

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2015 ANALYSIS AND RECOMMENDATIONS OHIO

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) distinguishes between sex trafficking of adults and minors under 16 years of age by eliminating the requirement to prove force, fraud or coercion when the victim is a minor under 16. However, proof of force, fraud or coercion is required to establish a sex trafficking offense against a minor victim aged 16 or 17, unless the defendant was in a position of authority or trust to the minor victim, as provided in Ohio Rev. Code Ann. § 2907.03 (Sexual battery).² Ohio Rev. Code Ann. § 2905.32(A) states,

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

² Ohio Rev. Code Ann. § 2907.3 (Sexual battery) states in part,

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

....

No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if any of the following applies:

- (1) The offender knows that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.³
- (2) The other person is less than sixteen years of age or is a developmentally disabled person whom the offender knows or has reasonable cause to believe is a developmentally disabled person, and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any of the following purposes:
 - (a) To engage in sexual activity for hire⁴;

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

³ Ohio Rev. Code Ann. § 2905.31(B) (Involuntary servitude) states, “‘Material that is obscene, sexually oriented, or nudity oriented’ and ‘performance that is obscene, sexually oriented, or nudity oriented’ have the same meanings as in section 2929.01 [Definitions] of the Revised Code” Ohio Rev. Code Ann. § 2929.01(Penalties and sentencing general definitions) defines “material that is obscene, sexually oriented, or nudity oriented” as “any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.” Ohio Rev. Code Ann. § 2929.01(DDD) defines “performance that is obscene, sexually oriented, or nudity oriented” as “any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.”

⁴ “Sexual activity for hire,” “performance for hire,” and “model or participant for hire” are defined under Ohio Rev. Code Ann. § 2905.32 (F)(2) (Trafficking in persons) as

an implicit or explicit agreement to provide sexual activity, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material, whichever is applicable, in exchange for anything of value paid to any of the following:

- (b) To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;
 - (c) To be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.
- (3) The other person is sixteen or seventeen years of age, either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any purpose described in divisions (A)(2)(a) to (c) of this section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.3⁵ of the Revised Code apply with respect to the offender and the other person.

Ohio Rev. Code Ann. § 2905.32(C) further provides, "In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section."

A conviction under Ohio Rev. Code Ann. § 2905.32(A), is punishable as a first degree felony,⁶ for which "the court shall sentence the offender to a definite prison term of ten, eleven, twelve, thirteen, fourteen, or fifteen years," and a possible fine up to \$20,000.⁷ Ohio Rev. Code Ann. §§ 2905.32(E),⁸ 2929.13(A), 2929.18(A)(3)(a).⁹

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- (a) The person engaging in such sexual activity, performance, or modeling participation;
 - (b) Any person who recruits, entices, isolates, harbors, transports, provides, obtains, or maintains, or attempts to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the person described in (F)(2)(a) of this section;
 - (c) Any person associated with a person described in (F)(2)(a) of this section.

⁵ See *supra* note 2.

⁶ Pursuant to Ohio Rev. Code Ann. § 2929.13(A) (Guidance by degree of felony; monitoring of sexually oriented offenders by global positioning device), unless the criminal provision specifies that a prison term is presumptive or mandatory, the judge has discretion to sentence a felony offender according to the terms of Ohio Rev. Code Ann. § 2929.14 (Basic prison terms), § 2929.15 (Community control sanctions), § 2929.16 (Residential Sanctions), § 2929.17 (Nonresidential sanctions), or § 2929.18 (Financial sanctions; restitution; reimbursements) with the minimum sentence necessary to accomplish the purposes of rehabilitating the criminal and protecting the community from future crime. Ohio Rev. Code Ann. §§ 2929.11, 2929.13(A), (D), 2929.14(A). If the criminal provision specifies that imprisonment is mandatory, then the court must "impose any financial sanction pursuant to section 2929.18 of the Revised Code that is required for the offense and may impose any other financial sanction pursuant to that section" Ohio Rev. Code Ann. § 2929.13(A). If the statute specifies that there is a presumption of imprisonment then "it is presumed that a prison term is necessary in order to comply with the purposes and principles of" Ohio Rev. Code Ann. § 2929.11 (Purposes of felony sentencing; discrimination prohibited), but the court may depart from the presumption and community control sanctions if it evaluates the factors outlined in § 2929.12 (Seriousness and recidivism factors) and finds that community control sanctions would adequately punish the offender, protect the public, and maintain the seriousness of the offense. Ohio Rev. Code Ann. § 2929.13(D). In the absence of a mandatory term of imprisonment and when the court departs from the presumption of imprisonment, the judge may order community control sanctions like community service, house arrest, mediation between offender and victim, probation, curfew, time in a halfway house, or up to six months in a community-based correctional facility. Ohio Rev. Code Ann. §§ 2929.15(A), 2929.16(A)(1), (4), 2929.17(B), (C), (E), (I), (L). Ohio Rev. Code Ann. § 2929.12 provides the judge several factors to consider in determining whether it is appropriate to issue a community control sanction or a term of imprisonment. This report will explicitly note when imprisonment is presumptive or mandatory.

⁷ When an offender is an organization rather than a person, different fines apply to felonies and misdemeanors of various degrees under Ohio Rev. Code Ann. § 2929.31 (Organizational penalties). Additionally, Ohio Rev. Code Ann. § 2929.32(A)(1) (Additional fine for certain offenders; collection of fines; crime victims recovery fund) authorizes the court to order an offender to pay a fine up to \$1,000,000 if any of the following applies to the offense and the offender:

- 1.1.1 Recommendation: Amend Ohio Rev. Code § 2905.32 (Trafficking in persons) to eliminate the requirement to either prove that the minor “was compelled to engage in sexual activity” or the existence of special circumstances under § 2907.03 (Sexual battery) when the minor victim is 16 or 17 years of age.

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

The following laws criminalize CSEC in Ohio:

1. Ohio Rev. Code Ann. § 2907.21(A) (Compelling prostitution) states,

No person shall knowingly do any of the following:

- (1) Compel¹⁰ another to engage in sexual activity for hire;
- (2) Induce, procure, encourage, solicit, request, or otherwise facilitate either of the following:
 - (a) A minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor;
 - (b) A person the offender believes to be a minor to engage in sexual activity for hire, whether or not the person is a minor.

(a) There are three or more victims, as defined in section 2969.11 of the Revised Code, of the offense for which the offender is being sentenced.

(b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of the other offenses, there is a total of three or more victims, as defined in section 2969.11 of the Revised Code.

(c) The offense for which the offender is being sentenced is aggravated murder, murder, or a felony of the first degree that, if it had been committed prior to July 1, 1996, would have been an aggravated felony of the first degree.

⁸ Under Ohio Rev. Code Ann. § 2905.32(D), “if an offender is convicted of or pleads guilty to a violation of [2905.32] and also...is convicted of or pleads guilty to any other violation of Chapter 2907 of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.” Pursuant to Ohio Rev. Code Ann. § 2941.25(A) (Allied offenses of similar import - multiple counts), “Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.” By contrast, “[w]here the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.” Ohio Rev. Code Ann. § 2941.25(B). Consequently, with the exception of Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), an offender convicted under § 2905.32 for sex trafficking a minor could not be convicted under the commercial sexual exploitation of children (CSEC) offenses discussed below, including Ohio Rev. Code Ann. § 2907.21(A) (Compelling prostitution), § 2907.22(A) (Promoting prostitution), § 2907.23 (Procuring), § 2907.07(B)(2) (Importuning) where the same conduct and victim are involved.

⁹ If the crime is a “sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code,” the court may impose an additional fine of fifty to \$500.

¹⁰ Ohio Rev. Code Ann. § 2907.21(B) states,

For a prosecution under division (A)(1) of this section, the element “compel” does not require that the compulsion be openly displayed or physically exerted. The element “compel” has been established if the state proves that the victim’s will was overcome by force, fear, duress, or intimidation.

- (3) (a) Pay or agree to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;
- (b) Pay or agree to pay a person the offender believes to be a minor, either directly or through the person's agent, so that the person will engage in sexual activity, whether or not the person is a minor.
- (4) (a) Pay a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity pursuant to a prior agreement, whether or not the offender knows the age of the minor;
- (b) Pay a person the offender believes to be a minor, either directly or through the person's agent, for the person having engaged in sexual activity pursuant to a prior agreement, whether or not the person is a minor.
- (5) (a) Allow a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the minor;
- (b) Allow a person the offender believes to be a minor to engage in sexual activity for hire if the person allowing the person to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the person the offender believes to be a minor, whether or not the person is a minor.

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by imprisonment for 9–36 months¹¹ and a possible fine up to \$10,000. If the crime is a “sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code,” the court may impose an additional fine of fifty to \$500. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the victim is 16–17, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2), 2929.18(A)(3)(b). If the victim is under 16, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a first degree felony by imprisonment for 3–11 years¹² and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(1), 2929.18(A)(3)(a).

If an offender convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,”¹³ however, enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422

¹¹ Ohio Rev. Code Ann. § 2929.14(A)(3)(b) states, “the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.”

¹² Ohio Rev. Code Ann. § 2929.14(A)(1) states, “the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.”

¹³ As used in Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms) and as defined in Ohio Rev. Code Ann. § 2929.01(AAA) (Definitions), “human trafficking”

means a scheme or plan to which all of the following apply:

- (1) Its object is one or more of the following:
 - (a) To subject a victim or victims to involuntary servitude, as defined in section 2905.31 [Involuntary servitude] of the Revised Code, to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.
 - (b) To facilitate, encourage, or recruit a victim who is less than sixteen years of age or is a developmentally disable person, or victims who are less than sixteen years of age or are developmentally disabled persons, for any purpose listed in divisions (A)(2)(a) of section 2905.32 of the Revised Code;
 - (b) To facilitate, encourage, or recruit a victim who is sixteen years of age or seventeen years of age, or victims who are sixteen or seventeen years of age, for any purposes listed in divisions (A)(2)(a) to (c) of section 2905.32 of the Revised Code, if the circumstances described in division

(Human trafficking specification)¹⁴ and § 2929.14(B)(7) (Basic prison terms).¹⁵ Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c). If the victim is 16–17 years old, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a second degree felony by mandatory imprisonment for 3–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2), (B)(7)(a)(ii), 2929.18(A)(3)(b). If the victim is under 16 years old, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a first degree felony by mandatory imprisonment for 5–10 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(B)(7)(a)(i), 2929.18(A)(3)(a).

2. Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution) states,

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- (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.3 of the Revised Code apply with respect to the person engaging in the conduct and the victim or victims.
- (2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:
- (a) Each of the felony offenses is a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.
 - (b) At least one of the felony offenses was committed in this state.
 - (c) The felony offenses are related to the same scheme or plan and are not isolated instances.

¹⁴ Ohio Rev. Code Ann. § 2941.1422 provides,

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 [Basic prison terms] of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking. . . .

....

¹⁵ Ohio Rev. Code Ann. § 2929.14(B)(7)(a) states,

- (a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:
- (i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;
 - (ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of section 2929.14 [Basic prison terms] of the Revised Code;
 - (iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

No person shall knowingly:

- (1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel or any other enterprise a purpose of which is to facilitate engagement in sexual activity for hire;
- (2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;
- (3) Transport another, or cause another to be transported in order to facilitate the other person's engaging in sexual activity for hire;
- (4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

Ohio Rev. Code Ann. § 2907.22(B)¹⁶ imposes enhanced penalties when the victim of the offense is a commercially sexually exploited child. In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). Where an offender convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

3. Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) states,

No person shall do any of the following to a child under eighteen years of age . . .

. . .

- (5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years¹⁷ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

4. Ohio Rev. Code Ann. § 2907.23 (Procuring) states,

(A) No person, knowingly and for gain, shall do either of the following:

- (1) Entice or solicit another to patronize a prostitute or brothel;
- (2) Procure a prostitute for another to patronize, or take or direct another at the other's request to any place for the purpose of patronizing a prostitute.

¹⁶ Ohio Rev. Code Ann. § 2907.22(B) states, in part,

Whoever violates this section is guilty of promoting prostitution. Except as otherwise provided in this division, promoting prostitution is a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the third degree. . . .

¹⁷ Ohio Rev. Stat. Ann. § 2929.14(A)(2) states, “the prison term shall be two, three, four, five, six, seven, or eight years.”

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring. Except as otherwise provided in this division, procuring is a misdemeanor of the first degree. If the prostitute who is procured, patronized, or otherwise involved in a violation of division (A)(2) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates division (A)(2) of this section knows the prostitute's age, or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is under sixteen years of age at the time of the violation, regardless of whether the offender who violates division (B) of this section knows the prostitute's age, procuring is a felony of the fourth degree. If the prostitute who is procured, patronized, or otherwise involved in violation of division (A)(2) of this section is sixteen or seventeen years of age at the time of the violation or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is sixteen or seventeen years of age at the time of the violation, procuring is a felony of the fifth degree.

A first degree misdemeanor is punishable by imprisonment for up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2929.24(A)(1), 2929.28(A)(2)(a)(i). A fourth degree felony is punishable by imprisonment for 6–18 months¹⁸ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2929.14(A)(4), 2929.18(A)(3)(d). A fifth degree felony is punishable by imprisonment for 6–12 months¹⁹ with “a presumption that a prison term shall be imposed” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e).

5. Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) states,

(2) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.07(B) is punishable as a fifth degree felony by imprisonment for 6–12 months²⁰ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months²¹ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

6. Ohio Rev. code Ann § 2907.24(A) (Soliciting) states

(2) No person shall solicit another to engage with such other person in sexual activity for hire²² if the other person is sixteen or seventeen years of age and the offender knows that the other person is sixteen or seventeen years of age or is in reckless disregard.

¹⁸ Ohio Rev. Code Ann. § 2929.14(A)(4) states, “the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.”

¹⁹ Ohio Rev. Code Ann. § 2929.14(A)(5) states, “the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.”

²⁰ See *supra* note 19.

²¹ See *supra* note 18.

²² “Sexual activity for hire” is defined under Ohio Rev. Code Ann. § 2907.24(E)(2) as

(3) No person shall solicit another to engage with such other person in sexual activity for hire if either of the following applies:

(a) The other person is less than sixteen years of age, whether or not the offender knows the age of the other person.

A violation of Ohio Rev. code Ann § 2907.24(A) when the victim is sixteen or seventeen years old is a felony of the fifth degree, punishable by imprisonment for 6–12 months²³ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). A violation of Ohio Rev. code Ann § 2907.24(A) when the victim is less than sixteen years of age is a felony of the third degree, punishable by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

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

1. Ohio Rev. Code Ann. § 2907.07(A)–(D) (Importuning) states,

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) (1) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct²⁴ with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(C) No person shall solicit another by means of a telecommunications device,²⁵ as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

An implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.

²³ See *supra* note 19.

²⁴ Ohio Rev. Code Ann. § 2907.01(A) defines “sexual conduct” as

vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

²⁵ Ohio Rev. Code Ann. § 2913.01(Y) (Definitions) defines a “telecommunications device” as “any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.”

- (1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.
- (2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

A first conviction under Ohio Rev. Code Ann. § 2907.07(A), (C) carries “a presumption in favor of a prison term” and is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(A), (C) is punishable as a second degree felony by mandatory imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2), 2929.18(A)(3)(b).

A first conviction under Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fifth degree felony by imprisonment for 6–12 months²⁶ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months²⁷ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

2. Ohio Rev. Code Ann. § 2907.02(A)(1)(b) (Rape) states,

No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

....

- (b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) is a first degree felony punishable by mandatory imprisonment for 10 years to life and a possible fine up to \$20,000, unless the victim was under 10, in which the minimum increases to 15 years. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a), 2971.03(B)(1)(a)–(b). If the offender uses force, has a previous conviction, or causes harm to the victim the minimum increases to 25 years. Ohio Rev. Code Ann. § 2971.03(B)(1)(c). However, under Ohio Rev. Code Ann. § 2907.02(B),

If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term

²⁶ See *supra* note 19.

²⁷ See *supra* note 18.

or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division.

Additionally, if the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) or a similar offense in another jurisdiction, the victim is under 10, or the offender causes serious harm, a violation of Ohio Rev. Code Ann. § 2907.02(A)(1)(b) may be punishable as a first degree felony by life imprisonment without parole and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a). Other penalties are applicable to sexually violent predators pursuant to Ohio Rev. Code Ann. §2971.03(A).

3. Ohio Rev. Code Ann. § 2907.04(A) (Unlawful sexual conduct with a minor) states,

No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

A first conviction under Ohio Rev. Code Ann. § 2907.04(A) generally is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. § 2907.04(B)(1), 2929.14(A)(4), 2929.18(A)(3)(d). If the offender is at least 10 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a third degree felony by imprisonment for 12–60 months²⁸ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.04(B)(3), 2929.14(A)(3)(a), 2929.18(A)(3)(c). However, if the offender is less than 4 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a first degree misdemeanor by imprisonment for up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.04(B)(2), 2929.24(A)(1), 2929.28(A)(2)(a)(i). If the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02, § 2907.04, or § 2907.03 (Sexual battery), a violation of Ohio Rev. Code Ann. § 2907.04 is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.04(B)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

4. Ohio Rev. Code Ann. § 2907.05(A)(4), (B) (Gross sexual imposition) states,

(A) No person shall have sexual contact²⁹ with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

....

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

....

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A conviction under Ohio Rev. Code Ann. § 2907.05(A)(4) or (B) is punishable as a third degree felony with “a presumption that a prison term shall be imposed for the offense” by imprisonment for 12–60 months and

²⁸ Ohio Rev. Code Ann. § 2929.14(A)(3)(a) states, “the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.”

²⁹ Ohio Rev. Code Ann. § 2907.01(B) defines “sexual contact” as, “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.”

a possible fine up to \$10,000.³⁰ Ohio Rev. Code Ann. §§ 2907.05(C)(2), 2929.14(A)(3)(a), 2929.18(A)(3)(c).

5. Ohio Rev. Code Ann. § 2907.06(A)(4) (Sexual imposition) states,

No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

....

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

A first conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a third degree misdemeanor by imprisonment up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. § 2907.06(C), 2929.24(A)(3), 2929.28(A)(2)(a)(iii). However, if an offender has certain prior convictions,³¹ a conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a first degree misdemeanor by imprisonment up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.06(C), 2929.24(A)(1) 2929.28(A)(2)(a)(i).

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

Ohio Rev. Code Ann. § 2907.25(A) (Prostitution) does not refer to § 2905.32 to identify a minor involved in prostitution as a victim of sex trafficking.

Ohio's delinquency statute does refer to the human trafficking statute, however. Ohio Rev. Code Ann. § 2152.021(F) (Complaint of delinquency or juvenile traffic offender) states "At any time after the filing of a complaint alleging that a child is a delinquent child and before adjudication, the court may hold a hearing to determine whether to hold the complaint in abeyance pending the child's successful completion of actions that constitute a method to divert the child from the juvenile court system if the child agrees to the hearing and either of the following applies: ... The court has reason to believe that the child is a victim of a violation of section 2905.32 of the Revised Code, regardless of whether any person has been convicted of a violation of that section or of any other section for victimizing the child, and the act charged is related to the child's victimization." Ohio Rev. Code Ann. § 2152.021(F)(1)(b)

Ohio Rev. Code Ann. § 2941.1422(A) (Human trafficking specification) also refers to human trafficking for sentencing purposes of certain CSEC statutes by stating,

³⁰ Ohio Rev. Code Ann. § 2907.05(C)(2) further states,

The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

³¹ These include convictions under Ohio Rev. Code Ann. § 2907.06, § 2907.02 (Rape), § 2907.03 (Sexual battery), § 2907.04 (Unlawful sexual conduct with minor), or § 2907.05 (Gross sexual imposition).

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking. . . .

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.

Ohio Rev. Code Ann. § 2923.32(A) (Engaging in pattern of corrupt activity; forfeiture) states,

(1) No person employed by, or associated with, any enterprise³² shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity³³ or the collection of an unlawful debt.

(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

. . . .

Ohio Rev. Code Ann. § 2923.31(I) (Definitions) defines “corrupt activity” as

engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as “racketeering activity” under the “Organized Crime Control Act of 1970,” 84 Stat. 941, 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;

³² Ohio Rev. Code Ann. § 2923.31(C) (Definitions) defines an “enterprise” as including “any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. ‘Enterprise’ includes illicit as well as licit enterprises.”

³³ Ohio Rev. Code Ann. § 2923.31(E) defines a “pattern of corrupt activity” as

two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.

- (2) Conduct constituting any of the following:
- (a) A violation of section 1315.55 [Additional money laundering prohibitions], . . . 2907.321[Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], 2907.323 [Illegal use of minor in nudity-oriented material or performance]
 - (c) Any violation of section 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution]
 - (e) Any violation or combination of violations of section 2907.32 [Pandering obscenity] of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 [Definitions] of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds one thousand dollars;
 - (f) Any combination of violations described in division (I)(2)(c) of this section and violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;
 - (g) Any violation of section 2905.32 [Trafficking in persons] of the Revised Code to the extent the violation is not based solely on the same conduct that constitutes corrupt activity pursuant to division (I)(2)(c) of this section due to the conduct being in violation of section 2907.21 of the Revised Code.
- (3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;
-

It is important to note that a person cannot be convicted of both a human trafficking offense and compelling prostitution offense because the Ohio legislature merged these two offenses, labeling them “allied offenses of similar import” under its provisions on multiple counts. Ohio Rev. Code Ann. §§ 2905.32(D) (Trafficking in persons), 2942.25(A) (Multiple counts).³⁴ Additionally, Ohio law also specifies that a human trafficking offense can be considered a predicate act only to the extent that it is “not based solely on the same conduct that constitutes corrupt activity . . . due to the conduct being in violation of section 2907.21 of the Revised Code [Compelling prostitution].” Ohio Rev. Stat. Ann. §2923.31(I)(2)(g). Thus, in determining whether there is a

³⁴ Pursuant to Ohio Rev. Code Ann. § 2941.25(Allied offenses of similar import—multiple counts),

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

pattern of corrupt activity, there may only be one predicate act even where a person has engaged in conduct that constitutes both human trafficking and compelling prostitution with regard to the same victim.

A conviction under Ohio Rev. Code Ann. § 2923.32(A) generally is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(2), 2929.18(A)(3)(b). However, where at least “one of the incidents of corrupt activity is a felony of the first, second, or third degree,” a conviction under Ohio Rev. Code Ann. § 2923.32(A) is punishable as a first degree felony by imprisonment for 3–11 years³⁵ and a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(1), 2929.18(A)(3)(a). Additionally, a conviction is subject to asset forfeiture. Ohio Rev. Code Ann. § 2923.32(B)(3) (Engaging in a pattern of corrupt activity) states,

In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation . . .

. . .

³⁵ See *supra* note 12.

Legal Components:

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

Legal Analysis:

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) does not apply to buyers of commercial sex with minors because Ohio Rev. Code Ann. § 2905.32(C) specifically states, “In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.”

- 2.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) to make the statute applicable to the actions of buyers of commercial sex with minors.³⁶

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

Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) includes the crime of buying sex with a minor by making it illegal for a person to “pay or agree to pay a minor, either directly or through the minor’s agent, so that the minor will engage in sexual activity” or to pay for having engaged in sexual activity with a minor “pursuant to a prior agreement.” A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3) or (4) is punishable as a third degree felony by imprisonment for 9–36 months³⁷ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

³⁶ 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 (discussing need to include buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

³⁷ See *supra* note 11.

Buyers also face charges under Ohio Rev. Code Ann. § 2907.24 (Solicitation), which makes it illegal to solicit minors for sexual activity for hire. An offense is a felony of the fifth degree when the victim is sixteen or seventeen years old, punishable by imprisonment for 6–12 months³⁸ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). A violation of Ohio Rev. Code Ann. § 2907.24(A) when the victim is less than sixteen years of age is a felony of the third degree, punishable by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

A buyer who solicits sex with a minor trafficking victim aged 16 or 17, also faces prosecution under Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) states,

- (2) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.07(B) is punishable as a fifth degree felony by imprisonment for 6–12 months³⁹ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months⁴⁰ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

Buyers could also be prosecuted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

. . .

- (5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years⁴¹ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b). Several of Ohio’s sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.⁴²

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

Ohio Rev. Code Ann. § 2907.24 (Solicitation) distinguishes between solicitation of an adult and solicitation of a minor. Additionally, under Ohio Rev. Code Ann. § 2907.21(A)(2)–(4) (Compelling prostitution), Ohio makes it

³⁸ See *supra* note 19.

³⁹ See *supra* note 19.

⁴⁰ See *supra* note 18.

⁴¹ See *supra* note 17.

⁴² See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

a separate crime to solicit or pay a minor to engage in sexual activity for hire.⁴³ Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) also makes it a crime to solicit sex with a minor trafficking victim aged 16 or 17.

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

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) is punishable as a second degree felony punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b). A first conviction under Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) is punishable as a fifth degree felony by imprisonment for 6–12 months⁴⁴ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months⁴⁵ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

An offense under Ohio Rev. Code Ann. § 2907.24 (Solicitation) is a felony of the fifth degree when the victim is sixteen or seventeen years old, punishable by imprisonment for 6–12 months⁴⁶ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). A violation of Ohio Rev. Code Ann. § 2907.24(A) when the victim is less than sixteen years of age is a felony of the third degree, punishable by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴⁷ 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 offense⁴⁸ against a minor. 18 U.S.C. § 3559(e)(1). To the

⁴³ See *supra* Section 2.2 for the penalties applicable to a conviction under Ohio Rev. Code Ann. § 2907.21.

⁴⁴ See *supra* note 19.

⁴⁵ See *supra* note 18.

⁴⁶ See *supra* note 19.

⁴⁷ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

⁴⁸ Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

extent buyers can be prosecuted under other federal CSEC laws,⁴⁹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.⁵⁰

- 2.4.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution), § 2919.22(B)(5) (Endangering children) and § 2907.07(B)(2) (Importuning) to raise the penalties to reflect the seriousness of these offenses.

- 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.*

Even though Ohio Rev. Code Ann. § 2907.07(B)(2) (Importuning) makes it a crime to solicit sex with a minor trafficking victim aged 16 or 17, the provisions of the importuning offense that apply to use of the Internet or electronic communications, Ohio Rev. Code Ann. § 2907.07(C) and (D), make it a crime to use the Internet or electronic communications to solicit a child under 16 to engage in sexual activity without specifying commercial purposes and do not apply to minors aged 16 or 17.⁵¹

Where the child is under 13, a first conviction under Ohio Rev. Code Ann. § 2907.07(C) carries “a presumption in favor of a prison term” and is punishable as a third degree by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the buyer was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(C) is punishable as a second degree felony by mandatory imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2), 2929.18(A)(3)(b). Where the child is 13–15, a first conviction under Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fifth degree felony by imprisonment for 6–12 months⁵² with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the buyer was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months⁵³ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

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

Ohio Rev. Code Ann. § 2907.24 (Solicitation) establishes that an age mistake defense is not permitted for buyers when the person solicited is “less than sixteen years of age, whether or not the offender knows the age of the person.” Ohio Rev. Code Ann. § 2907.24(3)(a). However, a mistake of age defense is not prohibited when the minor victim is 16 or 17 years of age and the buyer must know “that the other person is sixteen or seventeen years of age or is reckless in that regard.” Ohio Rev. Code Ann. § 2907.24(2).

⁴⁹ 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).

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

⁵¹ *See supra* Section 1.2 for the relevant text of Ohio Rev. Code Ann. § 2907.07(C), (D).

⁵² *See supra* note 19.

⁵³ *See supra* note 18.

Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) prohibits the use of an age mistake defense by stating that the conduct prohibited under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) is illegal “whether or not the offender knows the age” of such person. Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) does not expressly prohibit a mistake of age defense and requires the offender to know or be “reckless in . . . regard” to the minor’s age Ohio Rev. Code Ann. § 2907.07(B), (C), (D).

2.6.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.07 (Importuning) to expressly prohibit a mistake of age defense.

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

Ohio Rev. Code Ann. § 2907.24 (Solicitation) staggers penalties based on the age of the minor. An offense under Ohio Rev. Code Ann. § 2907.24 is a felony of the fifth degree when the victim is sixteen or seventeen years old, punishable by imprisonment for 6–12 months⁵⁴ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). A violation of Ohio Rev. Code Ann. § 2907.24(A) when the victim is less than sixteen years of age is a felony of the third degree, punishable by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

However, Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) does not stagger penalties based on the minor’s age. Regardless of the age of the minor-victim, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

2.7.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.24 (Solicitation) to increase the base penalty for offenses against older minors and align with the penalties provided under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons).

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

Buyers may be required to pay fines. Buyers convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) may be ordered to pay a fine up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2929.18(A)(3)(b). Buyers convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) for the first time may be ordered to pay possible fines up to \$10,000, where the victim is under 13, or up to \$2,500, where the victim is 13–15 or is a 16 or 17 year old victim of trafficking. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(c), (e). Buyers with prior convictions convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) or may be required to pay a possible fine up to \$15,000, where the victim is under 13, or up to \$5,000, where the victim is 13–15. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(b), (d). Buyers convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) may be ordered to pay possible fines up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.18(A)(3)(b).

An offense under Ohio Rev. Code Ann. § 2907.24 (Solicitation) is a felony of the fifth degree when the victim is sixteen or seventeen years old, punishable by a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.24(C)(1), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). A violation of Ohio Rev. Code Ann. § 2907.24(A) when the victim is less than sixteen years of age is a felony of the third degree, punishable by a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.24, 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

⁵⁴ See *supra* note 19.

Buyers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1), which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section . . .

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Buyers convicted of an offense⁵⁵ such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), or § 2907.07 may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that the following property is subject to forfeiture:

- (1) Contraband involved in an offense;
- (2) Proceeds derived from or acquired through the commission of an offense;
- (3) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:
 - (a) A felony;
 - (b) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;
 - (c) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.

Seizure of this property is governed by Ohio Rev. Code Ann. §2981.06 (Seizure of forfeited or other property—disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. §2981.04 or a civil process in Ohio Rev. Code Ann. §2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types.

⁵⁵ Ohio Rev. Code Ann. § 2981.01(B)(10) (Purposes of forfeitures; definitions) defines an “offense” as

any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal criminal prosecution or delinquent child proceeding began at the time the forfeiture is initiated. Except as otherwise specified, an offense for which property may be forfeited includes any felony and any misdemeanor. The commission of an “offense” includes the commission of a delinquent act.

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

Ohio criminalizes both buying and possessing child pornography. Ohio Rev. Code Ann. § 2907.321(A)(5) (Pandering obscenity involving a minor) makes it illegal to “[b]uy, procure, possess, or control any obscene material, that has a minor as one of its participants,” while Ohio Rev. Code Ann. § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor) makes it illegal for a person to “[k]nowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.” A first conviction under Ohio Rev. Code Ann. § 2907.321(A)(5) or § 2907.322(A)(5) is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(4), 2929.18(A)(3)(d). A subsequent conviction under either statute is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). Ohio Rev. Code Ann. § 2907.323(A)(3) (Illegal use of minor in nudity-oriented material or performance) also bans possessing or viewing “any material or performance that shows a minor who is not the person’s child or ward in a state of nudity” without proper purpose. A first conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) is punishable as a fifth degree felony by imprisonment for 6–12 months and a possible fine up to \$2,500, while a conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) after a prior conviction pursuant to Ohio Rev. Code Ann. § 2907.321, § 2907.322 or § 2907.323 is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(4), (5), 2929.18(A)(3)(d).

In comparison, a federal conviction for possession of child pornography⁵⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁸

- 2.9.1 Recommendation: Increase the penalties for violations of Ohio Rev. Code Ann. § 2907.323(A)(3) (Illegal use of minor in nudity-oriented material or performance) and Ohio Rev. Code Ann. § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor).

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

Buyers are required to register as sex offenders if convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution).

⁵⁶ 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).

⁵⁷ 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).

⁵⁸ 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).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A) (Definitions) defines a “sexually oriented offense” as,

any of the following violations or offenses committed by a person, regardless of the person’s age:

(1) A violation of section 2907.02 [Rape], 2907.03 [Sexual battery], 2907.05 [Gross sexual imposition], 2907.06 [Sexual imposition], 2907.07 [Importuning], 2907.08 [Voyeurism], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], 2907.32 [Pandering obscenity], 2907.321 [Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], or 2907.323 [Illegal use of minor in nudity-oriented material or performance] of the Revised Code;

(2) A violation of section 2907.04 [Unlawful sexual conduct with minor] of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 [Repealed] of the Revised Code;

(3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02 , 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;

...

(11) A violation of section 2905.32[Human trafficking] of the Revised Code when any of the following applies:

(a) The violation is a violation of division (A)(1) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented;.

(b) The violation is a violation of division (A)(2) of that section and the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is less than sixteen years of age or is a developmentally disabled person whom the offender knows or has reasonable cause to believe is a developmentally disabled person for any purpose listed in divisions (A)(2)(a) to (c) of that section.

(c) The violation is a violation of division (A)(3) of that section, the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain a person who is sixteen or seventeen years of age for any purpose listed in divisions (A)(2)(a) to (c) of that section, and the circumstances described in division (A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) of section 2907.03 of the

Revised Code apply with respect to the offender and the other person. (12) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially

equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section;

(13) A violation of division (A)(3) of section 2907.24 of the Revised Code;

(14) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of this section.

Legal Components:

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*
- 3.3 *Using the Internet or electronic communications to lure, entice, recruit or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*
- 3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*
- 3.5 *Convicted traffickers are required to register as sex offenders.*
- 3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.*

Legal Analysis:

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

A conviction under Ohio Rev. Code Ann. § 2905.32⁵⁹ (Trafficking in persons) is punishable as a first degree felony by imprisonment for a definite term of 10, 11, 12, 13, 14 or 15 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.18(A)(3)(a).

Traffickers who knowingly “[i]nduce, procure, encourage, solicit, request, or otherwise facilitate . . . [a] minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution). A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for 9–36 months⁶⁰ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). However, if a trafficker convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,” enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Pursuant to Ohio Rev. Code Ann. § 2907.23(A),(B) (Procuring), a trafficker may be convicted for procuring a prostitute, procuring a patron, directing patrons or knowingly permitting premises to be used for prostitution. If the minor, who has been procured for commercial sexual activity, is under 16 years of age, a conviction may result in a felony of the fourth degree, which is punishable by imprisonment for 6–18 months⁶¹ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.14(A)(4), 2929.18(A)(3)(d). If the minor is 16 or 17 years of age at the time of the violation, a conviction may result in a felony of the fifth degree, which is punishable by imprisonment for 6–12 months⁶² with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). These penalties apply even if the trafficker did not know the minor’s age.

Traffickers also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).⁶³ Where the victim is a minor, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree

⁵⁹ See *supra* section 1.1 for the provisions of Ohio Rev. Code Ann. § 2905.32.

⁶⁰ See *supra* note 11.

⁶¹ See *supra* note 18.

⁶² See *supra* note 19.

⁶³ See *supra* section 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a trafficker convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). Ohio Rev. Code Ann. § 2907.22(B). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Because Ohio Rev. Code Ann. § 2905.32 and Chapter 2907 of the Revised Code are allied offenses, a trafficker may not be convicted under Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.22(A) (Promoting prostitution) or § 2907.23(A),(B) (Procuring) if also convicted under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) for the same conduct involving the same victim. Ohio Rev. Code Ann. § 2905.32(D).

Traffickers also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A) states,

- (1) No person shall conduct or attempt to conduct a transaction⁶⁴ knowing that the property⁶⁵ involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity.⁶⁶
- (2) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity⁶⁷ with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions] of the Revised Code or federal law.
- (3) No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity.
- (4) No person shall conduct or structure or attempt to conduct or structure a transaction that involves the proceeds of corrupt activity that is of a value greater than ten thousand dollars if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity.
- (5) No person shall conduct or attempt to conduct a transaction that involves what has been represented to the person by a law enforcement officer or another person at the direction of or with the approval of a law enforcement officer to be the proceeds of corrupt activity or property used to conduct or facilitate corrupt activity with the intent to promote, manage, establish, carry on, or facilitate promotion, management, establishment, or carrying on of corrupt activity, to conceal or disguise the nature, location, source, ownership, or control of the property believed to be the proceeds of corrupt activity, or to avoid a transaction reporting requirement under section 1315.53 of the Revised Code or federal law.

⁶⁴ Ohio Rev. Code Ann. § 1315.51(L) (Definitions) defines a “transaction” to include “a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of a payment instrument, use of a safe deposit box, or any other acquisition or disposition of property.”

⁶⁵ Ohio Rev. Code Ann. § 1315.51(I) defines “property” as “anything of value and includes an interest in property, including a benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.”

⁶⁶ Ohio Rev. Code Ann. § 1315.51(B) provides that “[c]orrupt activity” has the same meaning as in section 2923 of the Revised Code.” See *supra* section 3.1 for the definition of “corrupt activity” provided in Ohio Rev. Code Ann. § 2923.31(I).

⁶⁷ Ohio Rev. Code Ann. § 1315.51(O) defines “unlawful activity” as “an act that is a criminal offense in the state in which the act is committed and, if the act is committed in a state other than this state, would be a criminal offense if committed in this state.”

A conviction under Ohio Rev. Code Ann. § 1315.55(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

Finally, a trafficker may be convicted for advertising a sexual activity of a minor for hire. Ohio Rev. Code Ann. § 2907.19 (Advertising sexual activity for hire) states that

(B) No person shall knowingly purchase or otherwise obtain advertising space for an advertisement for sexual activity for hire that includes a depiction of a minor.

(C) Whoever violates this section is guilty of commercial sexual exploitation of a minor, a felony of the third degree.⁶⁸

A third degree felony is punishable by imprisonment for 9–36 months and a possible fine up to \$7,500. Ohio Rev. Code Ann. §§ 2907.19, 1315.55(B), 2929.14(A)(3)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁶⁹ 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 offense⁷⁰ against a minor.

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

Both the creation and distribution of child pornography are criminalized under Ohio law. Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

⁶⁸ Ohio Rev. Code Ann. § 2907.19 further states that

(D)(1) In any prosecution under this section, it is not a defense that the offender did not know the age of the person depicted in the advertisement, relied on an oral or written representation of the age of the person depicted in the advertisement, or relied on the apparent age of the person depicted in the advertisement.

(2) In any prosecution under this section, it is an affirmative defense that the offender, prior to purchasing advertising space for the advertisement, made a reasonable bona fide attempt to ascertain the true age of the person depicted in the advertisement by requiring the person depicted in the advertisement to produce a driver's license, marriage license, birth certificate, or other government issued or school issued document that identifies the age of the person, provided the offender retains and produces a copy or other record of the driver's license, marriage license, birth certificate, or other document used to ascertain the age of the person depicted in the advertisement.

⁶⁹ See *supra* note 47.

⁷⁰ See *supra* note 48.

- (1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;
- (2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;
- (3) Create, direct, or produce an obscene performance that has a minor as one of its participants;
- (4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;
- ...
- (6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

A conviction under Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Similarly, Ohio Rev. Code Ann. § 2907.322(A)(1)–(4), (6) (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

- (1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- ...
- (6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

A conviction under Ohio Rev. Code Ann. § 2907.322(A)(1)–(4), (6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Additionally, Ohio Rev. Code Ann. § 2907.323(A)(1) (Illegal use of minor in nudity-oriented material or performance) states,

No person shall do any of the following:

- (1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:
 - (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic,

medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

A conviction under Ohio Rev. Code Ann. § 2907.323(A)(1), (2) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(2), 2929.18(A)(3)(b).⁷¹

Traffickers may also be convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

...

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁷² against a minor. Additionally, a federal conviction for distribution of child pornography⁷³ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁷⁴ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁷⁵

⁷¹ Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) may be applicable to impose enhanced penalties upon conviction. See *supra* note 13 for the text of the provision and Section 1.2 for an explanation of its applicability.

⁷² See *supra* note 48.

⁷³ 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).

⁷⁴ 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).

⁷⁵ 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

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

Although Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning)⁷⁶ makes it illegal to use the Internet or electronic communications solicit a child under 16 to engage in sexual activity, Ohio Rev. Code Ann. § 2907.07(C), (D) is most likely inapplicable to traffickers because Ohio Rev. Code Ann. § 2907.07(C), (D) requires the offender, and not a third party, to engage in the sexual activity with the minor. Ohio Rev. Code Ann. § 2907.07(C), (D).

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

Traffickers may be required to pay fines. Traffickers convicted under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) may be ordered to pay up to \$20,000, while those convicted under § 2919.22(B)(5) (Endangering children) may be ordered to pay a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.22(B), 2929.18(A)(3)(b). Traffickers convicted under Ohio Rev. Code Ann. § 2709.21(A)(2) (Compelling prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000, while traffickers convicted under Ohio Rev. Code Ann. § 2907.23(A),(B) (Procuring) face a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2907.23(C), 2929.14(A)(4), 2929.18(A)(3)(c), (d). If convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions), a trafficker may be ordered to pay a possible fine of the greater of \$75,000 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), (b), 1315.99(C), 1315.55(B). Finally, a trafficker convicted under Ohio Rev. Code Ann. § 2907.19 (Advertising sexual activity for hire) is subject to fines up to \$7,500.

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements) requires traffickers convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1), which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section . . .

(1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Traffickers convicted of an offense such as of Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), and § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended

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).

⁷⁶ *See supra* section 2.5 for the provisions of Ohio Rev. Code Ann. § 2907.07(C), (D).

use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds⁷⁷ of any offense⁷⁸ or any instrumentality “used, or intended to be used, in the commission . . . of . . . [a] felony; [a] misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties; [or an] attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.” Ohio Rev. Code Ann. § 2981.02(A)(1)-(3).

Seizure of this property is governed by Ohio Rev. Code Ann. §2981.06 (Seizure of forfeited or other property – disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. §2981.04 or a civil process in Ohio Rev. Code Ann. §2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types.

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

Traffickers will be required to register as Tier I sex offenders/child-victim offenders if convicted under Ohio Rev. Code Ann. § 2907.22 (Promoting prostitution). Ohio Rev. Code Ann. § 2950.01(E)(1)(a). If convicted under Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2905.32 (Trafficking in persons), § 2907.321 (Pandering obscenity involving minor), or § 2907.322 (Pandering sexually oriented matter involving a minor), traffickers will have to register as Tier II sex offenders/child-victim offenders. Ohio Rev. Code Ann. § 2950.01(F)(1)(g).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A) (Definitions)⁷⁹ defines a sexually oriented offenses to include convictions under Ohio Rev. Code Ann. § 2905.32, § 2907.21, § 2907.22, § 2907.321, and § 2907.322.

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

⁷⁷ Ohio Rev. Code Ann. § 2981.01(B)(11) states,

(11) “Proceeds” means both of the following:

(a) In cases involving unlawful goods, services, or activities, “proceeds” means any property derived directly or indirectly from an offense. “Proceeds” may include, but is not limited to, money or any other means of exchange. “Proceeds” is not limited to the net gain or profit realized from the offense.

(b) In cases involving lawful goods or services that are sold or provided in an unlawful manner, “proceeds” means the amount of money or other means of exchange acquired through the illegal transactions resulting in the forfeiture, less the direct costs lawfully incurred in providing the goods or services. The lawful costs deduction does not include any part of the overhead expenses of, or income taxes paid by, the entity providing the goods or services. The alleged offender or delinquent child has the burden to prove that any costs are lawfully incurred.

⁷⁸ See *supra* note 55 for the definition of “offense.”

⁷⁹ See *supra* section 2.10 for the text of Ohio Rev. Code Ann. § 2950.01(A).

While convictions for certain enumerated crimes constitute grounds for the termination of parental rights, Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) is not included among those crimes. Ohio Admin. Code § 5101:2-42-95(A)(1)(a) (Obtaining permanent custody: termination of parental rights) states,

Unless the public children services agency (PCSA) or private child placing agency (PCPA) has compelling reasons for not pursuing a request for permanent custody of a child, the agency, pursuant to section 2151.413 [Motion requesting permanent custody] of the Revised Code, shall petition the court that issued the current order of disposition to request permanent custody of a child when any of the following conditions are present:

(1) A court of competent jurisdiction has determined that the parent from whom the child was removed has:

(a) Been convicted of or pleaded guilty to one of the following:

.....

(iii) An offense under division (B)(2) of section 2919.22 (endangering children) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(iv) An offense under section 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (sexual corruption of a minor), 2907.05 (gross sexual imposition), or 2907.06 (sexual imposition) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense.

(v) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (A)(1)(a)(i) or (A)(1)(a)(iv) of this rule.

While human trafficking is not an offense which constitutes termination of parental rights and award of custody to one parent for purposes of obtaining parental custody, the court is required to consider convictions for human trafficking or conspiracy to commit human trafficking as evidence in determination of whether to enter a finding of custodial termination against both parents. Ohio Rev. Code Ann. § 2151.414 (E) states,

If the court determines, by clear and convincing evidence . . . that one or more of the following exists as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(7) The parent has been convicted or plead guilty to one of the following:

(e) An offense under section 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], or 2907.22 [Promoting prostitution] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(e) of this section.

- 3.6.1 Recommendation: Amend Ohio Admin. Code § 5101:2-42-95(A)(1)(a) (Obtaining permanent custody: termination of parental rights) to include convictions under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) when the sex trafficking victim is a minor and Ohio's other CSEC crimes as grounds for termination of parental rights.

Legal Components:

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

Legal Analysis:

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) does not criminalize assisting, enabling, or financially benefitting from domestic minor sex trafficking, but may apply to facilitators who knowingly “harbor” or “transport . . . a minor under the age of 16 “[t]o engage in sexual activity for hire . . . [t]o engage in performance for hire that is obscene, sexually oriented, or nudity oriented . . . [or] [t]o be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.” A conviction under Ohio Rev. Code Ann. § 2905.32⁸⁰ is punishable as a first degree felony by imprisonment for 10–15 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.18(A)(3)(a).⁸¹

Pursuant to Ohio Rev. Code Ann. § 2907.23(A),(B) (Procuring), a facilitator may be convicted for procuring a patron, directing patrons or knowingly permitting premises to be used for prostitution. If the minor, procured for commercial sexual activity, is under 16 years of age, a conviction may result in a felony of the fourth degree, which is punishable by imprisonment for 6–18 months⁸² and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.23(C), 2929.14(A)(4), 2929.18(A)(3)(d). If the minor is 16 or 17 years of age at the time of the violation, a conviction may result in a felony of the fifth degree, which is punishable by imprisonment for 6–12 months⁸³ with “a presumption in favor of a prison term” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). These penalties apply even if the facilitator did not know the age of the minor.

Facilitators who knowingly “[i]nduce, procure, . . . or otherwise facilitate . . . a minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution).⁸⁴ A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for 9–36 months⁸⁵ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). However, if the facilitator convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) committed the offense “in furtherance of human trafficking,” enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification)⁸⁶ and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a

⁸⁰ See *supra* Section 1.1 for the provisions of Ohio Rev. Code Ann. § 2905.32.

⁸¹ See *supra* Section 1.1 for the provisions of Ohio Rev. Code Ann. § 2929.18 (Financial sanctions; restitution; reimbursements).

⁸² See *supra* note 18.

⁸³ See *supra* note 19.

⁸⁴ See *supra* Section 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2907.21.

⁸⁵ See *supra* note 11.

⁸⁶ See *supra* Section 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2941.1422.

third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Facilitators also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).⁸⁷ Where the victim is a minor,⁸⁸ a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a facilitator convicted under Ohio Rev. Code Ann. § 2907.22(A) committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Pursuant to Ohio Rev. Code Ann. § 2921.32(A) (Obstructing justice), no person will “hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime.” If the crime is trafficking in persons, obstructing justice is a felony of the second degree, which is punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2921.32(C)(6), 2929.14(A)(2), 2929.18(A)(3)(b).

Facilitators also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A).⁸⁹ A conviction under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

- 4.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) to include assisting, enabling, or financially benefitting from domestic minor sex trafficking.

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 may be required to pay fines. Facilitators convicted under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) may be ordered to pay a possible fine up to \$20,000, while facilitators convicted under Ohio Rev. Code Ann. § 2709.21(A)(2) (Compelling prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2907.22(B), 2929.18(A)(3)(c). Persons convicted under Ohio Rev. Code Ann. § 2923.32 (Engaging in a pattern of corrupt activity; forfeiture) face a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused,” and may be ordered to pay court and investigation costs, while those convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) may be ordered to pay a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), 1315.99(C), 1315.55(B).

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements)⁹⁰ requires facilitators convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers

⁸⁷ See *supra* Section 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

⁸⁸ See *supra* note 16 for the text of Ohio Rev. Code Ann. § 2907.22(B).

⁸⁹ See *supra* Section 3.1 for the provisions of Ohio Rev. Code Ann. § 1315.55.

⁹⁰ See *supra* Section 3.4 for the provisions of Ohio Rev. Code Ann. § 2929.18(B)(8)(a).

convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for a “victim’s economic loss.”

Facilitators convicted of an offense⁹¹ such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2), or § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds⁹² of any offense⁹³ and any instrumentality “used, or intended to be used, in the commission . . . of . . . [a] felony; [a] misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties; [or an] attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.” Ohio Rev. Code Ann. § 2981.02(A)(1)-(3).

Seizure of this property is governed by Ohio Rev. Code Ann. §2981.06 (Seizure of forfeited or other property—disposition) which states in subsection (A),

Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper.

Property may be forfeited pursuant to a criminal process in Ohio Rev. Code Ann. §2981.04 or a civil process in Ohio Rev. Code Ann. §2981.05. Disposal of forfeited property is governed by Ohio Rev. Code Ann. § 2981.12, which outlines differing disposals for a variety of property types. Additionally, Ohio Rev. Code Ann. § 2923.32(B)(3)⁹⁴ expressly requires facilitators convicted of engaging in a pattern of corrupt activity to forfeit property “used in the course of,” or “derived from,” a violation of Ohio Rev. Code Ann. § 2923.32.

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

Ohio does not specifically prohibit child sex tourism.

- 4.3.1 Recommendation: Enact a law that specifically 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 occurring in Ohio.

4.4 *Promoting and selling child pornography is illegal.*

Ohio criminalizes both promoting and selling child pornography. Ohio Rev. Code Ann. § 2907.321(A)(2), (4) (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

...

- (2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

...

⁹¹ See *supra* note 55.

⁹² See *supra* note 77 for the definition of “proceeds.”

⁹³ See *supra* note 55 for the definition of “offense.”

⁹⁴ See *supra* Section 3.4 for the provisions of Ohio Rev. Code Ann. § 2923.32(B)(3).

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants.

A conviction under Ohio Rev. Code Ann. § 2907.321(A)(2), (4), is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Similarly, Ohio Rev. Code Ann. § 2907.322(A)(2), (4) (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

...

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

...

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

A conviction under Ohio Rev. Code Ann. § 2907.322(A)(1)–(4), (6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Legal Components:

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, preventing criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Commercial sexual exploitation is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Legal Analysis:

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*

In the context of Ohio statute’s chapter of victim’s rights, Ohio Rev. Code Ann. § 2930.01(H)(1) (Definitions) defines a “victim” as the following:

A person who is identified as the victim of a crime⁹⁵ or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

For purposes of preliminary hearings during criminal proceedings, “victim” is defined under Ohio Rev. Code Ann. § 2937.11 as

Any person who is less than sixteen years of age who was a victim of a violation of section 290532 [Trafficking in persons] of the Revised Code or against whom was directed any conduct that constitutes, or is an element of, a violation of 2905.32 of the Revised Code.

⁹⁵ Ohio Rev. Code Ann. § 2930.01(A)(1) defines “crime” in part as “[a] felony.”

For purposes of crime victims' compensation, Ohio Rev. Code Ann. § 2743.51(L)(1) (Definitions) defines a victim as including "a person who suffers personal injury or death as a result of . . . [c]riminally injurious conduct."⁹⁶

- 5.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2930.01 (Definitions) to expressly specify that human trafficking and CSEC victims qualify as victims for purposes of victims' services without requiring that the victim provide the basis for the criminal prosecution or subsequent proceedings.

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

Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio's CSEC laws do not expressly prohibit a defendant from raising a defense that the subject minor consented to the commercial sex act.

- 5.2.1 Recommendation: Enact a provision expressly prohibiting a consent defense to any commercial sexual offense when the victim is a minor.

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

Ohio Rev. Code Ann. § 2907.25(A) (Prostitution; after positive HIV test) does not protect minors from prosecution or limit its applicability to adults. Ohio Rev. Code Ann. § 2907.25(A) states, "No person shall engage in sexual activity for hire." A conviction under Ohio Rev. Code Ann. § 2907.25 is punishable as a third degree misdemeanor by imprisonment for up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. §§ 2907.25(C)(1), 2929.24(A)(3), 2929.28(A)(2)(a)(iii).

- 5.3.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.25 (Prostitution; after positive HIV test) to eliminate liability for prostitution offenses for all minors under 18.

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

Child Identified as Abused/Neglected

Pursuant to Ohio Rev. Code Ann. § 2151.031⁹⁷, a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under Ohio Rev. Code Ann. §

⁹⁶ Ohio Rev. Code Ann. § 2743.51(C) defines "criminally injurious conduct" as

one of the following:

(1) For the purposes of any person described in division (A)(1) [Definition of claimant] of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. . . .

. . . .

(2) For the purposes of any person described in division (A)(2) of this section, any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted. . . .

⁹⁷ See *infra* section 5.5 for a full analysis of child abuse definitions.

2151.031, the definition of custodian under Ohio Rev. Code Ann. § 2151.011(12)⁹⁸ is not sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

A sexually exploited child may be identified as abused by a number of professions who are required to report abuse. Ohio Rev. Code Ann. § 2151.421(A)(1)(a) (Duty to report child abuse or neglect; investigation and follow-up procedures) requires attorneys and specified healthcare and education professionals, among others, who have “reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age . . . has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child” to report the suspected abuse.

I. Initial Custody

This child may be taken into custody by law enforcement. Ohio Rev. Code Ann. § 2151.31(A) (Apprehension, custody, and detention) provides that a child may be taken into custody,

(3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:

- (a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 [Neglected child defined; failure to provide medical care for religious reasons; duty to report child abuse] of the Revised Code, and the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;
- (b) There are reasonable grounds to believe that the child is in immediate danger from the child’s surroundings and that the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;
- (c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child’s household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.

....

- (5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child’s parents, guardian, or other custodian;
- (6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:
 - (a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.

Ohio Rev. Code Ann. § 2151.31(B) explains that taking a child into custody under Ohio Rev. Code Ann. § 2151.31(A) is not considered an arrest.

Since custody pursuant to Ohio Rev. Code Ann. § 2151.31(A) is not an arrest, Ohio Rev. Code Ann. § 2151.31(C) provides that the child shall not be placed in juvenile detention. Ohio Rev. Code Ann. § 2151.31(C) states,

- (1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court’s final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult,

⁹⁸ See *infra* Section 5.6 for a full analysis of the definition of “custodian” under the child welfare statutes.

because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

Additionally, Pursuant to Ohio Rev. Code Ann. § 2151.312(B)(1), (2) (Places where neglected, abused, dependent, or unruly child may or may not be held),

- (B) (1) Except as provided under division (C)(1) of section 2151.311 of the Revised Code, a child alleged to be or adjudicated a neglected child,⁹⁹ an abused child,¹⁰⁰ a dependent child,¹⁰¹ or an unruly child¹⁰² may not be held in any of the following facilities:
- (a) A state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
 - (b) A secure correctional facility.
- (2) Except as provided under sections 2151.27 to 2151.59 of the Revised Code and division (B)(3) of this section and except when a case is transferred under section 2152.12 of the Revised Code, a child alleged to be or adjudicated an unruly child may not be held for more than twenty-four hours in a detention facility. A child alleged to be or adjudicated a neglected child, an abused child, or a dependent child shall not be held in a detention facility.

II. Process Following Initial Custody

⁹⁹ See *infra* Section 5.6 for the definition of “neglected child.”

¹⁰⁰ See *infra* Section 5.6 for the definition of “abused child.”

¹⁰¹ Ohio Rev. Code Ann. § 2151.04 (Dependent child defined) states,

As used in this chapter, “dependent child” means any child:

- (A) Who is homeless or destitute or without adequate parental care, through no fault of the child’s parents, guardian, or custodian;
- (B) Who lacks adequate parental care by reason of the mental or physical condition of the child’s parents, guardian, or custodian;
- (C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship;
- (D) To whom both of the following apply:
 - (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
 - (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

¹⁰² Ohio Rev. Code Ann. § 2151.022 (Unruly child defined) states,

As used in this chapter, “unruly child” includes any of the following:

- (A) Any child who does not submit to the reasonable control of the child’s parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;
- (C) Any child who behaves in a manner as to injure or endanger the child’s own health or morals or the health or morals of others;
- (D) Any child who violates a law, other than division (C) of section 2907.39 [Permitting juvenile on premises of adult entertainment establishment; use by juvenile of false information to enter adult entertainment establishment], division (A) of section 2923.211 [Underage purchase of firearm or handgun], division (C)(1) or (D) of section 2925.55 [Definitions; prohibitions concerning purchasing pseudoephedrine products], or section 2151.87 [Child prohibited from possessing, using, purchasing or receiving cigarettes or other tobacco products] of the Revised Code, that is applicable only to a child.

Ohio Rev. Code Ann. §2151.311 (Procedure upon taking child into custody) states,

(A) A person taking a child into custody shall, with all reasonable speed and in accordance with division (C) of this section, either:

- (1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code;
- (2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

A child alleged to be an abused or neglected child is subject to the jurisdiction of the juvenile court. Pursuant to Ohio Rev. Code §2151.23(A), "The juvenile court has exclusive original jurisdiction under the Revised Code as follows: (8) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody."

Ohio Rev. Code §2151.27(A)(1) governs the filing of a complaint involving an alleged abused or neglected child and states in relevant part,

Subject to division (A)(2) of this section, any person having knowledge of a child who appears . . . be a . . . abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the . . . abuse, neglect, or dependency allegedly occurred. If an alleged abused, neglected, or dependent child is taken into custody . . . pursuant to division (A) of section 2151.31 of the Revised Code without the filing of a complaint and placed into shelter care pursuant to division (C) of that section, a sworn complaint shall be filed with respect to the child before the end of the next day after the day on which the child was taken into custody. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child . . . is an . . . abused, neglected, or dependent child, the complaint shall allege the particular facts upon which the allegation that the child . . . is an . . . abused, neglected, or dependent child is based.

III. Placement Process pending Adjudication/Investigation

Pursuant to Ohio Rev. Code Ann. § 2151.314 (Detention hearing),

(A) If the child is not so released, a complaint under section 2151.27 or 2152.021 or an information under section 2152.13 of the Revised Code shall be filed or an indictment under division (B) of section 2152.13 of the Revised Code shall be sought and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required

(B) When the court conducts a hearing pursuant to division (A) of this section, all of the following apply:

- (1) The court shall determine whether an alleged abused, neglected, or dependent child should remain or be placed in shelter care;
- (2) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child would otherwise be placed or retained in shelter care, and the appointment is appropriate, the court

shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as temporary custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and to the guardian ad litem of the child. The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(3) The court shall comply with section 2151.419 of the Revised Code.

(C) If a child is in shelter care following the filing of a complaint pursuant to section 2151.27 or 2152.021 of the Revised Code, the filing of an information, or the obtaining of an indictment or following a hearing held pursuant to division (A) of this section, any party, including the public children services agency, and the guardian ad litem of the child may file a motion with the court requesting that the child be released from shelter care. The motion shall state the reasons why the child should be released from shelter care and, if a hearing has been held pursuant to division (A) of this section, any changes in the situation of the child or the parents, guardian, or custodian of the child that have occurred since that hearing and that justify the release of the child from shelter care. Upon the filing of the motion, the court shall hold a hearing in the same manner as under division (A) of this section.

IV. Adjudication

a) adjudicatory/dispositional hearing

Pursuant to Ohio Rev. Code Ann. § 2151.35 (Hearing procedure; findings; record),

(A)(1) If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code.

If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, it shall order that the case be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The court, upon the request of any party or the guardian ad litem of the child, may continue a dispositional hearing for a reasonable time not to exceed the time limits set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed.

If the dispositional hearing is not held within the period of time required by this division, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

V. Outcomes

If the court adjudicates the child to be an abused, neglected, or dependent child, pursuant to Ohio Rev. Code Ann. § 2151.353 (Disposition of abused, neglected or dependent child), the court may enter an order for any of the following dispositions:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. . . .

. . . .

- (4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. . . .
- (5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:
 - (a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.
 - (b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.
 - (c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.
- (6) Order the removal from the child's home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child's siblings.

Child Identified as Unruly/Runaway Child

I. Initial Custody

- a) authority for initial custody

This child may be taken into custody by law enforcement. Ohio Rev. Code Ann. § 2151.31(A) (Apprehension, custody, and detention) provides:

(A) A child may be taken into custody in any of the following ways:

- (5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child's parents, guardian, or other custodian;
- (6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

- (a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.
- (b) A complaint has been filed with respect to the child under section 2151.27 or 2152.021 of the Revised Code or the child has been indicted under division (A) of section 2152.13 of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.
- (c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

b) Placement

Ohio Rev. Code Ann. § 2151.31(B)-(C) (Apprehension, custody, and detention) provides:

(B) (1) The taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.

(2) Except as provided in division (C) of section 2151.311 of the Revised Code, a child taken into custody shall not be held in any state correctional institution, county, multicounty, or municipal jail or workhouse, or any other place where any adult convicted of crime, under arrest, or charged with crime is held.

(C) (1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court's final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter

II. Process Following Initial Custody

Pursuant to Ohio Rev. Code Ann. §2151.311 (Procedure upon apprehension):

(A) A person taking a child into custody shall, with all reasonable speed and in accordance with division (C) of this section, either:

- (1) Release the child to the child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code;
- (2) Bring the child to the court or deliver the child to a place of detention or shelter care designated by the court and promptly give notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

Pursuant to Ohio Rev. Code Ann. §2151.314 (Detention hearing):

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that the child's detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

III. Placement Process pending Adjudication/Investigation

Pursuant to Ohio Rev. Code Ann. §2151.314 (Detention hearing):

Of the child is not so released, a complaint under section 2151.27 or 2152.021 . . . shall be sought and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention or shelter care hearing shall be given to the child and, if they can be found, to the child's parents, guardian, or custodian.

Pursuant to Ohio Rev. Code Ann. §2151.312 (Place of detention):

- (A) A child alleged to be or adjudicated an unruly child may be held only in the following places:
 - (1) A certified family foster home or a home approved by the court;
 - (2) A facility operated by a certified child welfare agency;
 - (3) Any other suitable place designated by the court.

IV. Adjudication

Pursuant to Ohio Rev. Code Ann. §2151.35 (Hearing procedure; findings; record):

If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 or Chapter 2152. of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (C)(1) of section 2151.354 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 of the Revised Code.

V. Outcomes

Pursuant to Ohio Rev. Code Ann. § 2151.354 (Disposition of unruly child; driver's license suspension; habitual truants):

- (A) If the child is adjudicated an unruly child, the court may:
 - (1) Make any of the dispositions authorized under section 2151.353 of the Revised Code;
 - (2) Place the child on community control under any sanctions, services, and conditions that the court prescribes, as described in division (A)(4) of section 2152.19 of the Revised Code, provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;
 - (3) Suspend the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court and suspend the registration of all motor vehicles registered in the name of the child for a period of time prescribed by the court. A child whose license or permit is so suspended is ineligible for issuance of a license or permit during the period of suspension. At the end of the period of suspension, the child shall not be reissued a license or permit until the child has paid any applicable reinstatement fee and complied with all requirements governing license reinstatement.
 - (4) Commit the child to the temporary or permanent custody of the court;

- (5) Make any further disposition the court finds proper that is consistent with sections 2151.312 and 2151.56 to 2151.59 of the Revised Code;
- (6) If, after making a disposition under division (A)(1), (2), or (3) of this section, the court finds upon further hearing that the child is not amenable to treatment or rehabilitation under that disposition, make a disposition otherwise authorized under divisions (A)(1), (4), (5), and (8) of section 2152.19 of the Revised Code that is consistent with sections 2151.312 and 2151.56 to 2151.59 of the Revised Code.

Child Identified as Delinquent

I. Initial Custody

a) authority for initial custody

Ohio Rev. Code Ann. § 2151.31(A) (Apprehension, custody, and detention) provides that a child may be taken into custody,

(1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of section 2930.05 [Notice of arrest of defendant or alleged juvenile offender; affidavit concerning violence or intimidation] of the Revised Code;

(2) Pursuant to the laws of arrest;

....

(6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:

....

(b) A complaint has been filed with respect to the child under section 2151.27 [Complaint] or 2152.021 [Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings] of the Revised Code or the child has been indicted under division (A) of section 2152.13 [Serious youthful offender dispositional sentence] of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.

(c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.

(d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

Ohio Rev. Code Ann. § 2151.31(B) explains that taking a child into custody under Ohio Rev. Code Ann. § 2151.31(A) is not considered an arrest.

b) Placement

Ohio Rev. Code Ann. § 2151.311(A) (Procedure upon apprehension) explains that, once taken into custody, a child must be released to the “child’s parents, guardian, or other custodian, unless the child’s detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code” or “[b]ring the child to the court or . . . a place of detention or shelter care . . .” Ohio Rev. Code Ann. § 2151.31(C)(2) states the following:

A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court’s final order of disposition if the confinement is authorized under section 2152.04 [Confinement of delinquent child for purposes of preparing social history] of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

Additionally, commercially sexually exploited children who are taken into custody as an allegedly delinquent child¹⁰³ may be detained in adult correctional facilities under certain circumstances. Ohio Rev. Code Ann. § 2151.311(C)(1) permits an allegedly delinquent child to be held “in a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime . . . is held” for processing purposes¹⁰⁴ up to 6 hours, if “the child is alleged to be a delinquent child for” an offense “that would be a felony if committed by an adult,” or up to 3 hours “[i]f the child is alleged to be a delinquent child” for having committed an act “that would be a misdemeanor if committed by an adult, . . . [or] for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or is alleged to be an unruly child . . .” Ohio Rev. Code Ann. § 2151.311(C)(1)(a), (b). If a child is so detained, the child must be supervised by personnel, no handcuffs may be put on the child, and the child must be out of reach of adult detainees. Ohio Rev. Code Ann. § 2151.311(C)(1).

II. Process Following Initial Custody

Pursuant to Ohio Rev. Code Ann. § 2151.314 (Detention hearing),

(A) When a child is brought before the court or delivered to a place of detention or shelter care designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and shall release the child unless it appears that the child's detention or shelter care is warranted or required under section 2151.31 of the Revised Code.

III. Placement Process pending Adjudication/Investigation

Pursuant to Ohio Rev. Code Ann. § 2151.314 (Detention hearing),

¹⁰³ Ohio Rev. Code Ann. § 2151.011(B)(13) (Definitions) defines a “delinquent child” by referring to Ohio Rev. Code Ann. § 2152.02(F) (Definitions), which states,

“Delinquent child” includes any of the following:

- (1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;
- (2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151 [Juvenile court] of the Revised Code other than an order issued under section 2151.87 [Prohibiting child from possessing, using, purchasing or receiving cigarettes or other tobacco products] of the Revised Code;
- (3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211 [Underage purchase of firearm or handgun], or division (C)(1) or (D) of section 2925.55 [Unlawful purchase of pseudoephedrine product] of the Revised Code;
- (4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;
- (5) Any child who is a chronic truant.

¹⁰⁴ Ohio Rev. Code Ann. § 2151.311 (Procedure upon taking child into custody) explains that “processing purposes” include the following:

- (1) Fingerprinting, photographing, or fingerprinting and photographing the child in a secure area of the facility;
- (2) Interrogating the child, contacting the child's parent or guardian, arranging for placement of the child, or arranging for transfer or transferring the child, while holding the child in a nonsecure area of the facility.

(A) If the child is not so released, a complaint under section 2151.27 or 2152.021 or an information under section 2152.13 of the Revised Code shall be filed or an indictment under division (B) of section 2152.13 of the Revised Code shall be sought and an informal detention or shelter care hearing held promptly, not later than seventy-two hours after the child is placed in detention or shelter care, to determine whether detention or shelter care is required.

Ohio Rev. Code Ann. § 2152.04 also states,

A child who is alleged to be, or who is adjudicated, a delinquent child may be confined in a place of juvenile detention provided under section 2152.41 [County or district detention facility; temporary boarding in private homes] of the Revised Code for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that alleged or adjudicated delinquent child.

Ohio Rev. Code Ann. § 2152.41(A) reiterates that detention facilities “may be used to detain alleged delinquent children until final disposition for evaluation pursuant to section 2152.04” or “to confine children who are adjudicated delinquent children and placed in the facility pursuant to division (A)(3) of section 2152.19 of the Revised Code.”

IV. Adjudication

a) adjudicatory/dispositional hearing

Pursuant to Ohio Rev. Code Ann. § 2151.35 (Hearing procedure; findings; record),

(A)(1) If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under section 2151.354 or Chapter 2152. of the Revised Code.

Although, generally, a child suspected of being a victim of trafficking would divert pursuant to Ohio Rev. Code Ann. § 2152.021(F).

b) diversion or alternate process

Ohio law provides a diversion program for sexually exploited youth that avoids adjudication and directs minor victims to services, and expunges the juvenile record upon successful completion of the program. Pursuant to Ohio Rev. Code Ann. § 2152.021(F),

(1) At any time after the filing of a complaint alleging that a child is a delinquent child and before adjudication, the court may hold a hearing to determine whether to hold the complaint in abeyance pending the child's successful completion of actions that constitute a method to divert the child from the juvenile court system if the child agrees to the hearing and either of the following applies:

(a) The act charged would be a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code if the child were an adult.

(b) The court has reason to believe that the child is a victim of a violation of section 2905.32 of the Revised Code, regardless of whether any person has been convicted of a violation of that section or of any other section for victimizing the child, and the act charged is related to the child's victimization.

(2) The prosecuting attorney has the right to participate in any hearing held under division (F)(1) of this section, to object to holding the complaint that is the subject of the hearing in abeyance, and to make

recommendations related to diversion actions. No statement made by a child at a hearing held under division (F)(1) of this section is admissible in any subsequent proceeding against the child.

(3) If either division (F)(1)(a) or (b) of this section applies, the court shall promptly appoint a guardian ad litem for the child. The court shall not appoint the child's attorney as guardian ad litem. If the court decides to hold the complaint in abeyance, the guardian ad litem shall make recommendations that are in the best interest of the child to the court.

(4) If after a hearing the court decides to hold the complaint in abeyance, the court may make any orders regarding placement, services, supervision, diversion actions, and conditions of abeyance, including, but not limited to, engagement in trauma-based behavioral health services or education activities, that the court considers appropriate and in the best interest of the child. The court may hold the complaint in abeyance for up to ninety days while the child engages in diversion actions. If the child violates the conditions of abeyance or does not complete the diversion actions to the court's satisfaction within ninety days, the court may extend the period of abeyance for not more than two additional ninety-day periods.

V. Outcomes

Pursuant to Ohio Rev. Code Ann. § 2152.021(5), "If the court holds the complaint in abeyance and the child complies with the conditions of abeyance and completes the diversion actions to the court's satisfaction, the court shall dismiss the complaint and order that the records pertaining to the case be expunged immediately. If the child fails to complete the diversion actions to the court's satisfaction, the court shall proceed upon the complaint." In such cases where diversion is unsuccessful and the minor victim is adjudicated a delinquent child, Ohio Rev. Code Ann. § 2152.19(A) (Additional orders of disposition; motor vehicle license suspension; victim restitution, impact statement; truancy warnings; searches) states,

[T]he court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

(1) Any order that is authorized by section 2151.353 of the Revised Code for the care and protection of an abused, neglected, or dependent child;

(2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2152.41 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under section 2151.65 of the Revised Code;

(3) Place the child in a detention facility or district detention facility operated under section 2152.41 of the Revised Code, for up to ninety days;

(4) Place the child on community control under any sanctions, services, and conditions that the court prescribes. . . .

. . . .

(5) Commit the child to the custody of the court;

(6) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year;

(7)(a) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant, do either or both of the following:

(i) Require the child to participate in a truancy prevention mediation program;

(ii) Make any order of disposition as authorized by this section, except that the court shall not commit the child to a facility described in division (A)(2) or (3) of this section unless the court determines that the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 of the Revised Code or division (A)(6) of this section.

....
(8) Make any further disposition that the court finds proper, except that the child shall not be placed in any of the following:

- (a) A state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
- (b) A community corrections facility, if the child would be covered by the definition of public safety beds for purposes of sections 5139.41 to 5139.43 of the Revised Code if the court exercised its authority to commit the child to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to this chapter.

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

The definition of an “abused child” includes victims of commercial sexual exploitation. Ohio Rev. Code Ann. § 2151.031 (Abused child defined) states,

As used in this chapter, an “abused child” includes any child who:

- (A) Is the victim of “sexual activity”¹⁰⁵ as defined under Chapter 2907 [Sex offenses] of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
- (B) Is endangered as defined in section 2919.22 [Endangering children] of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

....

Ohio’s CSEC laws are located throughout chapter 2907 entitled “Sex Offenses.” Thus, commercially sexually exploited children are considered abused children under Ohio Rev. Code Ann. § 2151.031(A). However, Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) is not considered a sex offense, and thus these victims are not expressly defined as abused children.

Ohio Rev. Code Ann. § 2151.03(A) (Neglected child defined; failure to provide medical or surgical care for religious reasons; duty to report child abuse) defines a “neglected child” as one,

- (2) Who lacks adequate parental care because of the faults or habits of the child’s parents, guardian, or custodian;
 - (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child’s health, morals, or well being;
-
- (6) Who, because of the omission of the child’s parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare;
 - (7) Who is subjected to out-of-home care child neglect.

¹⁰⁵ Ohio Rev. Stat. Ann. § 2901.01(C) (Sex offenses general definitions) defines “sexual activity” as “sexual conduct or sexual contact, or both.”

- 5.5.1 Recommendation: Amend Ohio Rev. Code Ann. § 2151.031 (Abused child defined) to include minors victimized under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons).

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.*

Pursuant to Ohio Rev. Code Ann. § 2151.011(12) (Definitions), the definition of “custodian” as “a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child,” does not reach persons with mere physical custody or control of the child.

However, the definition of an abused child¹⁰⁶ under Ohio Rev. Code Ann. § 2151.031(A) (Abused child defined), which applies to victims of commercial sexual exploitation of children (CSEC) offenses, does not specify that the abusive conduct be committed by a parent, guardian or custodian and provides that “the court need not find that any person has been convicted of the offense in order to find that the child is an abused child.” Abuse by a parent, guardian or custodian appears to be separately addressed under Ohio Rev. Code Ann. § 2151.031(D) which applies to a child who “[b]ecause of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.”

Moreover, Ohio Rev. Code Ann. § 5153.16(A) (Duties of agency) states,

Except as provided in section 2151.422 of the Revised Code, in accordance with rules adopted under section 5153.166 of the Revised Code, and on behalf of children in the county whom the public children services agency considers to be in need of public care or protective services, the public children services agency shall do all of the following:

(1) Make an investigation concerning any child alleged to be an abused, neglected, or dependent child;

....

(3) Accept custody of children committed to the public children services agency by a court exercising juvenile jurisdiction;

(4) Provide such care as the public children services agency considers to be in the best interests of any child adjudicated to be an abused, neglected, or dependent child the agency finds to be in need of public care or service. . . .

¹⁰⁶ Ohio Rev. Code Ann. § 2151.031 (Abused child defined), states:

As used in this chapter, an “abused child” includes any child who:

(A) Is the victim of “sexual activity” as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

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

Ohio Rev. Code Ann. § 2743.52(A), (B) (Attorney general to determine reparations awards; OVI findings not lawful evidence) provides for victim compensation, stating,

(A) The attorney general shall make awards of reparations for economic loss arising from criminally injurious conduct,¹⁰⁷ if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(B) A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(C) A decision of the attorney general, an order of a court of claims panel of commissioners, or the judgment of a judge of the court of claims concerning an OVI violation shall not be used as the basis for any civil or criminal action and shall not be admissible as evidence in any civil or criminal proceeding.

A victim of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio's CSEC laws should fall within the definition of a victim¹⁰⁸ and a "claimant"¹⁰⁹ used within Ohio's laws regarding crime victims compensation.

Although Ohio Rev. Code Ann. § 2743.60 (Grounds for denial of claim or reduction of award; limit on aggregate awarded) contains certain ineligibility criteria that could bar victims from receiving compensation, such criteria do not pertain to minor victims of sex trafficking. "Nothing in [2743.60] shall be construed to prohibit an award to a claimant whose claim is based on the claimant's being a victim of a violation of section 2905.32 of the Revised Code if the claimant was less than eighteen years of age when the criminally injurious conduct occurred." Ohio Rev. Code Ann. § 2743.60(J).

However, the statute contains certain ineligibility criteria that could bar victims of Ohio's other CSEC laws from receiving compensation. Ohio Rev. Code Ann. § 2743.60(B)(1)(a) (Grounds for denial of claim or reduction of award; limit on aggregate awarded) prohibits a victim from receiving compensation where the victim was "an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice," while Ohio Rev. Code Ann. § 2743.60(A) prohibits an award where the victim fails to report the crime to law enforcement. Additionally, Ohio Rev. Code Ann. § 2743.60(C) authorizes the denial or reduction of a claim for compensation where the victim did not fully cooperate with law enforcement.

A claim also may be denied or reduced based on a finding of the victim's contributory misconduct. Ohio Rev. Code Ann. § 2743.60(F). Ohio Rev. Code Ann. § 2743.51(M) (Definitions) defines "contributory misconduct" as "any conduct of the claimant . . . that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

¹⁰⁷ See *supra* note 96 for the definition of "criminally injurious conduct."

¹⁰⁸ See *supra* Section 5.1 for the definition of "victim" provided in Ohio Rev. Code Ann. § 2743.51(L) (Reparation award to victim of crime definitions).

¹⁰⁹ Ohio Rev. Code Ann. § 2743.51(A)(1)(a) (Reparation award to victim of crime definitions) defines a "claimant" as

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who was one of the following at the time of the criminally injurious conduct:

(i) A resident of the United States;

(ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country.

Additionally, Ohio Rev. Code Ann. § 2743.56(B) (Applications for award of reparations) establishes the time limits for filing an application for an award, stating,

- (B) All applications for an award of reparations shall be filed as follows:
- (1) If the victim of the criminally injurious conduct was a minor, within two years of the victim's eighteenth birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later. This division does not require that a complaint, indictment, or information be filed against an alleged offender in order for an application for an award of reparations to be filed pertaining to a victim who was a minor if the application is filed within two years of the victim's eighteenth birthday, and does not affect the provisions of section 2743.64 of the Revised Code.
 - (2) If the victim of the criminally injurious conduct was an adult, at any time after the occurrence of the criminally injurious conduct.

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

Some victim-friendly criminal justice procedures or protections may be afforded to victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio's CSEC laws.

Ohio Rev. Code Ann. § 2945.481(A), (B) (Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom) permits a victim of certain offenses, including Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.321 (Pandering obscenity involving a minor), § 2905.32 (Trafficking in persons), or § 2907.322 (Pandering sexually oriented material involving a minor), who is under 13 to provide testimony via a deposition, which may be videotaped. Similarly, under Ohio Rev. Code Ann. § 2945.481(C)–(E), under specified circumstances, the judge may permit victims of the same crimes who are under 13 years old to give testimony via closed-circuit television or videotaped testimony.

Additionally, Ohio Rev. Code Ann. § 2937.11(D) (Conduct of preliminary hearing) provides,

- (1) (a) In a case involving an alleged violation of section 2905.32 of the Revised Code, upon motion of the prosecution, the testimony of the victim at the preliminary hearing may be taken in a place or room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, to be viewed by the accused and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the victim had it been given in the room in which the preliminary hearing is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the preliminary hearing.
- (2) For purposes of division (D)(1) of this section, a judge or magistrate may order the testimony of a victim to be taken at a place or room outside the room in which the preliminary hearing is being conducted if the judge or magistrate determines that the victim is unavailable to testify in the room in the physical presence of the accused due to one or more of the following:
 - (a) The inability of the victim to communicate about the alleged offense because of extreme fear, severe trauma, or another similar reason;
 - (b) The substantial likelihood that the victim will suffer serious emotional trauma from so testifying;
 - (c) The victim is at a hospital for care and treatment for any physical, mental, or emotional injury suffered by reason of the alleged offense.

While Ohio has “rape shield” provisions for victims of Ohio Rev. Code Ann. § 2907.02(D) (Rape) or § 2907.05(E) (Gross sexual imposition), which prohibit the admission of evidence of the victim's sexual history unless such evidence is needed to show “the origin of semen, pregnancy, or disease, or the victims past sexual

history with the offender,”¹¹⁰ these protections are not available to victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws unless their offenders are prosecuted under Ohio Rev. Code Ann. § 2907.02 or § 2907.05. As an added protection, victims of Ohio Rev. Code Ann. § 2907.05 or § 2907.02 may receive court-appointed counsel. Ohio Rev. Code Ann. §§ 2907.05(G), 2907.02(F). Moreover, Ohio Rev. Code Ann. § 2907.26(A)–(C) (Rules of evidence in prostitution cases) states,

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it, is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of sections 2907.21 to 2907.25 of the Revised Code, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

Victims of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws will be afforded those rights generally afforded to crime victims. Under Ohio Rev. Code Ann. § 2930.04 (Information to be given to victim by investigating law enforcement agency), a victim is entitled to information regarding counseling, housing, victim compensation, information about protection orders, and contact information for law enforcement. Pursuant to Ohio Rev. Code Ann. § 2930.07 (Concealment of victim’s or representative’s address, telephone number and similar identifying facts), in certain circumstances the court may keep the victim’s personal information confidential. Under Ohio Rev. Code Ann. § 2930.10 (Minimization of unwanted contact between prosecution and defense sides), the court shall minimize contact between the victim and the offender, and provide a separate waiting area for the victim in order to protect the victim.

5.8.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws to include protections prohibiting the admission of the victim’s sexual history with limited exceptions, similar to the protections afforded victims under of Ohio Rev. Code Ann. § 2907.02(D) (Rape) or § 2907.05(E) (Gross sexual imposition).

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.*

Ohio Rev. Code Ann. § 2151.358(E) (Expungement of records) states, “a person who has been adjudicated a delinquent child for having committed an act that would be a violation of section 2907.24 [Soliciting], 2907.241 [Loitering to engage in solicitation], or 2907.25 [Prostitution] of the Revised Code if the child were an adult may apply to the adjudicating court for the expungement of the record of adjudication if the person’s participation in the act was a result of the person having been a victim of human trafficking. The application shall be made in the same manner as an application for expungement under section 2953.38 of the Revised Code, and all of the provisions of that section shall apply to the expungement procedure.”

Under Ohio Rev. Code Ann. § 2953.38, if the court finds “that the applicant has demonstrated by a preponderance of the evidence that the applicant’s participation in the offense that is the subject of the application was the result of the applicant having been a victim of human trafficking,”¹¹¹ the court shall grant the

¹¹⁰ Additionally, this evidence is admissible “only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.” Ohio Rev. Code Ann. §§ 2907.02(D), 2907.05(E).

¹¹¹ “Victim of human trafficking” means a person who is or was a victim of a violation of section 2905.32 [Trafficking in persons] of the Revised Code, regardless of whether anyone has been convicted of a violation of that section or of any other section for victimizing the person. Ohio Rev. Code Ann. § 2953.38(A)(4).

application and order that the record of conviction be expunged.”¹¹² There is no stated time limit within which a minor must file for such an expungement.

Furthermore, in cases where the court holds a complaint of delinquency in abeyance because the complaint alleges prostitution related offenses or the court believes the minor is a victim of trafficking under Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons), all records pertaining to the case would be expunged immediately upon successful completion of diversionary actions. Ohio Rev. Code Ann. § 2152.021(F)(1)–(6).

Ohio Rev. Code Ann. § 2151.356(B)(1)(e) (Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders) orders the juvenile court to seal the records of a child adjudicated an unruly child who has turned 18 and is “not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child,” while Ohio Rev. Code Ann. § 2151.356(C)(1) authorizes the court, in its discretion, to seal the records of a child adjudicated a delinquent child, if “the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child.” The court may consider whether to seal the records within 2 years from the later of “[t]he termination of any order made by the court” related to the adjudication or “[t]he unconditional discharge of the person from the department of youth services” or another facility to which the child was committed. Ohio Rev. Code Ann. § 2151.356(C)(1)(a), (b). Ohio Rev. Code Ann. § 2151.358(A) further authorizes the court to expunge records sealed under Ohio Rev. Code Ann. § 2151.356 “five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier.”

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

Ohio Rev. Code Ann. § 5101.87 creates a human trafficking victims’ fund, “consisting of money seized in connection with a violation of section 2905.32 [Trafficking in persons], 2907.21 [Compelling prostitution], or 2907.22 [Promoting prostitution] of the Revised Code or acquired from the sale of personal effects, tools, or other property seized because the personal effects, tools, or other property were used in the commission of a violation of section 2905.32, 2907.21, or 2907.22 of the Revised Code or derived from the proceeds of the commission of a violation of section 2905.32, 2907.21, or 2907.22 of the Revised Code and deposited pursuant to section 2981.12 of the Revised Code and such other money as may be appropriated or contributed to the fund. Money in the fund shall be used for the sole purpose of treating, caring for, rehabilitating, educating, housing, and providing assistance for victims of trafficking in persons. The director of job and family services shall administer the fund.” Furthermore, all money seized in connection to violations of Ohio Rev. Code Ann. § 2905.32, § 2907.21, or 2907.22 will be deposited into the human trafficking fund. Ohio Rev. Code Ann. § 2981.12(A)(8).

Under Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements), victims whose offenders are convicted of committing an offense in furtherance of human trafficking under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) shall receive restitution. Ohio Rev. Code Ann. § 2929.18(B)(8)(a) states,

If an offender who is convicted of or pleads guilty to a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in a pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human

¹¹² “Expunge” means to destroy, delete, or erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable. Ohio Rev. Code Ann. § 2953.38(A)(1).

trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

- (i) The gross income or value to the offender of the victim's labor or services;
- (ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 20 U.S.C. 207, and state labor laws.

Victims whose offenders are convicted of other crimes also may receive restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) which states,

[T]he court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section . . .

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Additionally, pursuant to Ohio Rev. Code Ann. § 2307.51(A), "[a] victim of a violation of section 2905.32 of the Revised Code has and may commence a civil cause of action for compensatory and punitive damages against the trafficker for harm that resulted from the violation..." regardless of whether the trafficker was prosecuted or convicted. This is addition to any other cause of action. Ohio Rev. Code Ann. § 2307.51(B).

Victims whose offenders are convicted of engaging in a pattern of corrupt activity under Ohio Rev. Code Ann. § 2923.32 may also be able to pursue civil remedies under Ohio Rev. Code Ann. § 2923.34(A), (E) (Civil proceedings for relief from violation; civil penalty) which states,

(A) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern of corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation of division (A)(1) or (2) of section 1707.042 [Prohibited acts relating to control bids] or division (B), (C)(4), (D), (E), or (F) of section 1707.44 [Prohibited acts] of the Revised Code, of 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2314, or any other offense involving fraud in the sale of securities.

....

(E) In a civil proceeding under division (A) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section . . . shall have a cause of action for triple the actual damages the person sustained. . . . Damages under this division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

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.*

Ohio Rev. Code Ann. § 2901.13(A)(1)(a)¹¹³ (Limitations of criminal prosecutions) imposes a 6-year statute of limitations for prosecution of most felonies including most of Ohio’s CSEC laws. However, Ohio Rev. Code Ann. § 2901.13(A)(3)(a) provides a 20 year statute of limitations that is applicable to prosecutions of Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution). Additionally, if the victim of a crime included in Ohio Rev. Code Ann. tit. 29 (Crimes—procedure) was a minor at the time of the offense, Ohio Rev. Code Ann. § 2901.13(J) states,

The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age . . . shall not begin to run until either of the following occurs:

- (1) The victim of the offense reaches the age of majority.
- (2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

Ohio Rev. Code Ann. § 2305.111 (Actions for assault or battery; victims of childhood sexual abuse) provides a civil statute of limitations for actions brought by victims of childhood sexual abuse, by stating,

(C) An action for assault or battery brought by a victim of childhood sexual abuse¹¹⁴ based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act has fraudulently concealed from the plaintiff facts that form the basis of the claim, the running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

- 5.11.1 Recommendation: Eliminate the statute of limitations in criminal actions for child sex trafficking and CSEC offenses and amend Ohio Rev. Code Ann. § 2305.111 (Actions for assault or battery; victims of childhood sexual abuse) to include CSEC crimes to extend the statute of limitations for civil actions

¹¹³ Here and elsewhere in this report that Ohio Rev. Code Ann. § 2901.13 (Limitations of criminal prosecutions) is quoted or cited, it has been updated to reflect the amendments added by the enactment of House Bill 6. H.B. 6, 2015 Leg., 131st Gen. Assemb. (Effective July 16, 2015).

¹¹⁴ Subsection (A)(1) states, “‘Childhood sexual abuse’ means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age” The violations listed in (A)(1)(a) and (b) include Ohio Rev. Code Ann. § 2907.02 (Rape), certain subsections of § 2907.03 (Sexual battery), and § 2907.05 (Gross sexual imposition) through § 2907.06 (Sexual imposition), if certain conditions apply.

Legal Components:

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

Legal Analysis:

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

Pursuant to Ohio Rev. Code Ann. § 109.745(A),

The attorney general shall provide training for peace officers in investigating and handling violations of section 2905.32 of the Revised Code. The training shall include all of the following:

- (1) Identifying violations of section 2905.32 [Trafficking in persons] of the Revised Code;
- (2) Methods used in identifying victims of violations of section 2905.32 of the Revised Code who are citizens of the United States or a foreign country, including preliminary interviewing techniques and appropriate questioning methods;
- (3) Methods for prosecuting persons who violate section 2905.32 [Trafficking in persons] of the Revised Code;
- (4) Methods of increasing effective collaboration with nongovernmental organizations and other social service organizations in the course of a criminal action regarding a violation of section 2905.32 of the Revised Code;
- (5) Methods for protecting the rights of victims of violations of section 2905.32 [Trafficking in persons] of the Revised Code, including the need to consider human rights and the specific needs of women and children who are victims of violations of that section and to treat victims as victims rather than as criminals;
- (6) Methods for promoting the safety of victims of violations of section 2905.32 [Trafficking in persons] of the Revised Code, including the training of peace officers to quickly recognize victims of a violation of any of those sections who are citizens of the United States or citizens of a foreign country.

Ohio Rev. Code Ann. § 109.741 (Training in missing children, missing persons, child abuse and neglect cases) further requires the attorney general to adopt rules regarding “the training of peace officers in the handling of missing children, missing persons, and child abuse and neglect cases.”

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

Ohio permits single party consent to audiotaping. Ohio Rev. Code Ann. § 2933.52(A)(1) (Interception of wire, oral or electronic communications) makes it a crime for a person to purposely “[i]ntercept, attempt to intercept,

or procure another person to intercept or attempt to intercept a wire, oral, or electronic communication.” According to Ohio Rev. Code Ann. § 2933.52(B)(3), (4), the prohibition does not apply to, among other things,

- (3) A law enforcement officer who intercepts a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer;
- (4) A person who is not a law enforcement officer and who intercepts a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or this state or for the purpose of committing any other injurious act.

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

Wiretapping may be used to investigate certain designated offenses, including Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws. Ohio Rev. Code Ann. § 2933.52(B). Ohio Rev. Code Ann. § 2933.52(B)(1) (Interception of wire, oral or electronic communications) permits wiretapping conducted pursuant to an interception warrant. Ohio Rev. Code Ann. § 2933.54(A) (Conditions for issuance of warrant; denial; termination; finding of objective) authorizes a court to issue an interception warrant if

the judge determines, on the basis of the facts submitted by the person who made the application and all affiants, that all of the following exist:

- (1) The application and affidavits comply with section 2933.53 [Application for interception warrant] of the Revised Code.
- (2) There is probable cause to believe that a particular person is committing, has committed, or is about to commit a designated offense.
- (3) There is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications.
- (4) Normal investigative procedures with respect to the designated offense have been tried and have failed or normal investigative procedures with respect to the designated offense reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ in order to obtain evidence.
- (5) Except as provided in division (G)(1) of section 2933.53 of the Revised Code, there is probable cause to believe that the communication facilities from which the communications are to be intercepted, or the place at which oral communications are to be intercepted, are being used or are about to be used in connection with the commission of the designated offense or are leased to, listed in the name of, or commonly used by a person who is the subject of the interception warrant.
- (6) The investigative officer has received training that satisfies the minimum standards established by the attorney general and the Ohio peace officer training commission under section 2933.64 [Training in wiretapping and electronic surveillance] of the Revised Code in order to intercept the wire, oral, or electronic communication and is able to execute the interception sought.

Ohio Rev. Code Ann. § 2933.51(I) (Definitions) defines a “designated offense” as any of,

- (1) A felony violation of section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions], 1315.55 [Additional money laundering prohibitions] . . . 2905.01 [Kidnapping], 2905.02 [Abduction], . . . 2905.32 [Trafficking in persons], 2907.02 [Rape], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], . . . 2923.32 [Engaging in pattern of corrupt activity; forfeiture], . . . of the Revised Code;

....

- (4) Complicity in the commission of a felony violation of a section listed in division (I)(1), (2), or (3) of this section;

(5) An attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in division (I)(1), (2), or (3) of this section, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

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

Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) (Compelling prostitution) suggests that a law enforcement officer may pose as a minor to investigate solicitation of commercial sexual activity with a minor. These provisions use the phrase “a person the offender believes to be a minor,” which indicates law enforcement may pose as a minor to investigate a violation of Ohio Rev. Code Ann. § 2907.21(A)(2)–(5). Neither Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) nor Ohio’s CSEC laws expressly authorize the use of a decoy by law enforcement in the investigation of those crimes.

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

While Ohio Rev. Code Ann. § 2905.32 (Trafficking in persons) and Ohio’s CSEC laws do not expressly authorize law enforcement to use the Internet or electronic communications to investigate those crimes, Ohio Rev. Code Ann. § 2907.07 (Importuning) permits law enforcement officers to use the Internet or electronic communications to investigate solicitation of sex with a minor. Ohio Rev. Code Ann. § 2907.07(C)(2), (D)(2) make it illegal for a person to solicit “a law enforcement officer posing as a person who is less than [13 or 16] years of age, and the offender believes that the other person is less than [13 or 16] years of age or is reckless in that regard.”

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

Ohio Rev. Code Ann. § 2901.30(B) (Missing child report; notice to child’s school; notice of return) directs a law enforcement agency to take the report of a missing child¹¹⁵ and act promptly to locate the missing child. The law enforcement agency must gather information about the missing child and enter “it into the national crime information center computer,” notify the child’s school to mark the child’s records, and notify other law enforcement agencies within its jurisdiction. Ohio Rev. Code Ann. § 2901.30(C)–(E). Ohio Rev. Code Ann. § 2901.30(H) states,

A missing child’s parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other persons responsible for the care of a missing child, immediately shall notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if the missing child was the victim of an offense listed in division (A)(3)(b)¹¹⁶ of this section, or otherwise has been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of the missing child’s parents, parent who is the residential parent and legal

¹¹⁵ Ohio Rev. Code Ann. § 2901.30(A)(3) defines “missing children” or a “missing child” as

(a) A minor who has run away from or who otherwise is missing from the home of, or the care, custody, and control of, the minor’s parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person having responsibility for the care of the minor;

(b) A minor who is missing and about whom there is reason to believe the minor could be the victim of a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.03 [Unlawful restraint], or 2919.23 [Interference with custody] of the Revised Code or of a violation of section 2905.04 [Repealed] of the Revised Code as it existed prior to July 1, 1996.

¹¹⁶ See *supra* note 115 for the provisions of Ohio Rev. Code Ann. § 2901.30(A)(3)(b).

custodian, guardian, legal custodian, or other person responsible for the missing child's care, has been released if the missing child was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located, the law enforcement agency involved promptly shall integrate the fact that the minor no longer is a missing child into the national crime information center computer and shall inform any school that was notified under division (D) of this section that the minor is no longer a missing child.

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