CSEC laws to forfeit property used in or acquired through the commission of the crime.

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

Vermont’s statutes penalize the possession of child pornography only if the depicted child is under the age of 16. Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography) makes it illegal for a person “with knowledge of the character and content, [to] possess any photograph, film or visual depiction, including any depiction which is stored electronically, of sexual conduct<sup>38</sup> by a child<sup>39</sup> or of a clearly lewd exhibition of a child’s genitals or anus.” Pursuant to Vt. Stat. Ann. tit. 13, § 2825(c)(2) (Penalties), if the possessed child pornography depicts “sexual conduct by a child” a first conviction under Vt. Stat. Ann. tit. 13, § 2827(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both, but if the child pornography depicts “a clearly lewd exhibition of a child’s genitals or anus, other than a depiction of sexual conduct by a child,” a first conviction is punishable as a misdemeanor by imprisonment up to 2 years, a fine not to exceed \$5,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(c)(2). Subsequent convictions under Vt. Stat. Ann. tit. 13, § 2827(a) are punishable as felonies by imprisonment up to 10 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, § 2825(d).

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<sup>37</sup> Vt. Stat. Ann. tit. 13, § 5301(4) states, “‘Victim’ means a person who sustains physical, emotional or financial injury or death as a direct result of the commission or attempted commission of a crime or act of delinquency and shall also include the family members of a minor, incompetent or a homicide victim.”

<sup>38</sup> Vt. Stat. Ann. tit. 13, § 2821(2) (Definitions) defines “sexual conduct” as,

- (A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva or the mouth and the vulva;
- (B) any intrusion, however slight, by any part of a person’s body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;
- (C) any intentional touching, not through the clothing, of the genitals, anus or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;
- (D) masturbation;
- (E) bestiality; or
- (F) sadomasochistic abuse for sexual purposes.

<sup>39</sup> See *supra* note 11 for the definition of “child.”

In comparison, a federal conviction for possession of child pornography<sup>40</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>41</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>42</sup>

2.9.1 Recommendation: Amend the definition of “child” in Vt. Stat. Ann. tit. 13, § 2821(1) (Definitions) to include any person under the age of 18 in order to protect all minors from Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography).

2.9.2 Recommendation: Increase the penalties under Vt. Stat. Ann. tit. 13, § 2827 (Possession of child pornography) to reflect the seriousness of the offense.

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

Buyers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) (Human trafficking), § 2653(a)(4) (Aggravated human trafficking), § 2632(a)(6) (Prohibited acts), when the person solicited is a minor, or § 2827(a) (Possession of child pornography) are required to register as sex offenders, but buyers convicted under Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) are not expressly required to register. Vt. Stat. Ann. tit. 13, § 5402(a) (Sex offender registry) states that “[t]he department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.” Vt. Stat. Ann. tit. 13, § 5407(a) (Sex offender’s responsibility to report) states that “a sex offender shall report to the department.” Vt. Stat. Ann. tit. 13, § 5401(10)(A), (B) (Definitions) defines “sex offender” as

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

.....

(viii) human trafficking in violation of subdivisions 2652(a)(1)–(4) of this title;

(ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and

(x) a federal conviction in federal court for any of the following offenses:

(I) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(II) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

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<sup>40</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>41</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>42</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

- (III) Sexual abuse as defined in 18 U.S.C. § 2242.
- (IV) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.
- (V) Abusive sexual contact as defined in 18 U.S.C. § 2244.

.....

- (VII) Sexual exploitation of children as defined in 18 U.S.C. § 2251.
- (VIII) Selling or buying of children as defined in 18 U.S.C. § 2251A.
- (IX) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.
- (X) Material containing child pornography as defined in 18 U.S.C. § 2252A.

.....

- (XIII) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

.....

- (XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

(xi) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10).

.....

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64 [which includes Vt. Stat. Ann. tit. 13, § 2827(a) (Possession of child pornography)].

(vi) procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6) [Prohibited acts].

.....

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2652

.....

(x) an attempt to commit any offense listed in this subdivision (B).

**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 or electronic communications to lure, entice, recruit or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*
  - 3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*
  - 3.5 *Convicted traffickers are required to register as sex offenders.*
  - 3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control.*
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**Legal Analysis:**

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

Traffickers may be convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking) or Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking). A conviction under Vt. Stat. Ann. tit. 13, § 2652(a) is punishable as a felony by imprisonment “for a term up to and including life,” a fine not to exceed \$500,000, or both, while a conviction under Vt. Stat. Ann. tit. 13, § 2653(a) is a felony punishable by imprisonment for 20 years to life, a fine up to \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2652(b), 2653(b). Attempts to commit either human trafficking or aggravated human trafficking are punishable to the same extent as the completed offense. Vt. Stat. Ann. tit. 13, § 9(a) (Attempts).

A trafficker may also be convicted under Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking),<sup>43</sup> which is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2654(b).

Traffickers may be convicted under Vermont’s CSEC laws. A conviction under either Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance)<sup>44</sup> or Vt. Stat. Ann. tit. 13, § 2823 (Consenting to a sexual performance)<sup>45</sup> generally is punishable by imprisonment up to 10 years, a fine up to \$20,000, or both; however, if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), Vt. Stat. Ann. tit. 13, § 2823, or Vt. Stat. Ann. tit. 13, § 2824(a) (Promoting a recording of sexual conduct), a conviction under Vt. Stat. Ann. tit. 13, § 2822(a) or Vt. Stat. Ann. tit. 13, § 2823 is punishable by imprisonment for a term of 1–15 years, a fine up to \$50,000, or both. Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>46</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C.

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<sup>43</sup> See *supra* Component 1.1 for the provisions of Vt. Stat. Ann. tit. 13, § 2654(a).

<sup>44</sup> See *supra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2822(a).

<sup>45</sup> See *supra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2823.

<sup>46</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

§§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>47</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Vermont prohibits both the creation and distribution of child pornography. The creation of child pornography is prohibited under Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), which makes it illegal for a person to “promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.” A conviction under Vt. Stat. Ann. tit. 13, § 2822(a) is generally punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both, but if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a), (b).

Vt. Stat. Ann. tit. 13, § 2824(a) prohibits the distribution of child pornography by making it illegal for a person “with knowledge of the character and content, [to] promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child’s genitals or anus.” Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.” A conviction under Vt. Stat. Ann. tit. 13, § 2824(a) is punishable in the same manner as Vt. Stat. Ann. tit. 13, § 2822 described above. Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Lastly, Vt. Stat. Ann. tit. 13, § 2823 may be used to convict a trafficker who is the parent, legal guardian, or custodian of a child used in child pornography. Specifically, Vt. Stat. Ann. tit. 13, § 2823 makes it illegal for a “parent, legal guardian, or custodian of a child . . . [to], with knowledge of the character and content, consent to the participation of that child in a sexual performance or a performance including a lewd exhibition of the genitals by that child.” A conviction under Vt. Stat. Ann. tit. 13, § 2823 is punishable in the same manner as Vt. Stat. Ann. tit. 13, § 2822 described above. Vt. Stat. Ann. tit. 13, § 2825(a), (b).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>48</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child pornography<sup>49</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>50</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>51</sup>

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<sup>47</sup> See *supra* note 29.

<sup>48</sup> See *supra* note 29.

<sup>49</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>50</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C.



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

Although Vt. Stat. Ann. tit. 13, § 2828 (Luring a child) is not expressly commercial or limited in application to offenses involving the use of the Internet or electronic communications, the statute may be used to convict a trafficker who uses the Internet or electronic communications to lure, entice, recruit, or purchase a minor for commercial sex acts. Vt. Stat. Ann. tit. 13, § 2828 states,

- (a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 of this title<sup>52</sup> or engage in lewd and lascivious conduct as defined in section 2602 [Lewd or lascivious conduct with child] of this title.
- (b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.
- (c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

A conviction under Vt. Stat. Ann. tit. 13, § 2828(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(e) (Penalties).

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

Traffickers of commercial sex with minors face fines, restitution, and civil penalties; however, assets used in or acquired as a result of the commercial sexual exploitation of a child will not be seized.

Traffickers convicted under Vermont's human trafficking, CSEC, and statutes related to prostitution may be required to pay fines. Traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) are subject to a possible fine not to exceed \$500,000, while those convicted under § 2653(a)(1) (Aggravated human trafficking), if the victim is under the age of 18, or § 2654(a) (Patronizing or facilitating human trafficking) are subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2652(b), 2653(b), 2654(b). A trafficker convicted under either Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance) or § 2823 (Consenting to a sexual performance) is subject to a possible fine not to exceed \$20,000, but the possible fine range increases to \$50,000 if the offender has a prior conviction under § 2822(a), § 2823, or § 2824(a) (Promoting a recording of sexual conduct). Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) are required to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

- (a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay

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§§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>51</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>52</sup> *See supra* note 14 for the definition of “sexual act.”

restitution to the victim pursuant to section 7043 [Restitution] of this title.

(b) If the victim of human trafficking<sup>53</sup> to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

In a case involving a trafficker convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,<sup>54</sup> has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:

(A) attorney's fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) provides that "[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order."

3.4.1 Recommendation: Enact a law requiring traffickers who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2654(a) (Patronizing or facilitating human trafficking), or Vermont's CSEC laws to forfeit property used in or acquired through the commission of the crime.

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

Vt. Stat. Ann. tit. 13, § 5402(a) (Sex offender registry) states, "The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter." Vt. Stat. Ann. tit. 13, § 5407(a) (Sex offender's responsibility to report) mandates that "a sex offender [as defined in Vt. Stat. Ann. tit. 13, § 5401 (10)(A), (B) (Definitions)<sup>55</sup>] shall report to the department" and register as a sex offender. Therefore, traffickers convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1)–(4) (Human trafficking), § 2653(a)(4) (Aggravated human trafficking), § 2822(a) (Use of a child in a sexual performance), § 2823 (Consenting to a sexual performance), § 2824(a) (Promoting a recording of sexual conduct), or § 2632(a)(6) (Prohibited acts), if victim is a minor, are required to register as sex offenders. Vt. Stat. Ann. tit. 13, § 5401(10)(A), (B) (Definitions).

<sup>53</sup> See *supra* note 6 for the definition of "victim of human trafficking."

<sup>54</sup> See *supra* note 37 for the definition of "victim" under Vt. Stat. Ann. tit. 13, § 5301(4).

<sup>55</sup> See *supra* Component 2.10 for the provisions of Vt. Stat. Ann. tit. 13, § 5401(1)(A), (B).

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

Vermont does not specifically include a violation of Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), or any of Vermont's other human trafficking or CSEC laws as grounds for terminating parental rights. Vt. Stat. Ann., tit. 15A, § 3-504(a)(3) (Grounds for terminating relationship of parent and child) states that parental rights shall be terminated if it is in the best interest of the child and, among other things, the parent has been convicted of a violent crime. Vt. Stat. Ann. tit. 15A, § 3-504(a)(3) states,

... If the court finds, upon clear and convincing evidence, that any one of the following grounds exists and that termination is in the best interest of the minor,<sup>56</sup> the court shall order the termination of any parental relationship of the respondent to the minor:

....

(3) The respondent has been convicted of a crime of violence<sup>57</sup> or has been found by a court of competent jurisdiction to have committed an act of violence which violated a restraining or protective order, and the facts of the crime or violation indicate that the respondent is unfit to maintain a relationship of parent and child with the minor.

3.6.1 Recommendation: Amend Vt. Stat. Ann. tit. 15A, § 3-504(a)(3) (Grounds for terminating relationship of parent and child) to specify that convictions under Vt. Stat. Ann. tit. 13,

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<sup>56</sup> Pursuant to Vt. Stat. Ann. tit. 33, § 5114(a),

At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall consider the best interests of the child in accordance with the following:

- (1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.
- (2) The child's adjustment to his or her home, school, and community.
- (3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.
- (4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated emotional support and affection, in the child's welfare.

<sup>57</sup> Vt. Stat. Ann. tit. 13, § 11a(d) (Violent career criminals) defines "felony crime of violence" as,

....

- (7) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;
- (8) maiming as defined in section 2701 of this title;
- (9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title or its predecessor as it was defined in section 3201 of this title;
- (10) aggravated sexual assault as defined in section 3253 of this title;
- (11) first degree unlawful restraint as defined in section 2407 of this title;
- (12) first degree aggravated domestic assault as defined in section 1043 of this title where the defendant causes serious bodily injury to another person;
- (13) lewd or lascivious conduct with a child as defined in section 2602 of this title where the child is under the age of 13 years and the defendant is 18 years of age or older.

§ 2652(a)(1)–(4), (b) (Human trafficking), § 2653 (Aggravated human trafficking), or Vermont’s other human trafficking and CSEC laws are grounds for terminating 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.*
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***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.*

Vermont's human trafficking laws make it a separate crime for a person to financially benefit from sex trafficking. Vt. Stat. Ann. tit. 13, § 2652(a)(4) (Human trafficking) makes it illegal for a person to "benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture." Additionally, Vt. Stat. Ann. tit. 13, § 2652(a)(1) may apply to some facilitators, including those who knowingly "harbor, [or] transport . . . a person under the age of 18 for the purpose of having the person engage in a commercial sex act." To the extent a facilitator violates Vt. Stat. Ann. tit. 13, § 2652(a)(1) or (4) when the victim of human trafficking is a minor or the circumstances of the trafficking also constitute sexual assault, the facilitator may be convicted under Vt. Stat. Ann. tit. 13, § 2653(a) (Aggravated human trafficking), which is punishable as a felony by imprisonment for 20 years to life, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2653(b). A facilitator may also be convicted under Vt. Stat. Ann. tit. 13, § 2654(a) (Patronizing or facilitating human trafficking),<sup>58</sup> which is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$100,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2654(b).

Pursuant to Vt. Stat. Ann. tit. 13, § 2656 (Human trafficking by a business entity; dissolution), additional penalties may also apply if the facilitator is a business entity. Vt. Stat. Ann. tit. 13, § 2656 states,

If a business entity, including a corporation, partnership, association, or any other legal entity, is convicted of violating this chapter, the attorney general may commence a proceeding in the civil division of the superior court to dissolve the entity pursuant to 11A V.S.A. § 14.30–14.33.

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

Facilitators of commercial sex with minors face fines, restitution, and civil penalties; however, assets used in or acquired as a result of the commercial sexual exploitation of a child will not be seized.

Facilitators convicted under Vermont's human trafficking, CSEC, and statutes related to prostitution may be required to pay fines. Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a)(1) (Human trafficking) are subject to a possible fine not to exceed \$500,000, while those convicted under Vt. Stat. Ann. tit. 13, §

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<sup>58</sup> See *supra* Component 1.1.

2653(a)(1) (Aggravated human trafficking) or § 2654(a) (Patronizing or facilitating human trafficking) are subject to a possible fine not to exceed \$100,000. Vt. Stat. Ann. tit. 13, §§ 2652(b), 2653(b), 2654(b). A facilitator convicted under Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance)<sup>59</sup> is subject to a possible fine not to exceed \$20,000, but the possible fine range increases to \$50,000 if the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), Vt. Stat. Ann. tit. 13, § 2823 (Consenting to a sexual performance), or Vt. Stat. Ann. tit. 13, § 2824(a) (Promoting a recording of sexual conduct). Vt. Stat. Ann. tit. 13, § 2825(a), (b) (Penalties).

Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) are required to make restitution to their victim under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

- (a) A person convicted of a violation of this subchapter [Criminal acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.
- (b) If the victim of human trafficking<sup>60</sup> to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

In a case involving a facilitator convicted of any other offense, the court must consider restitution where the victim suffers a material loss. Vt. Stat. Ann. tit. 13, § 7043(a) (Restitution) states,

- (1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title,<sup>61</sup> has suffered a material loss.
- (2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.
- (3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:
  - (A) attorney's fees and costs; and
  - (B) the greater of either:
    - (i) the gross income or value of the labor performed for the offender by the victim; or
    - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

Facilitators convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2654(a) may also face civil liability. Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action)<sup>62</sup> expressly authorizes victims of human trafficking to bring a civil claim against their offenders.

- 4.2.1 Recommendation: Enact a law requiring facilitators who violate Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), § 2654(a) (Patronizing or facilitating human trafficking), or Vermont's CSEC laws to forfeit property used in or acquired through the commission of the crime.

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<sup>59</sup> See *supra* Component 1.2 for the provisions of Vt. Stat. Ann. tit. 13, § 2822(a).

<sup>60</sup> See *supra* note 6 for the definition of "victim of human trafficking."

<sup>61</sup> See *supra* note 37 for the definition of "victim" under Vt. Stat. Ann. tit. 13, § 5301(4).

<sup>62</sup> See *supra* Component 2.8 for the provisions of Vt. Stat. Ann. tit. 13, § 2662.

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

Vermont has no statute specifically related to sex tourism.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel in or outside of Vermont for the purpose of engaging in commercial sexual exploitation of a minor under the age of 18.

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

Vermont prohibits both the promotion and selling of child pornography. Vt. Stat. Ann. tit. 13, § 2821(5) (Definitions) defines “promote” as “to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.” Vt. Stat. Ann. tit. 13, § 2822(a) (Use of child in a sexual performance) makes it illegal for a person, “with knowledge of the character and content, [to] promote a sexual performance<sup>63</sup> by a child<sup>64</sup> or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child . . . .” Additionally, Vt. Stat. Ann. tit. 13, § 2824(a) (Promoting a recording of sexual conduct) makes it unlawful for a person, “with knowledge of the character and content, [to] promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child’s genitals or anus.” A first conviction under either Vt. Stat. Ann. tit. 13, § 2822(a) or § 2824(a) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(a) (Penalties). If the offender has a prior conviction under Vt. Stat. Ann. tit. 13, § 2822(a), § 2823 (Consenting to a sexual performance), or § 2824(a) (Promoting a recording of sexual conduct), however, a conviction is punishable as a felony by imprisonment for 1–15 years, a fine not to exceed \$50,000, or both. Vt. Stat. Ann. tit. 13, §§ 1, 2825(b).

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<sup>63</sup> See *supra* note 10.

<sup>64</sup> See *supra* note 11.

***Legal Components:***

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based upon the willingness of a minor under 18 to engage in the commercial sex act.*
- 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency 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 for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

***Legal Analysis:***

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>65</sup>

Vt. Stat. Ann. tit. 13, § 2652 (Human trafficking), Vermont’s core sex trafficking statute includes all sexually exploited children. When the victim is a minor, means of force, fraud, or coercion are not required to establish the child as a victim.<sup>66</sup> Additionally, Vt. Stat. Ann. tit. 13, § 2652 is buyer applicable; thus, any person who buys sex with a minor commits the offense of human trafficking. Lastly, third party control is not required to identify all commercially sexually exploited children as victims of human trafficking.

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

Vt. Stat. Ann. tit. 13, § 2652(d) (Human trafficking) expressly prohibits a defendant from raising consent of the minor as a defense, stating, “In a prosecution for a violation of this section, the victim’s alleged consent to the human trafficking is immaterial and shall not be admitted.” However, Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation), § 2822(a) (Use of a child in a sexual performance), and § 2823

<sup>65</sup> See generally **SHARED HOPE INTERNATIONAL**, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>66</sup> See *supra* Component 1.1.



(Consenting to a sexual performance) is silent regarding whether a minor's consent to a commercial sex act may be used as a defense to the crime.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>67</sup>

Several provisions under Vermont's core human trafficking statute prevent the criminalization of minors under 18 years of age for prostitution offenses; however, such protections are limited to minors identified as human trafficking victims. Specifically, Vt. Stat. Ann. tit. 13, § 2652(c)(1) (Human trafficking) protects victims of domestic minor sex trafficking, stating,

(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter (59) lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provisions of law, a person under the age of 18 shall be immune from prosecution in the Criminal Division of the Superior Court for a violation of subsection 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under 33 V.S.A. chapter 52 (Delinquency proceedings) or referred to the department for children and families for treatment under 33 V.S.A. chapter 53 (Children in need of care of supervision).

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

**Child Identified as in Need of Care or Supervision (Abused/Abandoned)**

Pursuant to Vt. Stat. Ann. tit. 33, § 4912 (1), (15) (Definitions), a sexually exploited child is likely to be identified as abused or abandoned. If a child is identified as abused or abandoned, the definition of “care provider” under § Vt. Stat. Ann. tit. 33, § 5102(1) (Definitions and provisions of general application)<sup>68</sup> is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

Vt. Stat. Ann. tit. 13, § 2652(e) (Human trafficking) states, “If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.”

Vt. Stat. Ann. tit. 33, § 5102(3) (Definitions and provisions of general application) defines a “child in need of care or supervision (CHINS)” as one who

(A) has been abandoned or abused by the child's parent, guardian, or custodian. A person is considered to have abandoned a child<sup>69</sup> if the person is: unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the

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<sup>67</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>68</sup> See *infra* Component 5.6 for a full analysis of the definition of “caregiver.”

<sup>69</sup> Notably, Vt. Stat. Ann. tit. 33, § 5102(2)(B)(ii) defines a “child” to include,

[A]n individual who is between the ages of 16 to 17.5, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (beyond parental control), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness.

child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

## *I. Initial Custody*

### *a. Authority for initial custody*

Vt. Stat. Ann. tit. 33, § 5301 (Taking into custody) governs when law enforcement may take a CHINS into custody. Vt. Stat. Ann. tit. 33, § 5301 states,

A child may be taken into custody:

(1) pursuant to an order of the family division of the superior court under the provisions of this chapter.

(2) by an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child's current home is necessary for the child's protection.

....

### *b. Placement*

Pursuant to Vt. Stat. Ann. tit. 33, § 5302(a) (Request for emergency care order), after an officer takes a child into custody under 5301(1) or (2), "the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home." If the officer determines that the removal of the child from the child's home is necessary, Vt. Stat. Ann. tit. 33, § 5302(b) (Request for emergency care order) states that the officer shall

(1) Remove the child from the child's surroundings, contact the [Department for Children and Families], and deliver the child to a location designated by the department. The department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety and welfare pending the issuance of an emergency care order.

(2) Prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the state's attorney . . . .

....

## *II. Process following initial custody*

After the officer has provided an affidavit to the state's attorney, the state's attorney must then request for an emergency care order. Vt. Stat. Ann. tit. 33, §5302(c). If the request is denied, the child must be returned to the child's home. Vt. Stat. Ann. tit. 33, §5302(d). Pursuant to Vt. Stat. Ann. tit. 33, § 5305(a) (Emergency care order, conditional custody order), however, "If the court determines that the child's continued residence in the home is contrary to the child's welfare, the court may issue an emergency care order transferring temporary custody of the child to the department pending a temporary care hearing."

### *III. Placement process pending adjudication/ investigation*

If the court issues an emergency care order, Vt. Stat. Ann. tit. 33, § 5307 (Temporary care hearing) states that the court shall hold a temporary care hearing “within 72 hours of the issuance of an emergency care order.”

At the temporary care hearing, the court must determine whether to return the child to the child’s home or retain custody over the child. Vt. Stat. Ann. tit. 33, § 5308(a) (Temporary care order) states,

The court shall order that legal custody be returned to the child’s custodial parent, guardian, or custodian unless the court finds by a preponderance of the evidence that a return home would be contrary to the child’s welfare because any one of the following exists:

- (1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.
- (2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child’s household, or another person known to the custodial parent, guardian, or custodian.
- (3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child’s household, or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:
  - (A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and
  - (B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

....

Pursuant to Vt. Stat. Ann. tit. 33, § 5308(b), if the court finds that any of the conditions listed in Vt. Stat. Ann. tit. 33, § 5308(a) exist, “the court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child,” which includes ordering any of the following, in order of preference: return legal custody to the parent or custodian, transfer temporary custody to a non-custodial parent, transfer temporary custody to a relative, transfer temporary custody to a person with a significant relationship with the child, or transfer custody to the Commissioner of the Department for Children and Families.

### *IV. Adjudication*

“The court may approve a written stipulation to the merits of a CHIN petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services” pursuant to Vt. Stat. Ann. tit. 33, § 5315 (Merits adjudication)<sup>70</sup>. If the court finds by clear and convincing evidence “that the allegations made in the petition have been established,” the court “shall order the [Department for Children and Families] to prepare a disposition case plan no later than seven business days before a scheduled disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal from the resulting disposition order.” Vt. Stat. Ann. tit. 33, § 5315(g).<sup>71</sup>

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<sup>70</sup> The text of Vt. Stat. Ann. tit. 33, § 5315 (Merits adjudication) cited here and elsewhere in this report include amendments made by House Bill 95 during the 2016 1<sup>st</sup> Legislative Session by the Vermont Legislature (effective June 1, 2016).

<sup>71</sup> See *supra* note 70.

## V. Outcomes

Pursuant to Vt. Stat. Ann. tit. 33, § 5318(a) (Disposition order), the outcomes of a dispositional hearing may include the following:

- (1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian . . . .
- (2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact . . . .
- (3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding . . . .
- (4) An order transferring legal custody to the [Commissioner of the Department for Children and Families].
- (5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the commissioner without limitation as to adoption.
- (6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.
- (7) An order transferring legal custody to a relative or another person with a significant relationship with the child . . . .

Vt. Stat. Ann. tit. 33, § 5318(c) further provides that if a 16–17.5 year old child “is transferred to the department pursuant to a petition filed under subsection 5309(d) [Filing of a petition] of this title services to the child and to his or her family shall be provided through a coordinated effort by the agency of human services, the department of education, and community-based interagency teams.”

Vt. Stat. Ann. tit. 33, § 5322 (Placement of a child in a facility used for treatment of delinquent children) states, “A child found by the court to be a [CHINS] shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act.”

### **Child Identified as in Need of Care or Supervision (Runaways)**

A sexually exploited child may be identified as a runaway under Vermont law. If a child is identified as a runaway, they will be directed through the CHINS process.

#### *I. Initial custody*

##### *a. Authority for initial custody*

Vt. Stat. Ann. tit. 33, § 5301 (Taking into custody) states,

A child may be taken into custody:

. . . .

- (3) By an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.

##### *b. Placement*

Pursuant to Vt. Stat. Ann. tit. 33, § 5303(a) (Procedure for runaway children),

If an officer takes a child into custody pursuant to subdivision 5301(3) of this title, the officer shall deliver the child to:

- (1) the child's custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or
- (2) a shelter designated by the department pursuant to section 5304 of this title as qualified to assist children who have run away for the purpose of reuniting them with their parents, guardian, or legal custodian.

## *II. Process following initial custody*

Once a child has been placed in a shelter designated for runaway children, the parents of the child must be notified, and reasonable efforts to mediate must be attempted.<sup>72</sup>

After a child has been placed, Vt. Stat. Ann. tit. 33, § 5303(c) provides that a child may only remain at a designated shelter for seven days. Vt. Stat. Ann. tit. 33, § 5303(d) states,

Upon expiration of the seven-day period or sooner at the request of the child or the custodial parent:

- (1) the child shall be released to his or her custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or
- (2) an officer shall seek an emergency care order pursuant to section 5302 of this title.

The state's attorney must request an emergency care order. Vt. Stat. Ann. tit. 33, § 5302(c). If the request is denied, the child must be returned to the child's home. Vt. Stat. Ann. tit. 33, § 5302(d). Pursuant to Vt. Stat. Ann. tit. 33, § 5305(a), however, "If the court determines that the child's continued residence in the home is contrary to the child's welfare, the court may issue an emergency care order transferring temporary custody of the child to the department pending a temporary care hearing."

## *III. Placement process pending adjudication*

If the court issues an emergency care order, Vt. Stat. Ann. tit. 33, § 5307 (Temporary care hearing) states that the court shall hold a temporary care hearing "within 72 hours of the issuance of an emergency care order."

At the temporary care hearing, the court must determine whether to return the child to the child's home or retain custody over the child. Vt. Stat. Ann. tit. 33, § 5308(a) (Temporary care order) states,

The court shall order that legal custody be returned to the child's custodial parent, guardian, or custodian unless the court finds by a preponderance of the evidence that a return home would be contrary to the child's welfare because any one of the following exists:

- (1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.
- (2) The child or another child residing in the same household has been physically or sexually abused by a custodial parent, guardian, or custodian, or by a member of the child's household, or another person known to the custodial parent, guardian, or custodian.
- (3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a custodial parent, guardian, or custodian, or by a member of the child's household,

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<sup>72</sup> See Vt. Stat. Ann. tit. 33, § 5301(b).

or another person known to the custodial parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

- (A) a custodial parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and
- (B) a custodial parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

....

Pursuant to Vt. Stat. Ann. tit. 33, § 5308(b), if the court finds that any of the conditions listed in Vt. Stat. Ann. tit. 33, § 5308(a) exist, “the court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child,” which includes ordering any of the following, in order of preference: return legal custody to the parent or custodian, transfer temporary custody to a non-custodial parent, transfer temporary custody to a relative, transfer temporary custody to a person with a significant relationship with the child, or transfer custody to the Commissioner of the Department for Children and Families.

#### *IV. Adjudication*

“The court may approve a written stipulation to the merits of a CHIN petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services” pursuant to Vt. Stat. Ann. tit. 33, § 5315<sup>73</sup> (Merits adjudication). If the court finds by clear and convincing evidence “that the allegations made in the petition have been established,” the court “shall order the [Department for Children and Families] to prepare a disposition case plan no later than seven business days before a schedule disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.” Vt. Stat. Ann. tit. 33, § 5315(g)<sup>74</sup>.

#### *V. Outcomes (Final permanent placement)*

Pursuant to Vt. Stat. Ann. tit. 33, § 5318(a) (Disposition order), the outcomes of a dispositional hearing may include the following:

- (1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian . . . .
- (2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact . . . .
- (3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding . . . .
- (4) An order transferring legal custody to the [Commissioner of the Department for Children and Families].
- (5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the commissioner without limitation as to adoption.
- (6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.
- (7) An order transferring legal custody to a relative or another person with a significant relationship with the child . . . .

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<sup>73</sup> See *supra* note 70.

<sup>74</sup> See *supra* note 71.

Vt. Stat. Ann. tit. 33, § 5318(c) further provides that if a 16–17.5 year old child “is transferred to the department pursuant to a petition filed under subsection 5309(d) [Filing of a petition] of this title services to the child and to his or her family shall be provided through a coordinated effort by the agency of human services, the department of education, and community-based interagency teams.”

Vt. Stat. Ann. tit. 33, § 5322 (Placement of a child in a facility used for treatment of delinquent children) states, “A child found by the court to be a [CHINS] shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act.”

## **Child Identified as Delinquent**

### *I. Initial custody*

#### *a. Authority for initial custody*

For the purposes of delinquency proceedings, Vt. Stat. Ann. tit. 33, § 5251(3) (Taking into custody) authorizes a law enforcement officer to take a child into custody “when the officer has reasonable grounds to believe that the child has committed a delinquent act<sup>75</sup> and that the child’s immediate welfare or the protection of the community, or both, require the child’s removal from the child’s current home.”

Alternatively, pursuant to Vt. Stat. Ann. tit. 33, § 5221 (Citation and notice to appear at preliminary hearing),

If an officer has probable cause to believe that a child has committed or is committing a delinquent act<sup>76</sup> and the circumstances do not warrant taking the child into custody pursuant to subchapter 3 of this chapter, the officer may issue a citation to appear before a judicial officer in lieu of arrest.

#### *b. Placement*

After taking the child into custody, the officer must “immediately notify the child’s custodial parent, guardian, or custodian and release the child to the care of child’s custodial parent, guardian, or custodian unless the officer determines that the child’s immediate welfare or the protection of the community, or both, require the child’s continued removal from the home.” Vt. Stat. Ann. tit. 33, § 5252(a).

Vt. Stat. Ann. tit. 33, § 5293 (Disposition of minors adjudicated as adult offenders; separation of persons under 18 years from adults) imposes additional limitations on where minors may be detained. Vt. Stat. Ann. tit. 33, § 5293(a)(1) prohibits the state of Vermont from placing minors who are detained while awaiting trial “in a facility for adult offenders unless a felony charge has been filed in the criminal division” and Vt. Stat. Ann. tit. 33 § 5293(a)(2)(A) further specifies that minors arrested for misdemeanors must “be released to his or her custodial parent, guardian, or custodian; or . . . be delivered to the criminal division of the superior court.” Vt. Stat. Ann. tit. 33, § 5293(a)(2)(B)(i) explains that a minor in supervision of the criminal division may not be held in a facility for adult offenders.

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<sup>75</sup> Vt. Stat. Ann. tit. 33, § 5102(9) (Definitions and provisions of general application) defines a “delinquent act” as “an act designated a crime under the laws of this state, or of another state if the act occurred in another state, or under federal law.”

<sup>76</sup> See *supra* note 75.

## *II. Process following initial custody*

Under Vt. Stat. Ann. tit. 33, § 5252(b) (Request for emergency care order), if the officer determines that the child must be removed from his or her home, the officer is required to take the child into custody while awaiting “the issuance of an emergency care order or direction from the state’s attorney to release the child,” “[p]repare an affidavit in support of a request for an emergency care order,” and “provide the affidavit to the state’s attorney.” Vt. Stat. Ann. tit. 33, § 5252(b). The state’s attorney will then request that the court issue an emergency care order. Vt. Stat. Ann. tit. 33, § 5252(c). If denied, the child must be released and returned to his or her custodial parent, guardian, or custodian. Vt. Stat. Ann. tit. 33, § 5252(d).

Vt. Stat. Ann. tit. 33, § 5253(a)(1) (Emergency care order; conditional custody order) states that the court may grant an emergency care order if it determines that

- (A) there is probable cause that the child has committed a delinquent act; and
- (B) continued residence in the home is contrary to the child’s welfare because:
  - (i) the child cannot be controlled at home and is at risk of harm to self or others; or
  - (ii) continued residence in the home will not safeguard the well-being of the child and the safety of the community because of the serious and dangerous nature of the act the juvenile is alleged to have committed.

If an officer has issued a citation without taking the child into custody, the state’s attorney must file a petition alleging the child’s delinquency within 10 days of the preliminary hearing specified in the citation. Vt. Stat. Ann. tit. 33, § 5223(a)<sup>77</sup> (Filing of Petition),<sup>78</sup>

When notice to the child is provided by citation, the State’s Attorney shall file the petition and supporting affidavit at least 10 business days prior to the date for the preliminary hearing specified in the citation.

Pursuant to Vt. Stat. Ann. tit. 33, § 5225(b)<sup>79</sup> (Preliminary Hearing; Risk Assessment),

Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the department or by a community provider that has contracted with the department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the state’s attorney. In lieu of filing a charge, the State’s Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State’s Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the

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<sup>77</sup> The text of Vt. Stat. Ann. tit. 33, § 5223(a) cited here and elsewhere in this report includes amendments made by the enactment of House Bill 95 during the 2016 1st Regular Session of the Vermont Legislature (effective June 1, 2016).

<sup>78</sup> The text of Vt. Stat. Ann. tit. 33, § 5223(a) cited here and elsewhere in this report includes amendments made by the enactment of House Bill 95 during the 2016 1st Regular Session of the Vermont Legislature (effective June 1, 2016).

<sup>79</sup> The text of Vt. Stat. Ann. tit. 33, § 5225(b) cited here and elsewhere in this report includes amendments made by the enactment of House Bill 95 during the 2016 1st Regular Session of the Vermont Legislature (effective June 1, 2016).



provider, the child's case shall return to the State's Attorney for charging consideration. If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the court until after a merits finding has been made.

### *III. Placement process pending adjudication*

A temporary care hearing must be held within 72 hours of the court's issuance of an emergency care order. Vt. Stat. Ann. tit. 33, § 5255(a). At the preliminary hearing the child may either deny or admit<sup>80</sup> the allegations and the court "may order the child to abide by conditions of release pending a merits or disposition hearing." Vt. Stat. Ann. tit. 33, § 5225(e), (f).

Pursuant to Vt. Stat. Ann. tit. 33, § 5256(a), (b) (Temporary care order) at the hearing, the court may proceed as follows:

- (a) The court shall order that custody be returned to the child's custodial parent, guardian, or custodian unless the court finds by a preponderance of the evidence that return to the home would be contrary to the welfare of the child because of any of the following:
  - (1) The child cannot be controlled at home and is at risk of harm to self or others.
  - (2) Continued residence in the home will not protect the community because of the serious and dangerous nature of the act the child is alleged to have committed.
  - (3) The child's welfare is otherwise endangered.
- (b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the court may issue such temporary orders related to the custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child, and the safety of the community, including:
  - (1) A conditional custody order returning custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitation as the court may deem necessary and sufficient to protect the child and the community.
  - (2) An order transferring temporary custody of the child to a noncustodial parent or a relative.
  - (3) A temporary care order transferring temporary custody of the child to the commissioner.

### *IV. Adjudication or referral to alternate process*

#### *a. Adjudication*

At a merits hearing, conducted in accordance with Vt. Stat. Ann. tit. 33, § 5229 (Merits adjudication), the court will determine whether the allegations against the child have been "established beyond a reasonable doubt." If the court determines "beyond a reasonable doubt that the child has committed a delinquent act, the court shall order the department to prepare a disposition case plan no later than seven business days before the disposition hearing." In no event shall a disposition hearing be held later than 35 days after finding that a child is delinquent Vt. Stat. Ann. tit. 33, § 5229(g) (Merits adjudication)<sup>81</sup>.

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<sup>80</sup> Under Vt. Stat. Ann. tit. 33, § 5225(e), "If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the court may proceed directly to disposition, provided that the juvenile, the custodial parent, the state's attorney, the guardian ad litem, and the department agree." See *supra* note 81.

<sup>81</sup> The text of Vt. Stat. Ann. tit. 33, § 5229(g) (Merits adjudication) cited here and elsewhere in this report includes amendments made by House Bill 95 during the 2016 1<sup>st</sup> Regular Session of the Vermont Legislature (effective June 1, 2016).

To the extent that a domestic minor sex trafficking victim commits an offense other than one under Vt. Stat. Ann. tit. 13, ch. 59<sup>82</sup> (Lewdness and prostitution) or ch. 63 (Obscenity), when a delinquency petition is filed for an act that “arises out of the sex trafficking or benefits the sex trafficker,” Vt. Stat. Ann. tit. 13, § 2652(c)(2) (Human trafficking) allows a sex trafficking victim to “raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.”

b. Diversion

As an alternative, a juvenile diversion program may be available through Vt. Stat. Ann. tit. 3, § 163(a), (b) (Juvenile court diversion project) and is encouraged to be available at the local level. Vt. Stat. Ann. tit. 3, § 163(a), (b) states,

- (a) The attorney general shall develop and administer a juvenile court diversion project for the purpose of assisting juveniles charged with delinquent acts . . . .
- (b) The diversion project administered by the attorney general shall encourage the development of diversion projects in local communities through grants of financial assistance to municipalities, private groups or other local organizations . . . .

V. *Outcomes (Final permanent placement)*

At the disposition hearing, Vt. Stat. Ann. tit. 33, § 5232(b) (Disposition order) authorizes the court to order any of the following dispositions for an adjudicated delinquent child:

- (1) Place the child on probation subject to the supervision of the [Commissioner of the Department for Children and Families], upon such conditions as the court may prescribe . . . .
- (2) Order custody of the child be given to the custodial parent, guardian, or custodian . . . .
- (3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child.
- (4) Transfer custody of the child to the commissioner.
- (5) Terminate parental rights and transfer custody and guardianship to the department without limitation as to adoption.
- (6) Issue an order of permanent guardianship pursuant to 14 V.S.A. § 2664 [Creation of permanent guardianship].
- (7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

Vt. Stat. Ann. tit. 33, § 5292(a), (b) (Detention in adult facilities of minors charged or adjudicated as delinquents) states that minors adjudicated delinquent are not ordinarily to be detained with adults.<sup>83</sup>

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<sup>82</sup> Chapter 59 includes Vt. Stat. Ann. tit. 13, § 2632(a) (Prohibited acts).

<sup>83</sup> Vt. Stat. Ann. tit. 33, § 5292(a), (b) states,

- (a) A minor charged with a delinquent act shall not be detained under this chapter in a jail or other facility intended or used for the detention of adults unless the child is alleged to have committed a crime punishable by life imprisonment and it appears to the satisfaction of the court that public safety and protection reasonably require such detention.

Vt. Stat. Ann. tit. 33, § 5293(c)–(f), however, distinguishes the treatment of minors adjudicated delinquent based on the delinquent act and the age of the child. Vt. Stat. Ann. tit. 33, § 5293(c)–(f) states,

(c) Placement of minors under 16.—The commissioner of corrections shall not place a minor under the age of 16 who has been sentenced to a term of imprisonment in a correctional facility used to house adult offenders.

(d) Placement of minors over 16 convicted of felony.—The commissioner of corrections may place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a felony and who has been sentenced to a term of imprisonment.

(e) Placement of a minor over 16 convicted of a misdemeanor.—The commissioner of corrections shall not place in a facility for adult offenders a minor who has attained the age of 16 but is under the age of 18 who has been convicted of a misdemeanor.

(f) Transfer of minor at 18th birthday.—At the 18th birthday of a minor convicted of a misdemeanor, the commissioner may transfer the minor to a facility for adult offenders.

Lastly, 2011 Vt. Acts & Resolves 55, § 3<sup>84</sup> (Services for victims of human trafficking) authorizes the Vermont center for crime victim services to establish a task force responsible for developing a statewide protocol to provide services for victims of human trafficking.

Pursuant to 2011 Vt. Acts & Resolves 55, § 3(b), the Vermont center for crime victims' services may enter into contracts with individuals and government organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking . . . [which] may include

- (1) Case management;
- (2) Emergency temporary housing;
- (3) Health care;
- (4) Mental health counseling;
- (5) Drug addiction screening and treatment;
- (6) Language interpretation and translation services;
- (7) English language instruction;
- (8) Job training and placement assistance;
- (9) Post-employment services for job retention; and
- (10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

5.4.1 Recommendation: Enact a law that mandates juvenile sex trafficking victims' access to specialized services.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>85</sup>

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(b) A minor who has been adjudicated as a delinquent child shall not by virtue of such adjudication be committed or transferred to an institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

<sup>84</sup> 2011 Vt. Acts & Resolves 55 became effective on July 1, 2011, but Section 3 is not codified. See <http://www.leg.state.vt.us/DOCS/2012/ACTS/ACT055.PDF> (last checked September 28, 2016).

<sup>85</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

Pursuant to both Vermont’s human trafficking and child abuse statutes, minor sex trafficking and commercial sexual exploitation victims are expressly identified as children requiring child welfare protection and care. Vt. Stat. Ann. tit. 13, § 2652(e) (Human trafficking) states, “If a person who is identified as a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as a subject of a child in need of care or supervision proceeding.” Additionally, for the purposes of Vermont’s child abuse reporting statutes, Vt. Stat. Ann. tit. 33, § 4912 (1), (15) (Definitions) contains the following definitions related to the abuse of a child:

(1) “Abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.

....

(15) “Sexual abuse” consists of any act or acts by any person involving sexual molestation or exploitation of a child, including:

- (A) incest;
- (B) prostitution;
- (C) rape;
- (D) sodomy;
- (E) or any lewd and lascivious conduct involving a child;
- (F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child;
- (G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;
- (H) human trafficking;
- (I) sexual assault;
- (J) voyeurism;
- (K) luring a child; or
- (L) obscenity.

5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

Vermont’s child welfare and human trafficking statutes do not prevent child sex trafficking victims from accessing necessary protective services as a result of limited definitions of “caregiver.” Contrarily, for the purposes of Vermont’s child reporting statutes, Vt. Stat. Ann. tit. 33, § 4912(1)(15) (Definitions) an offender includes “Any person involved in sexual molestation or exploitation of a child, including,

- (A) rape;
- (B) prostitution

....

- (F) aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photography, motion picture, exhibition, show, representation, or other presentation in which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a child;
- (G) viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged;
- (H) human trafficking;
- (I) sexual assault;

- ....  
(K) luring a child; or  
(L) obscenity.

Resultantly, any child subjected to sexual abuse, including human trafficking, under Vt. Stat. Ann. tit. 33, § 4912(1)(15) is included as a child eligible for child welfare protections, regardless of the relationship between the child and the offender.

Additionally, a child identified as a victim of human trafficking may be treated as a child in need of care or supervision. Vt. Stat. Ann. tit., § 2652(c)(2)(e) (Human trafficking). For purposes of Vermont's laws regarding juvenile proceedings, which includes laws related to children in need of care or supervision, Vt. Stat. Ann. tit. 33, § 5102(1) (Definitions and provisions of general application) defines "care provider" as "a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court." Vt. Stat. Ann. tit. 33, § 4912(10) (Person responsible for a child's welfare) further broadens those responsible for a child's care to include,

the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.

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

Commercially sexually exploited children may be eligible to receive crime victims' compensation although they are not specifically mentioned in Vermont's crime victim compensation statutes.

Vt. Stat. Ann. tit. 13, § 5353(a) (Application for compensation) establishes certain eligibility requirements for a victim to receive compensation. Vt. Stat. Ann. tit. 13, § 5353(a) states,

A victim or a dependent of a victim<sup>86</sup> shall, upon application, be eligible for compensation if:

- (1) a law enforcement official has filed a report concluding that a crime was committed which resulted in the injury or death of the victim; and
- (2) the crime was committed in this state; or
- (3) the victim is a Vermont resident, the state in which the crime occurred does not have an eligible crime victim's compensation program and the applicant would have been eligible for compensation under this chapter if the crime had been committed in this state; or
- (4) the victim is a Vermont resident who is injured or killed by an act of terrorism outside the United States, to the extent that compensation is not otherwise available under federal law.

If "a preponderance of the evidence shows that as a direct result of the crime an injury occurred which resulted in a pecuniary loss<sup>87</sup> to the victim," the victims' compensation board shall award compensation to an applicant. Vt. Stat. Ann. tit. 13, § 5355(a).

<sup>86</sup> See *supra* Component 5.1 for the definition of victim under Vt. Stat. Ann. tit. 13, § 5351(7) (Definitions).

<sup>87</sup> Vt. Stat. Ann. tit. 13, § 5351(5) states,

"Pecuniary loss" means, in the case of a victim, the amount of medical or medically-related expenses, loss of wages, and any other expenses which the board feels became necessary as a direct result of the crime. Medical or medically-related expenses may include, but are not limited to, the costs of individual or family

Even if a commercially sexually exploited child meets the basic eligibility requirements, certain additional requirements may make a commercially sexually exploited child ineligible to receive compensation. Vt. Stat. Ann. tit. 13, § 5355(b) (Approval or rejection of application) states,

An application for assistance shall be denied if any of the following apply:

- (1) The application was not made within the period of time permitted for commencing prosecution of the crime. The board may extend the time for filing for good cause shown.
- (2) The victim violated a criminal law of this state which caused or contributed to the victim's injuries or death.

Vt. Stat. Ann. tit. 13, § 5355(b) may, however, have limited applicability to victims of human trafficking, given that Vt. Stat. Ann. tit. 13, § 2652(c)(1)(A) (Human trafficking) protects victims of human trafficking from being “found in violation of” crimes outlined in Vt. Stat. Ann. tit. 13, Ch. 59 (Lewdness and prostitution) or Ch. 63 (Obscenity).

- 5.7.1 Recommendation: Amend Vt. Stat. Ann. tit. 13, § 5355(b) (Approval or rejection of application) to specify an exception for minor victims of sex trafficking and commercial sexual exploitation of children to ensure that listed ineligibility criteria do not prevent access to crime victim compensation.

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

Vermont affords some specific criminal justice protections to domestic minor sex trafficking victims. Vt. Stat. Ann. tit. 13, § 3255(a) (Evidence) provides evidentiary protection to victims as follows:

In a prosecution for a crime defined in this chapter and in sections 2601 [Lewd and lascivious conduct] and 2602 [Lewd or lascivious conduct with child] of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title . . .

- (1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.
- (2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.
- (3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:
  - (A) Evidence of the complaining witness' past sexual conduct with the defendant;
  - (B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;
  - (C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

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psychological, psychiatric or mental health counseling and the costs of replacing or repairing eyeglasses, hearing aids, dentures or any prosthetic devices which were taken, lost or destroyed during the commission of the crime. In the case of a dependent, “pecuniary loss” means the cost of psychological, psychiatric or mental health counseling, funeral expenses for the victim and upon demonstration of financial hardship, temporary living expenses.

Under Vermont law, victims<sup>88</sup> of certain crimes, including victims of human trafficking or aggravated human trafficking, are entitled to certain procedural protections. Vt. Stat. Ann. tit. 13, § 5301(7)(DD), (EE). Victims have the right to be notified of motions filed in the case that might substantially change the proceeding and the right to be notified of and present at their defendant's arraignment and further court proceedings. Vt. Stat. Ann. tit. 13, §§ 5308, 5309, 5312(a). Additionally, Vt. Stat. Ann. tit. 13, § 5313 (Limitations on employer) prohibits an employer from discharging or disciplining "a victim of a listed crime or a victim's family member or representative for honoring a subpoena to testify."

Vt. Stat. Ann. tit. 13, § 5314 (Information from law enforcement agency) requires law enforcement to give victims of certain crimes, including victims of human trafficking or aggravated human trafficking, information about their rights including the right to refuse to answer questions unless they are at a deposition or in court, the availability of assistance or protection, the identity of the accused, the case number and contact information for the law enforcement officer assigned to the case, the name and contact information of the prosecutor, and whether the accused has been taken into custody.

Additionally, Vt. Stat. Ann. tit. 13, § 5316 (Complete identification by prosecution and defense) states, "Any individual associated with the prosecution or defense of a listed crime, including attorneys, investigators or experts, who comes in contact with the victim or the victim's family shall properly identify himself or herself and by whom he or she is employed." Lastly, Vt. Stat. Ann. tit. 13, § 5321<sup>89</sup>(d), (e) (Appearance by victim) states,

(d) At or before the sentencing hearing, the prosecutor's office shall instruct the victim of a listed crime, in all cases where the court imposes a sentence which includes a period of incarceration, that a sentence of incarceration is to the custody of the commissioner of corrections and that the commissioner of corrections has the authority to affect the actual time the defendant shall serve in incarceration through good time credit, furlough, work-release and other early release programs. in [sic] addition, the prosecutor's office shall explain the significance of a minimum and maximum sentence to the victim and shall also explain the function of parole and how it may affect the actual amount of time the defendant may be incarcerated.

(e) At or before a change of plea hearing where the plea agreement filed with the court proposes a deferred sentence, the prosecutor's office shall instruct the victim of a listed crime about the significance of a deferred sentence and the potential consequences of a violation of conditions imposed by the court. In addition, the prosecutor's office shall consult with the victim concerning any proposed probation conditions prior to the hearing.

Pursuant to Vt. Stat. Ann. tit. 13, § 5306 (Victim advocates), victim advocates are authorized to "carry out the provisions of the victims' assistance program." Additionally, Vt. Stat. Ann. tit. 13, § 5310 (Nondisclosure of information about victim) helps keep victims' information confidential by prohibiting a witness from disclosing a victim's address or place of employment unless the "nondisclosure of the information will prejudice the defendant." Moreover, Vt. Stat. Ann. tit. 13, § 5322 (Confidentiality) states,

When responding to a request for public records, or on any state website or state payment report, the state of Vermont shall not disclose to the public the name or any other identifying information,

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<sup>88</sup> See *supra* note 37 for the definition of "victim" under Vt. Stat. Ann. tit. 13, § 5301(4).

<sup>89</sup> The text of Vt. Stat. Ann. tit. 13, § 5321 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 533 and House Bill 95 during the Vermont 2015-2016 Legislative Session (effective July 1, 2016).

including the town of residence or the type or purpose of the payment, of an applicant to the victim's compensation program, a victim named in a restitution judgment order, or a recipient of the domestic and sexual violence survivors' transitional employment program.

Additionally, Vt. Stat. Ann. tit. 13, § 5321(a)–(c) (Appearance by victim)<sup>90</sup> protects the victims' right to be informed and to participate in certain aspects of the trial, stating the following:

(a) The victim of a crime has the following rights in any sentencing proceedings concerning the person convicted of that crime, or in the event a proposed plea agreement filed with the court recommends a deferred sentence, at any change of plea hearing concerning the person charged with committing that crime:

(1) to be given advance notice by the prosecutor's office of the date of the proceedings; and

(2) to appear, personally, to express reasonably his or her views concerning the crime, the person convicted, and the need for restitution.

(b) The change of plea hearing or sentencing shall not be delayed or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.

(c) In accordance with court rules, at the sentencing or change of plea hearing, the court shall ask if the victim is present and, if so, whether the victim would like to be heard regarding sentencing or the proposed deferral of sentencing. In imposing the sentence or considering whether to defer sentencing, the court shall consider any views offered at the hearing by the victim. [If] the victim is not present, the court shall ask whether the victim has expressed, either orally or in writing, views regarding sentencing or the proposed deferral of sentencing and shall take those views into consideration in imposing the sentence or considering whether to defer sentencing.

Additional protections may apply to the extent that a domestic minor sex trafficking victim is also the victim of certain sex related crimes. Vt. R. Evid. 807 (Testimony where victim is a minor, a mentally ill person or a mentally retarded person) authorizes the court to allow children 12 years of age or under who are victims of Vt. Stat. Ann. tit. 13, § 3252 (Sexual assault), § 3253 (Aggravated sexual assault), or § 2602 (Lewd or lascivious conduct with child), among others, to provide testimony via a two-way closed circuit television under certain circumstances. Pursuant to Vt. R. Evid. 807(c),

The court shall make an order for two-way closed-circuit television or recorded testimony under this rule only upon a finding that requiring the child or mentally ill or mentally retarded person to testify in court will present a substantial risk of trauma to the child or mentally ill or mentally retarded person which would substantially impair the ability of the child or mentally ill or mentally retarded person to testify.

If testimonial protection for the child is authorized, Vt. R. Evid. 807(e) permits the court to allow a person "whose presence the court finds would contribute to the welfare and well-being of the child . . . [to] be present in the room with the child."

Human trafficking victims may also participate in the address confidentiality program under Vt. Stat. Ann. tit. 15, § 1152(a) (Address confidentiality program; application; certification), which states,

[A] parent or legal guardian acting on behalf of a minor . . . may apply to the secretary of state to have an address designated by the secretary serve as the person's address or the address of the minor or

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<sup>90</sup> See *supra* note 89.



incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state, and if it contains:

- (1) a statement made under oath by the applicant that:
    - (A) the applicant, or the minor . . . on whose behalf the application is made, is a victim of . . . human trafficking,<sup>91</sup>
    - (B) the applicant fears for his or her safety or his or her children's safety, or the safety of the minor . . . on whose behalf the application is made;
    - (C) the parent or legal guardian applying on behalf of a minor . . . has legal authority to act on the person's behalf;

. . . .

. . . .
  - (4) the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, sexual assault or, stalking, or human trafficking;
- . . . .

In addition, a human trafficking victim “may file a petition for a protective order in the county in which he or she resides or in Washington County to protect the confidentiality of his or her address.” Vt. Stat. Ann. tit. 15, § 1152(f).

Pursuant to Vt. Stat. Ann. tit. 15, § 1152(c), “Applicants shall be certified for four years following the date of filing, unless the certification is withdrawn or cancelled before that date . . . .” Under Vt. Stat. Ann. tit. 15, § 1157 (Assistance for program applicants), “The secretary of state shall make available a list of state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence, sexual assault, stalking, and human trafficking to assist persons applying to be program participants . . . .” Vt. Stat. Ann. tit. 15, § 1160 (Adoption of rules) further provides,

The secretary of state shall adopt rules necessary to perform his or her duties under this subchapter relating to: program application and certification; certification cancellation; agency use of designated addresses and exceptions; voting by program participants; and recording of vital statistics for program participants. All such rules . . . shall be designed with an understanding of the needs and circumstances of victims of domestic violence, sexual assault and, stalking, and human trafficking.

Lastly, Vt. Stat. Ann. tit. 12, § 1646(a)(3) (Evidence of sexual conduct) prohibits evidence of sexual behavior in civil cases as follows:

Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

- (A) evidence of the complaining witness' past sexual conduct with the defendant;
- (B) evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;
- (C) evidence of specific instances of the complaining witness' past false allegations of wrongful sexual activity.

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<sup>91</sup> Pursuant to Vt. Stat. Ann. tit. 15, § 1151 (Definitions), “[h]uman trafficking” means conduct prohibited by 13 V.S.A. § 2652 or § 2653, and includes a threat of such, regardless of whether the conduct or threat of conduct have been reported to law enforcement officers.”

5.9 *Expungement or sealing of juvenile delinquency 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.*

Vt. Stat. Ann. tit. 33, § 5119(c) (Sealing of records) governs sealing a child's record who has been adjudicated a child in need of care or supervision. Vt. Stat. Ann. tit. 33, § 5119(c) states,

On application of a person who, while a child, was found to be in need of care or supervision or, on the court's own motion, after notice to all parties of record and hearing, the court may order the sealing of all files and records related to the proceeding if it finds:

- (1) the person has reached the age of majority; and
- (2) sealing the person's record is in the interest of justice.

Similarly, Vt. Stat. Ann. tit. 33, § 5119(a) governs sealing a child's record who has been adjudicated delinquent after July 1, 1996. Vt. Stat. Ann. tit. 33, § 5119(a) states,

(1) . . . the court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state's attorney, the court finds:

(A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 [Definitions] or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or

(B) rehabilitation of the person has not been attained to the satisfaction of the court.

(2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the court shall provide such person's name and other identifying information to the state's attorney in the county in which the person was adjudicated delinquent. The state's attorney may object, and a hearing may be held to address the state's attorney's objection.

(3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the court may limit the order to the court files and records only upon good cause shown by the state's attorney.

. . . .

If a commercially sexually exploited minor participates in a juvenile diversion program, Vt. Stat. Ann. tit. 3, § 163(e), (f) (Juvenile court diversion project) allows juvenile records to be sealed after the successful completion of a diversion program. Vt. Stat. Ann. tit. 3, § 163(e), (f) states,

(e) Within 30 days of the two-year anniversary of a successful completion of juvenile diversion, the court shall order the sealing of all court files and records, law enforcement records other than entries in the juvenile court diversion project's centralized filing system, fingerprints, and photographs applicable to a juvenile court diversion proceeding unless, upon motion, the court finds:

(1) the participant has been convicted of a subsequent felony or misdemeanor during the two-year period, or proceedings are pending seeking such conviction; or

(2) rehabilitation of the participant has not been attained to the satisfaction of the court.

(f) Upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this section shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

- 5.9.1 Recommendation: Amend Vt. Stat. Ann. tit. 33, § 5119(c) (Sealing of records) to allow a juvenile sex trafficking victim to expunge juvenile records related to their trafficking victimization upon turning 18 or earlier.

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

Vt. Stat. Ann. tit. 13, § 7043(a)(1) (Restitution) states that the court shall consider restitution “in every case in which the victim of a crime<sup>92</sup> . . . has suffered a material loss.”<sup>93</sup> As a result, a commercially sexually exploited child whose offender is convicted under any of Vermont’s laws may be able to receive restitution. Moreover, commercially sexually exploited children whose offenders are convicted under Vt. Stat. Ann. tit. 13, § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), or § 2655(a) (Solicitation) are eligible to receive restitution under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

- (a) A person convicted of a violation of this subchapter [Criminal Acts] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.
- (b) If the victim of human trafficking<sup>94</sup> to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim’s heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim’s right to receive restitution pursuant to this section.

Vt. Stat. Ann. tit. 13, § 7043(a)(3) further explains,

In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, “material loss” shall also mean:

- (A) attorney’s fees and costs; and
- (B) the greater of either:
  - (i) the gross income or value of the labor performed for the offender by the victim; or
  - (ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. Section 385 [Administration].

In certain circumstances, the victim’s offender need not be convicted of a crime in order for the victim to be eligible to receive restitution. Vt. Stat. Ann. tit. 13, § 7043(e)(3) states, “An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense.”

Additionally, Vt. Stat. Ann. tit. 13, § 7043(h) states that “[r]estitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.”

Commercially sexually exploited children whose offenders are convicted under Vt. Stat. Ann. tit. 13, § 2652(a), § 2653(a), or § 2655(a) may pursue civil remedies as Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action) authorizes victims of human trafficking to bring a civil claim against their offenders. Vt. Stat. Ann. tit. 13, § 2662 provides,

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<sup>92</sup> See *supra* note 39.

<sup>93</sup> See *supra* Component 2.8 for the definition of “material loss.”

<sup>94</sup> See *supra* note 6 for the definition of “victim of human trafficking.”

- (a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 [Restitution] of this chapter.
- (b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.
- (c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

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

In regards to statutes of limitations applicable to criminal prosecutions, Vt. Stat. Ann. tit. 13, § 4501(a) (Limitation of prosecutions for certain crimes) eliminates the statute of limitations for prosecuting violations of Vt. Stat. Ann. tit. 13, § 3253 (Aggravated sexual assault), § 3253(a) (Aggravated sexual assault of a child), § 2652(a) (Human trafficking), and § 2653(a) (Aggravated human trafficking). Vt. Stat. Ann. tit. 13, § 4501(b) establishes that prosecutions must be commenced within 6 years for Vt. Stat. Ann. tit. 13, § 2252 (Sexual assault), "lewd and lascivious behavior"<sup>95</sup>, and "sexual exploitation of children," which includes Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), § 2823 (Consenting to a sexual performance), § 2824 (Promoting a recording of sexual conduct), § 2827 (Possession of child pornography), and § 2828 (Luring a child). For other felonies, Vt. Stat. Ann. tit. 13, § 4501(c), (e) (Limitation of prosecutions for certain crimes) states,

- (c) Prosecutions for any of the following offenses alleged to have been committed against a child under 18 years of age shall be commenced within 40 years after the commission of the offense, and not after:
  - (1) sexual assault;
  - (2) lewd and lascivious conduct;
  - (3) sexual exploitation of a minor as defined in subsection 3258(c)<sup>96</sup> of this title;
  - (4) lewd or lascivious conduct with a child; and
  - ....
- (e) Prosecutions for other felonies and for misdemeanors shall be commenced within three years after the commission of the offense, and not after.

<sup>95</sup> See Vt. Stat. Ann. tit. 13, § 2601 (Lewd and lascivious conduct) and § 2602 (Lewd or lascivious conduct with child).

<sup>96</sup> Vt. Stat. Ann. tit. 13, § 3258(a), (c) states:

- (a) No person shall engage in a sexual act with a minor if:
  - (1) the actor is at least 48 months older than the minor; and
  - (2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.
  - ....
- (c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action) does not specify a statute of limitations within its provisions. Therefore, Vermont's generally applicable 6-year statute of limitations for civil actions, codified at Vt. Stat. Ann. tit. 12, § 511 (Civil action), is applicable.

However, Vt. Stat. Ann. tit. 12, § 551(a) (Minority, insanity or imprisonment) provides, "When a person entitled to bring an action specified in this chapter is a minor . . . at the time the cause of action accrues, such person may bring such action within the times in this chapter respectively limited, after the disability is removed." Accordingly, if the victim of human trafficking is a minor, the victim will be able to bring a civil claim under Vt. Stat. Ann. tit. 13, § 2662 within 6 years of the minor's 18th birthday. Vt. Stat. Ann. tit. 1, § 173, tit. 12, §§ 511, 551(a).

- 5.11.1 Recommendation: Eliminate the statute of limitations for all civil causes of action for child victims of sex trafficking and commercial sexual exploitation.

***Legal Components:***

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
  - 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
  - 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
  - 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
  - 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
  - 6.6 *Law enforcement are mandated to promptly report missing and recovered children.*
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***Legal Analysis:***

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

Vermont does not specifically require law enforcement to receive training on human trafficking or domestic minor sex trafficking. 2011 Vt. Acts & Resolves 55, § 3 (Services for victims of human trafficking), however, authorizes the Vermont center for crime victim services to “convene a task force to assist . . . law enforcement agencies . . . to develop a statewide protocol to provide services for victims of human trafficking. The protocol may include a public awareness and education campaign.”

- 6.1.1 Recommendation: Enact a law that authorizes law enforcement to receive training on human trafficking, including domestic minor sex trafficking.

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

Vermont’s statutes do not address whether single party or two-party consent to audiotaping is required.

- 6.2.1 Recommendation: Enact a law permitting single party consent audiotaping.

- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*

Vermont code does not address whether wiretapping is permitted for domestic minor sex trafficking or any other crime.

- 6.3.1 Recommendation: Should Vermont enact a law authorizing wiretapping by law enforcement, include investigations related to Vt. Stat. Ann. tit. 13, § 2822(a) (Use of a child in a sexual performance), § 2823 (Consenting to a sexual performance), § 2652(a) (Human trafficking), § 2653(a) (Aggravated human trafficking), and § 2655(a) (Solicitation).

- 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.*

Vermont does not expressly prohibit a defendant from raising a defense to the use of a law enforcement decoy for the purposes of investigating prostitution or sex trafficking cases. Vt. Stat. Ann. tit. 13, § 2828(a) (Luring a

child). However, Vt. Stat. Ann. tit. 13, § 2828(a) prevents any person from “knowingly soliciting, luring, or enticing, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16.” Thus, a buyer charged with “soliciting, luring, or enticing . . . another person believed by the person to be a child under the age of 16” would be prohibited from raising a defense that the person was in fact a law enforcement decoy.

However, a buyer charged under Vermont’s core human trafficking statute would not be prohibited from raising the defense. Pursuant to Vt. Stat. Ann. tit. 13, § 2655 (Solicitation), “No person shall knowingly solicit a commercial sex act from a victim of human trafficking;” thus, the knowledge requirement attached to the statute would permit a buyer to raise a defense as to the use of a law enforcement decoy.

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

Vermont has no law expressly authorizing law enforcement to use the Internet or electronic communications to investigate buyers and traffickers. However, Vt. Stat. Ann. tit. 13, § 2828(a) (Luring a child) makes it illegal for an offender to “knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16.” Vt. Stat. Ann. tit. 13, § 2828(b) further explains that “[t]his section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.” Although not explicit, together these two phrases suggest that law enforcement may use the Internet or electronic communications to investigate buyers and traffickers.

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

Vt. Stat. Ann. tit. 20, § 1820(1) (Definitions) defines a “missing person” as “an individual: whose whereabouts is unknown; and with either a physical disability, a mental disability, or a developmental disability; or who is an unemancipated minor.” Once a person files a missing person complaint pursuant to Vt. Stat. Ann. tit. 20, § 1821 (Missing person complaint), Vt. Stat. Ann. tit. 20, § 1822 (Missing person report) requires the law enforcement agency that receives the complaint to “prepare a missing person report,” which must “include all information contained in the missing person complaint and any information or evidence gathered by a preliminary investigation, if one was made.” Vt. Stat. Ann. tit. 20, § 1823(a) (Dissemination of missing person report) requires the law enforcement agency next to forward copies of the report to “all law enforcement agencies within the jurisdiction where the missing person lives or was last seen, and other law enforcement agencies that can reasonably be expected to be involved in any investigation.” Furthermore, Vt. Stat. Ann. tit. 20, § 1823(b) mandates that law enforcement forward the report to

- (1) all law enforcement agencies to which the complainant reasonably requests the report be sent;
- (2) any law enforcement agency requesting a copy of the missing person report; and
- (3) all media in the region in which the missing person lives, or was last seen, unless such disclosure would impede an ongoing investigation or unless otherwise requested by the complainant.

Vt. Stat. Ann. tit. 20, § 1824(a) (Searches for missing persons) requires any law enforcement agency that receive a missing persons report to “commence a search for a missing person as soon as a report is received.” If the “missing person complaint involves an unemancipated minor, including a runaway child as defined in 13 V.S.A. § 1311 [Unlawful sheltering; aiding a runaway child], the law enforcement agency shall transmit the report, as soon as it is complete, to the Department of Public Safety for inclusion in the National Crime Information Center database.” Vt. Stat. Ann. tit. 20, § 1825.

Additionally, Vermont established the Vermont Amber Alert Program “to aid in the identification and location of abducted children.” Vt. Stat. Ann. tit. 20, § 1828. Vt. Stat. Ann. tit. 20, § 1828(3) (Vermont Amber Alert Program) provides that an Alert shall be issued by the Department of Public Safety if

- (A) a law enforcement agency notifies the Department of the abduction of a child;
- (B) there is sufficient information about the child or the person suspected of abducting the child that an immediate broadcast might help locate the child; and
- (C) the child is in danger of imminent death or serious bodily harm.

Vt. Stat. Ann. tit. 20, § 1828(5), (6) (Vermont Amber Alert Program) dictates the procedure that law enforcement must follow upon finding a missing child for whom an Alert was issued as follows:

- (5) A law enforcement agency which locates a child who is the subject of an Alert issued under this section shall immediately notify the law enforcement agency which requested the Amber Alert.
- (6) An Alert issued under this section shall be canceled:
  - (A) if the Department notifies the Federal Communications Commission’s designated state Emergency Alert System broadcaster in Vermont that the child has been located;
  - ....

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