

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2016 ANALYSIS AND RECOMMENDATIONS ARIZONA

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

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

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

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

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

Arizona has distinguished child sex trafficking from other forms of human trafficking by enacting a stand-alone sex trafficking law. Arizona Revised Statutes Annotated (Ariz. Rev. Stat. Ann.) § 13-1307(B) (Sex trafficking) makes it a crime “to traffic another person who is under eighteen years of age with either of the following:

1. The intent to cause the other person to engage in any prostitution or sexually explicit performance.<sup>2</sup>
2. The knowledge that the other person will engage in any prostitution or sexually explicit performance.

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

<sup>2</sup> Ariz. Rev. Stat. Ann. § 13-1307(E)(3) defines “sexually explicit performance” as “a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interest of patrons.”

Ariz. Rev. Stat. Ann. § 13-1307(E)(4) defines “traffic” as “to entice, recruit, harbor, provide, transport or otherwise obtain another person.”

Sex trafficking is a Class 2 felony<sup>3</sup> with penalty enhancements (Dangerous crimes against children) for trafficking a minor under 15. Ariz. Rev. Stat. Ann. §§ 13-1307(D), 13-705(C).

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.*<sup>4</sup>

The following state laws create separate and specific crimes of commercial sexual exploitation of children:

1. Ariz. Rev. Stat. Ann. § 13-3212<sup>5</sup> (Child prostitution; classification; increased punishment) criminalizes the sale and purchase of sex with a minor.<sup>6</sup> It states in part,
  - A. A person commits child prostitution by knowingly:
    1. Causing any minor to engage in prostitution.
    2. Using any minor for the purposes of prostitution.
    3. Permitting a minor who is under the person’s custody or control to engage in prostitution.
    4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
    5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
    6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
    7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.
    8. Providing a means by which a minor engages in prostitution.
  - B. A person who is at least eighteen years of age commits child prostitution by knowingly:
    1. Engaging in prostitution with a minor who is under fifteen years of age.
    2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.
    3. Engaging in prostitution with a minor who is fifteen, sixteen, or seventeen years of age.

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<sup>3</sup> Here and elsewhere in this report that felony classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-702 (First time felony offenders; sentencing; definition): Class 2 is punishable by imprisonment of 4-10 years (presumptive 5 years), Class 3 is punishable by imprisonment of 2.5 to 7 years (presumptive 3.5 years), Class 4 is punishable by imprisonment of 1.5 to 3 years (presumptive 2.5 years), Class 5 is punishable by imprisonment of .75 to 2 years (presumptive 1.5 years), and Class 6 is punishable by .5 to 1.5 years (presumptive 1 year). These penalties are listed without consideration of aggravating or mitigating factors, which increase or reduce the penalties respectively, according to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702. All classes of felonies are punishable by possible fines up to \$150,000. Ariz. Rev. Stat. Ann. § 13-801.

<sup>4</sup> See *infra* Components 2.4 and 3.1 for charts outlining the relevant penalty provisions for offenses listed in this section.

<sup>5</sup> The text of Ariz. Stat. Ann. § 13-3212 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2374 during the 2016 2<sup>nd</sup> Regular Session of the Arizona Legislature (effective August 6, 2016).

<sup>6</sup> Ariz. Rev. Stat. Ann. § 13-3212 has a complicated penalty structure, which is set out below under Component 2.4.

2. Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution) makes it a crime if one “takes away any minor from the minor’s father, mother, guardian or other person having the legal custody of the minor, for the purpose of prostitution . . . .” A conviction is punishable as a Class 4 felony, unless the minor is under 15, which makes a conviction punishable as a Class 2 felony since it is a dangerous crime against a child under Ariz. Rev. Stat. Ann. § 13-705(C).
3. Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor) is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3552(B), 13-705(D). The law states in part,
  - A. A person commits commercial sexual exploitation of a minor by knowingly:
    1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct<sup>7</sup> for the purpose of producing any visual depiction or live act depicting such conduct.
    2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
    3. Permitting a minor under the person’s custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct.
    4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.
    5. Using an advertisement<sup>8</sup> for prostitution as defined in section 13-3211 that contains a visual depiction of a minor.
  - B. Subsection A, paragraph 5 of this section does not apply to an act that is prohibited by section 13-3555 or to websites or internet service providers that host advertisements created and published by third parties and do not participate in creating or publishing the advertisements.

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

1. Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) states that a person commits a crime by knowingly “1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct. 2. Distributing,

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<sup>7</sup> Ariz. Rev. Stat. Ann. § 13-3551, which provides the definitions for chapter 35.1, states in subsection (10),

“Sexual conduct” means actual or simulated:

- (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
- (b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
- (c) Sexual bestiality.
- (d) Masturbation, for the purpose of sexual stimulation of the viewer.
- (e) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (f) Defecation or urination for the purpose of sexual stimulation of the viewer.

<sup>8</sup> Ariz. Rev. Stat. Ann. § 13-3551, which provides the definitions for chapter 35.1, states in subsection (1),

“Advertising” or “advertisement” means any message in any medium that offers or solicits any person to engage in sexual conduct in this state.

transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” Violating Ariz. Rev. Stat. Ann. § 13-3553 is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).

2. Ariz. Rev. Stat. Ann. § 13-3554 (Luring a minor for sexual exploitation) makes “offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor” a crime. The offense is a Class 3 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3554(C), 13-705(E).
3. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) makes the following actions a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705(D) if the minor is under 15:

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors<sup>9</sup> for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
  2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.
4. Ariz. Rev. Stat. Ann. § 13-1412(B) (Unlawful sexual conduct by a peace officer) creates a Class 2 felony for a peace officer to engage in sexual conduct with a minor under fifteen while the minor is in custody. It also creates a Class 3 felony for a peace officer to engage in sexual conduct with a minor who is between fifteen and eighteen years old. While this offense is not specific to commercial exploitation there is the potential for a quid pro quo arrangement solicited by a peace officer to a minor, meaning this offense can be used to prosecute commercially sexually exploitive conduct by peace officers.

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

Arizona’s prostitution statute, Ariz. Rev. Stat. Ann. § 13- 3214 (Prostitution), refers to Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) through an affirmative defense to prosecutions under this section if the alleged acts are a “direct result of being a victim of sex trafficking.”

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<sup>9</sup> Ariz. Rev. Stat. Ann. § 13-3560(E)(2) refers to § 13-3501 for the definition of “harmful to minors.” Ariz. Rev. Stat. Ann. § 13-3501(1) states,

“Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

- (a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:
  - (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
  - (ii) Portrays the description or representation in a patently offensive way.
- (b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

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.*

Ariz. Rev. Stat. Ann. § 13-2312 (Illegal control of an enterprise; illegally conducting an enterprise; classification) states,

A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.

B. A person commits illegally conducting an enterprise if such person is employed by or associated with any enterprise and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering.

C. A person violates this section if the person hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section.

Ariz. Rev. Stat. Ann. § 13-2301(D)(4) (Definitions) defines "racketeering" as

Any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

....  
(b) Any of the following acts if committed for financial gain:

....  
(xxii) Sexual exploitation of a minor.  
(xxiii) Prostitution.

....  
(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

....  
(xxxi) Child Prostitution.  
(xxxii) Sex trafficking.  
(xxxiii) Trafficking of persons for forced labor or services.

Based on this definition of racketeering, acts of sex trafficking and commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making it an available tool for combatting criminal enterprises that engage in domestic minor sex trafficking.

If the racketeering statute is used to combat criminal enterprises that commit CSEC offenses, additional penalties are available for convictions under Ariz. Rev. Stat. Ann. § 13-2312, which states,

A knowing violation of subsection A or B is a class 3 felony. A knowing violation of subsection C is a class 2 felony and the person is not eligible for probation, pardon, suspension of sentence or release on any basis until the person has served the sentence imposed by the court or the sentence is commuted.

Additionally, civil remedies are available. Ariz. Rev. Stat. Ann. § 13-2301(D)(6) states, “‘Remedy racketeering’ means to enter a civil judgment pursuant to this chapter or chapter 39<sup>10</sup> of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.”

Ariz. Rev. Stat. Ann. § 13-2314 (Racketeering; civil remedies by this state) states,

A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312. If the person against whom a racketeering claim has been asserted, including a forfeiture action or lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim . . . .

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Prior to a determination of liability such orders may include, but are not limited to, issuing seizure warrants, entering findings of probable cause for in personam or in rem forfeiture, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to forfeiture, damages or other remedies or restraints pursuant to this section as the court deems proper.

D. Following a determination of liability such orders may include, but are not limited to:

. . . .

4. Ordering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.

. . . .

6. In personam forfeiture pursuant to chapter 39 of this title to the general fund of the state or county as appropriate, to the extent that forfeiture is not inconsistent with protecting the rights of any person who sustained injury to his person, business or property by the racketeering conduct, of the interest of a person in:

(a) Any property or interest in property acquired or maintained by the person in violation of section 13-2312.

(b) Any interest in, security of, claims against or property, office, title, license or contractual right of any kind affording a source of influence over any enterprise or other property which the person has acquired or maintained an interest in or control of, conducted or participated in the conduct of in violation of section 13-2312.

(c) All proceeds traceable to an offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 and held by the person and all monies, negotiable instruments, securities and other property used or intended to be used by the person in any manner or part to facilitate commission of the offense and that the person either owned or controlled for the purpose of that use.

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<sup>10</sup> Chapter 39 is entitled, “Forfeiture.”

Under Ariz. Rev. Stat. Ann. § 13-2314.01(E) (Anti-racketeering revolving fund; use of fund; reports), money in the racketeering fund may be spent for the following purposes:

1. The funding of gang prevention programs, substance abuse prevention programs, substance abuse education programs, programs that provide assistance to victims of a criminal offense that is listed in section 13-2301 [Racketeering; civil remedies by this state] and witness protection pursuant to or for any purpose permitted by federal law relating to the disposition of any property that is transferred to a law enforcement agency.
2. The investigation and prosecution of any offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 or section 13-2312, including civil enforcement.
3. The payment of the relocation expenses of any law enforcement officer and the officer's immediate family if the law enforcement officer is the victim of a bona fide threat that occurred because of the law enforcement officer's duties.

As such, services for victims of human trafficking and CSEC offenses may receive funding from the anti-racketeering revolving fund. Ariz. Rev. Stat. Ann. § 13-2314.01(E)(1).

***Legal Components:***

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

***Legal Analysis:***

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

Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) can apply to buyers of sex with minors following federal precedent through the term “obtain.”<sup>11</sup> Ariz. Rev. Stat. Ann. § 13-1307(B) makes it a crime “to traffic another person who is under eighteen years of age with . . . intent to cause the other person to engage in any prostitution or sexually explicit performance . . . .”<sup>12</sup> Ariz. Rev. Stat. Ann. § 13-1307(E)(4) defines “traffic” as “to entice, recruit, harbor, provide, transport or otherwise obtain another person.”

- 2.1.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) to clarify that buyer conduct is included as a violation of Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking).

<sup>11</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>12</sup> See *supra* note 2.



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

Ariz. Rev. Stat. Ann. § 13-3212(B) (Child prostitution) does include the crime of buying sex with a minor by stating,

A person who is at least eighteen years of age commits child prostitution by knowingly:

1. Engaging in prostitution<sup>13</sup> with a minor who is under fifteen years of age.
2. Engaging in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.
3. Engaging in prostitution with a minor who is fifteen, sixteen, or seventeen years of age.

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

Ariz. Rev. Stat. Ann. § 13-1002 (Solicitation; classifications) defines the crime of solicitation as, “A person . . . commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other’s complicity in its commission.” Solicitation of prostitution is a Class 3 misdemeanor,<sup>14</sup> since the crime of prostitution is a misdemeanor. Ariz. Rev. Stat. Ann. §§ 13-1002(B)(7), 13-3214. However, Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) specifically makes it illegal to sell or to purchase sex with a minor with a more severe penalty than solicitation under § 13-1002. The solicitation of child prostitution under Ariz. Rev. Stat. Ann. § 13-1002 (Solicitation; classifications) would be a Class 4 felony for the Class 2 felony offenses and a Class 2 misdemeanor for the Class 6 felony offense.<sup>15</sup> Ariz. Rev. Stat. Ann. §§ 13-1002(B)(2), (6), 13-1212(E)–(G), (H).

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

Sentences for CSEC, sex trafficking, and non-commercial sex offenses that apply to buyers of commercial sex with minors are included here as they potentially could be applied to prosecute a buyer of sex with a minor. The sentences are enhanced if the victim is under the age of 15.

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<sup>13</sup> Ariz. Rev. Stat. Ann. § 13-3211 states, “‘Prostitution’ means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.”

<sup>14</sup> Here and elsewhere in this report that misdemeanor classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-707: Class 1 misdemeanors are punishable by imprisonment up to 6 months, Class 2 misdemeanors are punishable by imprisonment up to 4 months, and Class 3 misdemeanors are punishable by imprisonment up to 30 days. Misdemeanors also face possible fines in the following amounts pursuant to Ariz. Rev. Stat. Ann. § 13-802: Class 1 misdemeanors face a possible fine up to \$2,500, Class 2 misdemeanors face a possible fine up to \$750, and Class 3 misdemeanors face a possible fine up to \$500.

<sup>15</sup> See *supra* note 3.

Offense	Crime classification	Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. § 13-702 (except where noted differently)	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children (first felony offense) – applies when victim is under 15 years old	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children enhancement (person “previously convicted of one predicate felony”)
Ariz. Rev. Stat. Ann. § 13-1307: Sex trafficking	Class 2 felony <sup>16</sup>	3–12.5 years Presumptive 5 years	13–27 years Presumptive 20 years	23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3212: <sup>17</sup> Child prostitution	1) Class 2 felony if involves a minor under 15 (Ariz. Rev. Stat. Ann. § 13-3212(F))  2) Class 2 felony if the defendant knew or should have known the minor is 15, 16, or 17 (Ariz. Rev. Stat. Ann. § 13-3212(H))  3) Class 6 felony if minor is 15, 16 or 17 (Ariz. Rev. Stat. Ann. § 13-3212(I))	1) N/A  2) 7–21 years Presumptive 10.5 years (Ariz. Rev. Stat. Ann. § 13-3212(H)) <sup>18</sup>  3) .33–2 years Presumptive 1 year Under subsection H, if the offender is sentenced to probation, “the court shall order that as an initial term of probation,” 180 days imprisonment in county jail. If the offender meets certain requirements, the court	1) 13–27 years Presumptive 20 years	1) 23–37 years Presumptive 30 years

<sup>16</sup> These penalties include those of aggravating or mitigating factors, which increase or reduce the penalties respectively, according to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702 (First time felony offenders; sentencing; definition).

<sup>17</sup> “Notwithstanding any other law, a sentence imposed on a person for a violation of subsection A or subsection B, paragraph 2 of this section involving a minor who is fifteen, sixteen or seventeen years of age shall be consecutive to any other sentence imposed on the person at any time.” Ariz. Rev. Stat. Ann. § 13-3212(D).

<sup>18</sup> Under Ariz. Rev. Stat. Ann. § 13-3212(H)(2),

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2. The term for a defendant who has one historical prior felony conviction for a violation of this section is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

3. The term for a defendant who has two or more historical prior felony convictions for a violation of this section is as follows:

Minimum	Presumptive	Maximum
21 years	28 years	35 years

		has discretion to suspend 90 days of the sentence.		
Ariz. Rev. Stat. Ann. § 13-1405 <sup>19</sup> : Sexual conduct with a minor	1) Class 2 felony if under 15  2) Class 6 felony if the minor is at least 15  3) Class 2 felony if committed by someone who is or was "in a position of trust"	1) N/A  2) .33–2 years Presumptive 1 year  3) 3–12.5 years Presumptive 5 years	1) 13–27 years Presumptive 20 years (However, under (B) for "sexual conduct with a minor who is under twelve years of age," certain defendants may be sentenced to life.)	1) 23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-1417: Continuous sexual abuse of a child under 14 years of age	Class 2 felony	N/A	13–27 years Presumptive 20 years	23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-1410: Molestation of a child under 15	Class 2 felony	N/A	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3553: Sexual exploitation of a minor	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3560: Aggravated luring a minor for sexual exploitation	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3554: Luring a minor for sexual exploitation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or	8–22 years Presumptive 15 years Not eligible for suspension of sentence,

<sup>19</sup> Pursuant to Ariz. Rev. Stat. Ann. § 13-401(2), for Chapter 14 (Sexual Offenses),

"Position of trust" means a person who is or was any of the following:

- (a) The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
- (b) The minor's teacher.
- (c) The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
- (d) The minor's clergyman or priest.
- (e) Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.

			release	probation, pardon or release
Ariz. Rev. Stat. Ann. § 13-3561: Unlawful age misrepresentation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release

In addition, a fine may be imposed as part of the sentence requiring the felon to “pay an amount fixed by the court not more than one hundred fifty thousand dollars.” Ariz. Rev. Stat. Ann. § 13-801.

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>20</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>21</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>22</sup>

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

Using the Internet or electronic communications to accomplish a sexual offense is a separate crime resulting in serious penalties for buyers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation acts committed against a child. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

<sup>20</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>21</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>22</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705 if the minor is under 15. Ariz. Rev. Stat. Ann. § 13-3560(C).

In addition, Ariz. Rev. Stat. Ann. § 13-3561(A) (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry].

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

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

Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) eliminates a mistake of age defense for a person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age.” However, a mistake of age defense is not prohibited when the victim is 15–17 years of age. A person who “[e]ngag[es] in prostitution with a minor who the person knows or should have known is fifteen, sixteen, or seventeen years of age” is guilty of a Class 2 felony, while a person who “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” when the defendant’s knowledge of the age of the minor cannot be proven is guilty of a Class 6 felony.

- 2.6.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) and Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) to prohibit a mistake of age defense for all victims of commercial sexual exploitation under 18 years of age.

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

Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) staggers penalties based on the age of the victim and provides a lesser penalty (Class 6 felony) for buyers of sex with minors aged 15, 16, and 17 when the state cannot prove the buyer knew or should have known the minor’s age. A person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age” commits a Class 2 felony and is subject to punishment pursuant to Ariz. Rev. Stat. Ann. § 13-705. Ariz. Rev. Stat. Ann. § 13-3212(B)(1), (F). A person who “[e]ngag[es] in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age” is guilty of a Class 2 felony. Ariz. Rev. Stat. Ann. § 13-3212(B)(2), (G). By contrast, when a person “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” and the prosecution does not prove the buyer’s actual or constructive knowledge that the victim was under 18, that person will be guilty of a Class 6 felony. Ariz. Rev. Stat. Ann. § 13-3212(B)(3), (H).

Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) applies to situations of purchasing sex from any minor under 18, with a penalty enhancement if the minor is under 15. The base penalty is a presumptive 5 year sentence and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-702, 13-801. Sentence enhancements for a minor under 15 bring the presumptive penalty to 20 years for the first offense. Ariz. Rev. Stat. Ann. § 13-705.

- 2.7.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) to raise the base penalty for all minors to reflect the seriousness of the offense, regardless of the offender's knowledge of the victim's age.

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.*

Ariz. Rev. Stat. Ann. § 13-801 permits the court to impose up to a \$150,000 fine as part of a sentence for a felony conviction. In addition, asset and property forfeiture are available.

Ariz. Rev. Stat. Ann. § 13-3557<sup>23</sup> (Equipment; forfeiture) states,

On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

Where the seized property is money, “the court shall order the monies returned to each law enforcement agency that makes a showing of costs or expenses which it incurred in connection with the investigation and prosecution of the matter and shall order all excess monies remaining after such returns deposited in the anti-racketeering fund of this state or of the county in which the political subdivision seizing the monies or prosecuting the action is located . . . .”

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant, or without a court order under certain conditions, and with probable cause established. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state, “All property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.”

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

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is

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<sup>23</sup> Statute is codified in Chapter 35.1 entitled, “Sexual Exploitation of Children.”

engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” Sexual exploitation of a minor is a Class 2 felony (presumptive 5 year sentence) with a sentence enhancement under § 13-705 if the minor is under 15 (presumptive 17 year sentence for first offense).

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

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

Convicted buyers of sex with minors are required to register as sex offenders. Ariz. Rev. Stat. Ann. § 13-3821 (Persons required to register) lists the crimes for which an offender must register as a sex offender. They include the following crimes:

- ....
- 3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.
- 4. Sexual conduct with a minor pursuant to section 13-1405.
- 5. Sexual assault pursuant to section 13-1406.
- ....
- 10. Child prostitution pursuant to section 13-3212, subsection A or subsection B, Paragraph 1 or 2.
- ....
- 12. Sexual exploitation of a minor pursuant to section 13-3553.
- ....
- 14. Sex trafficking of a minor pursuant to section 13-1307.

However, buyers convicted of child prostitution under § 13-3212(B)(3), which applies to buyers of sex with minors aged 15–17 where the buyer’s actual or constructive knowledge of the victim’s minority has not been proven, are not required to register as sex offenders. Buyers convicted of sex offenses or pornography offenses may face non-mandatory registration under Ariz. Rev. Stat. Ann. § 13-3821(C) which states, “Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14<sup>27</sup> or 35.1<sup>28</sup> of

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<sup>24</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>25</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>26</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>27</sup> Chapter 14 is entitled, “Sexual Offenses.”

<sup>28</sup> Chapter 35.1 is entitled, “Sexual Exploitation of Children.”

this title or for an offense for which there was a finding of sexual motivation pursuant to section 13-118<sup>29</sup> may require the person who committed the offense to register pursuant to this section.”

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<sup>29</sup> Ariz. Rev. Stat. Ann. § 13-118(A) (Sexual motivation special allegation; procedures; definition) states,

A. In each criminal case involving an offense other than a sexual offense, the prosecutor may file a special allegation of sexual motivation if sufficient admissible evidence exists that would justify a finding of sexual motivation by a reasonable and objective finder of fact.

B. If the prosecutor files a special allegation of sexual motivation, the state shall prove beyond a reasonable doubt that the defendant committed the offense with a sexual motivation. The trier of fact shall find a special verdict as to whether the defendant committed the offense with a sexual motivation.

C. For purposes of this section “sexual motivation” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.



**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.

**Legal Analysis:**

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

Arizona has a series of laws directed at the trafficker in a crime of prostitution or commercial sexual exploitation of a child, including the following:

Offense	Crime classification	Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. § 13-702 (except where noted differently)	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children (first felony offense)—applies when victim is under 15 years old	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children enhancement (person “previously convicted of one predicate felony”)
Ariz. Rev. Stat. Ann. § 13-1307(B): Sex trafficking of a minor	Class 2 felony	3–12.5 years <sup>30</sup> Presumptive 5 years	13–27 years Presumptive 20 years	23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3206: Taking a child for the purpose of prostitution	1) Class 4 felony 2) Class 2 felony if under 15 years old	1) 1–3.75 years Presumptive 2.5 years 2) N/A	2) 13–27 years Presumptive 20 years	2) 23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3212: Child prostitution	1) Class 2 felony if involves a minor under 15 (Ariz. Rev. Stat. Ann. § 13-	1) N/A	1) 13–27 years Presumptive 20 years	1) 23–37 years Presumptive 30 years

<sup>30</sup> Pursuant to Ariz. Rev. Stat. Ann. §13-701(D)(24) (Sentence of imprisonment for felony; presentence report; aggravating and mitigating factors; consecutive terms of imprisonment; definition), it is an aggravating circumstance for a conviction under Ariz. Rev. Stat. Ann. §13-1307 if the “defendant recruited, enticed or obtained the victim from a shelter that is designed to serve runaway youth, foster children, homeless persons or victims of human trafficking, domestic violence or sexual assault.”

	3212(E))  2) Class 2 felony if minor is 15, 16, or 17 (Ariz. Rev. Stat. Ann. § 13-3212(G))	2) 10–24 years Presumptive 13.5 years (Ariz. Rev. Stat. Ann. § 13-3212(G)) <sup>31</sup>		
Ariz. Rev. Stat. Ann. § 13-3552: Commercial sexual exploitation of a minor (pornography)	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3553: Sexual exploitation of a minor	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3554: Luring a minor for sexual exploitation	Class 3 felony	2–8.75 years Presumptive 3.5 years Possibility of probation if child is over 15	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release
Ariz. Rev. Stat. Ann. § 13-3561: Unlawful age misrepresentation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release

Additionally, Arizona has a range of laws prohibiting conduct centered on promoting prostitution. They include the following: Ariz. Rev. Stat. Ann. § 13-3201 (Enticement of persons for purpose of prostitution), § 13-3202 (Procurement by false pretenses of person for purpose of prostitution), § 13-3203 (Procuring or placing persons in house of prostitution), § 13-3204 (Receiving earnings of prostitute), § 13-3207 (Detention of persons in house of prostitution for debt), § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution), and § 13-3209 (Pandering; methods; classification). These provisions are either Class 5 or Class 6 felonies.<sup>32</sup>

Pursuant to Ariz. Rev. Stat. Ann. § 9-500.10 (Escort and escort agency advertising requirements; civil penalty; definitions), traffickers and advertisers may also face civil penalties for advertising

A. . . . escort services unless the advertisement includes either:

1. The escort license number of the escort if the advertisement is for the services of a specific escort.

<sup>31</sup> See *supra* note 18.

<sup>32</sup> See *supra* note 3.

2. The business license number of the escort agency where the services are offered if the advertisement does not offer the services of a specific escort.
- B. An escort or escort agency shall retain on file, for at least one year, proof of the age of any escort whose services are offered in any advertisement of escort services.

Penalties range from \$500 for a first time offense to \$5,000 for a third or subsequent offense. Ariz. Rev. Stat. Ann. § 9-500.10(C).

Traffickers also face penalties under the money laundering provisions. Ariz. Rev. Stat. Ann. § 13-2317 (A)–(E) states,

- A. A person is guilty of money laundering in the first degree if the person does any of the following:
  1. Knowingly initiates, organizes, plans, finances, directs, manages, supervises or is in the business of money laundering in violation of subsection B of this section.
  - ....
- B. A person is guilty of money laundering in the second degree if the person does any of the following:
  1. Acquires or maintains an interest in, transacts, transfers, transports, receives or conceals the existence or nature of racketeering proceeds knowing or having reason to know that they are the proceeds of an offense.
  2. Makes property available to another by transaction, transportation or otherwise knowing that it is intended to be used to facilitate racketeering.
  3. Conducts a transaction knowing or having reason to know that the property involved is the proceeds of an offense and with the intent to conceal or disguise the nature, location, source, ownership or control of the property or the intent to facilitate racketeering.
  - ....
- ....
- D. In addition to any other criminal or civil remedy, if a person violates subsection A or B of this section as part of a pattern of violations that involve a total of one hundred thousand dollars or more in any twelve month period, the person is subject to forfeiture of substitute assets in an amount that is three times the amount that was involved in the pattern, including conduct that occurred before and after the twelve month period.
- E. Money laundering in the third degree is a class 6 felony. Money laundering in the second degree is a class 3 felony. Money laundering in the first degree is a class 2 felony.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>33</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>34</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” A conviction is

<sup>33</sup> See *supra* Component 2.4 for further discussion.

<sup>34</sup> See *supra* note 20.

punishable as a Class 2 felony with a sentence enhancement under Ariz. Rev. Stat. Ann. § 13-705 if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>35</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child pornography<sup>36</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>37</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>38</sup>

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

Using the Internet or electronic communications to accomplish a sexual offense is a separate crime resulting in serious penalties for traffickers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation of a child as long as a depiction of material harmful to minors is transmitted as part of the communication. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors<sup>39</sup> for the

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<sup>35</sup> See *supra* note 20.

<sup>36</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>37</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>38</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>39</sup> Ariz. Rev. Stat. Ann. § 13-3560 refers to the definition of “harmful to minors” in Ariz. Rev. Stat. Ann. § 13-3501. Ariz. Rev. Stat. Ann. § 13-3501 states,

1. “Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

(a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:

(i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be

purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3560(C), 13-705(D).

In addition, Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry], subsection A.

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in Ariz. Rev. Stat. Ann. § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

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

Traffickers convicted of sex trafficking, other CSEC felonies, or money laundering face a possible fine up to \$150,000 imposed by the court as part of the sentence for sex trafficking. Ariz. Rev. Stat. Ann. § 13-801.

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant or without a court order under certain conditions and with probable cause. While allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions) does state that “[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.”

In cases of commercial sexual exploitation of a child for child pornography and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture) states, “On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.” Pursuant to Ariz. Rev. Stat. Ann. 9.500.10, traffickers and advertisers may seek civil penalties for posting escort advertisements without proper licensure. Penalties range from \$500 for a first time offense to \$5,000 for a third or subsequent offense. Ariz. Rev. Stat. Ann. § 9-500.10(C).

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successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.

(ii) Portrays the description or representation in a patently offensive way.

(b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

Finally, mandatory restitution is specifically available in cases of sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309 (Restitution), which states that “[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.”

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

Under Ariz. Rev. Stat. Ann. § 13-3821(A) (Persons required to register), convicted traffickers are required to register as sex offenders. Ariz. Rev. Stat. Ann. § 13-3821(A) (Persons required to register) lists the crimes for which an offender must register as a sex offender. The list includes, in relevant part, the following crimes:

- ....
- 3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.
- 4. Sexual conduct with a minor pursuant to section 13-1405.
- 5. Sexual assault pursuant to section 13-1406.
- 6. Sexual assault of a spouse if the offense was committed before August 12, 2005.
- 7. Molestation of a child pursuant to section 13-1410.
- 8. Continuous sexual abuse of a child pursuant to section 13-1417.
- 9. Taking a child for the purpose of prostitution pursuant to section 13-3206.
- 10. Child prostitution pursuant to section 13-3212, subsection A or subsection B, paragraph 1 or 2.
- 11. Commercial sexual exploitation of a minor pursuant to section 13-3552.
- 12. Sexual exploitation of a minor pursuant to section 13-3553.
- 13. Luring a minor for sexual exploitation pursuant to section 13-3554.
- 14. Sex trafficking of a minor pursuant to section 13-1307.
- 15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to section 13-1402.
- ....
- 20. Unlawful age misrepresentation.
- 21. Aggravated luring a minor for sexual exploitation pursuant to section 13-3560.

### 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.*

Under Ariz. Rev. Stat. Ann. § 8-863(B) (Hearing to terminate parental rights), “The court may terminate the parental rights of a parent if the court finds by clear and convincing evidence one or more of the grounds prescribed in section 8-533.” Ariz. Rev. Stat. Ann. § 8-533(B) (Petition; who may file; grounds) states in part,

Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the parent has abandoned the child.
2. That the parent has neglected or willfully abused a child. This abuse includes serious physical or

emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.

.....

Ariz. Rev. Stat. Ann. § 8-201, which provides definitions for title 8, “unless the context otherwise requires,” defines “abuse” in relevant part as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child.” According to the definition, this includes the following: “Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.”

Additionally, pursuant to Ariz. Rev. Stat. § 8-846(D)(2) (Services provided to the child and family), “The court shall consider the following factors and reunification services are not required to be provided if the court finds by clear and convincing evidence that: The parent or guardian of a child has been convicted of . . . sexual abuse of a child . . . commercial sexual exploitation of a minor, sexual exploitation of a minor, or luring a minor for sexual exploitation.”

**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.*

The act of assisting or facilitating in some manner the crime of sex trafficking is prohibited in the state trafficking law. Ariz. Rev. Stat. Ann. § 13-1308 (Trafficking of persons for forced labor or services) makes it a crime to “[k]nowingly benefit, financially or by receiving anything of value, from participation in a venture that has engaged in an act in violation of section 13-1306 [Unlawfully obtaining labor or services], section 13-1307 [Sex trafficking] or this section.”

The acts of facilitators are prohibited in other CSEC provisions. Ariz. Rev. Stat. Ann. § 13-3210 (Transporting persons for purpose of prostitution or other immoral purpose) is a Class 5 felony and prohibits a person from “knowingly transporting by any means of conveyance, through or across this state, any other person for the purposes of prostitution or concubinage, or for any other immoral purposes . . . .” Ariz. Rev. Stat. Ann. § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution) makes it illegal if a person “knowingly operates or maintains a house of prostitution or prostitution enterprise . . . .” This offense is also a Class 5 felony.

Ariz. Rev. Stat. Ann. § 13-3553(A) (Sexual exploitation of a minor) states,

A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.<sup>40</sup>

If a facilitator makes use of a visual depiction of a minor in an advertisement for prostitution, it is a Class 2 felony with sentence enhancements if the minor is under 15 years of age. Ariz. Rev. Stat. Ann. §§ 13-3552, 13-705(D). However, this crime is not applicable to “an act that is prohibited by section 13-3555 [Portraying adult as minor; classification] or to websites or internet service providers that host

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<sup>40</sup>Ariz. Rev. Stat. Ann. § 13-3559 (Reporting suspected visual depictions of sexual exploitation of a minor; immunity) provides a defense to those that may otherwise be viewed as facilitators by stating in subsection (C), “It is an affirmative defense to a prosecution for a violation of section 13-3553 that on discovery a person in good faith reports the discovery of unsolicited suspected visual depictions involving the sexual exploitation of a minor.”



advertisements created and published by third parties and do not participate in creating or publishing the advertisements.” Ariz. Rev. Stat. Ann. § 13-3552(B).

Moreover, pursuant to Ariz. Rev. Stat. Ann. §13-3212(A)(4)–(8) (Child prostitution; classification; increased punishment), facilitators may be prosecuted for knowingly,

4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.
8. Providing a means by which a minor engages in prostitution.

A conviction under Ariz. Rev. Stat. Ann. §13-3212(A) is punishable as a Class 2 felony and subject to the sentencing provisions in Ariz. Rev. Stat. Ann. § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. §13-3212(E). Child prostitution convictions where the minor is 15, 16 or 17 is Class 2 felony punishable by a minimum sentence of 10 years, a presumptive sentence of 13.5 years, and a maximum sentence of 24 years for a first time offender. Ariz. Rev. Stat. Ann. §13-3212(G).

Facilitators could also be convicted under money laundering provisions.<sup>41</sup> A money laundering conviction is punishable as a Class 2, 3, or 6 felony (depending on degree) and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-2317(E), 13-801.

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

Facilitators of sex trafficking face a possible fine up to \$150,000 imposed by the court as part of the sentence for sex trafficking and felony CSEC violations. Ariz. Rev. Stat. Ann. § 13-801.

In cases of commercial sexual exploitation of a child for child pornography and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture)<sup>42</sup> states, “On the conviction of a person for a violation of section . . . 13-3553 [Sexual exploitation of a minor] . . . the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.”

According to Ariz. Rev. Stat. Ann. § 13-4315 (Allocation of forfeited property), seized property may be sold or transferred to “any local or state government entity or agency or political subdivision, law enforcement agency or prosecutorial agency or any federal law enforcement agency which operates within this state for official federal, state or political subdivision use within this state.” The seized property may also be sold, with the balance after expenses “paid into the anti-racketeering fund of the state or of the county in which the political subdivision seizing the property or prosecuting the action is located.”

However, if the seized property is money, “the court shall order the monies returned to each law enforcement agency that makes a showing of costs or expenses which it incurred in connection with the

<sup>41</sup> See *supra* Component 3.1 for relevant provisions.

<sup>42</sup> Statute is codified in Chapter 35.1 entitled, “Sexual Exploitation of Children.”

investigation and prosecution of the matter and shall order all excess monies remaining after such returns deposited in the anti-racketeering fund of this state or of the county in which the political subdivision seizing the monies or prosecuting the action is located . . . .”

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant, or without a court order under certain conditions and with probable cause. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state that “[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.” Therefore, forfeiture may not be available for sex trafficking and commercial sexual exploitation of children offenses because these offenses do not appear to be specifically designated in a statute providing for forfeiture.

Mandatory restitution is also specifically available in cases of sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309 (Restitution), which states that “[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.”

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

There is no specific provision in the Arizona code prohibiting child sex tourism.

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

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

Ariz. Rev. Stat. Ann. § 13-3553(A) (Sexual exploitation of a minor), a Class 2 felony, makes it illegal if

A person commits sexual exploitation of a minor by knowingly:

1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

**Legal Components:**

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

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>43</sup>

Pursuant to Ariz. Rev. Stat. Ann. § 13-1307(B) (Sex trafficking; classifications; definitions), Arizona’s core sex trafficking offense, all commercially sexually exploited children can be identified as sex trafficking victims. When the victim is a minor, the means of force, fraud or coercion are not required.<sup>44</sup> Ariz. Rev. Stat. Ann. § 13-1307(B) (Sex trafficking). Additionally, the human trafficking law applies to buyers; thus, buying commercial sex with a person who is not under the age of eighteen constitutes human trafficking.<sup>45</sup> Ariz. Rev. Stat. Ann. § 13-1307. Finally, the offense of human trafficking under Ariz. Rev. Stat. Ann. § 13-1307(B) (Sex Trafficking), does not require that a trafficker or controlling third party be identified. Consequently, Arizona’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Ariz. Rev. Stat. Ann. § 13-1307(B) (Sex trafficking).

<sup>43</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>44</sup> See *supra* Component 1.1.

<sup>45</sup> See *supra* Component 2.1.

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

Arizona's child sex trafficking statute and CSEC statutes do not specifically prohibit a defendant from raising a defense as to the consent of a minor to a commercial sex act. Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking), § 13-3212 (Child prostitution) and § 13-3552 (Commercial sexual exploitation of a minor) do not refer to a defense based on consent of the minor to the commercial sex act, therefore, the defense is neither permitted nor prohibited.

- 5.2.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking), § 13-3212 (Child prostitution), and § 13-3552 (Commercial sexual exploitation of a minor) to specifically prohibit a defendant prosecuted under these provisions from raising a defense based on consent of the minor to sex acts.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>46</sup>

Ariz. Rev. Stat. Ann. § 13-3214 (Prostitution) contains age-neutral provisions and renders minors under the age of 18 liable to prosecution for prostitution offenses. However, Ariz. Rev. Stat. Ann. § 13-3214(D) (Prostitution) provides an affirmative defense to the prosecution when the prostitution offense was committed as a result of being a sex trafficking victim.

- 5.3.1 Recommendation: Amend state law to ensure that all minors are protected from criminalization for prostitution related offenses.

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

**Child Identified as Abused/Neglected**

Pursuant to Ariz. Rev. Stat. Ann. §§ 8-201(2), 8-201(25) (Definitions), a commercially sexually exploited child is likely to be identified as abused or neglected. However, if a child is identified as abused or neglected under § 8-201(2) or § 8-201(25), respectively, the definition of custodian under Ariz. Rev. Stat. Ann. § 8-201 is not sufficiently broad to involve the Department of Child Safety (DCS) in investigations where the child is in the custody or control of a non-family trafficker. Pursuant to § 8-201(2), "[a]buse means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage . . . and is caused by the acts or omissions of an individual who has the care, custody and control of a child." Additionally, pursuant to § 8-201(9) "[c]ustodian means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court."

Pursuant to Ariz. Rev. Stat. Ann. § 8-455<sup>47</sup> The Department of Child Safety (Centralized intake hotline; purposes; report of possible crimes; DCS report; risk assessment tools; access to information; public awareness; definitions) is required to operate and maintain a centralized intake hotline for the purpose of receiving all communications concerning suspected abuse or neglect of children. Pursuant to § 8-455(A), "[i]f a person communicates suspected abuse or neglect to a department employee other than through the hotline, the employee shall refer the person or communication to the hotline." The hotline is operated to

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<sup>46</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>47</sup> The text of Ariz. Stat. Ann. § 8-455 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2522 during the 2016 2nd Regular Session of the Arizona Legislature (effective August 6, 2016).

“quickly and efficiently provide information to a law enforcement agency or prepare a DCS report . . . .” pursuant to § 8-455(B)(3). If the report contains a criminal conduct allegation, the hotline worker must report<sup>48</sup> it to the office of Child Welfare Investigations and to the appropriate law enforcement agency. Ariz. Rev. Stat. Ann. § 8-456 states, “[t]he Office of Child Welfare Investigations shall investigate DCS reports that contain a criminal conduct allegation . . . .”

## I. Initial Custody

### a) *Authority following initial custody*

The sex trafficking, child prostitution, and CSEC laws do not refer to a specific protective response for child victims. Intervention is possible through Ariz. Rev. Stat. Ann. § 8-821 (Taking into temporary custody), which states in part,

. . . .  
B. A child may be taken into temporary custody by a peace officer, a child welfare investigator, or a child safety worker if temporary custody is clearly necessary to protect the child because probable cause exists to believe that the child is either:

1. A victim or will imminently become a victim of abuse<sup>49</sup> or neglect.
2. Suffering serious physical<sup>50</sup> or emotional injury<sup>51</sup> that can only be diagnosed by a medical doctor or psychologist.

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<sup>48</sup> Pursuant to Ariz. Rev. Stat. Ann. § 8-455(D) “A hotline worker shall prepare a DCS report for investigation if the identity or current location of the child victim, the child’s family or the person suspected of abuse or neglect is known or can be reasonably ascertained and all of the following are alleged: 1. The suspected conduct would constitute abuse or neglect. 2. The suspected victim of the conduct is under eighteen years of age. 3. The suspected victim of the conduct is a resident of or present in this state. 4. The person suspected of committing the abuse or neglect is the parent, guardian, or custodian of the victim or an adult member of the victim’s household.” *See supra* note 47.

<sup>49</sup> Ariz. Rev. Stat. Ann. § 8-201(2) defines “abuse” as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child.” According to a relevant part of the definition, “Abuse includes: (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.”

<sup>50</sup> Ariz. Rev. Stat. Ann. § 8-201(33) defines “serious physical injury” as “an injury that is diagnosed by a medical doctor and that does any one or a combination of” several things, including, “the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.”

<sup>51</sup> Ariz. Rev. Stat. Ann. § 8-201(29) states,

“Serious emotional injury” means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

- . . . .  
(c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

- ....
- ....
- D. A person who takes a child into custody pursuant to subsection B, paragraph 2 of this section shall immediately have the child examined by a medical doctor or psychologist. After the examination the person shall release the child to the custody of the parent or guardian of the child unless the examination reveals abuse or neglect. Temporary custody of a child taken into custody pursuant to subsection B, paragraph 2 of this section shall not exceed twelve hours.
- E. A child who is taken into temporary custody pursuant to this article shall not be detained in a police station, jail or lockup where adults charged with or convicted of a crime are detained.
- F. A child shall not remain in temporary custody for more than seventy-two hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed.<sup>52</sup>

Another way that a child may be taken into custody is through the Office of Child Welfare Investigations within the Department of Child Safety pursuant to Ariz. Rev. Stat. § 8-456(C)(2)<sup>53</sup> which states,

After receiving a DCS report from the centralized intake hotline pursuant to section 8-455, an investigator shall do all of the following:

- ....
2. If required by section 8-821 and subject to section 8-871, take a child into temporary custody. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian when necessary."

Pursuant to Ariz. Rev. Stat. § 8-471(E) a child welfare investigator<sup>54</sup> shall:

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<sup>52</sup> A domestic minor sex trafficking victim may also enter the system through the Department of Child Safety (DCS). Ariz. Rev. Stat. Ann. § 8-304(B) (Investigation of alleged acts of delinquency, dependency and incorrigibility) states,

A department investigator is responsible for the complete investigation of all complaints of alleged dependency, and a criminal conduct allegation shall be investigated in cooperation with the appropriate law enforcement agencies and according to the protocols established pursuant to section 8-817. The department shall be responsible for the disposition of such child unless the matter requires the intervention of the court . . .

<sup>53</sup> The text of Ariz. Rev. Stat. § 8-456 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2522 during the 2016 2<sup>nd</sup> Regular Session of the Arizona Legislature (effective August 6, 2016).

<sup>54</sup> Pursuant to Ariz. Rev. Stat. § 8-471(C) (Office of child welfare investigations; training; responsibilities; annual report), child welfare investigators should have "received training to understand law enforcement's role in cases of criminal child abuse or neglect and in social services offered by the department." Ariz. Rev. Stat. § 41-1969.01(D) further provides that the investigators shall be provided with training, at a minimum, in the following areas:

- (1) First responder training on responding to reports of child abuse.
- ....
- (3) Child physical and sexual abuse investigation.
- ....
- (6) A child's constitutional rights as a victim of a crime pursuant to article II, section 2.1, Constitution of Arizona.

Pursuant to Ariz. Rev. Stat. § 8-471(E), a child welfare investigator also must:

- (1) Protect children.
- (2) Assess, respond to or investigate all criminal conduct allegations, which shall be a priority, but not otherwise exercise the authority of a peace officer.

(5) Take a child into temporary custody as provided in section 8-821 [Taking into temporary custody]. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian pursuant to section 8-821. A child welfare investigator who is responding to or investigating a report containing a criminal conduct allegation shall have the primary responsibility for making the decision whether to take a child into temporary custody.

(6) Evaluate conditions created by the parents, guardian or custodian that would support or refute the allegation that the child should be adjudicated dependent. The investigator shall then determine whether any child is in need child safety services.

(7) Identify, promptly obtain and abide by court orders that restrict or deny custody, visitation or contact by a parent or other person in the home with the child and notify appropriate personnel within the department to preclude violations of a court order in the provision of any services.

#### *b) Placement*

Pursuant to Ariz. Rev. Stat. § 8-471(F), "Unless a dependency petition is filed, a child shall not remain in temporary custody for a period exceeding seventy-two hours, excluding Saturdays, Sundays and holidays. If a petition is not filed, the child shall be released to the child's parent, guardian or custodian."

#### II. Process following initial custody

Under Ariz. Rev. Stat. Ann. § 8-841, "Any interested party may file a petition to commence proceedings in the juvenile court alleging that a child is dependent."

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

Ariz. Rev. Stat. Ann. § 8-824(A) (Preliminary protective hearing) states, "The court shall hold a preliminary protective hearing to review the taking into temporary custody of a child pursuant to section 8-821 not fewer than five days nor more than seven days after the child is taken into custody, excluding Saturdays, Sundays and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party or for other good cause shown, the court may grant one continuance that does not exceed five days." Ariz. Rev. Stat. Ann. § 8-824(F) explains that "[t]he petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition." Ariz. Rev. Stat. Ann. § 8-824(J) states,

At the hearing, if the child is not returned to the parent or guardian, the court shall:

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(3) Not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

(a) The child initiates contact with the investigator.

(b) The child who is interviewed is the subject of, is the sibling of or is living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 4, subdivision (b) of this subsection.

(c) The interview is conducted pursuant to the terms of the protocols established pursuant to section 8-817.

(4) After the receipt of any report or information pursuant to paragraph 2 of this subsection, immediately do both of the following:

(a) Notify the appropriate municipal or county law enforcement agency if they have not already been notified.

(b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the report of child abuse or neglect when investigating allegations pursuant to paragraph 2 of this subsection . . . .

1. Enter orders regarding the placement of the child pending the determination of the dependency petition and visitation, if any.
2. If a relative is identified as a possible placement for the child, notify the relative of the right to be heard in any proceeding to be held with respect to the child.
3. Determine if the tasks and services set forth in the case plan are reasonable and necessary to carry out the case plan.

## **Child Identified as Delinquent**

### **I. Process following initial custody**

Under Ariz. Rev. Stat. Ann. § 8-305(C),<sup>55</sup> while the juvenile hearing is pending, a juvenile shall not be confined with adults charged or convicted of a crime, except that:

- (1) A juvenile who is accused of a criminal offense or who is alleged to be delinquent may be securely detained in such location for up to six hours until transportation to a juvenile detention center can be arranged if the juvenile is kept in a physically separate section from any adult who is charged with or convicted of a crime and no sight or sound contact between the juvenile and any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.
- (2) A juvenile who is transferred as provided in section 8-327 [Transfer hearing] to the criminal division of the superior court may be securely detained if the juvenile is kept in a physically separate section from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.
- (3) A juvenile who is arrested for an offense listed in section 13-501 [Persons under eighteen years of age; felony charging; definitions] may be detained in a juvenile detention center until formally charged as an adult. After a juvenile has been formally charged as an adult the juvenile may be securely either of the following:
  - (a) Detained in a juvenile detention center if the offense is not a dangerous offense and the detention is ordered by the court.
  - (b) Securely detained in an adult facility if the juvenile is detained separately from any adult charged with or convicted of a crime, except to the extent authorized under federal laws or regulations.

Pursuant to Ariz. Rev. Stat. Ann. § 8-305(D)<sup>56</sup>, in determining whether a juvenile charged with a non-dangerous offense should be held in a juvenile detention facility or adult facility pursuant to Subsection A or C(3)(a), the court shall consider the following factors:

- (1) The best interests of both the juvenile charged as an adult and the other juveniles detained in the juvenile detention center.
- (2) The severity of the charges against the juvenile charged as an adult.
- (3) The existing programs and facilities for juveniles at both the juvenile detention center and the adult facility.
- (4) Any other factor relevant to the determination of where to detain the juvenile.

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<sup>55</sup> The text of Ariz. Rev. Stat. Ann. § 8-305 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1308 by 2016 2<sup>nd</sup> Regular Session of the Arizona Legislature (effective August 6, 2016).

<sup>56</sup> See *supra* note 55.



Ariz. Rev. Stat. Ann. § 8-305(E) further explains, “A child who is alleged to be delinquent or who is alleged to be incorrigible shall not be securely detained in a jail or lockup in which adults charged with or convicted of a crime are detained. A child may be nonsecurely detained if necessary to obtain the child’s name, age, residence or other identifying information for up to six hours until arrangements for transportation to any shelter care facility, home or other appropriate place can be made. A child who is nonsecurely detained shall be detained separately from any adult charged with or convicted of a crime, and no sight or sound contact with any charged or convicted adult is permitted, except to the extent authorized under federal laws or regulations.

Pursuant to Ariz. Rev. Stat. Ann. § 8-301 (Commencement of proceedings), proceedings are commenced when the county attorney files a petition. Subject to some exceptions, Ariz. Rev. Stat. Ann. § 8-321 (Referrals; diversions; conditions; community based alternative programs) permits the county attorney to divert the juvenile prior to any court disposition to either a “community based alternative program” or to a “diversion program administered by the juvenile court.”

The referral is submitted by the juvenile probation officer to the county attorney to determine if a petition, that the juvenile should be diverted or referred to a community based alternative program, should be filed. Ariz. Rev. Stat. § 8-321(E).

Ariz. Rev. Stat. Ann. § 8-321 (Referrals; diversions; conditions; community based alternative programs) gives sole discretion to the county attorney to decide whether to divert to the juvenile court diversion program or defer prosecution of a minor charged with a delinquency offense in favor of a community based alternative program. Diversion provides the opportunity to avoid adjudication and the resulting criminal record so long as the juvenile successfully completes the program. Ariz. Rev. Stat. Ann. § 8-321(G). The community-based alternative program involves a contract between the juvenile, the parents, and the county prosecutor. Ariz. Rev. Stat. Ann. § 8-321(L). Pursuant to Ariz. Rev. Stat. Ann. § 8-321(J), “[a]fter holding a meeting the participants in the community based alternative program may agree on any legally reasonable consequences that the participants determine are necessary to fully and fairly resolve the matter except confinement.” Under Ariz. Rev. Stat. Ann. § 8-321(M), if the juvenile is faced with these reasonable consequences and then successfully completes the program:

the county attorney shall not file a petition in juvenile court and the program’s resolution shall not be used against the juvenile in any further proceeding and is not an adjudication of incorrigibility or delinquency. The resolution of the program is not a conviction of crime, does not impose any civil disabilities ordinarily resulting from a conviction and does not impose any civil disabilities ordinarily resulting from a conviction and does not disqualify the juvenile in any civil service application or appointment.

Pursuant to Ariz. Rev. Stat. Ann. § 8-321(P), (Q),

(P) If the juvenile does not acknowledge responsibility for the offense, or fails to comply with the consequences set by the community based alternative program, the case shall be submitted to the county attorney for review.

(Q) After reviewing a referral, if the county attorney declines prosecution, the county attorney may return the case to the juvenile probation department for further action as provided in subsection F of this section.

However, if the juvenile successfully complies with the conditions set forth by the probation officer and completes any program or further requirements that the officer requests, “the county attorney shall not file a petition in juvenile court and the program’s resolution shall not be used against the juvenile in any further proceeding and is not an adjudication of incorrigibility or delinquency. The resolution of the program is not a

conviction of crime, does not impose any civil disabilities ordinarily resulting from a conviction, and does not disqualify the juvenile in any civil service application or appointment.” Ariz. Rev. Stat. § 8-321 (G), (M).

## II. Outcomes

If a child is identified as a delinquent<sup>57</sup> for the offense of prostitution (misdemeanor), a prostitution-related offense, or an offense committed while being prostituted or used in pornography, rather than identified as a victim of abuse or a victim of a crime, the court could enter a disposition order for probation or detention pursuant to Ariz. Rev. Stat. Ann. § 8-341 (Disposition and commitment; definitions).

Once the judge has received and reviewed the evidence, the judge may enter judgment on the proper disposition of the adjudication hearing, the judge may specify placement of the juvenile in the following manner, under Ariz. Rev. Stat. Ann. § 8-341 (A) (Disposition and commitment; definitions),

(1) It may award a delinquent juvenile:<sup>58</sup>

- (a) To the care of the juvenile’s parents, subject to the supervision of the probation department.
- (b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.
- (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
- (d) To a private agency or institution, subject to the supervision of a probation officer.
- (e) To the department of juvenile corrections.
- (f) To maternal or paternal relatives, subject to the supervision of a probation department
- (g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

(2) It may award an incorrigible child:<sup>59</sup>

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<sup>57</sup> Pursuant to Ariz. Rev. Stat. Ann. § 8-307(A) (Delinquency hearings; required attendance of cited child; referring to youth service bureau; notification of parents), “. . . any child, ten years of age or older, against whom a complaint has been filed citing the commission of a delinquent act shall appear at the juvenile court . . . . When the offense alleged is a misdemeanor other than assault or battery and is the child’s first offense according to juvenile court records, the juvenile court may, in its sole discretion, refer the child to a youth service bureau or similar counseling program or make the complaint a matter of record in lieu of the child appearing at the juvenile court.”

<sup>58</sup> Ariz. Rev. Stat. Ann. § 8-201(13) defines a “[d]elinquent juvenile as a child who is adjudicated to have committed a delinquent act.” Ariz. Rev. Stat. Ann. § 8-201(12) defines a “[d]elinquent act” as “an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offence, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under section 13-501, subsection 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.”

<sup>59</sup> Ariz. Rev. Stat. Ann. § 8-201(19) defines “[i]ncorrigible child” as “a child who”:

- (a) Is adjudicated a child who refused to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who is beyond the control of that person.
- (b) Is habitually truant from school as defined in section 15-803, subsection C.
- (c) Is a runaway from the child’s home or parent, guardian or custodian.
- (d) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others.
- (e) Commits any act constituting an offense that can only be committed by a minor and that is not designated a delinquent act.

- (a) To the care of the child's parents, subject to the supervision of a probation department.
- (b) To the protective supervision of a probation department, subject to any conditions the court may impose.
- (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
- (d) To a public or private agency, subject to the supervision of a probation department.
- (e) To maternal or paternal relatives, subject to the supervision of a probation department.

Pursuant to Ariz. Rev. Stat. Ann. § 8-341(B) (Disposition and commitments; definitions), “[i]f a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile’s eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

- (1) The juvenile is not charged with a subsequent offense.
- (2) The juvenile has not been found in violation of a condition of probation.
- (3) The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.
- (4) The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.
- (5) The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.
- (6) Restitution ordered pursuant to section 8-344 has been made.
- (7) The juvenile’s parents have not requested that the court continue the juvenile’s probation for more than one year.

A juvenile fourteen years of age or older shall be placed on juvenile intensive probation if he or she is adjudicated as a repeat felony offender.<sup>60</sup> Ariz. Rev. Stat. Ann. § 8-341(D) (Disposition and commitments; definitions).

Furthermore, pursuant to Ariz. Rev. Stat. Ann. § 8-341(N) (Disposition and commitments; definitions), “[n]otwithstanding any law to the contrary, if a person under the supervision of the court is an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment or services may be provided until the person reaches twenty-one years of age if the court, the person or the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or withdrawn. The court may terminate the provision of services after the person reaches eighteen years of age if the court determines that any of the following applies:

- (1) The person is not progressing toward treatment goals.
- (2) The person terminates treatment.
- (3) The person commits a new offense after reaching eighteen years of age.
- (4) Continued treatment is not required or is not in the best interests of the state or the person.

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(f) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.

<sup>60</sup> Ariz. Rev. Stat. Ann. § 8-341(V)(2) defines a “[r]epet felony offender” as “a juvenile to whom both of the following apply: (a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult. (b) Previously has been adjudicated a first time felony juvenile offender.” A first time felony juvenile offender is defined as “a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.” Ariz. Rev. Stat. Ann. § 8-341(V)(1). Under Ariz. Rev. Stat. Ann. § 13-3214(E)(4) (Prostitution; classification), “a person who has previously be convicted of three or more violations of this section and who commits a subsequent violation of this section is guilty of a class 5 felony . . . .”

Under Ariz. Rev. Stat. Ann. § 8-245(A), “[w]hen a child under the jurisdiction of the juvenile court appears to be in need of medical or surgical care, the juvenile court may order the parent, guardian or custodian to provide treatment of the child in a hospital or otherwise . . . .”

- 5.4.1. Recommendation: Enact a mandatory protective response for juvenile sex trafficking victims that provides an avenue to specialized services outside detention.

## 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>61</sup>

Arizona state law defines “abuse” to include the commercial sexual exploitation of a child. However, child sex trafficking is not included within either definition of “abuse” or “commercial sexual exploitation” under Ariz. Rev. Stat. Ann. §§ 8-201(2) (Definitions) or § 13-3553 (Sexual exploitation of a minor), respectively. Instead, Ariz. Rev. Stat. Ann. § 8-201(2) (Definitions) defines “abuse” in part as

the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:

- (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

. . . .

Ariz. Rev. Stat. Ann. § 8-201(25) defines “neglect” or “neglected” as

. . . .

(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.

(f) Any of the following acts committed by the child’s parent, guardian or custodian with reckless disregard as to whether the child is physically present:

- (i) Sexual contact as defined in section 13-1401.
- (ii) Oral sexual contact as defined in section 13-1401.
- (iii) Sexual intercourse as defined in section 13-1401.
- (iv) Bestiality as prescribed in section 13-1411.

- 5.5.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 8-201(2)(a) (Definitions) to include Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) in the list of commercial sexual offenses that constitute “abuse.”

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<sup>61</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

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.*

The definition of “custodian” under Ariz. Rev. Stat. Ann. § 8-201(9) (Definitions) is limited to the parents and legal caregivers of a child; therefore, the legal definition of custodian is unlikely to include non-familial offenders and would be a barrier to a sex trafficked child accessing child welfare protections and services. However, pursuant to the definition of “abuse” under Ariz. Rev. Stat. Ann. § 8-201(2) (Definitions), a child is identified as abused when, “an individual who has the care, custody, and control over a child . . . (a) inflict[s] or allow[s] . . . commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 . . . or child prostitution pursuant to section 13-3212.”

Pursuant to the definition of abuse and the corresponding jurisdiction thereof,<sup>62</sup> commercial sexual exploitation and prostitution are offenses rising to the level of abuse pursuant to Ariz. Rev. Stat. Ann. § 8-455 (Centralized intake hotline; purposes; report of possible crimes; DCS report; risk assessment tools; access to information; public awareness; definitions. Under Ariz. Rev. Stat. Ann. § 8-201(2) (Definitions), abuse is defined as,

[T]he infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:

(a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

. . . .

However, while an offender is commonly in a position to exert control over a child sex trafficking victim, finding the definition requires that the abuse be committed by a person “who has the care, custody, and control” of a child, an offender of CSEC or child sex trafficking would likely not included as a person capable of committing abuse under Ariz. Rev. Stat. Ann. § 8-201(2) (Definitions). Consequently, the definition of a person capable of committing abuse would likely serve as a barrier to services for a child identified as a commercially sexually exploited.

5.6.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 8-201 (Definitions) to expressly allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.

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

Ariz. Rev. Stat. Ann. § 41-2407 (Victim compensation and assistance fund; subrogation) establishes a victim compensation and assistance fund administered by the Arizona criminal justice commission. The fund’s

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<sup>62</sup> Ariz. Rev. Stat. Ann. § 8-202 (Jurisdiction of juvenile court) defines jurisdiction as,

A. The juvenile court has original jurisdiction over all delinquency proceedings brought under the authority of this title.

B. The juvenile court has exclusive original jurisdiction over all proceedings brought under the authority of this title except for delinquency proceedings.

operational details are set forth in Arizona's Administrative Code (Ariz. Admin. Code). The Administrative Code contains ineligibility criteria that could operate to bar a domestic minor sex trafficking victim's claim for compensation. According to a state website, "The maximum award of any single claim is \$25,000."<sup>63</sup> Ariz. Admin. Code § R10-4-108 (Compensation award criteria) outlines the expenses for which a claim may be made, including medical expenses, mental health counseling and care, work loss expenses, funeral expenses, and crime scene cleanup expenses.

Ariz. Admin. Code § R10-4-106 (Prerequisites for a Compensation Award) states in part,

The Board shall make a compensation award only if it determines that,

....

3. The victim of the criminally injurious conduct or act of international terrorism or a person who submits a claim regarding criminally injurious conduct or an act of international terrorism was not:

a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death.

....

The Board must also determine that the victim was not "[c]onvicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court." Ariz. Admin. Code § R10-4-106(A)(3)(e).

Additionally, under Ariz. Admin. Code § R10-4-106(A)(4), (5), (7), among other things, the board must determine that the crime was "reported to an appropriate law enforcement authority within 72 hours after its discovery," that the victim "cooperated with law enforcement agencies," and that the claim "was submitted to the operational unit within two years after discovery of the criminally injurious conduct . . . ." However, under Ariz. Admin. Code § R10-4-106(B), "The Board shall extend the time limits under subsections (A)(4) [the 72 hour limit] and (A)(7) [the two year limit] if the Board determines there is good cause for a delay."

Ariz. Admin. Code § R10-4-108(F) (Compensation Award Criteria) requires the board to "deny or reduce" the award if, among other things,

The Board determines that the victim's physical injury, medical condition, mental distress, or death was due in substantial part to the victim's:

- a. Negligence,
- b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism, or
- c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism.

Finally, Ariz. Admin. Code § R10-4-108(H)(1) (Compensation Award Criteria) requires denial of a claim in total if,

The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial health or safety risk.

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<sup>63</sup>*Victim Compensation*, ARIZONA CRIMINAL JUSTICE COMMISSION  
<http://azcjc.gov/ACJC.Web/victim/VictComp.aspx> (last visited July 27, 2016).

The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:

- a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or act of international terrorism or failed to appear as a witness for the prosecution;
- b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct or act of international terrorism escaped prosecution or the prosecution of the suspect was negatively affected; or
- c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities;

....

- 5.7.1 Recommendation: Amend the crime victims' compensation rules to stipulate an exception to the ineligibility criteria noted above for victims of CSEC crimes, including Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution), § 13-3212 (Child prostitution), § 13-3552 (Commercial sexual exploitation of a minor), § 13-3553 (Sexual exploitation of a minor), and § 13-1307 (Sex trafficking) in recognition of the challenges these victims face through trauma-bonding, denial, and delayed disclosure.

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

Pursuant to Ariz. Rev. Stat. Ann. § 13-4434 (Victim's right to privacy; exception; definitions), a victim's right to privacy is protected during the court process. Ariz. Rev. Stat. Ann. § 13-4434 states,

- A. The victim has the right at any court proceeding not to testify regarding any identifying or locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.
- B. A victim's identifying and locating information that is obtained, compiled or reported by a law enforcement agency or prosecution agency shall be redacted by the originating agency and prosecution agencies from records pertaining to the criminal case involving the victim including discovery disclosed to the defendant.
- C. Subsection B of this section does not apply to:
  1. The victim's name except, if the victim is a minor, the victim's name may be redacted from public records pertaining to the crime if the countervailing interests of confidentiality, privacy, the rights of the minor or the best interests of this state outweigh the public interest in disclosure.
  2. Any records that are transmitted between law enforcement and prosecution agencies or a court.
  3. Any records if the victim or, if the victim is a minor, the victim's representative as designated under section 13- 4403 has consented to the release of the information.
  4. The general location at which the reported crime occurred.
- D. For the purposes of this section:
  1. "Identifying information" includes a victim's date of birth, social security number and official state or government issued driver license or identification number.
  2. "Locating information" includes the victim's address, telephone number, e-mail address and place of employment.

....

Ariz. Rev. Stat. Ann. § 13-1421(A) (Evidence relating to victim's chastity; pretrial hearing) provides protection to victims of sexual offenses who wish to testify against their perpetrators. This provision, however, appears to be limited to Chapter 14 (Sexual offenses). It states in part that "[e]vidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any

offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence" falls into one of five categories, including "[e]vidence of the victim's past sexual conduct with the defendant" and "[e]vidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma."

Ariz. Rev. Stat. Ann. § 13-4253(A) (Out of court testimony; televised; recorded) provides authority for the court to order "the testimony of the minor [under 15<sup>64</sup>] be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding." Also, subsection (B)<sup>65</sup> permits the court to "order that the testimony of the minor be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding." In either case, "the minor shall not be required to testify in court at the proceeding for which the testimony was taken." Ariz. Rev. Stat. Ann. § 13-4253(C).

Ariz. Rev. Stat. Ann. § 13-4252 (Recording of testimony) also allows for the admissibility of recorded statements by a minor under 15 or a person who is developmentally disabled. However, the minor must still be available to testify. If the recording is admitted, "[E]ither party may call the minor to testify and the opposing party may cross-examine the minor."<sup>66</sup>

Under Ariz. Rev. Stat. Ann. § 13-4251, the article on child witnesses, which contains § 13-4252 and § 13-4253, "applies to the testimony or statements of a minor in criminal proceedings involving acts committed against the minor or involving acts witnessed by the minor whether or not those acts are charged and in civil proceedings including proceedings involving a dependency or a termination of parental rights."

A court appointed special advocate program is established in Ariz. Rev. Stat. Ann. § 8-523. Ariz. Rev. Stat. Ann. § 8-221(I) states in part that "[i]n all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests. This guardian may be an attorney or a court appointed special advocate."

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<sup>64</sup> Ariz. Rev. Stat. Ann. § 13-4251(B).

<sup>65</sup> In *State v. Vincent*, 768 P.2d 150, 161 (Ariz. 1989), the Supreme Court of Arizona strictly limited the applicability of this provision: "Thus, we hold, section 13-4253(B) requires the trial judge to condition the substitution of videotaped testimony for live testimony upon an individualized showing of necessity." With regard to the question of whether "even an individualized showing of probable trauma to a child witness justif[ied] abridgment of the defendant's constitutional right to a face-to-face courtroom encounter," *id.*, the court held that "[a]n exception [to face-to-face testimony] exists . . . under both the state and federal constitutions, where the state sustains its burden of proving by an individualized showing to the trial court that face-to-face testimony would so traumatize a child witness as to prevent the child from reasonably communicating." *Id.* at 164. Even though the case focused on subsection (B), it is likely that the court's reasoning would also apply to subsection (A), since subsection (A) also denies face-to-face confrontation.

<sup>66</sup> In *State v. Taylor*, 2 P.3d 674, 677 (Ariz. Ct. App. 1999) (citation omitted), an Arizona Court of Appeals held Ariz. Rev. Stat. Ann. § 13-4252 "constitutional only if it can be construed as being consistent with the court's rules." In analyzing the statute, the court stated, "The statute creates additional procedural requirements for the admissibility of statements that would otherwise be admissible under the supreme court's rules and makes admissible statements that are excluded by the rules. Because § 13-4252 expands on, conflicts with, and engulfs the court's rules, it is unconstitutional." *Id.* at 678.



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.*

Ariz. Rev. Stat. Ann. § 8-349(A) (Destruction of juvenile records; electronic research records) permits “[a] person who has been referred to juvenile court [to] apply for destruction of the person’s juvenile court and department of juvenile corrections records” under certain conditions. For records that “concern a referral or citation that did not result in further action or that resulted in diversion, placement in a community based alternative program or an adjudication for an offense other than an offense listed in section 13-501, subsection A or B<sup>67</sup> or title 28, chapter 4 [Driving under the influence],” the person must “certify under oath” that she is at least 18, “has not been convicted of a felony offense or adjudicated delinquent for an offense that would be an offense listed in section 13-501, subsection A or B or title 28, chapter 4,” does not have a criminal charge pending, “has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan,” and has paid in full all “restitution and monetary assessments.” If the juvenile court finds all of the above to be true, and that “[t]he destruction of the records is in the interests of justice” and it “would further the rehabilitative process of the applicant,” the juvenile court may order the records destroyed.

If, however, “the records concern a referral that resulted in an adjudication of delinquency for an offense not subject to” the provisions of this section set out above, the person must “certify under oath” that she is at least 25, “has not been convicted of a felony,” does not have a criminal charge pending, “has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan,” and has paid in full all “restitution and monetary assessments.” “The juvenile court may order the destruction of records . . . if the county attorney does not object within ninety days after the date of the notice and the court finds” the above conditions to be true and that “[t]he destruction of the records is in the interests of justice” and the destruction of the records “would further the rehabilitative process of the applicant.”

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<sup>67</sup> Ariz. Rev. Stat. Ann. § 13-501 (Persons under eighteen years of age; felony charging) states,

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

Minor victims may still be found guilty of other crimes committed in the course of their victimization through prostitution, pornography, or sexual performance. Pursuant to Ariz. Rev. Stat. Ann. § 13-921 (Probation for defendants under eighteen years of age; dual adult juvenile probation), with certain exceptions, “[i]f the court places a defendant on probation pursuant to this section, . . . [and] if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant’s record and order the person to be released from all penalties and disabilities resulting from the conviction.”

Additionally, Ariz. Rev. Stat. Ann. § 13-907.01 (Vacating conviction of a sex trafficking victim) allows individuals who have been convicted of violating Ariz. Rev. Stat. Ann. § 13-3214 (Prostitution; classification) to apply to the sentencing court to have the conviction vacated. The court must vacate the conviction if it “finds by clear and convincing evidence that the person’s participation . . . was a direct result of being a victim of sex trafficking . . .” as defined by Ariz. Rev. Stat. Ann. § 13-1307.<sup>68</sup> The court may vacate the conviction without a hearing if the application is unopposed by the Prosecutor. Ariz. Rev. Stat. Ann. § 13-907.01(B).<sup>69</sup> Pursuant to Ariz. Rev. Stat. Ann. § 13-907.01(D), after vacating the conviction, the court must:

- (1) Release the applicant from all penalties and disabilities resulting from the conviction;
- (2) Enter an order that a notation be made in the court file and in law enforcement and prosecution records that the conviction has been vacated and the person was the victim of a crime; and
- (3) Transmit the order vacating the conviction to the arresting agency, the prosecutor and the department of public safety.

The vacated conviction does not count as a historical prior, nor may it be used for classification as a repeat offender under Ariz. Rev. Stat. Ann. § 13-703 (Repetitive offenders; sentencing). Ariz. Rev. Stat. Ann. § 13-907.01(E). Once the conviction has been vacated, an applicant is permitted to write on any application for “employment, housing, financial aid, or loan[s]” that do not require a fingerprint clearance card that the person has never been “arrested for, charged with, or convicted of the crime” of prostitution. Ariz. Rev. Stat. Ann. § 13-907.01(F).

#### *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.*

Mandatory restitution is specifically available in cases of sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309 (Restitution), which states that “[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.” Furthermore, under Ariz. Rev. Stat. Ann. § 13-807,

A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this state against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order.

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<sup>68</sup> See *supra* Component 1.1 for definition of sex trafficking.

<sup>69</sup> “If the prosecutor opposes the application, the court shall hold a hearing on the application.” Ariz. Rev. Stat. Ann. § 13-907.01(C).

Ariz. Rev. Stat. Ann. § 13-804(A) (Restitution for offense causing economic loss; fine for reimbursement of public monies) provides another form of discretionary restitution.

On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

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Domestic minor sex trafficking victims will probably have difficulty obtaining restitution under Ariz. Rev. Stat. Ann. § 13-804(A) because of its limitation to economic damages.

Under the racketeering provisions of Ariz. Rev. Stat. Ann. § 13-2314(A) (Racketeering; civil remedies by this state), “The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering . . . .” Subsection (D) states that “[f]ollowing a determination of liability” the court can issue orders, including “[o]rdering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.” Furthermore, “A civil action authorized by this section, including proceedings pursuant to chapter 39 of this title, is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.” Ariz. Rev. Stat. Ann. § 13-2314(L).

Ariz. Rev. Stat. Ann. § 13-2314.04(A) (Racketeering; unlawful activity; civil remedies by private cause of action) states in part,

A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity,<sup>70</sup> or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation.

The Arizona Crime Victims’ Bill of Rights located in the State Constitution, art. II, sec. 2.1 includes in its list of victims’ rights the right “[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” However, as noted above, paragraph (C) of this section could

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<sup>70</sup> Ariz. Rev. Stat. Ann. § 13-2314.04(T)(3) states,

“Pattern of racketeering activity” means either:

- (a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:
  - (i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.
  - (ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.
  - (iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.
- (b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

operate as a barrier to identification of domestic minor sex trafficking victims as victims. It states, “(C) ‘Victim’ means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.”

*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.*

Ariz. Rev. Stat. Ann. § 13-2314(I) states in part, “[I]nitiation of civil proceedings related to violations of any offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312, including procedures pursuant to chapter 39 of this title, shall be commenced within seven years after actual discovery of the violation.”

Ariz. Rev. Stat. Ann. § 13-2314.04 states in part, “Notwithstanding any law prescribing a lesser period but subject to subsection A of this section, the initiation of civil proceedings pursuant to this section shall be commenced within three years from the date the violation was discovered, or should have been discovered with reasonable diligence, and ten years after the events giving rise to the cause of action, whichever comes first.”

Ariz. Rev. Stat. Ann. § 12-502 (Effect of minority or insanity) states that “[i]f a person entitled to bring an action other than those set forth in article 2 [Real actions] of this chapter is at the time the cause of action accrues either under eighteen years of age or of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.” Under Ariz. Rev. Stat. Ann. § 12-542 (Injury to person; injury when death ensues), “Except as provided in section 12-551 [Product liability] there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions: 1. For injuries done to the person of another including causes of action for medical malpractice as defined in section 12-561. 2. For injuries done to the person of another when death ensues from such injuries, which action shall be considered as accruing at the death of the party injured . . .” Under Ariz. Rev. Stat. Ann. 12-550 (General limitation), “Actions other than for recovery of real property for which no limitation is otherwise prescribed shall be brought within four years after the cause of action accrues and not afterward.” Finally, Ariz. Rev. Stat. Ann. § 12-511 states in part, “Notwithstanding sections 12-505 and 12-542, if a defendant is charged by a criminal complaint or indictment the statute of limitations for any civil cause of action that is brought by a victim against the defendant for criminal conduct against the victim is extended for one year from the final disposition of the criminal proceedings, regardless of whether the defendant is convicted of criminal conduct against the victim.” The provision defines “criminal conduct” to include,

[A]ny act, including all preparatory offenses, in violation of section . . . 13-1304 [Kidnapping], 13-1404 [Sexual abuse], 13-1405 [Sexual conduct with a minor], 13-1406 [Sexual assault], 13-1410 [Molestation of a child], 13-1417 [Continuous sexual abuse of a child], 13-2314.04 [Racketeering], . . . 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation], . . . 13-3601 [Domestic violence] or 13-3601.02 [Aggravated domestic violence].

Ariz. Rev. Stat. Ann. § 13-107 (Time limitations) outlines statutes of limitations for prosecution of any crime. Under subsection A, “A prosecution for any homicide, any offense that is listed in chapter 14 [Sexual offenses] or 35.1 [Sexual exploitation of children] of this title and that is a class 2 felony, any violent sexual assault pursuant to section 13-1423, . . . or any attempt to commit an offense listed in this subsection may be commenced at any time.” Under subsection (B), the statute of limitations for class 2 to class 6 felonies is seven years. The statute of limitations for misdemeanors is one year. Subsection (F) states that “[t]he time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting

attorney designates the offense as a misdemeanor.”

**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 decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement are mandated to promptly report missing and recovered children.*

**Legal Analysis:**

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

Ariz. Rev. Stat. Ann. § 41-1781 (Training and education) establishes a division of training and education for law enforcement personnel. Although training is not mandated, it is available through the Arizona Department of Public Safety/Arizona Law Enforcement Academy (ALEA), according to an ALEA representative. According to the basic curriculum guide for post-academy training, one of the stated objectives is to be able to identify examples of various crimes against children, including commercial sexual exploitation of a minor, sexual exploitation of a minor, dangerous crimes against children, child abuse, child neglect, public sexual indecency to a minor, sexual conduct with a minor, and child molestation.<sup>71</sup>

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

Ariz. Rev. Stat. Ann. § 13-3005 (Interception of wire, electronic and oral communications; installation of pen register or trap and trace device) prohibits the interception of communications without consent of a party who is present at the communication. However, Ariz. Rev. Stat. Ann. § 13-3012(9) (Exemptions) expressly permits the interception of communications where a single party who is “a party to the communication or a person who is present during the communication” consents thereto, which allows law enforcement to intercept such communications outside the typically required court order. Ariz. Rev. Stat. Ann. § 13-3012(1) also exempts, among other things, the “interception of wire, electronic or oral communications, . . . the providing of information, facilities or technical assistance to an investigative or law enforcement officer pursuant to a subpoena or an ex parte order granted pursuant to sections 13-3010, 13-3015, 13-3016, 13-3017 and 13-3018 or an emergency interception made in good faith pursuant to section 13-3015, including any of the foregoing acts by a communication service provider or its officers, agents or employees.”

Ariz. Rev. Stat. Ann. § 13-3010 provides procedures for an ex parte order for interception, stating in subsection A,

On application of a county attorney, the attorney general or a prosecuting attorney whom a county attorney or the attorney general designates in writing, any justice of the supreme court, judge of the

<sup>71</sup> ARIZONA PEACE OFFICER STANDARDS & TRAINING BOARD, BASIC TRAINING CURRICULUM 23, *available at* <https://aleaonline.az.gov/sites/default/files/documents/files/585%20Basic%20Training%20Curriculum%20January%202011.pdf> (July 2016).

court of appeals or superior court judge may issue an ex parte order for the interception of wire, electronic or oral communications if there is probable cause to believe both:

1. A crime has been, is being or is about to be committed.
2. Evidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.

“Crime” is defined in Ariz. Rev. Stat. Ann. § 13-3010(P) as meaning “murder, gaming, kidnapping, robbery, bribery, extortion, theft, an act in violation of chapter 23 of this title [Organized crime, fraud and terrorism], dealing in narcotic drugs, marijuana or dangerous drugs, sexual exploitation of children in violation of chapter 35.1 of this title or any felony that is dangerous to life, limb or property. Crime includes conspiracy to commit any of the offenses listed in this subsection.”

Ariz. Rev. Stat. Ann. § 13-3015(A) (Emergency interception), states in part,

Notwithstanding any other provision of this chapter, if the attorney general or a county attorney or such prosecuting attorneys as they may designate in writing reasonably determines that an emergency situation exists involving immediate danger of death or serious physical injury to any person, and that such death or serious physical injury may be averted by interception of wire, electronic or oral communications before an order authorizing such interception can be obtained, the attorney general or a county attorney or his designee may specially authorize a peace officer or law enforcement agency to intercept such wire, electronic or oral communications.

If this provision is used, the person authorizing the emergency interception must apply “for an order authorizing the interception, in accordance with the provisions of section 13-3010. The application shall be made as soon as practicable, and in no event later than forty-eight hours after commencement of the emergency interception.”

Ariz. Rev. Stat. Ann. § 13-3015(B).

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

Ex parte orders for intercepting communications require probable cause that “[a] crime has been, is being or is about to be committed” and that “[e]vidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.” Ariz. Rev. Stat. Ann. § 13-3010(A). Evidence gathered through an emergency interception may be admissible, although Ariz. Rev. Stat. Ann. § 13-3015(C) (Emergency interception) requires the prosecutor to request authorization within 48 hours of the emergency interception by stating “if the prosecuting attorney fails to obtain an authorization within forty-eight hours after commencement of the emergency interception, or if authorization to intercept communications is denied, the interception shall immediately terminate and any communications intercepted without judicial authorization may not be used as evidence in any criminal or civil proceeding against any person.”

### 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*

Arizona’s child prostitution statute, Ariz. Rev. Stat. Ann. § 13-3212(A)(4), (C) (Child prostitution) expressly prohibits a defense to the use of a law enforcement decoy. Under Ariz. Rev. Stat. Ann. § 13-3212(A)(4), (C) (Child prostitution),

It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.

Additionally, Ariz. Rev. Stat. Ann. § 13-3212(A), (B)(1) and (2) criminalize, among other things, knowingly causing a minor to engage in prostitution, receiving any benefit from prostitution of a child, or knowingly

“[e]ngaging in prostitution with a minor who is under 15 years of age” or “with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age.”

Similar prohibitions on using such a defense to the prosecution of a trafficker or buyer of sex with a minor are found in Ariz. Rev. Stat. Ann. § 13-3560(B) (Aggravated luring a minor for sexual exploitation) and Ariz. Rev. Stat. Ann. § 13-3554(B) (Luring a minor for sexual exploitation). Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.” Ariz. Rev. Stat. Ann. § 13-3554(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor.”

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

Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) makes it a crime when a person “[k]nowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor” and “[b]y means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.” Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.”

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

Ariz. Rev. Stat. Ann. § 8-810 (Missing children; notification; entry into databases) mandates reporting certain missing children by DCS, stating in relevant part in subsection A, “If the department receives a report made pursuant to section 13-3620<sup>72</sup> or receives information during the course of providing services that indicates a child is at risk of serious harm and the child’s location is unknown, the department shall notify the appropriate law enforcement agency and provide the information required to make the record entry into the Arizona crime

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<sup>72</sup> Ariz. Rev. Stat. Ann. § 13-3620 (Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions) states,

A. Any person [as defined later in the statute] who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature . . . shall immediately report or cause reports to be made of this information to a peace officer, to the department of child safety, , or to a tribal law enforcement or social service agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only . . . .

. . . .

P. For purposes of this section:

. . . .

4. “Reportable offense” means any of the following:

- (a) Any offense listed in chapters 14 [Sexual offenses] and 35.1 [Sexual exploitation of children] of this title or section 13-3506.01 [Furnishing harmful items to minors; internet activity].
- (b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.
- (c) Child prostitution pursuant to section 13-3212.
- (d) Incest pursuant to section 13-3608.



information center and the national crime information center missing person databases.” Under subsection (B), “The appropriate law enforcement agency shall immediately enter the information provided by the department pursuant to subsection A of this section into the Arizona crime information center and the national crime center missing persons database.”

Ariz. Rev. Stat. Ann. § 15-829 (Missing child; notification of school; flagging records) requires that upon receiving a missing child<sup>73</sup> report from parents or guardians, law enforcement shall notify the missing child’s school or, if home-schooled, the county school superintendent. The school is then required to flag the records of the missing child. The law enforcement agency reporting to the school must also notify the school or county school superintendent if the missing child is recovered in order to have the flag on the child’s record removed. A similar process is required under Ariz. Rev. Stat. Ann. § 36-339 (Missing children; notification; flagging birth certificate records) with respect to notification by the receiving law enforcement agency in Arizona of a missing child report to the state registrar in the child’s birth state who is then required to flag the child’s birth certificate. If the missing child is found, the law enforcement agency that reported the child missing must notify the state registrar so they can remove the flag from the child’s registered birth certificate.

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<sup>73</sup> Ariz. Rev. Stat. Ann. § 15-829(D)(2) defines “missing child” as “a person who is under the age of eighteen years, whose temporary or permanent residence is in this state or is believed to be in this state, whose location has not been determined and who has been reported as missing to a law enforcement agency.”