

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2015 ANALYSIS AND RECOMMENDATIONS MICHIGAN

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 identify the commercially sexually exploited minor as a trafficking victim.*
- 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 Analysis¹:

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

Michigan's human trafficking laws, Mich. Comp. Laws Ann. §§ 750.462a² (Definitions)–750.462h³ (Relevancy of resistance or lack of resistance), criminalize sex trafficking of minors without requiring proof of the use of force, fraud, or coercion. Mich. Comp. Laws Ann. § 750.462e(a)⁴ (Forced labor or services; prohibited conduct

¹ This report includes legislation enacted as of August 1, 2015.

² The text of Mich. Comp. Laws Ann. § 750.462a included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

³ The text of Mich. Comp. Laws Ann. § 750.462h included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

⁴ The text of Mich. Comp. Laws Ann. § 750.462e included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

as relates to age of minor) states that “[a] person shall not do any of the following, regardless of whether the person knows the age of the minor: (a) [r]ecruit, entice, harbor, transport, provide, or obtain by any means a minor⁵ for commercial sexual activity.”⁶ Mich. Comp. Laws Ann. § 750.462e(b), which makes it a crime to “[r]ecruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services,” may also apply to domestic minor sex trafficking offenses since the definition of “services” under Mich. Comp. Laws Ann. § 750.462a(1) (Definitions) includes “commercial sexual activity and sexually explicit performances.” However, proof of force, fraud or coercion would be required in a prosecution under Mich. Comp. Laws Ann. § 750.462e(b).⁷

A violation of Mich. Comp. Laws Ann. § 750.462e is a felony punishable by imprisonment up to 20 years, a fine of up to \$20,000, or both.⁸ Mich. Comp. Laws Ann. § 750.462f(2).⁹ Additionally, pursuant to Mich. Comp. Laws Ann. § 750.462f(3) (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution), “A person who attempts, conspires, or solicits another to violate this chapter is subject to the same penalty as a person who commits a violation of this chapter.”

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 make CSEC a crime in Michigan:

1. Mich. Comp. Laws Ann. § 750.13 (Enticing away female under sixteen; felony, penalty) makes it a crime to “take or entice away any female under the age of 16 years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage, sexual intercourse or marriage.” A conviction for violating Mich. Comp. Laws Ann. § 750.13 is punishable as a felony by imprisonment up to 10 years. Mich. Comp. Laws Ann. § 750.13.
2. Mich. Comp. Laws Ann. § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties) states,

A person who persuades, induces, entices, coerces, causes, or knowingly allows a child¹⁰ to engage in a child sexually abusive activity¹¹ for the purpose of producing any child sexually abusive material,¹² or a

⁵ Mich. Comp. Laws Ann. § 750.462a(j) (Definitions) defines a “minor” as “an individual under 18 years of age.”

⁶ “‘Commercial sexual activity’ means 1 or more of the following for which anything of value is given or received by any person: (i) An act of sexual penetration or sexual contact as those terms are defined in section 520a [Definitions]. (ii) Any conduct prohibited under section 145c [Definitions; child sexually abusive activity or material; penalties]. (iii) Any sexually explicit performance as that term is defined in section 3 of 1978 PA 33, MCL 722.673 [Definitions].” Mich. Comp. Laws Ann. § 750.462a(c). See *supra* note 2.

⁷ Mich. Comp. Laws Ann. § 750.462a(g) (Definitions) defines “[f]orced labor or services” as “labor or services that are obtained or maintained by force, fraud, or coercion.” See *supra* note 2.

⁸ See *infra* Appendix A for further discussion of sentencing guidelines.

⁹ The text of Mich. Comp. Laws Ann. § 750.462f included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹⁰ Mich. Comp. Laws Ann. § 750.145c(1)(b) defines “child” as “a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.”

¹¹ See *supra* note **Error! Bookmark not defined.**

¹² Mich. Comp. Laws Ann. § 750.145c(1)(m) defines “child sexually abusive material” as “any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a

person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

3. Pursuant to Mich. Comp. Laws Ann. § 449a(2)¹³ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), “A person who engages or offers to engage the services of another person, who is less than 18 years of age and who is not his or her spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration, is guilty of a crime punishable as provided in section 451.” Under Mich. Comp. Laws Ann. § 451(4)¹⁴ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined.), “A person convicted of violating section 449a(2) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or both.”

The following laws may also apply to commercial sexual exploitation of children crimes in Michigan, although they do not refer specifically to commercial transactions:

1. Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose) states,

A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony

A first time conviction for violating this statute is punishable by imprisonment up to 4 years, a fine up to \$4,000, or both. Mich. Comp. Laws Ann. § 750.145a. Subsequent convictions are punishable by imprisonment up to 10 years, a fine up to \$10,000, or both. Mich. Comp. Laws Ann. § 750.145b(1).

2. Mich. Comp. Laws Ann. § 750.520b(1) (Criminal sexual conduct in the first degree; felony) provides that “[a] person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with,” among others, a victim “under 13 years of age,” or “under circumstances involving the commission of any other felony.” Mich. Comp. Laws Ann. § 750.520b(1)(a), (c). A conviction under this statute is

photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.”

¹³ The text of Mich. Comp. Laws Ann. § 449a included here and elsewhere in this report includes amendments made by the enactment of Senate Bill 205 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹⁴ The text of Mich. Comp. Laws Ann. § 750.451 (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition) included here and elsewhere in this report includes amendments made by the enactment of House Bill 5012 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

generally punishable by “imprisonment for life or for any term of years.” Mich. Comp. Laws Ann. § 750.520b(2)(a). However, if the defendant is at least 17 and the victim is less than 13, the minimum sentence is imprisonment for 25 years. Mich. Comp. Laws Ann. § 750.520b(2)(b). In addition to penalties under subsections (2)(a) and (2)(b), “the court shall sentence the defendant to lifetime electronic monitoring under section 520n.” Mich. Comp. Laws Ann. § 750.520b(2)(d). If the offender is 17 or older and the victim is less than 13 and “if the person was previously convicted of a violation of this section or section 520c [Criminal sexual conduct in the second degree], 520d [Criminal sexual conduct in the third degree], 520e [Criminal sexual conduct in the fourth degree], or 520g [Assault with intent to commit criminal sexual conduct],” a violation is punishable by life imprisonment without parole. Mich. Comp. Laws Ann. § 750.520b(2)(c). An additional mandatory minimum of at least 5 years is imposed for all violations under the statute for subsequent offenders of first, second, or third degree criminal sexual conduct. Mich. Comp. Laws Ann. § 750.520f(1).

3. Mich. Comp. Laws Ann. § 750.520c(1) (Criminal sexual conduct in the second degree; felony) states that “[a] person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with,” among others, a victim “under 13 years of age,” or “under circumstances involving the commission of any other felony.” Mich. Comp. Laws Ann. § 750.520c(1)(a), (c). A conviction for violating Mich. Comp. Laws Ann. § 750.520c(1) is punishable as a felony by a maximum imprisonment of 15 years and lifetime electronic monitoring if committed by a person at least 17 against a child under 13 for a first offense, enhanced by a mandatory minimum sentence of at least 5 years for subsequent offenses. Mich. Comp. Laws Ann. §§ 750.520c(2)(a), (b), 750.520f(1).
4. Mich. Comp. Laws Ann. § 750.520d(1) (Criminal sexual conduct in the third degree; felony) states that “[a] person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with,” among others, a victim aged 13–15. A conviction under Mich. Comp. Laws Ann. § 750.520d(1) is punishable as a felony by imprisonment up to 15 years for a first offense and a mandatory minimum of at least 5 years for subsequent offenses. Mich. Comp. Laws Ann. §§ 750.520d(2), 750.520f(1).
5. Mich. Comp. Laws Ann. § 750.520e(1) (Criminal sexual conduct in the fourth degree; misdemeanor) makes it a crime to, among other things, engage in sexual contact with a child aged 13–15 when the offender is at least 5 years older than the victim. A conviction under Mich. Comp. Laws Ann. § 750.520e(1) is punishable as a misdemeanor by imprisonment up to 2 years, a fine up to \$500, or both. Mich. Comp. Laws Ann. § 750.520e(2).

1.3 Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.

Michigan’s prostitution law, Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime) does not refer to the state human trafficking laws, Mich. Comp. Laws Ann. §§ 750.462a¹⁵ (Definitions–750.462h (Relevancy of resistance or lack of resistance) to identify CSEC victims as minor victims of trafficking. However, Mich. Comp. Laws Ann. § 750.451¹⁶ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) which sets out the penalties for violations of § 750.448 and other related offenses refers to the human trafficking law to establish a presumption that commercially sexually exploited minors are victims of human trafficking. Mich. Comp. Laws Ann. § 750.451(6) states,

In any prosecution of a person under 18 years of age for an offense punishable under this section, it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity

¹⁵ See *supra* note 2.

¹⁶ See *supra* note 14.

or commercial sexual activity in violation of section 462e or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h.

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.

Mich. Comp. Laws Ann. § 750.159i (Prohibited conduct) states,

- (1) A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.
- (2) A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a pattern of racketeering activity.
- (3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of racketeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.
- (4) A person shall not conspire or attempt to violate subsection (1), (2), or (3).

Mich. Comp. Laws Ann. § 750.159g defines “racketeering” to include, among other things,

committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the following:

-
- (n) A violation of section 145c, concerning child sexually abusive activity or material.
 - (o) A violation of section 145d, concerning internet or computer crimes.
-
- (ff) A violation of section 452 [House of ill-fame; keeping, maintaining or operating], 455 [Pandering; felony], 457 [Earnings of prostitute, accepting], 458 [Detaining female in house of prostitution for debt], or 459 [Transporting female for prostitution; felony], concerning prostitution.
 - (gg) A violation of chapter LXVIIA, concerning human trafficking.
-

Mich. Comp. Laws Ann. § 750.159f(c) defines a “pattern of racketeering activity” as

not less than 2 incidents of racketeering to which all of the following characteristics apply:

- (i) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
- (ii) The incidents amount to or pose a threat of continued criminal activity.
- (iii) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.

A conviction for violating Mich. Comp. Laws Ann. § 750.159i is punishable as a felony by imprisonment up to 20 years, a fine up to \$100,000, or both, and asset forfeiture. Mich. Comp. Laws Ann. § 750.159j(1). Asset forfeiture under this statute is both mandatory and criminal. Mich. Comp. Laws Ann. §750.159j(4) states,

The court shall order a person convicted of a violation of section 159i to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of

section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation.

Pursuant to Mich. Comp. Laws Ann. §750.159j(12) “[a]n order of criminal forfeiture entered under this section shall authorize an appropriate law enforcement agency to seize the property declared criminally forfeited under this section. . .” Disbursement of the property is governed by Mich. Comp. Laws Ann. §750.159r, which states that upon forfeiture, the property may be sold and disbursed to in the following order of priority: to pay an outstanding security interest, to satisfy an order of restitution, to pay the claim of each person who shows that he is a victim of the crime, to the extent that the claim is not covered by an order of restitution, to pay any outstanding lien against the property that has been imposed by a governmental unit, and to pay the proper expenses of proceedings for forfeiture and sale. The remaining balance shall be distributed to the units of government substantially involved in effecting the forfeiture.

Legal Components:

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

Legal Analysis:

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

Michigan's sex trafficking law applies to buyers following federal precedent¹⁷ through use of the word "obtain." Mich. Comp. Laws Ann. § 750.462e¹⁸ (Forced labor or services; prohibited conduct as relates to age of minor) makes it a crime to "knowingly recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity."

- 2.1.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) to clarify that buyer conduct is included as a violation

¹⁷ 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.

¹⁸ See *supra* note 4.

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

Pursuant to Mich. Comp. Laws Ann. § 449a(2)¹⁹ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), “A person who engages or offers to engage the services of another person, who is less than 18 years of age and who is not his or her spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration, is guilty of a crime punishable as provided in section 451.” Under Mich. Comp. Laws Ann. § 451(4)²⁰ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; "prior conviction" defined.), “A person convicted of violating section 449a(2) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or both.”

Several sexual offenses might also apply to buyers of sex acts with a minor but do not specifically criminalize commercial sex with a minor.²¹

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

Michigan’s distinguishes between soliciting or purchasing sex with an adult and soliciting or purchasing sex with a minor under Mich. Comp. Laws Ann. § 750.449a²² (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty) which makes it a felony when a person “engages or offers to engage the services of another person, who is less than 18 years of age and who is not his or her spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration.”

Otherwise, buyers convicted under Mich. Comp. Laws Ann. § 750.449a will be punished for a misdemeanor in accordance with the provisions of Mich. Comp. Laws Ann. § 750.451²³ (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition) and receive up to 93 days’ imprisonment, a fine up to \$500, or both, for a first conviction; or up to 1 year imprisonment, a fine up to \$1,000, or both, if the person has 1 prior conviction.²⁴ Mich. Comp. Laws Ann. §§ 750.449a, 750.451(1)–(3). If the person has 2 or more prior convictions, however, he or she will be guilty of a felony and receive a punishment of imprisonment up to 2 years, a fine up to \$2,000, or both. Mich. Comp. Laws Ann. §§ 750.449a, 750.451(1)–(3).

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

A conviction under Mich. Comp. Laws Ann. § 750.462e²⁵ (Forced labor or services; prohibited conduct as relates to age of minor subjects buyers to a prison term of up to 20 years and a possible fine of up to \$20,000. Mich. Comp. Laws Ann. § 750.462f(2)²⁶ (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of

¹⁹ See *supra* note 13.

²⁰ See *supra* note 14.

²¹ See *supra* Section 1.2 for discussion of the sexual offenses that may apply to some buyers.

²² See *supra* note 19.

²³ See *supra* note 20.

²⁴ Pursuant to Mich. Comp. Laws Ann. § 750.451 (5), “prior conviction” is defined as “a violation of section 448, 449, 449a, 450, or 462 or a violation of a law of another state or of a political subdivision of this state or another state substantially corresponding to section 448, 449, 449a, 450, or 462.”

²⁵ See *supra* note 4.

²⁶ See *supra* note 9.

MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution). If convicted under Mich. Comp. Laws Ann. § 449a(2)²⁷ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), a buyer would be guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or both.” Mich. Comp. Laws Ann. § 451(4).²⁸

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 offense²⁹ against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,³⁰ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³¹

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.*

Michigan does not expressly criminalize the use of the Internet to purchase commercial sex acts with a minor; however, the using the Internet to communicate with a minor with the intent to commit, or attempt to commit, a violation of specified sexual offense laws is illegal under Mich. Comp. Laws Ann. § 750.145d(1)(a) (Use of internet or computer system; prohibited communication). Specifically, Mich. Comp. Laws Ann. § 750.145d(1)(a) states,

A person shall not use the internet or a computer,³² computer program,³³ computer network,³⁴ or

²⁷ See *supra* note 13.

²⁸ See *supra* note 14.

²⁹ 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).

³⁰ 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).

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

³² Mich. Comp. Laws Ann. § 750.145d(9)(a) defines “computer” as “any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.”

³³ Mich. Comp. Laws Ann. § 750.145d(9)(c) defines “computer program” as “a series of internal or external

computer system³⁵ to communicate with any person for the purpose of doing any of the following:
(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], . . . 520b [Criminal sexual conduct in the first degree; felony; consecutive terms], 520c [Criminal sexual conduct in the second degree; felony], 520d [Criminal sexual conduct in the third degree; felony], 520e [Criminal sexual conduct in the fourth degree; misdemeanor], or 520g [Assault with intent to commit criminal sexual conduct; felony] . . . in which the victim or intended victim is a minor or is believed by that person to be a minor.

The penalty for violating Mich. Comp. Laws Ann. § 750.145d(1)(a) depends on the penalty applicable to the underlying offense for purposes of which the defendant solicited a minor.³⁶

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

Mich. Comp. Laws Ann. § 750.462e³⁷ (Forced labor or services; prohibited conduct as relates to age of minor) expressly states that, “[a] person shall not do any of the following, regardless of whether the person knows the age of the minor: (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity. (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.” Mich. Comp. Laws Ann. § 750.449a(2)³⁸ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), however, does not specifically prohibit a mistake of age defense.

instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.”

³⁴ Mich. Comp. Laws Ann. § 750.145d(9)(b) defines “computer network” as “the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.”

³⁵ Mich. Comp. Laws Ann. § 750.145d(9)(d) defines “computer system” as “a set of related, connected or unconnected, computer equipment, devices, software, or hardware.”

³⁶ A conviction under Mich. Comp. Laws Ann. § 750.145d(1)(a) is subject to the following penalty scheme pursuant to Mich. Comp. Laws Ann. § 750.145d(2):

(a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

³⁷ See *supra* note 4.

³⁸ See *supra* note 19.

- 2.6.1 Recommendation: Amend Mich. Comp. Laws Ann. § 449a(2) (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty) to expressly prohibit the use of a mistake of age defense in relation to this crime.

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

The penalties for violations of Mich. Comp. Laws Ann. § 750.462e³⁹ (Forced labor or services; prohibited conduct as relates to age of minor) and Mich. Comp. Laws Ann. § 449a(2)⁴⁰ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty) apply equally to all offenses involving a minor victim under the age of 18. The penalty for violations of Mich. Comp. Laws Ann. § 750.462e is up to 20 years imprisonment, a fine of up to \$20,000, or both. Mich. Comp. Laws Ann. § 750.462f(2).⁴¹ The penalty for violations of Mich. Comp. Laws Ann. § 449a(2) is up to 5 years imprisonment, a fine of up to \$10,000 or both. Mich. Comp. Laws Ann. § 451(4)⁴².

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 sex with minors may face fines in the following amounts: \$20,000 for a violation of Mich. Comp. Laws Ann. § 750.462e⁴³ (Forced labor or services; prohibited conduct as relates to age of minor), \$10,000 for a violation of Mich. Comp. Laws Ann. § 449a(2)⁴⁴ (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), \$500 for a violation of Mich. Comp. Laws Ann. § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor) and \$5,000–\$20,000 for a violation of Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication), depending on the underlying crime. Mich. Comp. Laws Ann. §§ 750.462f(2), 750.451(4), 750.520e(2), 750.145d(2)(a)–(f). Buyers convicted of Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty) may be required to pay fines up to \$500 for a first conviction, up to \$1,000 if they have 1 prior conviction, and up to \$2,000 if they have 2 prior convictions. Mich. Comp. Laws Ann. §§ 750.449a, 750.451. A buyer convicted of violating Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose) may be ordered to pay a fine of up to \$4,000 for a first offense and up to \$10,000 for each subsequent offense. Mich. Comp. Laws Ann. §§ 750.145a, 750.145b(1).

Mich. Comp. Laws Ann. § 780.766b⁴⁵ (Conviction of offense described in MCL 750.462a to 750.462h; restitution) requires buyers to pay restitution to their victims. It states,

When sentencing a defendant convicted of an offense described in chapter LXVIIA of the Michigan penal code [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under section 16 [§ 780.766],⁴⁶ the court may order the

³⁹ See *supra* note 4.

⁴⁰ See *supra* note 13.

⁴¹ See *supra* note 9.

⁴² See *supra* note 14.

⁴³ See *supra* note 9.

⁴⁴ See *supra* note 9.

⁴⁵ The text of Mich. Comp. Laws Ann. § 780.766b included here and elsewhere in this report includes amendments made by the enactment of House Bill 5237 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

⁴⁶ See below in this section for discussion of restitution required under Mich. Comp. Laws Ann. § 780.766 (“Victim” defined; restitution; order; condition of probation, parole, or sentence; revocation of probation or parole; petition to modify payment method; lien; enforcement; failure to pay restitution; payment by parent of juvenile;

defendant to pay all of the following:

- (a) Lost income, calculated by whichever of the following methods results in the largest amount:
 - (i) The gross amount received by the defendant from or the value to the defendant of the victim's labor or services.
 - (ii) The value of the victim's labor or services as calculated under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, or the federal minimum wage, whichever results in the largest value.
 - (iii) Income loss as determined under section 16(4)(c).
- (b) The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- (c) Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings as follows:
 - (i) Wages lost.
 - (ii) Child care.
 - (iii) Transportation.
 - (iv) Parking.
- (d) Any other loss suffered by the victim as a proximate result of the offense.

Convicted buyers are also required to pay mandatory restitution under Mich. Comp. Laws Ann. § 780.766(2) ("Victim" defined; order of restitution generally), which states in part,

Except as provided in subsection (8),⁴⁷ when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate. . . .

In addition, Mich. Comp. Laws Ann. § 750.462f(6)⁴⁸ (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution) states,

In addition to any mandatory restitution applicable under section 16 of the William Van Regenmorter

definitions; review; report or petition; compliance; copy of order to department of corrections; disposition of unclaimed restitution; amendment of order; effect of bankruptcy; victim as minor).

⁴⁷ Mich. Comp. Laws Ann. § 780.766(8) states,

The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action.

Additionally, under subsection (9), "[a]ny amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim services commission made after an order of restitution under this section." Mich. Comp. Laws Ann. § 780.766(9).

⁴⁸ See *supra* note 9.

crime victim's rights act, 1985 PA 87, MCL 780.766 [“Victim” defined; order of restitution generally], the court may order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766b, and to reimburse any governmental entity for its expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

Convicted buyers may face asset forfeiture under Mich. Comp. Laws Ann. § 600.4702(1) (Property subject to seizure and forfeiture; exception; encumbrances; substituted proceeds of crime),⁴⁹ which states,

Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, a local unit of government or this state under this chapter:

- (a) All personal property that is the proceeds of a crime,⁵⁰ the substituted proceeds of a crime, or an instrumentality of a crime.
- (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- (c) In the case of a crime that is a violation . . . Michigan penal code . . . 750.462a to 750.462h [Human trafficking]. . . all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions:
 - (i) Contributed directly and materially to the commission of the crime.
 - (ii) Was used to conceal the crime.
 - (iii) Was used to escape from the scene of the crime.
 - (iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime.

Additionally, buyers may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801⁵¹ (Nuisance; injunction; abatement; guilt; “controlled substance” defined),

- (1) A building, vehicle, boat, aircraft, or place is a nuisance if 1 or more of the following apply:
 - (a) It is used for the purpose of lewdness, assignation, prostitution, or gambling.
 - (b) It is used by, or kept for the use of, prostitutes or other disorderly persons.
 -
 - (f) It is used for conduct prohibited by chapter LXVIIA of the Michigan Penal Code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking].
- (2) All furniture, fixtures, and contents of a building, vehicle, boat, aircraft, or place described in subsection (1) and all intoxicating liquors in the building, vehicle, boat, aircraft, or place are also declared a nuisance.
-

⁴⁹ The text of Mich. Comp. Laws Ann. § 600.4702 included here and elsewhere in this report includes amendments made by the enactment of House Bill 5233 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

⁵⁰ Pursuant to Mich. Comp. Laws Ann. § 600.4701(a)(vii)(B) (Property subject to seizure and forfeiture; exception; encumbrances; substituted proceeds of crime), “[c]rime” is defined to include “a violation of . . . Chapter LXVIIA of the Michigan penal code [Human trafficking].” The text of Mich. Comp. Laws Ann. § 600.4701 (Definitions) included here and elsewhere in this report includes amendments made by the enactment of House Bill 5236 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

⁵¹ The text of Mich. Comp. Laws Ann. § 600.3801 included here and elsewhere in this report includes amendments made by the enactment of House Bill 5230 during the Regular Session of the 97th Michigan Legislature (effective March 18, 2015).

(4) A person, or a servant, agent, or employee of the person, who owns, leases, conducts, or maintains a building, vehicle, or place described in subsection (1) is guilty of a nuisance.

....

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

Mich. Comp. Laws Ann. § 600.3825⁵² (Order of abatement; execution of court order; duties of officer; use of building or place ordered closed; contempt; determination of amount due victim) further directs that “[i]f the court in an action under this chapter declares property to be a nuisance under section 3801(1)(f), the officer executing the order of the court shall first pay from the proceeds any amount determined by the court to be due to the victim. . . For purposes of determining the amount due to a victim under this subsection, the court shall consider the loss suffered by the victim as a proximate result of the conduct and may use as guidance the items of loss enumerated in . . . MCL 780.766b [Conviction of offense described in MCL 750.462a to 750.462h; restitution].

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

Mich. Comp. Laws Ann. § 750.145c(4) (Definitions; child sexually abusive activity or material; penalties) states, with certain exceptions,

A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. . . .

....

In comparison, a federal conviction for possession of child pornography⁵³ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁴ Subsequent convictions, however, are

⁵² The text of Mich. Comp. Laws Ann. § 600.3825 included here and elsewhere in this report includes amendments made by the enactment of House Bill 5230 during the Regular Session of the 97th Michigan Legislature (effective March 18, 2015).

⁵³ 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).

⁵⁴ 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).

punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁵

- 2.9.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.145c(4) (Definitions; child sexually abusive activity or material; penalties) to impose more substantial penalties that 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.

Mich. Comp. Laws Ann. § 28.723 (Individuals required to be registered) provides that, among others, persons convicted of a listed offense “who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act.” Mich. Comp. Laws Ann. § 28.723(1). “Listed offense” is defined as “a tier I, tier II, or tier III offense.” Mich. Comp. Laws Ann. § 28.722(j)⁵⁶ (Definitions). Under Mich. Comp. Laws Ann. § 28.722(s), a “Tier I offense” is defined as,

1 or more of the following:

(i) A violation of section 145c(4) [Definitions; child sexually abusive activity or material; penalties] of the Michigan penal code, 1931 PA 328, MCL 750.145c.

....

(iv) A violation of section 449a(2) of the Michigan Penal Code, 18 1931 PA 328, MCL 750.449A [Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty]

....

(x) An offense substantially similar to an offense described in subparagraphs (i) to (viii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

Mich. Comp. Laws Ann. § 28.722(u) provides that Tier II offenses include,

1 or more of the following:

(i) A violation of section 145a [Accosting, enticing or soliciting child for immoral purpose] of the Michigan penal code, 1931 PA 328, MCL 750.145a.

(ii) A violation of section 145b [Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty] of the Michigan penal code, 1931 PA 328, MCL 750.145b.

....

(iv) A violation of section 145d(1)(a) [Use of Internet or computer system; prohibited communication] of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.

....

(vii) A violation of section 462e(a) of the Michigan Penal Code, 1931 PA 328, MCL 750.462E [Forced labor or services; prohibited conduct as relates to age of minor].

⁵⁵ 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).

⁵⁶ The text of Mich. Comp. Laws Ann. § 28.722 included here and elsewhere in this report includes amendments made by the enactment of Senate Bill 602 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

(viii) A violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime] of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

.....

(x) A violation of section 520c [Criminal sexual conduct in the second degree; felony], [or] 520e [Criminal sexual conduct in the fourth degree; misdemeanor] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e . . . committed against an individual 13 years of age or older but less than 18 years of age.

.....

(xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi).

(xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xi) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

Lastly Mich. Comp. Laws Ann. § 28.722(w) defines a “Tier III offense” as,

1 or more of the following:

.....

(iv) A violation of section 520b [Criminal sexual conduct in the first degree; felony], [or] 520d [Criminal sexual conduct in the third degree; felony] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d . . . This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.

(v) A violation of section 520c [Criminal sexual conduct in the second degree; felony] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520c . . . , committed against an individual less than 13 years of age.

(vi) A violation of section 520e [Criminal sexual conduct in the fourth degree; misdemeanor] of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.

(vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).

(viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

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 and potential exploitation.*
-

Legal Analysis:

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

Michigan's human trafficking laws applicable to traffickers carry significant penalties. A violation of Mich. Comp. Laws Ann. § 750.462e⁵⁷ (Forced labor or services; prohibited conduct as relates to age of minor) is a felony punishable by a sentence of imprisonment up to 20 years, a fine of up to \$20,000, or both.⁵⁸ Mich. Comp. Laws Ann. § 750.462f(2). To the extent that a violation of Mich. Comp. Laws Ann. § 750.462e "involves kidnapping or an attempt to kidnap," Mich. Comp. Laws Ann. § 750.462f(d) provides that a trafficker may receive a sentence of imprisonment "for life or any term of years."

Traffickers also may be prosecuted under Michigan's CSEC laws. A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.13 (Enticing away female under sixteen; felony, penalty) is guilty of a felony punishable by imprisonment up to 10 years.⁵⁹ Mich. Comp. Laws Ann. § 750.13.

A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties) will receive a sentence of imprisonment up to 20 years, a fine up to \$100,000, or both.⁶⁰ Mich. Comp. Laws Ann. § 750.145c(2).

A trafficker could be charged with money laundering under Mich. Comp. Laws Ann. § 750.411k (Proceeds of criminal offense), which states,

- (1) A person shall not knowingly receive or acquire a monetary instrument or other property that constitutes the proceeds or substituted proceeds of a specified criminal offense with prior actual knowledge of both of the following:
 - (a) The monetary instrument or other property represents the proceeds or substituted proceeds of a criminal offense.
 - (b) The receipt or acquisition of the proceeds or substituted proceeds meets 1 or more of the following criteria:
 - (i) It will aid that person or another person in promoting or carrying on the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.

⁵⁷ See *supra* note 4.

⁵⁸ See *supra* Section 1.1 for the substantive provisions of Mich. Comp. Laws Ann. § 750.462e; see *infra* Appendix A for further discussion of sentencing guidelines.

⁵⁹ See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.13.

⁶⁰ See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c.

- (ii) It is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or to avoid a transaction reporting requirement under state or federal law.
- (2) A person shall not knowingly conduct, attempt to conduct, or participate in conducting or attempting to conduct a financial transaction involving a monetary instrument or other property that constitutes the proceeds or substituted proceeds of a specified criminal offense with prior actual knowledge of both of the following:
 - (a) The monetary instrument or other property represents the proceeds or substituted proceeds of a criminal offense.
 - (b) The financial transaction meets 1 or more of the following criteria:
 - (i) It will aid that person or another person in promoting or carrying on the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
 - (ii) It is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense, or to avoid a transaction reporting requirement under state or federal law.

First-degree money laundering is a felony punishable by imprisonment up to 20 years, a fine up to \$500,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411o(2). First-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411o(1), if all of the following circumstances exist:

- (a) The value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation is \$10,000.00 or more.⁶¹
- (b) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (c) The violation is committed with the intent to do 1 or more of the following:
 - (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
 - (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

Second-degree money laundering is a felony punishable by imprisonment up to 10 years, a fine up to \$100,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411n(2). Second-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411n(1), if the amount involved is greater than \$10,000 and one of the following circumstances exists:

- (a) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (b) The violation is committed with the intent to do 1 or more of the following:
 - (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
 - (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

⁶¹ The \$10,000 threshold for the entire money laundering section can be aggregated over 30 calendar days. Mich. Comp. Laws Ann. §§ 750.411o(3), 750.411n(3), 750.411m(3).

Third-degree money laundering is a felony punishable by imprisonment up to 5 years, a fine up to \$50,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411m(2). Third-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411m(1), if one of the following circumstances exists:

- (a) The value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation is \$10,000.00 or more.
- (b) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (c) The violation is committed with the intent to do 1 or more of the following:
 - (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
 - (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

Fourth-degree money laundering is a misdemeanor punishable by imprisonment up to 2 years, a fine up to \$10,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411l.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (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 offense⁶² against a minor.

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

Mich. Comp. Laws Ann. § 750.145c(2), (3) (Definitions; child sexually abusive activity or material; penalties) make the creation and distribution of child pornography illegal.⁶³ A trafficker who is convicted of violating Mich. Comp. Laws Ann. § 750.145c(2) by creating child pornography may receive imprisonment up to 20 years, a fine up to \$100,000, or both, if the trafficker “knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.” Mich. Comp. Laws Ann. § 750.145c(2). A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.145c(3) for distributing child pornography is guilty of a felony punishable by imprisonment up to 7 years, a fine not to exceed \$50,000, or both. Mich. Comp. Laws Ann. § 750.145c(3).

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 offense⁶⁴ against a minor. Additionally, a federal conviction for distribution of child pornography⁶⁵

⁶² See *supra* note 29.

⁶³ See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c(2), (3).

⁶⁴ See *supra* note 29.

⁶⁵ 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of

is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁶⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁶⁷

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.*

Michigan does not expressly criminalize the use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor; however, the use of the Internet to communicate with a minor while intending to commit, or attempting to commit, a violation of specified sexual offense laws is illegal under Mich. Comp. Laws Ann. § 750.145d(1)(a) (Use of Internet or computer system; prohibited communication), which states,

A person shall not use the internet or a computer,⁶⁸ computer program,⁶⁹ computer network,⁷⁰ or computer system⁷¹ to communicate with any person for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [Definitions; child sexually abusive activity or material; penalties] . . . 520b [Criminal sexual conduct in the first degree; felony], 520c [Criminal sexual conduct in the second degree; felony], 520d [Criminal sexual conduct in the third degree; felony], [or] 520e [Criminal sexual conduct in the fourth degree; misdemeanor] . . . in which the victim or intended victim is a minor or is believed by that person to be a minor.

The penalty for violating Mich. Comp. Laws Ann. § 750.145d(1)(a) depends on the penalty applicable to the underlying offense, the purpose for which the defendant solicited the minor. Mich. Comp. Laws Ann. § 750.145d(2).⁷²

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

Traffickers may receive fines in the following amounts: up to \$4,000 for a first violation of Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose), up to \$10,000 for a second violation under Mich. Comp. Laws Ann. § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), up to \$100,000 for violating subsection (2) and up to \$50,000 for violating subsection (3) of Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material; penalties). Mich. Comp. Laws Ann. §§ 750.145a, 750.145b(1), 750.145c(2), 750.145c(3), 750.159j(1).

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).

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

⁶⁷ 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).

⁶⁸ *See supra* note 32 for the definition of “computer.”

⁶⁹ *See supra* note 33 for the definition of “computer program.”

⁷⁰ *See supra* note 34 for the definition of “computer network.”

⁷¹ *See supra* note 35 for the definition of “computer system.”

⁷² *See supra* note 36 for penalty scheme under Mich. Comp. Laws Ann. § 750.145d(2).

Additionally, traffickers may receive fines up to \$5,000–\$20,000 for violations of Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication), and up to \$20,000 for violations of Mich. Comp. Laws Ann. § 750.462e⁷³ (Forced labor or services; prohibited conduct with regard to age of minor). Mich. Comp. Laws Ann. §§ 750.145d(2)(a)–(f), 750.462f(2).⁷⁴

Mich. Comp. Laws Ann. § 780.766b⁷⁵ (Conviction of offense described in MCL 750.462a to 750.462h; restitution) provides for mandatory restitution and states,

When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under section 16 [§ 780.766],⁷⁶ the court may order the defendant to pay all of the following:

- (a) Lost income, calculated by whichever of the following methods results in the largest amount:
 - (i) The gross amount received by the defendant from or the value to the defendant of the victim's labor or services.
 - (ii) The value of the victim's labor or services as calculated under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, or the federal minimum wage, whichever results in the largest value.
 - (iii) Income loss as determined under section 16(4)(c).
- (b) The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- (c) Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings as follows:
 - (i) Wages lost.
 - (ii) Child care.
 - (iii) Transportation.
 - (iv) Parking.
- (d) Any other loss suffered by the victim as a proximate result of the offense.

Mich. Comp. Laws Ann. § 750.462f(6) further provides that “the court may order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter Crime Victim's Rights Act, 1985 PA 87, MCL 780.766b. . . .”

Traffickers are generally subject to mandatory restitution orders pursuant to Mich. Comp. Laws Ann. § 780.766 (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole). Mich. Comp. Laws Ann. § 780.766(2) states,

Except as provided in subsection (8),⁷⁷ when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate. . . .

⁷³ See *supra* note 4.

⁷⁴ See *supra* note 9.

⁷⁵ See *supra* note 45.

⁷⁶ See below for discussion of restitution pursuant to Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; restitution; order; condition of probation, parole, or sentence; revocation of probation or parole; petition to modify payment method; lien; enforcement; failure to pay restitution; payment by parent of juvenile; definitions; review; report or petition; compliance; copy of order to department of corrections; disposition of unclaimed restitution; amendment of order; effect of bankruptcy; victim as minor).

⁷⁷ See *supra* note 47.

Under Mich. Comp. Laws Ann. § 780.766(24),

If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

- (a) Homemaking and child care expenses.
- (b) Income loss not ordered to be paid under subsection (4)(h).
- (c) Mileage.
- (d) Lodging or housing.
- (e) Meals.
- (f) Any other cost incurred in exercising the rights of the victim or a parent under this act.”

Convicted traffickers face asset forfeiture under Mich. Comp. Laws Ann. § 600.4702(1) (Property subject to seizure and forfeiture; exception; encumbrances; substituted proceeds of crime),⁷⁸ which states,

Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, a local unit of government or this state under this chapter:

- (a) All personal property that is the proceeds of a crime,⁷⁹ the substituted proceeds of a crime, or an instrumentality of a crime.
- (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- (c) In the case of a crime that is a violation . . . Michigan penal code . . . 750.462a to 750.462h [Human trafficking] . . . all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions:
 - (i) Contributed directly and materially to the commission of the crime.
 - (ii) Was used to conceal the crime.
 - (iii) Was used to escape from the scene of the crime.
 - (iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime

Additionally, traffickers may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801⁸⁰ (Nuisance; injunction; abatement; guilt; "controlled substance" defined),

- (1) A building, vehicle, boat, aircraft, or place is a nuisance if 1 or more of the following apply:
 - (a) It is used for the purpose of lewdness, assignation, prostitution, or gambling.
 - (b) It is used by, or kept for the use of, prostitutes or other disorderly persons.
 -
 - (f) It is used for conduct prohibited by chapter LXVIIA of the Michigan Penal Code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking].
- (2) All furniture, fixtures, and contents of a building, vehicle, boat, aircraft, or place described in subsection (1) and all intoxicating liquors in the building, vehicle, boat, aircraft, or place are also declared a nuisance.
-
- (4) A person, or a servant, agent, or employee of the person, who owns, leases, conducts, or maintains a building, vehicle, or place described in subsection (1) is guilty of a nuisance.
-

⁷⁸ See *supra* note 49.

⁷⁹ See *supra* note 50.

⁸⁰ See *supra* note 51.

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

Mich. Comp. Laws Ann. § 600.3825⁸¹ (Order of abatement; execution of court order; duties of officer; use of building or place ordered closed; contempt; determination of amount due victim) further directs that “[i]f the court in an action under this chapter declares property to be a nuisance under section 3801(1)(f), the officer executing the order of the court shall first pay from the proceeds any amount determined by the court to be due to the victim. . . For purposes of determining the amount due to a victim under this subsection, the court shall consider the loss suffered by the victim as a proximate result of the conduct and may use as guidance the items of loss enumerated in . . . MCL 780.766b [Conviction of offense described in MCL 750.462a to 750.462h; restitution].

Asset forfeiture may also be available under Michigan’s law related to criminal enterprises. Mich. Comp. Laws Ann. § 750.159j(4) (Violation as felony; penalties; imposition of costs; order to criminally forfeit property) states,

The court shall order a person convicted of a violation of section 159i [Prohibited conduct] to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. . . .

A conviction for money laundering under Mich. Comp. Laws Ann. § 750.411k can result in fines from up to \$10,000–\$500,000, “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” depending on the degree of the violation.⁸² Mich. Comp. Laws Ann. §§ 750.411l, 750.411m(2), 750.411n(2), 750.411o(2).

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

A trafficker convicted under Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) and certain CSEC laws will be required to register as a sex offender pursuant to Mich. Comp. Laws Ann. § 28.723 (Individuals required to be registered). Mich. Comp. Laws Ann. § 28.723 requires registration when an offender is convicted of violating a “listed offense” which is defined as “a tier I, tier II, or tier III offense.” Mich. Comp. Laws Ann. §§ 28.723(1)(a), 28.722(j)⁸³ (Definitions). Under Mich. Comp. Laws Ann. § 28.722(s), a “Tier I offense” is defined as,

1 or more of the following:

(i) A violation of section 145c(4) [Definitions; child sexually abusive activity or material; penalties]

⁸¹ See *supra* note 51.

⁸² See *supra* Section 3.1 for discussion of the substantive provisions of the money laundering statutes.

⁸³ See *supra* note 56.

of the Michigan penal code, 1931 PA 328, MCL 750.145c.

....

(v) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

....

(viii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vii).

(ix) An offense substantially similar to an offense described in subparagraphs (i) to (viii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

Mich. Comp. Laws Ann. § 28.722(u) provides that Tier II offenses include,

1 or more of the following:

(i) A violation of section 145a of the Michigan penal code . . . [Accosting, enticing or soliciting child for immoral purpose].

(ii) A violation of section 145b of the Michigan penal code . . . [Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty].

(iii) A violation of section 145c(2) or (3) of the Michigan penal code . . . [Definitions; child sexually abusive activity or material; penalties].

(iv) A violation of section 145d(1)(a) of the Michigan penal code . . . [Use of internet or computer system; prohibited communication], except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.

....

(vii) A violation of section 462e(a) of the Michigan Penal Code, 1931 PA 328, MCL 750.462E [Forced labor or services; prohibited conduct as relates to age of minor].

(viii) A violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime] of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

(ix) A violation of section 455 of the Michigan penal code . . . [Pandering; felony]

....

(xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi).

(xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xi) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

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 and potential exploitation.*

Mich. Comp. Laws Ann. § 712A.19b(3) (Termination of parental rights to child) does not provide that a violation of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) or any of Michigan's CSEC laws constitute grounds for the termination of parental rights. However, under Mich. Comp. Laws Ann. § 712A.19b(3) the court may terminate parental rights when a parent is convicted of other crimes, as well as in specified situations, including when a parent or nonparent adult subjects a child to sexual abuse. Specifically, Mich. Comp. Laws Ann. § 712A.19b(3) states,

The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

....

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the

foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

.....

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

.....

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

.....

.....

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

.....

(ii) A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10 [Punishment for subsequent felony], 769.11 [Punishment for subsequent felony following conviction of 2 or more felonies], and 769.12 [Punishment for subsequent felony following conviction of 3 or more felonies].

(iii) A federal law or law of another state with provisions substantially similar to a crime or procedure listed or described in subparagraph (i) or (ii).

- 3.6.1 Recommendation: Amend Mich. Comp. Laws Ann. § 712A.19b(3)(n) (Termination of parental rights to child) to include Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) § 750.145a (Accosting, enticing or soliciting child for immoral purpose), § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), § 750.145c (Definitions; child sexually abusive activity or material; penalties) and § 750.145d (Use of internet or computer system; prohibited communication) as grounds for termination of parental rights.

Legal Components:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*
- 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*
- 4.3 *Promoting and selling child sex tourism is illegal.*
- 4.4 *Promoting and selling child pornography is illegal.*

Legal Analysis:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Facilitators face criminal liability for benefitting financially from sex trafficking under Mich. Comp. Laws Ann. § 750.462d⁸⁴ (Prohibited conduct) which states,

A person shall not do either of the following:

- (a) Knowingly recruit, entice, harbor, transport, provide, or obtain an individual by any means, knowing that individual will be subjected to forced labor or services or debt bondage.
- (b) Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in section 159f⁸⁵, if the enterprise has engaged in an act proscribed under this chapter.

A conviction is punishable by imprisonment up to 10 years, a possible fine of up to \$10,000, or both, enhanced to 20 years, a possible fine of up to \$20,000, or both when serious bodily injury results, and to life in prison, a possible fine of \$50,000 or both if the violation involves “kidnapping or attempted kidnapping, criminal sexual conduct in the first degree or attempted criminal sexual conduct in the first degree, or an attempt to kill or the death of an individual.”⁸⁶ Mich. Comp. Laws Ann. § 750.462f(1)(a), (c), (d).

A facilitator could also be prosecuted under Michigan’s money laundering statutes and face punishments from imprisonment up to 2–20 imprisonment, fines from up to \$10,000–\$500,000, “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or imprisonment and a fine, depending on the degree of the violation.⁸⁷ Mich. Comp. Laws Ann. §§ 750.411l, 750.411m(2), 750.411n(2), 750.411o(2).

⁸⁴ The text of Mich. Comp. Laws Ann. § 750.462d (Prohibited conduct) included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

⁸⁵ Pursuant to Mich. Comp. Laws Ann. § 750.159f(a), an “[e]nterprise” includes an individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, governmental unit, or other legal entity or a group of persons associated in fact although not a legal entity. Enterprise includes illicit as well as licit enterprises.”

⁸⁶ See *infra* Appendix A for further discussion of sentencing guidelines.

⁸⁷ See *supra* Section 3.1 for the substantive provisions of the Michigan money laundering statutes.

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 face a maximum fine of \$50,000 for the promotion and distribution of child pornography under Mich. Comp. Laws Ann. § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties). Facilitators convicted under Mich. Comp. Laws Ann. § 750.462d (Prohibited conduct)⁸⁸ face fines ranging from of up to \$10,000, enhanced to \$15,000 when bodily injury occurs, \$20,000 when serious bodily injury occurs, and to life in prison if the violation involves “kidnapping or attempted kidnapping, criminal sexual conduct in the first degree or attempted criminal sexual conduct in the first degree, or an attempt to kill or the death of an individual.” Mich. Comp. Laws Ann. § 750.462f(1)(a)–(d).⁸⁹

Mich. Comp. Laws Ann. § 780.766b⁹⁰ (Conviction of offense described in MCL 750.462a to 750.462h; restitution) provides for mandatory restitution and states, “When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim.”⁹¹ Mich. Comp. Laws Ann. § 750.462f(6) also provides that restitution is available under Mich. Comp. Laws Ann. § 780.766b for victims of facilitators convicted under Mich. Comp. Laws Ann. § 750.462d.⁹²

Convicted facilitators may be subject to asset forfeiture under Mich. Comp. Laws Ann. § 600.4702(1),⁹³ which states,

Except as otherwise provided in this section, the following property is subject to seizure by, and forfeiture to, a local unit of government or this state under this chapter:

- (a) All personal property that is the proceeds of a crime,⁹⁴ the substituted proceeds of a crime, or an instrumentality of a crime.
- (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.
- (c) In the case of a crime that is a violation . . . Michigan penal code . . . 750.462a to 750.462h [Human trafficking] . . . all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions:
 - (i) Contributed directly and materially to the commission of the crime.
 - (ii) Was used to conceal the crime.
 - (iii) Was used to escape from the scene of the crime.
 - (iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime.

Additionally, facilitators may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801⁹⁵ (Nuisance; injunction; abatement; guilt; "controlled substance" defined),

- (1) A building, vehicle, boat, aircraft, or place is a nuisance if 1 or more of the following apply:
 - (a) It is used for the purpose of lewdness, assignation, prostitution, or gambling.

⁸⁸ See *supra* note 84.

⁸⁹ See *supra* note 9.

⁹⁰ See *supra* note 75.

⁹¹ See *infra* Section 5.10 for the substantive provisions of Mich. Comp. Laws Ann. § 780.766b.

⁹² Facilitators are generally required to make restitution pursuant to Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole). See *infra* Section 5.10 for a full discussion of restitution calculation.

⁹³ See *supra* note 49.

⁹⁴ See *supra* note 50.

⁹⁵ See *supra* note 51.

(b) It is used by, or kept for the use of, prostitutes or other disorderly persons.

....

(f) It is used for conduct prohibited by chapter LXVIIA of the Michigan Penal Code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking].

(2) All furniture, fixtures, and contents of a building, vehicle, boat, aircraft, or place described in subsection (1) and all intoxicating liquors in the building, vehicle, boat, aircraft, or place are also declared a nuisance.

....

(4) A person, or a servant, agent, or employee of the person, who owns, leases, conducts, or maintains a building, vehicle, or place described in subsection (1) is guilty of a nuisance.

....

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

Mich. Comp. Laws Ann. § 600.3825⁹⁶ (Order of abatement; execution of court order; duties of officer; use of building or place ordered closed; contempt; determination of amount due victim) further directs that “[i]f the court in an action under this chapter declares property to be a nuisance under section 3801(1)(f), the officer executing the order of the court shall first pay from the proceeds any amount determined by the court to be due to the victim. . . For purposes of determining the amount due to a victim under this subsection, the court shall consider the loss suffered by the victim as a proximate result of the conduct and may use as guidance the items of loss enumerated in . . . MCL 780.766b [Conviction of offense described in MCL 750.462a to 750.462h; restitution].”

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

Michigan has no laws preventing the promotion or sale of child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

Mich. Comp. Laws Ann. § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties) makes the distribution and promotion of child pornography a felony.⁹⁷ A violation of Mich. Comp. Laws Ann. § 750.145c(3) is punishable by imprisonment up to 7 years, a fine up to \$50,000, or both, where the facilitator “knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.”

⁹⁶ See *supra* note 51.

⁹⁷ See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c(3).

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 facilitator has a prior conviction for a federal sex offense⁹⁸ against a minor. Additionally, a federal conviction for distribution of child pornography⁹⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.¹⁰⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.¹⁰¹

⁹⁸ See *supra* note 29.

⁹⁹ 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).

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

¹⁰¹ 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).

Legal Components:

- 5.1 Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.
- 5.2 The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.
- 5.3 Prostitution laws apply only to adults, preventing 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 Commercial sexual exploitation 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) without regard to ineligibility factors.
- 5.8 Victim-friendly procedures and protections are provided in the trial process for minors under 18.
- 5.9 Expungement or sealing of juvenile 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 Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.

Under the William Van Regenmorter Crime Victim’s Rights Act,¹⁰² “victim” is defined in part as “[a]n individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.”¹⁰³ Mich. Comp. Laws Ann. § 780.752(1)(m)(i). While this definition does not specifically reference Michigan’s human trafficking and CSEC offenses it may be broad enough to encompass victims of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) and Michigan’s CSEC laws.

For purposes of receiving restitution under Mich. Comp. Laws Ann. § 780.766(1) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole), a “victim” is defined in part as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.” However, victims of trafficking are specifically ensured access to mandatory restitution under Mich. Comp. Laws Ann. § 780.766b¹⁰⁴ (Conviction of offense described in MCL 750.462a to 750.462h;

¹⁰² Mich. Comp. Laws Ann. §§ 780.751–.834.

¹⁰³ Mich. Comp. Laws Ann. § 780.752(1)(b) defines “crime” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.”

¹⁰⁴ The text of Mich. Comp. Laws Ann. § 780.766b included here and elsewhere in this report includes amendments made by the enactment of House Bill 5237 during the Regular Session of the 97th Michigan Legislature (effective

restitution) which states,

When sentencing a defendant convicted of an offense described in chapter LXVIIA of the Michigan penal code [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under section 16 [§ 780.766],¹⁰⁵ the court may order the defendant to pay all of the following:

- (a) Lost income, calculated by whichever of the following methods results in the largest amount:
 - (i) The gross amount received by the defendant from or the value to the defendant of the victim's labor or services.
 - (ii) The value of the victim's labor or services as calculated under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, or the federal minimum wage, whichever results in the largest value.
 - (iii) Income loss as determined under section 16(4)(c).
- (b) The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- (c) Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings as follows:
 - (i) Wages lost.
 - (ii) Child care.
 - (iii) Transportation.
 - (iv) Parking.
- (d) Any other loss suffered by the victim as a proximate result of the offense.

In Chapter 18 (Department of management and budget), sections 351 (Definitions)–368 (Crimes to which act applicable), which govern eligibility requirements for crime victim compensation, Mich. Comp. Laws Ann. § 18.351(1) (Definitions) defines “victim” as “a person who suffers a personal physical injury as a direct result of a crime,”¹⁰⁶ and “personal physical injury” as “actual bodily harm and includes pregnancy.” Mich. Comp. Laws Ann. § 18.351(1)(f), (i). While this definition does not specifically reference Michigan’s human trafficking and CSEC offenses, and it requires actual bodily harm, it may be broad enough to encompass victims of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) and Michigan’s CSEC laws.

January 14, 2015).

¹⁰⁵ See below in this section for discussion of restitution required under Mich. Comp. Laws Ann. § 780.766 (“Victim” defined; restitution; order; condition of probation, parole, or sentence; revocation of probation or parole; petition to modify payment method; lien; enforcement; failure to pay restitution; payment by parent of juvenile; definitions; review; report or petition; compliance; copy of order to department of corrections; disposition of unclaimed restitution; amendment of order; effect of bankruptcy; victim as minor).

¹⁰⁶ Mich. Comp. Laws Ann. § 18.351(c) defines “crime” as

an act that is 1 of the following:

- (i) A crime under the laws of this state or the United States that causes an injury within this state.
- (ii) An act committed in another state that if committed in this state would constitute a crime under the laws of this state or the United States, that causes an injury within this state or that causes an injury to a resident of this state within a state that does not have a victim compensation program eligible for funding from the victims of crime act of 1984, chapter XIV of title II of the comprehensive crime control act of 1984, Public Law 98-473, 98 Stat. 2170.

. . . .

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

Mich. Comp. Laws Ann. § 750.462e¹⁰⁷ (Forced labor or services; prohibited conduct as relates to age of minor), § 750.13 (Enticing away female under sixteen; felony, penalty) and § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material) do not expressly bar a defense based on consent of the minor.

- 5.2.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor), § 750.13 (Enticing away female under sixteen; felony, penalty) and § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material) to expressly bar a defense based on consent of the minor in CSEC and minor sex trafficking cases.

5.3 *Prostitution laws apply only to adults, preventing criminalization of minors under 18 for prostitution offenses.*

Michigan’s prostitution laws eliminate liability for prostitution offenses for some, but not all, minors. Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act) makes it a crime for “[a] person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act.”

Criminal liability is not eliminated for juvenile sex trafficking victims aged 16 or 17. Mich. Comp. Laws Ann. § 750.451(6)¹⁰⁸ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) establishes a rebuttable presumption that a “person under 18 years of age” who is prosecuted for “an offense punishable under this section [§ 750.451]¹⁰⁹ . . . was coerced into child sexually abusive activity or commercial sexual activity in violation of section 462e [Forced labor or services; prohibited conduct as relates to age of minor] or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h [Human trafficking].” However, minors who are 16–17 remain subject to arrest and conviction or adjudication for prostitution if that presumption is rebutted or they are unwilling or unable to participate in court-ordered services. Mich. Comp. Laws Ann. §§ 750.448, 750.451(6). Mich. Comp. Laws Ann. § 750.451(6)¹¹⁰ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) provides,

In any prosecution of a person under 18 years of age for an offense punishable under this section, it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity in violation of section 462e or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h. The prosecution may overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense. The state may petition the court to find

¹⁰⁷ See *supra* note 4.

¹⁰⁸ See *supra* note 14.

¹⁰⁹ Offenses punishable under Mich. Comp. Laws Ann. § 750.451 include, among other prostitution-related offenses, Mich. Comp. Laws Ann. §§ 448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime), 449 (Admitting to place for purpose of prostitution; crime), 449a (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty), 750.450 (Aiding, assisting, or abetting; penalty), or 750.462 (Female 16 years of age or less in house of prostitution; crime).

¹¹⁰ See *supra* note 14.

the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.¹¹¹ A person under 18 years of age who fails to substantially comply with court-ordered services under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not eligible for the presumption under this section.

- 5.3.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime) to eliminate liability for prostitution offenses for all minors under 18.

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

Child Identified as Abused/Neglected

I. Initial Custody

a. Authority for initial custody

Under the Child Protection Laws, Mich. Comp. Laws Ann. §§ 722.621–722.638, a minor trafficking victim may enter child protective services and, where necessary, be taken into protective custody. This may happen through a report of abuse under Mich. Comp. Laws Ann. § 722.623(1)(a)¹¹² (Individual required to report child abuse or neglect; written report; contents; transmitting report to county department; copies to prosecuting attorney and probate court; conditions requiring transmission of report to law enforcement agency; pregnancy of or venereal disease in child less than 12 years of age; exposure to or contact with methamphetamine production), which requires specified medical and psychosocial professionals, social service providers, school personnel, law enforcement, clergy, or child care providers, among others, with “reasonable cause to suspect child abuse or child neglect” to immediately report “the suspected child abuse or child neglect to the department.”¹¹³ Under Mich. Comp. Laws Ann. § 750.451(7)¹¹⁴ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined), law enforcement are specifically mandated to report to child welfare when encountering a juvenile sex trafficking victim:

Excluding any reasonable period of detention for investigation purposes, a law enforcement officer who encounters a person under 18 years of age engaging in any conduct that would be a violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime], 449 [Admitting to place for purpose of prostitution; crime], 450 [Aiding, assisting, or abetting; penalty], or 462 [Female 16 years of age or less in house of prostitution; crime], or a local ordinance substantially corresponding

¹¹¹ While a 17 year old who commits a criminal offense would generally be directed into the adult criminal justice process rather than the delinquency process, Mich. Comp. Laws Ann. § 712A.2(b)(3) (Authority and jurisdiction of court) extends original jurisdiction of the family division to include juveniles under 18 who are “dependent and . . . in danger of substantial physical or psychological harm,” which includes a juvenile “alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code [Human trafficking] or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.” The text of Mich. Comp. Laws Ann. § 712A.2(b) (Authority and jurisdiction of court) included here and elsewhere in this report includes amendments made by the enactment of House Bill 5026 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹¹² The text of Mich. Comp. Laws Ann. § 722.623 included here and elsewhere in this report includes amendments made by the enactment of House Bill 5239 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹¹³ The “department” is defined in Mich. Comp. Laws. § 722.622(o) (Definitions) as “the department of human resources.” See *supra* note 128.

¹¹⁴ See *supra* note 14.

to section 448, 449, 450, or 462, if engaged in by a person 16 years of age or over shall immediately report to the department of human services a suspected violation of human trafficking involving a person under 18 years of age in violation of sections 462a to 462h [Human trafficking].

Pursuant to subsection (8), “The department of human services shall begin an investigation of a human trafficking violation reported to the department of human services under subsection (7) within 24 hours after the report is made to the department of human services, as provided in section 8 of the child protection law, 1975 PA 238, MCL 722.628. The investigation shall include a determination as to whether the person under 18 years of age is dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of . . . MCL 712A.2 [Authority and jurisdiction of court].”

When a child comes within the jurisdiction of the family court because he or she is taken into protective custody, a preliminary hearing must be held if the child is not released to her parents. Pursuant to Mich. Comp. Laws Ann. § 722.626(1) (Detention of child in temporary protective custody),

If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child’s health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12A of the probate code of 1939, 1939 PA 288, MCL 712A.14, or order the child released to the child’s parent, guardian, or custodian.

In addition, Mich. Comp. Laws Ann. § 722.624 (Persons permitted to report child abuse or neglect) states, “[A]ny person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency.” Mich. Comp. Laws Ann. § 722.623(6) states in part,

If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b [Definitions; child abuse] and 145c [Definitions; child sexually abusive activity or material; penalties], sections 520b to 520g [Criminal sexual conduct] of the Michigan penal code . . . or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child’s health or welfare, . . . the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. . . .

Within 24 hours of receiving a report of suspected abuse, the department shall, depending on the circumstances, commence an investigation or “refer the report to the prosecuting attorney and the local law enforcement agency.” Mich. Comp. Laws Ann. § 722.628(1).¹¹⁵ If “[t]he child is the victim of suspected sexual abuse or sexual exploitation,” law enforcement must commence an investigation of the suspected abuse or neglect within 24 hours. Mich. Comp. Laws Ann. § 722.628(1), (3)(b). “In the course of its investigation, the department shall determine if the child is abused or neglected.” Mich. Comp. Laws Ann. § 722.628(2).

“After completing a field investigation and based on its results, the department shall determine in which single category, prescribed by section 8d, to classify the allegation of child abuse or neglect.” Mich. Comp. Laws Ann. § 722.628(12). If as a result of the field investigation, “[t]he department determines that there is evidence

¹¹⁵ Similarly, where a law enforcement agency suspects abuse, Mich. Comp. Laws Ann. § 722.628(1) (Referring report or commencing investigation; informing parent or legal guardian of investigation) requires the law enforcement entity to “refer the report to the department . . . or shall commence an investigation of the child suspected of being abused or neglected.” Mich. Comp. Laws. Ann. § 722.628(1).

of child abuse or neglect,” and that a violation of, among other crimes, Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material; penalties), occurs, the department must classify the abuse as Category 1. Mich. Comp. Laws Ann. §§ 722.628d(1)(e)(iv), 722.628a(1)(f). When abuse is classified as Category 1, Mich. Comp. Laws Ann. § 722.628d(2) states,

In response to a category I classification, the department shall do all of the following:

- (a) If a court petition is not required under another provision of this act, submit a petition for authorization by the court under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.
- (b) Open a protective services case and provide the services necessary under this act.
- (c) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry as provided in section 7(7), either by name or as “unknown” if the perpetrator has not been identified.

Mich. Comp. Laws Ann. § 712A.14(1) also permits law enforcement to “without the order of the court, immediately take into custody any child . . . whose surroundings are such as to endanger his or her health, morals, or welfare,” and after taking into custody, the law enforcement officer “shall immediately attempt to notify the parent or parents, guardian, or custodian,” and if not released to the parents, bring the child “before the court for a preliminary hearing on the status of the child.” Mich. Comp. Laws Ann. § 712A.14(1), (2).

II. Process following initial custody

Pursuant to Mich. Comp. Laws Ann. § 722.637(1) (Submission of petition for authorization under MCL 712A.2; exception), unless excepted under subsection (2), “within 24 hours after the department determines that a child was . . . sexually abused . . . the department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.” However, Mich. Comp. Laws Ann. § 722.637(2) states,

The department is not required to file a petition for authorization by the court as described in subsection (1) if the department determines that the parent or legal guardian is not a suspected perpetrator of the abuse and the department determines that all of the following apply:

- (a) The parent or legal guardian did not neglect or fail to protect the child.
- (b) The parent or legal guardian does not have a historical record that shows a documented pattern of neglect or failing to protect the child.
- (c) The child is safe in the parent’s or legal guardian’s care.

If a petition for authorization is filed, Mich. Comp. Laws Ann. § 712A.2(b)¹¹⁶ (Authority and jurisdiction of court) grants the family court jurisdiction over a

juvenile under 18 years of age found within the county:

- (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile,¹¹⁷

¹¹⁶ See *supra* note 147.

¹¹⁷ Chapter 712A does not define “person legally responsible for the care and maintenance of the juvenile”; however, Mich. Comp. Laws Ann. § 712A.13a(1)(h) defines a “non-parent adult” as

a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

- (i) Has substantial and regular contact with the child.
- (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare.
- (iii) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.

when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

. . . .

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

. . . .

Mich. Comp. Laws Ann. § 712A.13a(2) (Definitions; petition) states,

If a juvenile is alleged to be within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter. If a petition is before the court because the department of human services is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

Mich. Comp. Laws Ann. § 712A.14(2) (Officers or county agent authorized to take child into custody) states,

If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

III. Placement process pending adjudication/investigation

Pursuant to Mich. Comp. Laws Ann. § 722.954e¹¹⁸ (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services), child serving agencies must consider a child's status as a human trafficking victim in making placement decisions and must ensure access to specialized services. It states,

Before determining placement of a child in its care, a supervising agency shall give special consideration to information that a child may be the victim of human trafficking. If a supervising agency finds that a child is or may be a victim of human trafficking, the supervising agency shall place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.

In comparison, Mich. Comp. Laws Ann. § 722.622(u) (Definitions) in the Child Protection Law defines "person responsible for the child's health or welfare" in part as "a . . . person 18 years of age or older who resides for any length of time in the same home in which the child resides."

¹¹⁸ The text of Mich. Comp. Laws Ann. § 722.954e (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services) included here and elsewhere in this report includes amendments made by the enactment of House Bill 5026 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

Pursuant to Mich. Comp. Laws Ann. § 712A.14(3), placement options pending investigation and adjudication include:

- (a) In the home of the child's parent, guardian, or custodian.
- (b) If a child is within the court's jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court's supervision. Except as otherwise provided in subsections (4) and (5), if a child is within the court's jurisdiction under section 2(b) of this chapter, the court shall not place a child in a foster care home subject to the court's supervision.
- (c) In a child care institution or child placing agency licensed by the department of human services to receive for care children within the jurisdiction of the court.
- (d) In a suitable place of detention.

IV. Outcomes

Pursuant to Mich. Comp. Laws Ann. § 722.628b, “[i]f a central registry case involves a child's death, serious physical injury of a child, or sexual abuse or exploitation of a child, the department shall refer the case to the prosecuting attorney for the county in which the child is located.” Furthermore, the court is required to appoint a lawyer-guardian ad litem responsible for representing the child whenever a judicial proceeding is necessary under chapter 722. Mich. Comp. Laws Ann. § 722.630.

Child Identified as Delinquent

I. Initial Custody

a. Authority for Initial Custody

If a minor victim of trafficking, is instead arrested for a juvenile or status offense, the family division of the circuit court will have jurisdiction over the juvenile proceeding pursuant to Mich. Comp. Laws Ann. § 712A.2(a) (Authority and jurisdiction of court).¹¹⁹ If the minor “who is found violating any law or ordinance” is taken into immediate custody by law enforcement without an order from the court pursuant to Mich. Comp.

¹¹⁹ Mich. Comp. Laws Ann. § 712A.2 (Authority and jurisdiction of court) states,

The court has the following authority and jurisdiction:

- (a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

- (1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. . . .

-
 - (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

-
 - (3) If the juvenile is dependent and is in danger of substantial physical or psychological harm.

The juvenile may be found to be dependent when any of the following occurs:

- (A) The juvenile is homeless or not domiciled with a parent or other legally responsible person.
 - (B) The juvenile has repeatedly run away from home and is beyond the control of a parent or other legally responsible person.
 - (C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code . . . [Human trafficking] or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.

. . . .

See supra note 116.

Laws Ann. § 712A.14(1), and the minor cannot be released to parents under Mich. Comp. Laws Ann. § 712A.14(1) or (2),¹²⁰ the juvenile has various options for placement pending trial. However, only a minor who is “16 years of age or older” can be taken into custody on prostitution charges under Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act). Mich. Comp. Laws Ann. §§ 750.448, 750.451. However, Mich. Comp. Laws Ann. § 750.451(6)¹²¹ (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) provides,

In any prosecution of a person under 18 years of age for an offense punishable under this section, it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity in violation of section 462e or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h. The prosecution may overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense. The state may petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2. A person under 18 years of age who fails to substantially comply with court-ordered services under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not eligible for the presumption under this section.¹²²

II. Placement process pending adjudication/investigation

If delinquency charges are filed, Mich. Comp. Laws Ann. § 712A.14(3) provides, “If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing” Placement options include the parent’s home, “a suitable place of detention,” a licensed “child care institution or child placing agency,” or “[i]f a child is within the court’s jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court’s supervision.” Mich. Comp. Laws § 712A.14(3).

¹²⁰ Under circumstances where a child is taken into custody by a law enforcement officer or county agent, without an order of the court, as provided in Mich. Comp. Laws Ann. § 712A.14(1),

[A]n officer or county agent . . . shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years . . . shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a time fixed therein. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

Where the child is not released into the care of the child’s parent, guardian or custodian, as provided in Mich. Comp. Laws Ann. § 712A.14(2), “[T]he child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.”

¹²¹ See *supra* note 14.

¹²² To the extent that juvenile sex trafficking victims who are 17 years old could be directed into the adult criminal justice process rather than the delinquency process, they may be able to avoid a prostitution conviction by participating in the deferred sentencing process established under Mich. Comp. Laws Ann. § 750.451c (Individual as victim of human trafficking violation; applicability of subsection (2); deferred proceedings; duties of court; violation of term or condition of probation; adjudication of guilt; circumstances; discharge and dismissal; proceedings open to public; record; nonpublic record; “human trafficking violation” defined) which allows victims of sex trafficking to have their proceedings deferred and permits them to successfully complete probation in lieu of conviction. Mich. Comp. Laws Ann. § 750.451c(1)–(2), (6).

III. Adjudication and alternative process

When a juvenile is alleged to fall under section 2(b), the court can authorize “a petition to be filed at the conclusion of the preliminary hearing or inquiry. . . . upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter.” Mich. Comp. Laws Ann. § 712A.13a(2). The court can choose to conduct the hearing in an informal manner, though stenographic notes or a transcript of the hearing will be required for the hearing. Mich. Comp. Laws Ann. § 712A.17(1). If the juvenile is found to fall within the purview of chapter 712A, the court can enter an order of disposition pursuant to Mich. Comp. Laws Ann. § 712A.18(1).

For a minor who proceeds to adjudication in the juvenile court, Mich. Comp. Laws Ann. § 712A.18(1) (Orders of disposition) provides a range of dispositional alternatives, including, among others, giving a warning to the juvenile and juvenile’s parents and dismissing the petition, placing “the juvenile on probation, or under supervision in the juvenile’s own home or in the home of an adult who is related to the juvenile,” placing the child “in a suitable foster care home,”¹²³ or committing “the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics.” Mich. Comp. Laws Ann. § 712A.18(1)(a)–(c), (e). Additionally, pursuant to Mich. Comp. Laws Ann. § 712A.18(1)(l), the court may, “[i]f a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp” The court also may, “[i]f the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted.” Mich. Comp. Laws Ann. § 712A.18(1)(m). Alternatively, Mich. Comp. Laws Ann. § 712A.11(7) (Preliminary inquiry; petition) permits the court to offer the juvenile the option of avoiding formal jurisdiction and delinquency adjudication by participating in a voluntary program under the Juvenile Diversion Act, codified at Mich. Comp. Laws Ann. § 722.821 to § 722.831.

Alternatively, Mich. Comp. Laws Ann. § 712A.11(7) (Preliminary inquiry; petition) permits the court to offer the juvenile the option of avoiding formal jurisdiction and delinquency adjudication by participating in a voluntary program under the Juvenile Diversion Act, codified at Mich. Comp. Laws Ann. § 722.821 to § 722.831. If a juvenile sex trafficking victim is placed in foster care,¹²⁴ Mich. Comp. Laws Ann. § 722.954e¹²⁵ (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services) provides that “[b]efore determining placement of a child in its care, a supervising agency¹²⁶ shall give special consideration to information that a child may be the victim of human trafficking. If a supervising agency finds that a child is or may be a victim of human trafficking, the supervising agency shall place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.”

¹²³ Mich. Comp. Laws Ann. § 722.954e (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services) provides that “[b]efore determining placement of a child in its care, a supervising agency shall give special consideration to information that a child may be the victim of human trafficking. If a supervising agency finds that a child is or may be a victim of human trafficking, the supervising agency shall place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.” *See supra* note 118.

¹²⁴ “Foster care” is defined as “a child’s placement outside the child’s parental home by and under the supervision of a child placing agency, the court, the department, or the department of community health.” Mich. Comp. Laws Ann. § 722.952(j).

¹²⁵ *See supra* note 118.

¹²⁶ Pursuant to Mich. Comp. Laws Ann. § 722.952(l), a “[s]upervising agency” means the department if a child is placed in the department’s care for foster care, or a child placing agency in whose care a child is placed for foster care.”

IV. Outcomes

Where a juvenile remains in custody, Mich. Comp. Laws Ann. § 712A.16(1) (Detention and care of juvenile) provides that, in general, minors under 17 are not to be kept with “criminal or dissolute persons.” For a minor who proceeds to adjudication in the juvenile court, Mich. Comp. Laws Ann. § 712A.18(1) (Orders of disposition) provides a range of dispositional alternatives, including, among others, giving a warning to the juvenile and juvenile’s parents and dismissing the petition, placing “the juvenile on probation, or under supervision in the juvenile’s own home or in the home of an adult who is related to the juvenile,” placing the child “in a suitable foster care home,”¹²⁷ or committing “the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics.” Mich. Comp. Laws Ann. § 712A.18(1)(a)–(c), (e). Additionally, pursuant to Mich. Comp. Laws Ann. § 712A.18(1)(l), the court may, “[i]f a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp” The court also may, “[i]f the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted.” Mich. Comp. Laws Ann. § 712A.18(1)(m).

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

Some types of commercial sexual exploitation are expressly identified as a type of abuse and neglect within Michigan’s child protection laws. Mich. Comp. Laws Ann. § 722.622(f)¹²⁸ (Definitions) defines “child abuse” to include “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy..” Mich. Comp. Laws Ann. § 722.622(w) defines “sexual abuse” as “engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code . . . with a child,” and Mich. Comp. Laws Ann. § 722.622(x) defines “sexual exploitation” as “allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code [Definitions; child sexually abusive activity or material; penalties].” However, conduct criminalized under Mich. Comp. Laws Ann. § 750.462e¹²⁹ (Forced labor or services; prohibited conduct as relates to age of minor), and § 750.13 (Enticing away female under sixteen) is not expressly identified as a type of child abuse.

5.5.1 Recommendation: Amend Mich. Comp. Laws Ann. § 722.622(f) (Definitions) to include human trafficking in the definition of “child abuse” to ensure that trafficked minors are considered abuse victims who fall within Michigan’s child protection laws.

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

Mich. Comp. Laws Ann. § 722.622(u)¹³⁰ (Definitions) defines “person responsible for the child’s health or

¹²⁷ Mich. Comp. Laws Ann. § 722.954e (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services) provides that “[b]efore determining placement of a child in its care, a supervising agency shall give special consideration to information that a child may be the victim of human trafficking. If a supervising agency finds that a child is or may be a victim of human trafficking, the supervising agency shall place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.” See *supra* note 118.

¹²⁸ See *supra* note 119.

¹²⁹ See *supra* note 4.

¹³⁰ See *supra* note 119.

welfare” in part as “a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or . . . nonparent adult . . .” and Mich. Comp. Laws Ann. § 722.622(t) defines “nonparent adult” as “a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child: (i) Has substantial and regular contact with the child. (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare. (iii) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.” Mich. Comp. Laws Ann. § 722.622(u) defines “child abuse” in part as “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare.” Since the definitions of “person responsible for the child’s health or welfare” and “nonparent” require legal custody or a close connection to the child’s family, child protective services may be unable to intervene and provide services in some cases involving a minor trafficked by a non-family member.

However, the definition of caregiver does not limit juvenile sex trafficking victims’ access to services through child welfare because a child who has been commercially sexually exploited may be deemed “dependent” under Mich. Comp. Laws Ann. § 712A.2(b)(3) (Authority and jurisdiction of court) which states,

The court has the following authority and jurisdiction:

....
(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

....
(3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be dependent when any of the following occurs:

....
(C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code [Human trafficking] . . . or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*

Mich. Comp. Laws Ann. § 18.354(1)(a) (Eligibility for awards; limitations; waiver) of the Crime Victims Compensation Board Act¹³¹ provides that a victim¹³² of a crime is entitled to an award, unless the limitations in Mich. Comp. Laws Ann. § 18.354(2) apply. Mich. Comp. Laws Ann. § 18.354(2) provides that “[a] person is not eligible to receive an award if the person is either of the following: (a) Criminally responsible for the crime. (b) An accomplice to the crime.” To the extent that a domestic minor sex trafficking victim can be considered criminally responsible or an accomplice to the relevant crime because of his or her participation in a commercial sex act, the provisions of Mich. Comp. Laws Ann. § 18.354(2) could prevent some domestic minor sex trafficking victims from being eligible to receive an award.

Mich. Comp. Laws Ann. § 18.354(3) also requires that “the claimant has incurred a minimum out-of-pocket loss¹³³ of \$200.00 or has lost at least 2 continuous weeks’ earnings or support”; however, “[i]f the claimant is a victim of criminal sexual conduct in the first, second, or third degree, the commission may waive the limitations

¹³¹ Mich. Comp. Laws Ann. §§ 18.351–18.368.

¹³² See *supra* Section 5.1 for the definition of “victim.”

¹³³ Mich. Comp. Laws Ann. § 18.351(e) defines “out-of-pocket loss” as “the unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care, psychological counseling, replacement services, any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing, or other services necessary as a result of the injury upon which a claim is based.”

of this subsection.”

Additionally, Mich. Comp. Laws Ann. § 18.355(2), (3) (Claim; filing; notice) states,

(2) Except as provided in subsection (3), a claim shall be filed by the claimant not later than 1 year after the occurrence of the crime upon which the claim is based, except as follows:

(a) If police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed by [the victim or others eligible for awards] not later than 1 year after the crime was reported.

....

(3) Upon petition by the claimant and for good cause shown, the commission may extend the period in which a claim may be filed under subsection (2).

Mich. Comp. Laws Ann. § 18.355 does not clarify what constitutes “good cause” under Mich. Comp. Laws Ann. § 18.355(3) for a claimant’s failure to file within the time limits imposed under Mich. Comp. Laws Ann. § 18.355(2).

5.7.1 Recommendation: Amend Mich. Comp. Laws Ann. § 18.354 (Eligibility for awards; limitations; waiver) to make the ineligibility factors in Mich. Comp. Laws Ann. § 18.354(2) and (3) and the time restrictions on filing in Mich. Comp. Laws Ann. § 18.355(2) (Claim; filing; notice) inapplicable to minor victims of sex trafficking.

5.7.2 Recommendation: Amend Mich. Comp. Laws Ann. § 18.351(1)(f) (Definitions) to include psychological and emotional trauma in the definition of “personal physical injury” to ensure that sexually abused minors are considered victims.

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

The William Van Regenmorter Crime Victim’s Rights Act¹³⁴ provides several protections to victims of felony offenses or offenses punishable by imprisonment for more than one year, including, but not limited to, victims of Mich. Comp. Laws Ann. § 750.462b¹³⁵ (Forced labor or services; prohibited) –§ 750.462e¹³⁶ (Forced labor or services; prohibited conduct as relates to age of minor). Mich. Comp. Laws Ann. § 780.752(1)(b), (1)(m)(i).¹³⁷ For example, under Mich. Comp. Laws Ann. § 780.757 (Waiting area for victim or other safeguards), “The court shall provide a waiting area for the victim separate from the defendant, defendant’s relatives, and defense witnesses,” or, “[i]f a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim’s contact with defendant, defendant’s relatives, and defense witnesses during court proceedings.” Victims of certain sexual offenses have the right to a speedy trial pursuant to Mich. Comp. Laws Ann. § 780.759(1) (Speedy trial; requirements; hearing; notice; time of trial). Victims may also be protected from having to testify about personal identifying information under Mich. Comp. Laws Ann. § 780.758(1) (Motion not to compel testimony of victim or other witness; hearing).

¹³⁴ Mich. Comp. Laws Ann. §§ 780.751–.834.

¹³⁵ The text of Mich. Comp. Laws Ann. § 750.462b included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹³⁶ See *supra* note 4.

¹³⁷ However, “[a]n individual who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims under this article,” and “[a]n individual who is incarcerated is not eligible to exercise the privileges and rights established for victims under this article except that he or she may submit a written statement to the court for consideration at sentencing.” Mich. Comp. Laws Ann. § 780.752(3), (4).

Pursuant to Michigan Rules of Evidence Rule 803A (Hearsay exception; child's statement about sexual act), Michigan also provides a hearsay exception in criminal and delinquency proceedings for child witnesses testifying about a sexual act, which states in part,

A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:

- (1) the declarant was under the age of ten when the statement was made;
- (2) the statement is shown to have been spontaneous and without indication of manufacture;
- (3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective [sic] circumstance; and
- (4) the statement is introduced through the testimony of someone other than the declarant.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

Mich. Comp. Laws Ann. § 750.520j (Evidence of victim's sexual conduct) and § 750.520h (Corroboration of victim's testimony not required)¹³⁸ provide protections to testifying victims of sexual offenses, but not to victims of Mich. Comp. Laws Ann. § 750.462j, § 750.462e, or Michigan's CSEC laws. Mich. Comp. Laws Ann. § 750.462g¹³⁹ (Testimony) states, "[t]he testimony of a victim is not required in a prosecution under this chapter. However, if a victim testifies, that testimony need not be corroborated."

Mich. Comp. Laws Ann. § 750.520j(1) states,

Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

- (a) Evidence of the victim's past sexual conduct with the actor.
- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

Additional witness protections specific to child victims under the age of 16 of specified sex offenses are available under Mich. Comp. Laws Ann. § 600.2163a (Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videotape deposition). Mich. Comp. Laws Ann. § 600.2163a(2) states that the protections of Mich. Comp. Laws Ann. § 600.2163a are limited to "prosecutions and proceedings under section 136b [Definitions; child abuse], 145c [Definitions; child sexually abusive activity or material], 520b [Criminal sexual conduct in the first degree] to 520e [Criminal sexual conduct in the fourth degree], or 520g [Criminal sexual conduct]." Pursuant to Mich. Comp. Laws Ann. § 600.2163a(3), "If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct

¹³⁸ Mich. Comp. Laws Ann. § 750.520h (Corroboration of victim's testimony not required) states, "The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g."

¹³⁹ The text of Mich. Comp. Laws Ann. § 750.462g included here and elsewhere in this report includes amendments made by the enactment of House Bill 5234 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

dolls or mannequins, to assist the witness in testifying on direct and cross-examination.” Mich. Comp. Laws Ann. § 600.2163a(4) further provides that “[a] witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony.” Additionally, Mich. Comp. Laws Ann. § 600.2163a(5) states,

A custodian of the videorecorded statement¹⁴⁰ may take a witness’s videorecorded statement before the normally scheduled date for the defendant’s preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.

Mich. Comp. Laws Ann. § 600.2163a(6) sets out the following purposes for which a “videorecorded statement” can be introduced:

- (a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.
- (b) It may be admitted for impeachment purposes.
- (c) It may be considered by the court in determining the sentence.
- (d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.

Pursuant to Mich. Comp. Laws Ann. § 600.2163a(11), “A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.” Mich. Comp. Laws Ann. § 600.2163a(14) states,

If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (13),¹⁴¹ the court shall order both of the following:

- (a) All persons not necessary to the proceeding shall be excluded during the witness’s testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness’s testimony shall be made available.
- (b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant’s position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

¹⁴⁰ Mich. Comp. Laws Ann. § 600.2163a(1)(a) defines “custodian of the videorecorded statement” as “the department of human services, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.”

¹⁴¹ Mich. Comp. Laws Ann. § 600.2163a(13) states,

If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (14) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.
- (c) The desire of the witness or the witness’s family or guardian to have the testimony taken in a room closed to the public.

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.*

To the extent that a juvenile victim is or has been prosecuted as an adult for prostitution offenses, they can seek to have their conviction set aside under Mich. Comp. Laws Ann. § 780.621¹⁴² (Application for order setting aside conviction; misdemeanor conviction; setting aside of certain convictions prohibited; victim of human trafficking violation; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; notice to victim; affidavits and proofs; court order; definitions) which states,

(3) A person who is convicted of a violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime], 449 [Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty], or 450 [Aiding, assisting, or abetting; penalties] of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.¹⁴³

....

(5) An application under subsection (3) may be filed at any time following the date of the conviction to be set aside. A person may apply to have more than 1 conviction set aside under subsection (3).

For juvenile sex trafficking victims who have been adjudicated delinquent for prostitution offenses, Mich. Comp. Laws Ann. § 712A.18e (Application for entry of order setting aside adjudication; filing) states that persons with no more than 1 juvenile offense and no felony convictions may apply to have the adjudication set aside unless the adjudication was for an offense that would be classified as a felony with a maximum sentence of life imprisonment if committed by an adult, the adjudication was for a certain type of traffic offense, or the juvenile was tried and convicted as an adult and only one adjudication may be set aside under this provision. Mich. Comp. Laws Ann. § 712A.18e(1), (2)(a), (2)(b).

Pursuant to Mich Comp. Laws § 712A.18e(3),

An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

Mich Comp. Laws § 712A.18e(4) further requires that an application be “signed under oath by the person whose adjudication is to be set aside” and provide, as well as other information, including statements “that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application,” “that the applicant has not been convicted of any felony offense,” and “whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.” Mich. Comp. Laws Ann. § 712A.18e(4)(c), (4)(d), (4)(f), (4)(g).

¹⁴² The text of Mich. Comp. Laws Ann. § 780.621 included here and elsewhere in this report includes amendments made by the enactment of House Bill 5025 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹⁴³ Pursuant to Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor), “A person shall not do any of the following, regardless of whether the person knows the age of the minor: (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity. (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.” *See supra* note 3.

With one narrow exception,¹⁴⁴ the court may set aside the adjudication “if the court determines that the circumstances and behavior of the applicant from the date of the applicant’s adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare.” Mich. Comp. Laws Ann. § 712A.18e(9).

- 5.9.1 Recommendation: Amend Mich. Comp. Laws Ann. § 712A.18e (Application for entry of order setting aside adjudication; filing) to permit automatic expungement at age 18 of juvenile records for juvenile sex trafficking victims arrested for prostitution-related offenses.
- 5.9.2 Alternatively, amend Mich. Comp. Laws Ann. § 780.621 (Application for order setting aside conviction; misdemeanor conviction; setting aside of certain convictions prohibited; victim of human trafficking violation; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; notice to victim; affidavits and proofs; court order; definitions) to permit automatic expungement at age eighteen of juvenile delinquency adjudications for prostitution-related offenses.

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.

Restitution is mandatory for juvenile victims of Mich. Comp. Laws Ann. § 750.462e¹⁴⁵ (Forced labor or services; prohibited conduct with regard to age of minor), . Mich. Comp. Laws Ann. § 780.766b¹⁴⁶ (Conviction of offense described in MCL 750.462a to 750.462h; restitution) states,

When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking], the court shall order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under section 16 [Mich. Comp. Laws Ann. § 780.766, the court may order the defendant to pay all of the following:

- (a) Lost income, calculated by whichever of the following methods results in the largest amount:
 - (i) The gross amount received by the defendant from or the value to the defendant of the victim’s labor or services.
 - (ii) The value of the victim’s labor or services as calculated under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, or the federal minimum wage, whichever results in the largest value.
 - (iii) Income loss as determined under section 16(4)(c).
- (b) The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- (c) Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings as follows:
 - (i) Wages lost.
 - (ii) Child care.
 - (iii) Transportation.
 - (iv) Parking.
- (d) Any other loss suffered by the victim as a proximate result of the offense.

¹⁴⁴ Mich Comp. Laws § 712A.18e(10) states, “Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 [Motor vehicle; taking possession and driving away] of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.”

¹⁴⁵ See *supra* note 4.

¹⁴⁶ See *supra* note 75.

Restitution is also provided under Mich. Comp. Laws Ann. § 750.462f (6) (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution) which states,

In addition to any mandatory restitution applicable under section 16 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766 [“Victim” defined; order of restitution generally], the court may order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766b, and to reimburse any governmental entity for its expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

Restitution also is mandatory under Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole), which states,

Except as provided in subsection (8),¹⁴⁷ when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim¹⁴⁸ of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate. . . .

Mich. Comp. Laws Ann. § 780.766(4) states,

If a crime results in physical or psychological injury to a victim, the order of restitution shall require that the defendant do 1 or more of the following, as applicable:

- (a) Pay an amount equal to the reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.
- (b) Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.
- (c) Reimburse the victim or the victim’s estate for after-tax income loss suffered by the victim as a result of the crime.
- (d) Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim’s family actually incurred and reasonably expected to be incurred as a result of the crime.
- (e) Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the crime or, if homemaking or child care is provided without compensation by a relative, friend, or any other person, an amount equal to the costs that would reasonably be incurred as a result of the crime for that homemaking and child care, based on the rates in the area for comparable services.
-
- (h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.

In addition, Mich. Comp. Laws Ann. § 780.766(24) states,

If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the

¹⁴⁷ See *supra* note 47.

¹⁴⁸ Mich. Comp. Laws Ann. § 780.766(1) states in part, “As used in this section only, ‘victim’ means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. . . .”

victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

- (a) Homemaking and child care expenses.
- (b) Income loss not ordered to be paid under subsection (4)(h).
- (c) Mileage.
- (d) Lodging or housing.
- (e) Meals.
- (f) Any other cost incurred in exercising the rights of the victim or a parent under this act.

Civil remedies are provided for human trafficking victims under Enrolled Senate Bill 590 § 3, The Human Trafficking Victims Compensation Act,¹⁴⁹ which states,

(1) A person who violates chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking], is liable to the victim¹⁵⁰ of the violation for economic and noneconomic damages that result from the violation, including, but not limited to, all of the following:

- (a) Physical pain and suffering.
 - (b) Mental anguish.
 - (c) Fright and shock.
 - (d) Denial of social pleasure and enjoyments.
 - (e) Embarrassment, humiliation, or mortification.
 - (f) Disability.
 - (g) Disfigurement.
 - (h) Aggravation of a preexisting ailment or condition.
 - (i) Reasonable expenses of necessary medical or psychological care, treatment, and services.
 - (j) Loss of earnings or earning capacity.
 - (k) Damage to property.
 - (l) Any other necessary and reasonable expense incurred as a result of the violation.
- (2) A victim is entitled to damages under subsection (1) to the extent the victim has sustained the damages, regardless of whether the victim suffered any physical injury as a result of the violation.
- (3) A victim is entitled to damages under subsection (1) regardless of whether the damages sustained were foreseeable to the violator.
- (4) A victim is entitled to damages under subsection (1) regardless of whether the violator was charged with or convicted of a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h.

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.

Under Mich. Comp. Laws Ann. § 767.24(1)(c) (Indictments; crimes; subsection (2) to be known as “Theresa Flores’s Law”; subsection (4) to be known as Brandon D’Annunzio’s law; findings and filing; limitations; extension or tolling), criminal prosecutions under Chapter 750 (Human trafficking) may be brought at any time if the crime would be punishable by life imprisonment, however this does not include offenses under Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it relates to age of minor) which

¹⁴⁹ Enacted Senate Bill 590 § 1 states, “This act shall be known and may be cited as the ‘Human Trafficking Victims Compensation Act.’” Senate Bill 590 was enacted during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

¹⁵⁰ Enacted Senate Bill 590 § 2 states, “As used in this act, ‘victim’ means a victim of a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 5 328, MCL 750.462a to 750.462h [Human trafficking].”

specifically criminalize juvenile sex trafficking.¹⁵¹ Prosecutions under Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it relates to age of minor) and § 750.13 (Enticing away female under sixteen) must be commenced within 25 years while prosecutions under Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material), § 750.520c (Criminal sexual conduct in the second degree), § 750.520d (Criminal sexual conduct in the third degree), § 750.520e (Criminal sexual conduct in the fourth degree), and § 750.520g (Assault with intent to commit criminal sexual conduct) must be commenced within “10 years after the offense is committed or by the alleged victim’s twenty-first birthday, whichever is later.” Mich. Comp. Laws Ann. § 767.24(2), (3)(a).

A civil action filed under Enacted Senate Bill 590 § 3¹⁵² “must be filed within 3 years after the last violation that is the subject of the action occurred.” Enacted Senate Bill 590 § 4. Otherwise, the general statute of limitations for commencing a civil action for personal injury must be commenced within 3 years “after the claim first accrued.” Mich. Comp. Laws § 600.5805(1), (10).

- 5.11.1 Recommendation: Amend Mich. Comp. Laws Ann. § 767.24 (Indictments; finding and filing; limitations) to eliminate the statute of limitations for prosecutions involving violations of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) and § 750.13 (Enticing away female under sixteen).
- 5.11.2 Recommendation: Extend the time for commencing a civil action filed under Enacted Senate Bill 590 § 3 to allow victims sufficient time to bring claims against their exploiters.

¹⁵¹ Under Mich. Comp. Laws Ann. § 750.462f(1)(d) (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution), violations of Mich. Comp. Laws Ann. §§ 750.462b, 750.462c, or 750.462d are punishable by life imprisonment “[i]f the violation involves kidnapping or attempted kidnapping, criminal sexual conduct in the first degree or attempted criminal sexual conduct in the first degree, or an attempt to kill or the death of an individual.” The offenses specific to juvenile sex trafficking under Mich. Comp. Laws Ann. § 750.462e are punishable under Mich. Comp. Laws Ann. § 750.462f(2) by not more than 20 years imprisonment.

¹⁵² See *supra* note 149.

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 audio-taping 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 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 and child welfare agencies are mandated to promptly report missing and recovered children.*

Legal Analysis:

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

Pursuant to Mich. Comp. Laws Ann. § 28.609 (Minimum standards; rules), law enforcement officers in Michigan must meet minimum standards in order to be employed as a law enforcement officer. Additionally, Mich. Comp. Laws Ann. § 28.221 (Training school for peace officers; creation, location, subjects) requires the Michigan Department of Public Safety to provide law enforcement with training in specified subjects which include issues related to human trafficking and domestic minor sex trafficking. Mich. Comp. Laws Ann. § 28.221.

According to the Basic Training Curriculum and Training Objectives manual published in 2010 by the Michigan Commission on Law Enforcement Standards (MCOLES), police officers receive special training in the area of child abuse and neglect investigations.¹⁵³ Section I.G.1.2.(c) of the manual, entitled “Recognize Suspected Cases of Child Abuse While Responding to Complaints Related to and Not Related to Child Abuse,” includes training on “indicators of sexual abuse or criminal sexual conduct (e.g., incest, molestation, pornography).”¹⁵⁴ Section I.H.2.2.(a)(24), entitled “Demonstrate an Understanding of Substantive Criminal Law as It Relates to Domestic Violence,” includes human trafficking among the “crimes likely to be committed in a domestic violence incident.”¹⁵⁵

Additionally, Enacted House Bill 5158¹⁵⁶ establishes the Michigan Human Trafficking Commission and tasks the Commission with “[p]rovid[ing] information and training regarding human trafficking to police officers, prosecutors, court personnel, health care providers, social services personnel, and other individuals the commission considers appropriate.” Enacted House Bill 5158 §§ 3, 4(c).

¹⁵³ The Basic Training Curriculum and Training Objectives Manual published in 2010 by the Michigan Commission on Law Enforcement Standards (MCOLES) demonstrates that police officers receive special training in the area of child abuse and neglect investigations. Section I.G.1.2.(c) of the manual, entitled “Recognize Suspected Cases of Child Abuse While Responding to Complaints Related to and Not Related to Child Abuse,” includes training on “indicators of sexual abuse or criminal sexual conduct (e.g., incest, molestation, pornography).” Michigan Comm’n on Law Enforcement Standards, Basic Training Curriculum and Training Objectives 84 (2010), *available at* http://www.mi.gov/documents/mcoles/Basic_Training_Manual_Part_I-2011_342561_7.pdf (last visited, Nov. 27, 2012).

¹⁵⁴ See *supra* note 153 at I-G-1, page 2.

¹⁵⁵ See *supra* note 153 at I-H-2, page 3.

¹⁵⁶ House Bill 5158 was enacted during the Regular Session of the 97th Michigan Legislature (effective October 16, 2014).

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

Single party consent to audiotaping is generally not permitted under Michigan law. Mich. Comp. Laws Ann. § 750.539c (Eavesdropping upon private conversation) provides that “[a]ny person who is present or who is not present during a private conversation and who wilfully uses any device to eavesdrop¹⁵⁷ upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same . . . is guilty of a felony.” However, Mich. Comp. Laws Ann. § 750.539g(a) (Exceptions) specifically excepts “[e]avesdropping or surveillance not otherwise prohibited by law by a peace officer of this state or of the federal government, or the officer’s agent, while in the performance of the officer’s duties,” from the prohibitions in Mich. Comp. Laws Ann. §§ 750.539a–750.539f.

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

Mich. Comp. Laws Ann. § 750.539g(a) (Exceptions) provides that the prohibitions on intercepting communications in “[s]ections 539a to 539f do not prohibit . . . [e]avesdropping or surveillance not otherwise prohibited by law by a peace officer of this state or of the federal government, or the officer’s agent, while in the performance of the officer’s duties.” As no other statutes appear to limit law enforcement’s ability to intercept communications in the course of investigations, law enforcement officers and their agents should be able to utilize wiretapping in trafficking investigations.¹⁵⁸

6.4 *Using a law enforcement 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.*

Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) and the CSEC laws are silent as to a defendant’s ability to raise a defense that the victim was a law enforcement officer acting as a decoy, rather than an actual minor.

- 6.4.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct with regard to age of minor) to revoke a defendant’s ability to raise a defense that the victim was a law enforcement officer was acting as a decoy.

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

Although Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication) does not expressly permit the use of the Internet to investigate the buying or selling of sex with minors, it does indicate that an offender who believes the victim to be a minor is in violation of the statute. Mich. Comp. Laws Ann. § 750.145d(1)(a) makes it illegal for a defendant to

use the internet or a computer . . . for the purpose of doing any of the following:

- (a) Committing, attempting to commit, conspiring to commit, or soliciting another person to

¹⁵⁷ Mich. Comp. Laws Ann. § 750.539a(2) (Definitions) provides in part, “‘Eavesdrop’ or ‘eavesdropping’ means to overhear, record, amplify or transmit any part of the private discourse of others without the permission of all persons engaged in the discourse.”

¹⁵⁸ The Michigan Supreme Court has determined that law enforcement officers do not need to obtain a warrant in “participant monitoring” situations. *People v. Collins*, 475 N.W. 2d 684, 698 (Mich. 1991). “Participant monitoring” refers “only to the electronic monitoring (whether or not recorded) by a law enforcement agent of a conversation where one of the parties to the conversation has previously consented to the activity.” *Id.* at 684, n. 1.

commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [Definitions; child sexually abusive activity or material; penalties] . . . 520b [Criminal sexual conduct in the first degree], 520c [Criminal sexual conduct in the second degree], 520d [Criminal sexual conduct in the third degree], 520e [Criminal sexual conduct in the fourth degree], or 520g [Assault with intent to commit criminal sexual conduct] . . . in which the victim or intended victim is . . . believed by that person to be a minor.

The use of the language, “believed by that person to be a minor,” suggests that the use of the Internet to investigate buyers and traffickers under Mich. Comp. Laws Ann. § 750.145d is permissible. Additionally, case law involving prosecutions for violations of Mich. Comp. Laws Ann. § 750.145d indicates that law enforcement currently uses the Internet to investigate violations of Mich. Comp. Laws Ann. § 750.145d.

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

Pursuant to Mich. Comp. Laws Ann. § 28.258(2) (Definitions; certain persons reported missing),

If an individual who is any of the following is reported missing, the law enforcement agency receiving the report, after conducting a preliminary investigation, shall immediately enter the information described in subsection (3) regarding that individual into the LEIN,¹⁵⁹ the national crime information center, and if the individual is a child,¹⁶⁰ the clearinghouse:

....

- (b) An individual who was in the company of another individual under circumstances indicating that the individual’s physical safety may be in danger.
- (c) An individual who disappeared under circumstances indicating that the disappearance was not voluntary.
- (d) A child not described in subdivision (a), (b), (c), or (f).
- (e) An individual not described in subdivision (a), (b), (c), or (f), who is believed to be incapable of returning to his or her residence without assistance.

....

Mich. Comp. Laws Ann. § 28.258(3) states,

The information to be entered into the LEIN, the national crime information center, and the clearinghouse under subsection (2) shall include all of the following, if available:

- (a) The name and address of the individual.
- (b) The vital statistics of the individual, including a physical description, and if the missing individual is a child, the child’s date of birth, state of birth, and if possible, mother’s maiden name.
- (c) The date the individual was missing and, if the missing individual is a child under subsection (2)(d), the date the child becomes 17 years of age.
- (d) Any other information that may assist in the location of the individual, as determined by the department and the LEIN policy council.

Mich. Comp. Laws Ann. § 28.259(1), (2) (Missing children information clearinghouse) establishes “[a] missing children information clearinghouse,” which

shall do all of the following:

- (a) Record each report on a missing child received under section 8.
- (b) Accept and record a report about a missing child from a law enforcement agency.

¹⁵⁹ Mich. Comp. Laws Ann. § 28.258(1)(e) defines “LEIN” as a “law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.”

¹⁶⁰ “Child” is defined in Mich. Comp. Laws Ann. § 28.258(1)(a) as “an individual less than 17 years of age.”

- (c) Exchange information on children suspected of interstate travel with the national crime information center.
- (d) Establish a policy regarding the compilation of a record of the reasons children become missing.

After a missing child has been found, Mich. Comp. Laws Ann. § 28.259(3) requires that “the originating law enforcement agency . . . remove the missing child from the clearinghouse record by means of the LEIN. If the originating law enforcement agency has new information about the missing child’s location, that agency shall report the information to the law enforcement agency with jurisdiction in the area in which the missing child may be located.”

APPENDIX A: MICHIGAN SENTENCING GUIDELINES

1. Statutory Sentencing Guidelines

Michigan has codified sentencing guidelines and imposes minimum sentences based on a person's prior criminal record and specified offense variables. Mich. Comp. Laws § 777.21 (Minimum sentence range; determination), which establishes the procedure for calculating appropriate minimum sentences, states,

- (1) Except as otherwise provided in this section, for an offense enumerated in part 2 [Included felonies] of [Chapter XVII (Sentencing Guidelines)],¹⁶¹ determine the recommended minimum sentence range as follows:
 - (a) Find the offense category for the offense from part 2 of this chapter. From section 22 [Offense variables; scoring] of this chapter, determine the offense variables to be scored for that offense category and score only those offense variables for the offender as provided in part 4 [Offense variables] of this chapter. Total those points to determine the offender's offense variable level.
 - (b) Score all prior record variables for the offender as provided in part 5 [Prior record variables] of this chapter. Total those points to determine the offender's prior record variable level.
 - (c) Find the offense class for the offense from part 2 of this chapter. Using the sentencing grid for that offense class in part 6 [Sentencing grids] of this chapter, determine the recommended minimum sentence range from the intersection of the offender's offense variable level and prior record variable level. The recommended minimum sentence within a sentencing grid is shown as a range of months or life.
- (2) If the defendant was convicted of multiple offenses, subject to section 14 of chapter XI,¹⁶²

¹⁶¹ Offenses in the chapter include the following: Mich. Comp. Laws § 750.145a (Accosting, enticing or soliciting child for immoral purpose), Mich. Comp. Laws § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), Mich. Comp. Laws § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited), Mich. Comp. Laws § 750.145d(2)(b)–(f) (Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions), Mich. Comp. Laws § 750.159j (Violation as felony; penalties; imposition of costs; order to criminally forfeit property; additional authority of court; conditions for entering order of criminal forfeiture; attorney fees; determination of extent of property; property not reachable; retention of property by law enforcement agency; disposition of money seized; seizure; other criminal or civil remedies not precluded), Mich. Comp. Laws § 750.349 (Kidnapping; “restrain” defined; violation as felony; penalty; other violation arising from same transaction), offenses punishable under Mich. Comp. Laws § 750.451(3) and (4) (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition), Mich. Comp. Laws § 750.452 (House of ill-fame; keeping, maintaining or operating), Mich. Comp. Laws § 750.455 (Pandering; felony), Mich. Comp. Laws § 750.457 (Earnings of prostitute, accepting), Mich. Comp. Laws § 750.458 (Detaining female in house of prostitution for debt), Mich. Comp. Laws § 750.459 (Transporting female for prostitution; felony), human trafficking offenses punishable under Mich. Comp. Laws § 750.462f(1)(a), (1)(b), (1)(c), (1)(d), (2) and (3), Mich. Comp. Laws § 750.520b(2) (Criminal sexual conduct in the first degree; felony; consecutive terms), Mich. Comp. Laws § 750.520c (Criminal sexual conduct in the second degree; felony), Mich. Comp. Laws § 750.520d (Criminal sexual conduct in the third degree; felony), Mich. Comp. Laws § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor), Mich. Comp. Laws § 750.520g(1)–(2) (Assault with intent to commit criminal sexual conduct; felony). Mich. Comp. Laws §§ 777.16g, 777.16i, 777.16q, 777.16w, 777.16y.

¹⁶² Mich. Comp. Laws § 771.14 (Presentence investigation report; contents; information related to victim prohibited from inclusion; information exempted from disclosure; amendment or alteration; review of report; challenge; findings; copies).

score each offense as provided in this part.

(3) If the offender is being sentenced under section 10,¹⁶³ 11,¹⁶⁴ or 12¹⁶⁵ of chapter IX, determine the offense category, offense class, offense variable level, and prior record variable level based on the underlying offense. To determine the recommended minimum sentence range, increase the upper limit of the recommended minimum sentence range determined under part 6 for the underlying offense as follows:

- (a) If the offender is being sentenced for a second felony, 25%.
- (b) If the offender is being sentenced for a third felony, 50%.
- (c) If the offender is being sentenced for a fourth or subsequent felony, 100%.

(4) If the offender is being sentenced for a violation described in section 18 of this chapter,¹⁶⁶ both of the following apply:

- (a) Determine the offense variable level by scoring the offense variables for the underlying offense and any additional offense variables for the offense category indicated in section 18 of this chapter.
- (b) Determine the offense class based on the underlying offense. If there are multiple underlying felony offenses, the offense class is the same as that of the underlying felony offense with the highest crime class. If there are multiple underlying offenses but only 1 is a felony, the offense class is the same as that of the underlying felony offense. If no underlying offense is a felony, the offense class is G.

(5) If the offender is being sentenced for an attempted felony described in section 19 of this chapter,¹⁶⁷ determine the offense variable level and prior record variable level based on the underlying attempted offense.

2. Sentencing Variables

There are two kinds of sentencing variables, prior record variables and offense variables. Both are considered when determining the proper minimum sentence under the guidelines.

Offense Variables

Offense variables are listed in Mich. Comp. Laws §§ 777.31–777.49a (Part 4. Offense variables). Potentially applicable offense variables are included below.

- **Mich. Comp. Laws § 777.33 (Physical injury to victim)**

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was killed. . . . 100 points
- (b) A victim was killed. . . . 50 points
- (c) Life threatening or permanent incapacitating injury occurred to a victim. . . . 25 points

¹⁶³ Mich. Comp. Laws§ 769.10 (Punishment for subsequent felony; sentence imposed for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited).

¹⁶⁴ Mich. Comp. Laws§ 769.11 (Punishment for subsequent felony following conviction of 2 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited).

¹⁶⁵ Mich. Comp. Laws§ 769.12 (Punishment for subsequent felony following conviction of 3 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited; eligibility for parole; provisions not in derogation of consecutive sentence; “prisoner subject to disciplinary time” defined).

¹⁶⁶ Mich. Comp. Laws § 777.18 (MCL 333.7410 to 750.367a; felonies to which chapter applicable) includes sentencing for Mich. Comp. Laws 750.157c (Person inducing a minor to commit a felony).

¹⁶⁷ Mich. Comp. Laws § 777.19 (Attempt to commit offense; applicability of chapter).

- (d) Bodily injury requiring medical treatment occurred to a victim. . . . 10 points
- (e) Bodily injury not requiring medical treatment occurred to a victim. . . . 5 points
- (f) No physical injury occurred to a victim. . . . 0 points
- (2) All of the following apply to scoring offense variable 3:
 - (a) In multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points.
 - (b) Score 100 points if death results from the commission of a crime and homicide is not the sentencing offense.
 - (c) Score 50 points if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and any of the following apply:
 - (i) The offender was under the influence of or visibly impaired by the use of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
 - (ii) The offender had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the offender had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (iii) The offender's body contained any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.
 - (d) Do not score 5 points if bodily injury is an element of the sentencing offense.
- (3) As used in this section, "requiring medical treatment" refers to the necessity for treatment and not the victim's success in obtaining treatment.

- **Mich. Comp. Laws § 777.34 (Psychological injury to victim)**

- (1) Offense variable 4 is psychological injury to a victim. Score offense variable 4 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
 - (a) Serious psychological injury requiring professional treatment occurred to a victim. . . . 10 points
 - (b) No serious psychological injury requiring professional treatment occurred to a victim. . . . 0 points
- (2) Score 10 points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

- **Mich. Comp. Laws § 777.35 (Psychological injury to member of victim's family)**

- (1) Offense variable 5 is psychological injury to a member of a victim's family. Score offense variable 5 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
 - (a) Serious psychological injury requiring professional treatment occurred to a victim's family. . . . 15 points
 - (b) No serious psychological injury requiring professional treatment occurred to a victim's family. . . . 0 points
- (2) Score 15 points if the serious psychological injury to the victim's family may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

- **Mich. Comp. Laws § 777.36 (Intent to kill or injure another individual)**

(1) Offense variable 6 is the offender's intent to kill or injure another individual. Score offense variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender had premeditated intent to kill or the killing was committed while committing or attempting to commit arson, criminal sexual conduct in the first or third degree, child abuse in the first degree, a major controlled substance offense, robbery, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, or kidnapping or the killing was the murder of a peace officer or a corrections officer. . . . 50 points
 - (b) The offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result. . . . 25 points
 - (c) The offender had intent to injure or the killing was committed in an extreme emotional state caused by an adequate provocation and before a reasonable amount of time elapsed for the offender to calm or there was gross negligence amounting to an unreasonable disregard for life. . . . 10 points
 - (d) The offender had no intent to kill or injure. . . . 0 points
- (2) All of the following apply to scoring offense variable 6.
- (a) The sentencing judge shall score this variable consistent with a jury verdict unless the judge has information that was not presented to the jury.
 - (b) Score 10 points if a killing is intentional within the definition of second degree murder or voluntary manslaughter, but the death occurred in a combative situation or in response to victimization of the offender by the decedent.

- **Mich. Comp. Laws § 777.37 (Aggravated physical abuse; “sadism” defined)**

(1) Offense variable 7 is aggravated physical abuse. Score offense variable 7 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. . . . 50 points
 - (b) No victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. . . . 0 points
- (2) Count each person who was placed in danger of injury or loss of life as a victim.
- (3) As used in this section, “sadism” means conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification.

- **Mich. Comp. Laws § 777.38 (Victim asportation or captivity)**

(1) Offense variable 8 is victim asportation or captivity. Score offense variable 8 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense. . . . 15 points
 - (b) No victim was asported or held captive. . . . 0 points
- (2) All of the following apply to scoring offense variable 8:
- (a) Count each person who was placed in danger of injury or loss of life as a victim.
 - (b) Score 0 points if the sentencing offense is kidnapping.

- **Mich. Comp. Laws § 777.39 (Offense variable 9; number of victims; scoring)**

(1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the

following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Multiple deaths occurred. . . . 100 points
 - (b) There were 10 or more victims who were placed in danger of physical injury or death, or 20 or more victims who were placed in danger of property loss. . . . 25 points
 - (c) There were 2 to 9 victims who were placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss. . . . 10 points
 - (d) There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss. . . . 0 points
- (2) All of the following apply to scoring offense variable 9:
- (a) Count each person who was placed in danger of physical injury or loss of life or property as a victim.
 - (b) Score 100 points only in homicide cases.

- **Mich. Comp. Laws § 777.40 (Exploitation of vulnerable victim)**

- (1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
- (a) Predatory conduct was involved. . . . 15 points
 - (b) The offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status. . . . 10 points
 - (c) The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious. . . . 5 points
 - (d) The offender did not exploit a victim's Vulnerability. . . . 0 points
- (2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.
- (3) As used in this section:
- (a) "Predatory conduct" means preoffense conduct directed at a victim for the primary purpose of victimization.
 - (b) "Exploit" means to manipulate a victim for selfish or unethical purposes.
 - (c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.
 - (d) "Abuse of authority status" means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher.

- **Mich. Comp. Laws § 777.41 (Criminal sexual penetration)**

- (1) Offense variable 11 is criminal sexual penetration. Score offense variable 11 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
- (a) Two or more criminal sexual penetrations occurred. . . . 50 points
 - (b) One criminal sexual penetration occurred. . . . 25 points
 - (c) No criminal sexual penetration occurred. . . . 0 points
- (2) All of the following apply to scoring offense variable 11:
- (a) Score all sexual penetrations of the victim by the offender arising out of the sentencing offense.
 - (b) Multiple sexual penetrations of the victim by the offender extending beyond the sentencing offense may be scored in offense variables 12 or 13.
 - (c) Do not score points for the 1 penetration that forms the basis of a first- or third-degree criminal sexual conduct offense.

- **Mich. Comp. Laws § 777.42 (Contemporaneous felonious criminal acts)**

(1) Offense variable 12 is contemporaneous felonious criminal acts. Score offense variable 12 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Three or more contemporaneous felonious criminal acts involving crimes against a person were committed. . . . 25 points
 - (b) Two contemporaneous felonious criminal acts involving crimes against a person were committed. . . . 10 points
 - (c) Three or more contemporaneous felonious criminal acts involving other crimes were committed. . . . 10 points
 - (d) One contemporaneous felonious criminal act involving a crime against a person was committed. . . . 5 points
 - (e) Two contemporaneous felonious criminal acts involving other crimes were committed . . . 5 points
 - (f) One contemporaneous felonious criminal act involving any other crime was committed. . . . 1 point
 - (g) No contemporaneous felonious criminal acts were committed. . . . 0 points
- (2) All of the following apply to scoring offense variable 12:
- (a) A felonious criminal act is contemporaneous if both of the following circumstances exist:
 - (i) The act occurred within 24 hours of the sentencing offense.
 - (ii) The act has not and will not result in a separate conviction.
 - (b) A violation of section 227b¹⁶⁸ of the Michigan penal code, 1931 PA 328, MCL 750.227b, should not be considered for scoring this variable.
 - (c) Do not score conduct scored in offense variable 11.

- **Mich. Comp. Laws § 777.43 (Continuing pattern of criminal behavior)**

(1) Offense variable 13 is continuing pattern of criminal behavior. Score offense variable 13 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age. . . . 50 points
- (b) The offense was part of a pattern of felonious criminal activity directly related to causing, encouraging, recruiting, soliciting, or coercing membership in a gang or communicating a threat with intent to deter, punish, or retaliate against another for withdrawing from a gang. . . . 25 points
- (c) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person. . . . 25 points
- (d) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of section 7401(2)(a)(i) to (iii)¹⁶⁹ or section 7403(2)(a)(i) to (iii)¹⁷⁰ of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403. . . . 10 points
- (e) The offense was part of a pattern of felonious criminal activity involving a combination of

¹⁶⁸ Mich. Comp. Laws § 750.227b (Carrying or possessing firearm when committing or attempting to commit felony; “law enforcement officer” defined).

¹⁶⁹ Mich. Comp. Laws § 333.7401 (Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; “plant” defined).

¹⁷⁰ Mich. Comp. Laws § 333.7403 (Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; discharge from lifetime probation).

- 3 or more violations of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403. . . . 10 points
- (f) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against property. . . . 5 points
- (g) No pattern of felonious criminal activity existed. . . . 0 points
- (2) All of the following apply to scoring offense variable 13:
- (a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.
- (b) The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense.
- (c) Except for offenses related to membership in an organized criminal group or that are gang-related, do not score conduct scored in offense variable 11 or 12.
- (d) Score 50 points only if the sentencing offense is first degree criminal sexual conduct.
- (e) Do not count more than 1 controlled substance offense arising out of the criminal episode for which the person is being sentenced.
- (f) Do not count more than 1 crime involving the same controlled substance. For example, do not count conspiracy and a substantive offense involving the same amount of controlled substances or possession and delivery of the same amount of controlled substances.

- **Mich. Comp. Laws § 777.44 (Offender's role)**

- (1) Offense variable 14 is the offender's role. Score offense variable 14 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
- (a) The offender was a leader in a multiple offender situation. . . . 10 points
- (b) The offender was not a leader in a multiple offender situation. . . . 0 points
- (2) All of the following apply to scoring offense variable 14:
- (a) The entire criminal transaction should be considered when scoring this variable.
- (b) If 3 or more offenders were involved, more than 1 offender may be determined to have been a leader.

- **Mich. Comp. Laws § 777.46 (Property obtained, damaged, lost, or destroyed)**

- (1) Offense variable 16 is property obtained, damaged, lost, or destroyed. Score offense variable 16 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
- (a) Wanton or malicious damage occurred beyond that necessary to commit the crime for which the offender is not charged and will not be charged. . . . 10 points
- (b) The property had a value of more than \$20,000.00 or had significant historical, social, or sentimental value. . . . 10 points
- (c) The property had a value of \$1,000.00 or more but not more than \$20,000.00. . . . 5 points
- (d) The property had a value of \$200.00 or more but not more than \$1,000.00. . . . 1 point
- (e) No property was obtained, damaged, lost, or destroyed or the property had a value of less than \$200.00. . . . 0 points
- (2) All of the following apply to scoring offense variable 16:
- (a) In multiple offender or victim cases, the appropriate points may be determined by adding together the aggregate value of the property involved, including property involved in uncharged offenses or charges dismissed under a plea agreement.
- (b) In cases in which the property was obtained unlawfully, lost to the lawful owner, or destroyed, use the value of the property in scoring this variable. If the property was damaged,

use the monetary amount appropriate to restore the property to pre-offense condition in scoring this variable.

(c) The amount of money or property involved in admitted but uncharged offenses or in charges that have been dismissed under a plea agreement may be considered.

Prior Record Variables

Prior record variables are listed in Mich. Comp. Laws §§ 777.50–777.57 (Part 5. Prior record variables). Potentially applicable prior record variables are included below.

- **Mich. Comp. Laws § 777.51 (Prior high severity felony convictions)**

(1) Prior record variable 1 is prior high severity felony convictions. Score prior record variable 1 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 3 or more prior high severity felony convictions. . . . 75 points
- (b) The offender has 2 prior high severity felony convictions. . . . 50 points
- (c) The offender has 1 prior high severity felony conviction. . . . 25 points
- (d) The offender has no prior high severity felony convictions. . . . 0 points

(2) As used in this section, “prior high severity felony conviction” means a conviction for any of the following, if the conviction was entered before the sentencing offense was committed:

- (a) A crime listed in offense class M2, A, B, C, or D .
- (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class M2, A, B, C, or D .
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

- **Mich. Comp. Laws § 777.52 (Prior low severity felony convictions)**

(1) Prior record variable 2 is prior low severity felony convictions. Score prior record variable 2 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 4 or more prior low severity felony convictions. . . . 30 points
- (b) The offender has 3 prior low severity felony convictions. . . . 20 points
- (c) The offender has 2 prior low severity felony convictions. . . . 10 points
- (d) The offender has 1 prior low severity felony conviction. . . . 5 points
- (e) The offender has no prior low severity felony convictions. . . . 0 points

(2) As used in this section, “prior low severity felony conviction” means a conviction for any of the following, if the conviction was entered before the sentencing offense was committed:

- (a) A crime listed in offense class E, F, G, or H.
- (b) A felony under a law of the United States or another state that corresponds to a crime listed in offense class E, F, G, or H.
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

- **Mich. Comp. Laws § 777.53 (Prior high severity juvenile adjudications)**

(1) Prior record variable 3 is prior high severity juvenile adjudications. Score prior record variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 3 or more prior high severity juvenile adjudications. . . . 50 points
- (b) The offender has 2 prior high severity juvenile adjudications. . . . 25 points
- (c) The offender has 1 prior high severity juvenile adjudication. . . . 10 points
- (d) The offender has no prior high severity juvenile adjudications. . . . 0 points

(2) As used in this section, “prior high severity juvenile adjudication” means a juvenile adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the sentencing offense was committed:

- (a) A crime listed in offense class M2, A, B, C, or D.
- (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class M2, A, B, C, or D .
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

- **Mich. Comp. Laws § 777.54 (Prior low severity juvenile adjudications)**

(1) Prior record variable 4 is prior low severity juvenile adjudications. Score prior record variable 4 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 6 or more prior low severity juvenile adjudications. . . . 20 points
- (b) The offender has 5 prior low severity juvenile adjudications. . . . 15 points
- (c) The offender has 3 or 4 prior low severity juvenile adjudications. . . . 10 points
- (d) The offender has 2 prior low severity juvenile adjudications. . . . 5 points
- (e) The offender has 1 prior low severity juvenile adjudication. . . . 2 points
- (f) The offender has no prior low severity juvenile adjudications. . . . 0 points

(2) As used in this section, “prior low severity juvenile adjudication” means a juvenile adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the sentencing offense was committed:

- (a) A crime listed in offense class E, F, G, or H.
- (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class E, F, G, or H.
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

- **Mich. Comp. Laws § 777.55 (Prior misdemeanor convictions or prior misdemeanor juvenile adjudications)**

(1) Prior record variable 5 is prior misdemeanor convictions or prior misdemeanor juvenile adjudications. Score prior record variable 5 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 7 or more prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 20 points
- (b) The offender has 5 or 6 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 15 points
- (c) The offender has 3 or 4 prior misdemeanor convictions or prior misdemeanor juvenile

- adjudications. . . . 10 points
- (d) The offender has 2 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 5 points
- (e) The offender has 1 prior misdemeanor conviction or prior misdemeanor juvenile adjudication. . . . 2 points
- (f) The offender has no prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 0 points
- (2) All of the following apply to scoring record variable 5:
 - (a) Except as provided in subdivision (b), count a prior misdemeanor conviction or prior misdemeanor juvenile adjudication only if it is an offense against a person or property, a controlled substance offense, or a weapon offense. Do not count a prior conviction used to enhance the sentencing offense to a felony.
 - (b) Count all prior misdemeanor convictions and prior misdemeanor juvenile adjudications for operating or attempting to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while under the influence of or impaired by alcohol, a controlled substance, or a combination of alcohol and a controlled substance. Do not count a prior conviction used to enhance the sentencing offense to a felony.
- (3) As used in this section:
 - (a) “Prior misdemeanor conviction” means a conviction for a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States if the conviction was entered before the sentencing offense was committed.
 - (b) “Prior misdemeanor juvenile adjudication” means a juvenile adjudication for conduct that if committed by an adult would be a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States if the order of disposition was entered before the sentencing offense was committed.

• **Mich. Comp. Laws § 777.56 (Relationship to criminal justice system)**

- (1) Prior record variable 6 is relationship to the criminal justice system. Score prior record variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
 - (a) The offender is a prisoner of the department of corrections or serving a sentence in jail. . . . 20 points
 - (b) The offender is incarcerated in jail awaiting adjudication or sentencing on a conviction or probation violation. . . . 15 points
 - (c) The offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony. . . . 10 points
 - (d) The offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor. . . . 5 points
 - (e) The offender has no relationship to the criminal justice system. . . . 0 points
- (2) Score the appropriate points under this section if the offender is involved with the criminal justice system in another state or United States.
- (3) As used in this section:
 - (a) “Delayed sentence status” includes, but is not limited to, an individual assigned or deferred under any of the following:
 - (i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
 - (ii) Section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.
 - (iii) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.
 - (iv) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
 - (v) Sections 11 to 15 of chapter II.
 - (vi) Section 4a of chapter IX.
 - (b) “Prisoner of the department of corrections or serving a sentence in jail” includes an

individual who is an escapee.

- **Mich. Comp. Laws § 777.57 (Subsequent or concurrent felony convictions)**

(1) Prior record variable 7 is subsequent or concurrent felony convictions. Score prior record variable 7 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 2 or more subsequent or concurrent convictions. . . . 20 points
- (b) The offender has 1 subsequent or concurrent conviction. . . . 10 points
- (c) The offender has no subsequent or concurrent convictions. . . . 0 points

(2) All of the following apply to scoring record variable 7:

- (a) Score the appropriate point value if the offender was convicted of multiple felony counts or was convicted of a felony after the sentencing offense was committed.
- (b) Do not score a felony firearm conviction in this variable.
- (c) Do not score a concurrent felony conviction if a mandatory consecutive sentence or a consecutive sentence imposed under section 7401(3) of the public health code, 1978 PA 368, MCL 333.7401, will result from that conviction.

3. Offenses and Penalties by Class.

Michigan's sentencing guidelines separate offenses into eight separate categories. An individual's sentence is based on the class of the offense, the prior offense variables present, and the prior record variables present.

Class A Offenses

Class A offenses are subject to minimum imprisonment ranges of 21–35 months to 270–450 months. Mich. Comp. Laws § 777.62 (Minimum sentence ranges for class A). The following are Class A offenses:

- Mich. Comp. Laws § 750.349 (Kidnapping; “restrain” defined; violation as felony; penalty; other violation arising from same transaction)
- Mich. Comp. Laws § 750.462f(1)(d) (Human trafficking violation involving death or the commission of certain felonies)
- Mich. Comp. Laws § 750.520b(2) (Criminal sexual conduct in the first degree; felony; consecutive terms)

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16q (MCL 750.332 to 750.350a; felonies to which chapter applicable). 777.16w¹⁷¹ (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–19)	21–35 months	27–45 months	42–70 months	51–85 months	81–135 months	108–180 months

¹⁷¹ The text of Mich. Comp. Laws Ann. § 777.16w (MCL 750.451(3) to 750.465a(1)(c); felonies to which chapter applicable; violation of MCL 750.462f) included here and elsewhere in this report includes amendments made by the enactment of Senate Bill 206 during the Regular Session of the 97th Michigan Legislature (effective January 14, 2015).

points)						
II (20–39 points)	27–45 months	42–70 months	51–85 months	81–135 months	108–180 months	126–210 months
III (40–59 points)	42–70 months	51–85 months	81–135 months	108–180 months	126–210 months	135–225 months
IV (60–79 points)	51–85 months	81–135 months	108–180 months	126–210 months	135–225 months	171–285 months
V (80–99 points)	81–135 months	108–180 months	126–210 months	135–225 months, or life	171–285 months	225–375 months
VI (100+ points)	108–180 months	126–210 months	135–225 months, or life	171–285 months, or life	225–375 months	270–450 months

Mich. Comp. Laws § 777.62 (Minimum sentence ranges for class A).

Class B Offenses

Class B offenses are subject to minimum imprisonment ranges of 0–18 months to 17–160 months. Mich. Comp. Laws § 777.63 Minimum sentence ranges for class B). The following are Class B offenses:

- Mich. Comp. Laws § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(f) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.159j (Violation as felony; penalties; imposition of costs; order to criminally forfeit property; additional authority of court; conditions for entering order of criminal forfeiture; attorney fees; determination of extent of property; property not reachable; retention of property by law enforcement agency; disposition of money seized; seizure; other criminal or civil remedies not precluded)
- Mich. Comp. Laws § 750.457 (Accepting earnings of a prostitute)
- Mich. Comp. Laws 750.458 (Detaining person in house of prostitution for debt)
- Mich. Comp. Laws § 750.459 (Transporting person for prostitution; felony)
- Mich. Comp. Laws § 750.462(f)(1)(c) (Human trafficking violation resulting in serious bodily injury)
- Mich. Comp. Laws § 750.462f(2) (Obtaining a minor for commercial sexual activity or for forced labor or services)
- Mich. Comp. Laws § 750.520d (Criminal sexual conduct in the third degree; felony).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16i (MCL 750.158 to 750.182a; felonies to which chapter applicable), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A	B	C	D	E	F

	0 points	1–9 points	10–24 points	25–49 points	50–74 points	75+ points
I (0–9 points)	0–18 months	12–20 months	24–40 months	36–60 months	51–85 months	72–120 months
II (10–24 points)	12–20 months	15–25 months	30–50 months	51–85 months	72–120 months	78–130 months
III (25–34 points)	15–25 months	21–35 months	36–60 months	57–95 months	78–130 months	84–140 months
IV (34–49 points)	21–35 months	24–40 months	45–75 months	72–120 months	84–140 months	87–145 months
V (50–74 points)	24–40 months	36–60 months	51–85 months	78–130 months	87–145 months	99–160 months
VI (75+ points)	36–60 months	45–75 months	57–95 months	84–140 months	99–160 months	117–160 months

Mich. Comp. Laws § 777.63 (Minimum sentence ranges for class B).

Class C Offenses

Class C offenses are subject to minimum imprisonment ranges of 0–11 months to 62–114 months. Mich. Comp. Laws § 777.64 (Minimum sentence ranges for class C). The following are Class C offenses:

- Mich. Comp. Laws § 750.145d(2)(e) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.462f(1)(b) (Human trafficking violation resulting in bodily injury)
- Mich. Comp. Laws § 750.520c (Criminal sexual conduct in the second degree; felony).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.158 to 750.182a; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–11 months	0–17 months	10–19 months	12–24 months	19–38 months	29–57 months
II (10–24 points)	0–17 months	5–17 months	12–24 months	19–38 months	29–57 months	36–71 months
III (25–34 points)	10–19 months	12–24 months	19–38 months	29–57 months	36–71 months	43–86 months
IV (35–49 points)	12–24 months	19–38 months	29–57 months	36–71 months	43–86 months	50–100 months
V (50–74 points)	19–38 months	29–57 months	36–71 months	43–86 months	50–100 months	58–114 months

VI (75+ points)	29–57 months	36–71 months	43–86 months	50–100 months	58–114 months	62–114 months
-----------------	--------------	--------------	--------------	---------------	---------------	---------------

Mich. Comp. Laws § 777.64 (Minimum sentence ranges for class).

Class D Offenses

Class D offenses are subject to minimum imprisonment ranges of 0–6 to 43–76 months. Mich. Comp. Laws § 777.65 (Minimum sentence ranges for class D). The following are Class D offenses:

- Mich. Comp. Laws § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty)
- Mich. Comp. Laws § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(d) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.462f(1)(a) (Human trafficking violation)
- Mich. Comp. Laws § 750.520(g)(1) (Assault with intent to commit criminal sexual conduct; felony).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–6 months	0–9 months	0–11 months	0–17 months	5–23 months	10–23 months
II (10–24 points)	0–9 months	0–11 months	0–17 months	5–23 months	10–23 months	19–38 months
III (25–34 points)	0–11 months	0–17 months	5–23 months	10–23 months	19–38 months	29–57 months
IV (35–49 points)	0–17 months	5–23 months	10–23 months	19–38 months	29–57 months	34–67 months
V (50–74 points)	5–23 months	10–23 months	19–38 months	29–57 months	34–67 months	38–76 months

VI (75+ points)	10–23 months	19–38 months	29–57 months	34–67 months	38–76 months	43–76 months
-----------------	--------------	--------------	--------------	--------------	--------------	--------------

Mich. Comp. Laws § 777.65 (Minimum sentence ranges for class D).

Class E Offenses

Class E offenses are subject to minimum imprisonment ranges of 0–3 months to 24–38 months. Mich. Comp. Laws § 777.66 (Minimum sentence ranges for class E). The following are Class E offenses:

- Mich. Comp. Laws § 750.451(4) (Soliciting a person under 18 years of age to commit prostitution)
- Mich. Comp. Laws § 750.452 (House of ill-fame; keeping, maintaining or operating)
- An attempt to commit any Class A, B, C, or D offense

Mich. Comp. Laws §§ 777.19(Attempt to commit offense, applicability of chapter), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–3 months	0–6 months	0–9 months	5–23 months	7–23 months	9–23 months
II (10–24 points)	0–6 months	0–9 months	0–11 months	7–23 months	10–23 months	12–24 months
III (25–34 points)	0–9 months	0–11 months	0–17 months	10–23 months	12–24 months	14–29 months
IV (35–49 points)	0–11 months	0–17 months	5–23 months	12–24 months	14–29 months	19–38 months
V (50–74 points)	0–14 months	5–23 months	7–23 months	14–29 months	19–38 months	22–38 months
VI (75+ points)	0–17 months	7–23 months	12–24 months	19–38 months	22–38 months	24–38 months

Mich. Comp. Laws §§ 777.66 (Minimum sentence ranges for class E).

Class F Offenses

Class F offenses subject to minimum imprisonment ranges of 0–3 months to 17–30 months. Mich. Comp. Laws § 777.67 (Minimum sentence ranges for class F). The following are Class F offenses:

- Mich. Comp. Laws § 750.145a (Accosting, enticing or soliciting child for immoral purpose)

- Mich. Comp. Laws § 750.145c(4)(Definitions; child sexually abusive activity or material; penalties; possessions of child sexually abusive material; expert testimony, defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(c) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)

Mich. Comp. Laws § 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0-9 points)	0–3 months	0–6 months	0–9 months	2–17 months	5–23 months	10–23 months
II (10-34 points)	0–6 months	0–9 months	0–17 months	5–23 months	10–23 months	12–24 months
III (35-74 points)	0–9 months	0–17 months	2–17 months	10–23 months	12–24 months	14–29 months
IV (75+ points)	0–17 months	2–17 months	5–23 months	12–24 months	14–29 months	17–30 months

Mich. Comp. Laws § 777.67 (Minimum sentence ranges for class F).

Class G Offenses

Class G offenses subject to minimum imprisonment ranges of 0–3 months to 7–23 months. Mich. Comp. Laws § 777.68 (Minimum sentence ranges for class G). The following are Class G offenses:

- Mich. Comp. Laws § 750.145d(2)(b) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.451(3) (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition)
- Mich. Comp. Laws § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0-9 points)	0–3 months	0–6 months	0–9 months	0–11 months	0–17 months	2–17 months
II (10-15 points)	0–6 months	0–9 months	0–11 months	0–17 months	2–17 months	5–23 months
III (16+ points)	0–9 months	0–11 months	0–17 months	2–17 months	5–23 months	7–23 months

Mich. Comp. Laws § 777.68 (Minimum sentence ranges for Class G).

Class H Offenses

Class H offenses are subject to minimum imprisonment ranges of 0–1 months to 5–17 months. Mich. Comp. Laws § 777.69 (Minimum sentence ranges for class H). No class H offenses were cited directly in this report. However, an attempt to commit any Class E, F, or G offense is a Class H offense. Mich. Comp. Laws § 777.19 (Attempt to commit offense, applicability of chapter).

© January 31, 2012 Shared Hope International, American Center for Law and Justice. All rights reserved.

© November 29, 2012 Shared Hope International. All right reserved.

© November 7, 2013 Shared Hope International. All rights reserved.

© November 6, 2014 Shared Hope International. All rights reserved.

© November 11, 2015 Shared Hope International. All rights reserved.