

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Kentucky’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Kentucky’s trafficking law could apply to buyers who “subject” a minor to “commercial sexual activity.” Specifically, Ky. Rev. Stat. Ann. § 529.100(1)(b) (Human trafficking) states,

A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to engage in:

....

(b) Commercial sexual activity¹ through the use of force, fraud, or coercion, except that if the person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.

However, to ensure buyers are held accountable as sex trafficking offenders, the trafficking law should be amended to expressly apply to persons who “patronize” a minor for commercial sex.

1.1.1 Recommendation: Amend Ky. Rev. Stat. Ann. § 529.100(1) (Human trafficking) to clarify that buyer conduct is included as a violation of Ky. Rev. Stat. Ann. § 529.100.

¹ Ky. Rev. Stat. Ann. § 529.010(3) (Definitions) defines “commercial sexual activity” as follows:

- (a) Any sex act, for which anything of value is given to, promised to, or received by any person;
- (b) Participation in the production of obscene material as set out in KRS Chapter 531; or
- (c) Engaging in a sexually explicit performance;

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Kentucky's CSEC laws do not criminalize purchasing or soliciting commercial sex with a minor.

1.2.1 Recommendation: Enact a CSEC law that specifically includes purchasing or soliciting sex with any minor under 18.

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities – Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent) applies to traffickers but is limited in application to offenders who use a communications system during the commission of the offense; it states,

It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of:

- (a) Procuring or promoting the use of a minor, including a peace officer, or a person working in coordination with law enforcement, posing as a minor if the person believes that the peace officer or the person working in coordination with law enforcement is a minor or is wanton or reckless in that belief; or
 - (b) Procuring or promoting the use of a minor from an adult intermediary, including a peace officer, or a person working in coordination with law enforcement, posing as an adult intermediary for a minor if the person believes that the peace officer or the person working in coordination with law enforcement is an adult intermediary for a minor or is wanton or reckless in that belief;
- for any activity in violation of KRS . . . 529.100 [Human trafficking] where that offense involves commercial sexual activity, or . . . KRS Chapter 531 [Relating to child pornography].

1.3.1 Recommendation: Enact a CSEC law that addresses an array of exploitive conduct engaged in by traffickers.

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Kentucky law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to Ky. Rev. Stat. Ann. § 529.180(1) (Ignorance of human trafficking minor victim's actual age not a defense), "In any prosecution under KRS 529.100 [Human trafficking] or 529.110 [Promoting human trafficking] involving commercial sexual activity, it shall not be a defense that . . . [t]he defendant was unaware of the minor's actual age."

1.4.1 Recommendation: Prohibit a mistake of age defense in CSEC cases.

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Kentucky law expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Pursuant to Ky. Rev. Stat. Ann. § 529.180(3), (4) (Ignorance of human trafficking minor victim’s actual age not a defense),

In any prosecution under KRS 529.100 [Human trafficking] or 529.110 [Promoting human trafficking] involving commercial sexual activity, it shall not be a defense that:

....

- (3) The intended victim of the offense is a law enforcement officer posing as a minor as part of a criminal investigation or operation;
- (4) The solicitation was unsuccessful, the conduct was not engaged in, or the law enforcement officer could not engage in the solicited offense

Further, Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities) allows for the use of a law enforcement decoy when the defendant uses electronic means to commit various sex offenses, including child sex trafficking. It states,

It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS . . . 529.100 [Human trafficking] where that offense involves commercial sexual activity

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Kentucky’s trafficking law does not expressly allow for business entity liability.

- 1.6.1 Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Kentucky law requires convicted trafficking offenders, but not convicted CSEC offenders, to pay a mandatory fee that is to be deposited in the Human Trafficking Victims Fund; further, while both trafficking and CSEC offenders face asset forfeiture, only a percentage of a trafficking offender’s forfeited assets is directed into a victim services fund.

Regarding mandatory fees, Ky. Rev. Stat. Ann. § 529.130 (Human trafficking victims service fee) states, “Any person convicted of an offense in KRS 529.100 [Human trafficking] or 529.110 [Promoting human trafficking] shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of not less than ten thousand dollars (\$10,000) to be remitted to the fund created in KRS 529.140.”

Under Ky. Rev. Stat. Ann. § 529.140(3) (Human trafficking victims fund), funds shall be distributed as follows:

Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies. The Office of the

Attorney General shall promulgate administrative regulations to develop procedures for distributing funds pursuant to this section. The administrative regulations shall require that:

- (a) The Office of the Attorney General use funds received to maintain programs for the prevention of human trafficking, provide education, training, or public outreach programs about human trafficking, and conduct human trafficking investigations. The Office of the Attorney General may recoup costs for conducting any programs or trainings; and
- (b) The Cabinet for Health and Family Services use funds received to serve minor victims of human trafficking under KRS 620.029 [Duties of the cabinet relating to children who are victims of human trafficking].

Regarding asset forfeiture, Ky. Rev. Stat. Ann. § 529.150 (Forfeiture of property used in connection with human trafficking – Distribution of proceeds) provides for forfeiture in trafficking cases and directs a percentage of forfeited assets to the Human Trafficking Victims Fund. Specifically, Ky. Rev. Stat. Ann. § 529.150

- (1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460 [the subchapter on forfeited property], with the exception of the distribution of proceeds, which shall be distributed as required in this section.
- (2) Proceeds from the assets seized and forfeited shall be distributed as follows:
 - (a) Fifty percent (50%) shall be paid to the human trafficking victims fund;
 - (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and
 - (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to KRS 218A.420(9) [[Procedure for disposal of seized and forfeited property – Distribution of proceeds]. Notwithstanding KRS Chapter 48 [Budget], these funds shall be exempt from any state budget reduction acts.

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

In addition, CSEC offenders face asset forfeiture under Ky. Rev. Stat. Ann. § 500.092(3)(c) (Forfeiture of personal property not used as a residence triggered by violation or attempted violation of certain offenses – Forfeiture of real and personal property associated with violation or attempted violation of KRS 531.310 or 531.320), which provides for forfeiture of personal property used in connection with a violation of Ky. Rev. Stat. Ann. § 510.155 (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities – Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent).

Disposition of forfeited assets is governed by Ky. Rev. Stat. Ann. § 218A.420(4) (Procedure for disposal of seized and forfeited property – Distribution of proceeds – Administrative regulations on use of funds – Adoption of policies for seizure of forfeitable assets – Asset-forfeiture training – Vehicles – Joint operations), which states,

- Coin, currency, or the proceeds from the sale of property forfeited shall be distributed as follows:
- (a) Eighty-five percent (85%) shall be paid to the law enforcement agency or agencies which seized the property, to be used for direct law enforcement purposes; and
 - (b) Fifteen percent (15%) shall be paid to the Office of the Attorney General or, in the alternative, the fifteen percent (15%) shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of this section. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

As noted above, however, state asset forfeiture laws do not direct a percentage of a CSEC offender's forfeited assets into a victim services fund.

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on CSEC offenders into a victim services fund.



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Ky. Rev. Stat. Ann. § 529.010(16) (Definitions) defines “victim of human trafficking” as “a person who has been subjected to human trafficking.” “Human trafficking” is defined under Ky. Rev. Stat. Ann. § 529.010(7)(b) as “criminal activity whereby one (1) or more persons are subjected to engaging in . . . [c]ommercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.” Because the definition of “commercial sexual activity” includes “[a]ny sex act, for which anything of value is given to, promised to, or received by any person,” a buyer can be charged regardless of whether a trafficker is involved or identified. Ky. Rev. Stat. Ann. § 529.010(3)(a).

Similarly, Kentucky’s human trafficking law does not require third party control because it can apply directly to a buyer who “subjects” a minor to “commercial sexual activity.” Ky. Rev. Stat. Ann. § 529.100(1)(b) (Human trafficking) states,

A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to engage in:

....

(b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.

Accordingly, third party control is not required to identify a commercially sexually exploited child as a trafficking victim or to establish the crime of human trafficking.

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Kentucky law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Kentucky law requires child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking. Specifically, Ky. Rev. Stat. Ann. § 620.029(2)(a) (Duties of cabinet relating to children who are victims of human trafficking) requires the Cabinet for Health and Family Services to develop sex trafficking specific policies, which include screening and assessment of suspected child trafficking victims, stating,

In order to effectuate the requirements of this section, the cabinet shall: (a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Kentucky law requires juvenile justice agencies to conduct appropriate screening of children and youth who are at risk of sex trafficking. Pursuant to Ky. Rev. Stat. Ann. § 15A.068(2) (Duties of department if child may be victim of human trafficking – Administrative regulations),

After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c)² of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

Kentucky law clearly prohibits the prosecution of minors for prostitution offenses; however, state law contemplates the limited use of temporary detention in response to minors engaged in commercial sex. Ky. Rev. Stat. Ann. § 529.120 (Treatment of minor suspected of prostitution offense) states,

- (1) Notwithstanding KRS 529.020 [Kentucky] or 529.080 [Loitering for prostitution purposes], if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080.
- (2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet of Health and Family Services pursuant to KRS 620.030 [Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties]. Pursuant to KRS 620.040 [Duties of prosecutor, police, and cabinet – Prohibition as to school personnel – Multidisciplinary teams], the officer may take the minor into protective custody.

² Pursuant to Ky. Rev. Stat. Ann. § 15A.068(1),

If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in KRS 529.010 [Definitions], the department shall:

- (a) File a report with the Cabinet for Health and Family Services pursuant to KRS 620.030 [Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties];
- (b) Notify the child’s attorney that the child may be a victim of human trafficking; and
- (c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services.

(3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect of abuse pursuant to KRS 620.029 [Duties of cabinet relating to children who are victims of human trafficking].

Consequently, while Kentucky law seemingly permits the limited use of detention in response to commercially sexually exploited minors under Ky. Rev. Stat. Ann. § 529.120, statutory protections provide alternative mechanisms for taking such minors into protective custody and safeguards from prosecution for prostitution offenses.

2.5.1 Recommendation: Amend state law to clearly prohibit the use of detention in response to minors engaged in commercial sex.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Kentucky law prohibits the criminalization of child sex trafficking victims for status offenses committed as a result of trafficking victimization; however, protection is not extended to misdemeanor and non-violent felony offenses. Regarding status offenses, Ky. Rev. Stat. Ann. § 630.125 (Child not to be charged with or found guilty of status offense related to human trafficking) states,

If reasonable cause exists to believe the child is a victim of human trafficking,³ as defined in KRS 529.010, the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.

Further, Ky. Rev. Stat. Ann. § 529.170(1) (Being victim of human trafficking is affirmative defense to violation of chapter) provides trafficking victims with an affirmative defense to non-violent offenses, stating,

A person charged under this chapter [Prostitution offenses], or charged with an offense which is not a violent crime as defined in KRS 17.165 [Definitions], may assert being a victim of human trafficking as an affirmative defense to the charge.

However, Ky. Rev. Stat. Ann. § 529.170(2) makes the affirmative defense described in Ky. Rev. Stat. Ann. § 529.170(1) “unavailable if the defendant intentionally or wantonly placed himself in a situation in which it was probably that he would be subjected to coercion.”

2.6.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

³ Ky. Rev. Stat. Ann. § 529.010(16) (Definitions) defines “victim of human trafficking” as “a person who has been subjected to human trafficking.” “Human trafficking” is defined under Ky. Rev. Stat. Ann. § 529.010(7)(b) as “criminal activity whereby one (1) or more persons are subjected to engaging in . . . [c]ommercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.”

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Although Kentucky law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization, an affirmative defense may be available. Specifically, Ky. Rev. Stat. Ann. § 529.170(1) (Being victim of human trafficking is affirmative defense to violation of chapter) states,

A person charged under this chapter [Prostitution offenses], or charged with an offense which is not a violent crime as defined in KRS 17.165, may assert being a victim of human trafficking as an affirmative defense to the charge.

Ky. Rev. Stat. Ann. § 17.165(3) (Definitions) defines “violent crime” as

a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

Pursuant to Ky. Rev. Stat. Ann. § 529.100(2) (Human trafficking),

- (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.
- (b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

Accordingly, the affirmative defense should apply to trafficking charges, unless a child victim suffered serious physical injury or death, as well as to charges brought under the prostitution chapter. Ky. Rev. Stat. Ann. §§ 529.170, 17.165(3), 529.100(2). Notably, however, Ky. Rev. Stat. Ann. § 529.170(2) makes the affirmative defense “unavailable if the defendant intentionally or wantonly placed himself in a situation in which it was probably that he would be subjected to coercion.”

- 2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Ky. Rev. Stat. Ann. § 529.170(1) (Being victim of human trafficking is affirmative defense to violation of chapter) prohibits assertion of an affirmative defense in cases where a child sex trafficking victim is charged with a violent felony; it states,

A person charged under this chapter [Prostitution offenses], or charged with an offense which is not a violent crime as defined in KRS 17.165 [Definitions], may assert being a victim of human trafficking as an affirmative defense to the charge.

Further, Ky. Rev. Stat. Ann. § 529.170(2) makes the affirmative defense “unavailable if the defendant intentionally or wantonly placed himself in a situation in which it was probably that he would be subjected to coercion.”

- 2.8.1 Recommendation: Amend Ky. Rev. Stat. Ann. § 529.170 (Being victim of human trafficking is affirmative defense to violation of chapter) to provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

Kentucky law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Kentucky law extends juvenile court jurisdiction to all minors under 18 years of age and prohibits automatic transfers and direct file, Kentucky law does not establish a minimum age for juvenile court jurisdiction and fails to require courts to consider the impact of trauma or past victimization in make discretionary transfer determinations.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	None. “Child’ is defined as, “any person who has not reached his or her eighteenth birthday”	17	No.	Yes. Minors: (1) 14+ years of age charged with certain offenses can be prosecuted as “youthful offenders” ⁴ ; (2) previously convicted as a youthful offender; (3) 14+ years of age who is charged with a felony which involved the use of a firearm.	No.
Relevant Statute(s)	Ky. Rev. Stat. Ann. § 600.020(9) (Definitions for KRS Chapters 600 to 645)	Ky. Rev. Stat. Ann. § 600.020(9) (Definitions for KRS Chapters 600 to 645)	N/A	Ky. Rev. Stat. Ann. § 635.020(2)–(5) (Criteria for determining how child is to be tried)	Ky. Rev. Stat. § 640.010(2)(c) (Preliminary hearing – Proof required to try child as youthful offender in circuit court)

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; and (2) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

⁴ Ky. Rev. Stat. Ann. § 600.020(72) (Definitions for KRS Chapters 600 to 645) defines “youthful offender” as, “any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.”

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

In lieu of defining “abused child” to include child sex trafficking,⁵ Kentucky law establishes a separate process for reporting child victims of human trafficking to child welfare and specifically requires the Cabinet for Health and Family Service to provide a service response to child victims of human trafficking. Ky. Rev. Stat. § 620.029(1)–(2)(a) (Duties of cabinet relating to children who are victims of human trafficking) provides,

- (1) In order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010 [Definitions], the cabinet shall:
 - (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3) [Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties];
 - (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and
 - (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.
- (2) In order to effectuate the requirements of this section, the cabinet shall:
 - (a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement

⁵ Kentucky does, however, include commercial sexual exploitation of children in the definition of “abused or neglected child” under Ky. Rev. Stat. Ann. § 600.020(1) (Definitions for KRS Chapters 600 to 645), which states in part,

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

“Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

- (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

. . . .

5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

. . . .

- (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age.

EXTRA CREDIT



The Cabinet for Health and Family Services is required to provide a service response to child labor trafficking victims based on the definition of “human trafficking” under Ky. Rev. Stat. Ann. § 529.010 (Definitions), which includes subjecting a child to forced labor or services.

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Kentucky’s child welfare code allows for a child welfare response to non-familial child sex trafficking cases that does not hinge on caregiver fault and provides a trafficking-specific process for child sex trafficking victims to access services through child welfare.

To ensure child sex trafficking victims are reported to child welfare regardless of parent or caregiver involvement, Ky. Rev. Stat. Ann. § 620.030(3) (Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties) provides that “[a]ny person who knows or has reasonable cause to believe that a child is a victim of human trafficking as defined in KRS 529.010 [Definitions] shall immediately cause an oral or written report to be made” and clarifies that “[t]his subsection shall apply regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision.” Additionally, Kentucky’s child welfare code clarifies the duties of the Cabinet in responding to reports of children who are victims of human trafficking. Ky. Rev. Stat. § 620.029(1)–(2)(a) (Duties of cabinet relating to children who are victims of human trafficking) provides,

- (1) In order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010, the cabinet shall:
 - (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3);
 - (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and
 - (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.
- (2) In order to effectuate the requirements of this section, the cabinet shall:
 - (a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Kentucky law provides child sex trafficking victims with access to specialized services through a non-punitive system. Pursuant to Ky. Rev. Stat. § 620.029(1), (2)(a) (Duties of cabinet relating to children who are victims of human trafficking),

- (1) In order to provide the most effective treatment for children who are victims of human trafficking, as defined in Ky. Rev. Stat. § 529.010 [Definitions] the [Cabinet for Health and Family Services] shall:
 - (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3) [Duty to report dependency, neglect, abuse, human trafficking, or female genital mutilation – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties];
 - (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and
 - (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.
- (2) In order to effectuate the requirements of this section, the cabinet shall:
 - (a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement

Further, Ky. Rev. Stat. Ann. § 15A.068(1)(a)–(c) (Duties of department if child may be victim of human trafficking – Administrative regulations) states,

If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in KRS 529.010, the department shall:

- (a) File a report with the Cabinet for Health and Family Services pursuant to KRS 620.030;
- (b) Notify the child’s attorney that the child may be a victim of human trafficking; and
- (c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services.

EXTRA CREDIT



Kentucky law extends access to specialized services to victims of child labor trafficking. For purposes of protection, Ky. Rev. Stat. Ann. § 529.010(7) (Definitions) defines “human trafficking” to include “criminal activity whereby one (1) or more persons are subjected to engaging in: (a) Forced labor or services; or (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion”

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Kentucky law authorizes a child sex trafficking multidisciplinary team (MDT) to be established in every county but does not require a MDT response to child sex trafficking cases. Pursuant to Ky. Rev. Stat. § 620.040(7)(a)–(c), (g) (Duties of prosecutor, police, and cabinet – Prohibitions as to school personnel – Multidisciplinary teams),

- (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
- (b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth’s and county attorneys, children’s advocacy center staff, mental health professionals, medical professionals, victim advocates including advocates for victims of human trafficking, educators, and other related professionals, as deemed appropriate.
- (c) The multidisciplinary team shall review child sexual abuse cases and child human trafficking cases involving commercial sexual activity referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child’s welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

Further, Kentucky law allows a human trafficking victim advocate to serve on a child sexual abuse multidisciplinary team (MDT). Ky. Rev. Stat. § 431.600(1) (Coordination of child sexual abuse investigations and prosecutions – Protection of and counseling for child victims) provides,

Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Health and Family Services. Cabinet for Health and Family Services social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020 [Definitions], is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth’s and county attorneys, children’s advocacy center staff, mental health professionals, medical professionals, victim advocates, including those for victims of human trafficking, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child

Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A [Administrative regulations].

As noted above, however, Kentucky does not statutorily require a multi-disciplinary team response to child sex trafficking cases.

- 3.2.1 Recommendation: Strengthen existing responses to require a specialized multi-disciplinary team response to child sex trafficking victims.

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Kentucky law requires specialized services for identified sex trafficked children and youth in the juvenile justice system. Pursuant to Ky. Rev. Stat. Ann. § 15A.068(2) (Duties of department if child may be victim of human trafficking – Administrative regulations),

After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.

Policy Goal 3.4 State law extends foster care services to older foster youth.

Kentucky law extends foster care services to youth under 21 years of age through a court process. However, these services are not extended to youth under 23 years of age as permitted under federal law.⁶ Specifically, Ky. Rev. Stat. Ann. § 610.110 (6) (Disposition of case) provides,

Upon motion of the child and agreement of the Department of Juvenile Justice or the cabinet, as appropriate, the court may authorize an extension of commitment up to age twenty-one (21) for the purpose of permitting the Department of Juvenile Justice or the cabinet, as appropriate, to assist the child in establishing independent living arrangements if a return to the child's home is not in his or her best interest.

Further, Ky. Rev. Stat. Ann. § 620.140(d), (e) (Dispositional alternatives) provides expanded access to transitional planning or living support up through the age of 21, stating,

(d) Commitment of the child to the custody of the cabinet for placement for an indeterminate period of time not to exceed his or her attainment of the age eighteen (18), unless the youth elects to extend his or her commitment beyond the age of eighteen (18) under paragraph (e) of this subsection. Beginning at least six (6) months prior to an eligible youth attaining the age of eighteen (18), the cabinet shall provide the eligible youth with education, encouragement, assistance, and support regarding the development of a transition plan, and inform the eligible youth of his or her right to extend commitment beyond the age of eighteen (18); or

⁶ For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf (discussing the need to extend child welfare protections to youth under 24 years of age).

(e) Extend or reinstate an eligible youth's commitment up to the age of twenty-one (21) to receive transitional living support. The request shall be made by the youth prior to attaining nineteen (19) years of age. Upon receipt of the request and with the concurrence of the cabinet, the court may authorize commitment up to the age of twenty-one (21).

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Kentucky state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

- 3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Kentucky state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

- 3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

While civil orders of protection exist under Kentucky law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Kentucky's crime victims' compensation laws exempt victims of child sex trafficking and CSEC from cooperation requirements; however, other ineligibility factors may leave some commercially sexually exploited children without access to an award.

For the purposes of accessing crime victims' compensation, Ky. Rev. Stat. Ann. § 49.280(5)(a)(1) (Definitions for KRS 49.270 to 49.490) defines "victim" as "a needy person who suffers personal physical or psychological injury or death from a criminal act in Kentucky as a result of . . . [c]riminally injurious conduct" "Criminally injurious conduct" is defined under Ky. Rev. Stat. Ann. § 49.280(3) to include "conduct that occurs or is attempted in this jurisdiction, poses a substantial threat of personal physical, psychological injury, or death, and is punishable by fine, imprisonment, or death"

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Ky. Rev. Stat. Ann. § 49.330(2) (Application for award – Filing of claim form – Effect of pending criminal prosecution on proceedings of Crime Victims Compensation Board),

A claim form must be filed by the claimant not later than five (5) years after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than five (5) years after the death of the victim; provided, however, that upon good cause shown,⁷ the Crime Victims Compensation Board may extend the time for filing if, in a particular case, the interest of justice so requires.

Further, Ky. Rev. Stat. Ann. § 49.370(1)(c) (Awards, findings, and amounts) requires the crime to have been reported to law enforcement within a specified time; it states,

No award shall be made unless the Crime Victims Compensation Board or board member, as the case may be, finds that:

.....

(c) Police or court records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police or court records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

⁷ Notably, Ky. Rev. Stat. Ann. § 49.330 does not explain what constitutes "good cause" for purposes of this exception.

Lastly, Ky. Rev. Stat. Ann § 49.390(2) (Reduction of award – Determination of victim’s contribution – Basis of denial of claim) allows a claim to be reduced or denied based on contributory conduct, stating in part,

In determining the amount of an award, the Crime Victims Compensation Board or board member shall determine whether, because of his or her conduct, the claimant or the victim of such crime contributed to the infliction of the victim’s injury, and shall reduce the amount of the award or reject the claim altogether, in accordance with such determination

Notably, Kentucky law carves out an exception to cooperation requirements. Because this exception is offense-specific, however, only victims of trafficking, not CSEC, will be protected. Under Ky. Rev. Stat. Ann. § 49.370(2), “Except for claims related to sexual assault, human trafficking, and domestic violence, the board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.”

Because child sex trafficking and CSEC victims are not expressly exempt from all the ineligibility factors noted above, however, some commercially sexually exploited children may not have access to an award.

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims’ compensation.

Policy Goal 4.3 Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Kentucky law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offenses arising from their victimization. Ky. Rev. Stat. Ann. § 610.330 (Expungement of juvenile court records) applies to delinquency adjudications, generally. It states,

- (1)
 - (a) Any child who has been adjudicated as coming within the purview of KRS Chapter 630 [Status offenders], 635 [Public offenders], or 645 [Mental health act], but not KRS Chapter 620 [Dependency, neglect, and abuse] or 640 [Youthful offenders], may petition the court for the expungement of offenses from his or her juvenile court record. He or she shall be informed of such right at the time of adjudication.⁸

⁸ Ky. Rev. Stat. Ann. § 635.020(1)–(3) (Criteria for determining how child is to be tried) provides guidance on when a child is to be tried as a public offender rather than as a youthful offender, stating,

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter [Public offenders].
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at this time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior adjudication, and after the county attorney has consulted with the Commonwealth’s attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney

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- (c) Expungement shall not be granted if:
 1. There are any proceedings pending or being instituted against the child;
 2. The offense is a sex crime, as defined in KRS 17.500; or
 3. The offense would classify a person as a violent offender under KRS 439.3401.
 - (2) A petition may seek the expungement from the juvenile court record of:
 - (a) Misdemeanors, violations, or status offenses;
 - (b) A single felony; or
 - (c) A series of felonies arising from a single incident.
 - (3) The petition shall be filed or the court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his or her unconditional release from commitment to the Department of Juvenile Justice or the Cabinet for Health and Family Services or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.
-
- (5) The court may order the adjudication vacated and all records expunged in the petitioner's case in the custody of the court and any of these records in the custody of any other agency or official, including law enforcement and public or private elementary and secondary school records, unless at the hearing the county attorney establishes that the child or offense is ineligible for expungement under subsections (1) to (4) of this section
 - (6) Upon the entry of an order to expunge the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.
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- (9) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

However, vacatur under Ky. Rev. Stat. Ann. § 610.330 is not available for sex crimes or violent offenses, which fails to recognize the array of crimes trafficking victims are charged with and leaves many survivors without any avenue for relief.

Similarly, Ky. Rev. Stat. Ann. § 529.160 (Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense – Motion – Finding – Presumption) allows sex trafficked youth to vacate criminal convictions, stating,

- (1) When a person is charged or convicted under this chapter [Prostitution offenses], or with an offense which is not a violent crime as defined in KRS 17.165,⁹ and the person's participation in the offense is

has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

"Prostitution is a Class B misdemeanor." Ky. Rev. Stat. Ann. § 529.020(b) (Prostitution). Accordingly, a child charged with prostitution would be adjudicated as a public offender, so the expungement and vacatur provisions set forth under Ky. Rev. Stat. Ann. § 610.330 would apply.

⁹ Ky. Rev. Stat. Ann. § 17.165(3) (Definitions – Criminal record check for job applicants at child-care centers – Restrictions on employing violent offenders or person convicted of sex crimes) defines "violent crime" as "the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim."

determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense.

(2) The motion shall be filed no sooner than sixty (60) days following the date the final judgment was entered by the court in which the charges were filed.

(3)

(a) A motion filed under this section, any hearing conducted on the motion, and any relief granted are governed by KRS 431.076, 431.078, and 431.079 unless otherwise provided in this section.

(b) For the purposes of expungement under KRS 431.076, a finding by the court that the person's participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice.

(c) No official determination or documentation is required to find that the person's participation in the offense was a direct result of being a victim of human trafficking, but documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant's participation in the offense was a direct result of being a victim.

Ky. Rev. Stat. Ann. § 529.160(3)(b) allows for vacatur in that “a finding by the court that the person's participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice.” However, vacatur under Ky. Rev. Stat. Ann. § 529.160 is not available for violent felonies.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Restitution is mandatory in cases involving CSEC, but not child sex trafficking, based on the felony classification of those offenses.¹⁰ Specifically, Ky. Rev. Stat. Ann. § 532.356(1)(b) (Reimbursement and restitution as additional sanctions – Ineligibility to operate motor vehicle upon conviction of certain theft, fraud, and organized crime offenses) provides,

Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense,¹¹ and, for the purposes of paragraph (b) of this subsection, any Class C felony offense listed in subsection (3)¹² of this section, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:

¹⁰ See *infra* appendix for a full discussion of the penalties applicable to keystone statutes involving child sex trafficking and CSEC.

¹¹ Ky. Rev. Stat. Ann. § 532.356 mandates payment of victim restitution for Class D felonies related to the commercial sexual exploitation of children, including Ky. Rev. Stat. Ann. § 510.155 (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities – Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent).

¹² Ky. Rev. Stat. Ann. § 532.356(3) includes fraud, theft, and organized crime offenses: “1. KRS 434.650 [Fraudulent use – Presumption as to knowledge of revocation]; 2. KRS 434.655 [Fraudulent use of credit or debit card after reporting it lost, as stolen, or not received]; 3. KRS 434.660 [Fraud by authorized persons, business organization, or financial institution]; 4. KRS 434.670 [Failure to furnish goods, services, etc., represented in writing as furnished]; 5. KRS 434.690 [Receiving goods, services, etc., obtained by fraud – presumption as to possession of transportation tickets fraudulently obtained]; 6. KRS 514.030 [Theft

....

(b) Restitution to the crime victim as set out in KRS 439.563 [Restitution as condition of parole – Board order – Effect on length of parole], 532.032 [Restitution], and 532.033 [Order of restitution].

4.4.1 Recommendation: Statutorily mandate restitution in all child sex trafficking and CSEC cases.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Kentucky law allows victims of child sex trafficking and CSEC to pursue civil remedies against their exploiters under Ky. Rev. Stat. Ann. § 431.082 (Civil action by victim against defendant – Damages – Construction), which states,

- (1) In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 [Sexual offenses] or 531 [Pornography] or any human trafficking offense proscribed by KRS Chapter 529 [Prostitution offenses], the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.
- (2) If the plaintiff prevails, he or she shall be entitled to attorney’s fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.
- (3) Any award of nominal damages shall support an award of attorneys fees and costs to the prevailing party.
- (4) Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.
- (5) The provisions of this section shall not be construed as repealing any provision of KRS 431.080 [Conviction of felony does not bar civil remedy] or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.

Further, Ky. Rev. Stat. Ann. § 413.249(2) (Action relating to childhood sexual abuse or childhood sexual assault) provides for “recovery of damages for injury or illness¹³ suffered as a result of childhood sexual assault or abuse.” Ky. Rev. Stat. Ann. § 413.249(1)(a) defines “childhood sexual assault or abuse” as follows:

[A]n act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor or felony in:

1. KRS Chapter 510 [Sexual offenses];
2. KRS 529.040 [Promoting prostitution] when the defendant advances or profits from the prostitution of a minor;
3. KRS 529.100 [Human trafficking] when the offense involves commercial sexual activity;
4. KRS 529.110 [Promoting human trafficking] when the offense involves commercial sexual activity;
-
6. KRS Chapter 531 [Pornography] involving a minor or depiction of a minor; or
7. KRS 506.010 [Criminal attempt] or 506.030 [Criminal solicitation] for attempt to commit or solicitation to commit any of the offenses described in subparagraphs 1. to 6. of this paragraph.

by unlawful taking or disposition – Penalties]; 7. KRS 514.040 [Theft by deception]; 8. KRS 514.050 [Theft of property lost, mislaid, or delivered by mistake]; 9. KRS 514.060 [060 Theft of services]; 10. KRS 514.070 [070 Theft by failure to make required disposition of property]; 11. KRS 514.080 [Theft by extortion]; 12. KRS 514.090 [Theft of labor already rendered]; 13. KRS 514.110 [Receiving stolen property]; 14. KRS 514.120 [Obscuring identity of machine or other property]; or 15. KRS 506.120 [Engaging in organized crime].”

¹³ Ky. Rev. Stat. Ann. § 413.249(1)(c) defines “injury or illness” as “either a physical or psychological injury or illness.”

Pursuant to Ky. Rev. Stat. Ann. § 413.249(3), the cause of action provided for under Ky. Rev. Stat. Ann. § 413.249(2) applies against:

- (a) A person alleged to have committed the act of childhood sexual assault or abuse; or
- (b) An entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual assault or abuse that resulted in the injury to the plaintiff.¹⁴

EXTRA CREDIT



Kentucky law provides sex trafficked youth with a trafficking-specific civil remedy under Ky. Rev. Stat. Ann. § 431.082, which applies broadly to victim of “any human trafficking offense proscribed by KRS Chapter 529” regardless of their age.



Kentucky law provides child labor trafficking victims with a trafficking-specific civil remedy under Ky. Rev. Stat. Ann. § 431.082, which applies broadly to a victim of “any human trafficking offense proscribed by KRS Chapter 529,” including both sex and labor trafficking victims.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Prosecutions for felony offenses may commence at any time;¹⁵ in contrast, the statute of limitation for civil actions based on “childhood sexual assault or abuse,” including child sex trafficking and CSEC, are lengthened but not eliminated. Pursuant to Ky. Rev. Stat. Ann. § 500.050(1), (2) (Time limitations),

¹⁴ However, Ky. Rev. Stat. Ann. § 413.249(5) states,

A victim of childhood sexual assault or abuse shall not have a cause of action against a third party, unless the third party failed to act as a reasonable person or entity in complying with their duties to the victim. If a victim of childhood sexual assault or abuse has a cause of action under this section, the cause of action shall be commenced within the time period set forth in subsection (2) of this section.

¹⁵ Notably, Ky. Rev. Stat. Ann. § 500.050(3)(a) prescribes a 10-year statute of limitation for misdemeanor sex offenses when the victim is a minor. Subsection (b) defines “misdemeanor sex offense” as follows:

1. KRS Chapter 510 [Sexual Offenses];
2. KRS Chapter 531 [Pornography] involving a minor or depiction of a minor; or
3. KRS 506.010 [Criminal attempt] or 506.030 [Criminal solicitation] for attempt to commit or solicitation to commit:

(1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.

(2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.

Regarding civil actions, Ky. Rev. Stat. Ann. § 413.249(2) (Action relating to childhood sexual abuse or childhood sexual assault) provides,

A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual assault or abuse¹⁶ shall be brought before whichever of the following periods last expires:

(a) Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;

(b) Within ten (10) years of the date the victim knew, or should have known, of the act;

(c) Within ten (10) years after the victim attains the age of eighteen (18) years; or

(d) Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual assault or abuse.

In contrast, Ky. Rev. Stat. Ann. § 431.082 (Civil action by victim against defendant – Damages – Construction) does not provide for an extended statute of limitation for civil claims filed under that section. Notably, Ky. Rev. Stat. Ann. § 413.140(1)(a) (Actions to be brought within one year) establishes a 1-year statute of limitation for “[a]n action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant.”

4.6.1 Recommendation: Eliminate the civil statute of limitation for all cases involving child sex trafficking.

a. Any of the offenses described in subparagraphs 1. and 2. of this paragraph;

b. Promoting prostitution under KRS 529.040 when the defendant advances or profits from the prostitution of a minor;

c. Human trafficking involving commercial sexual activity under KRS 529.100;

d. Promoting human trafficking involving commercial sexual activity under KRS 529.110; or

e. Unlawful transaction with a minor in the first degree under KRS 530.064(1)(a).

¹⁶ See *supra* Policy Goal 4.5 for a full discussion of Ky. Rev. Stat. Ann. § 413.249, including the definition of “childhood sexual assault or abuse.”



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Kentucky law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child’s testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Kentucky law allows child sex trafficking victims who are under 13 years of age to testify by an alternative method. Specifically, Ky. Rev. Stat. Ann. § 421.350(1)–(3) (Testimony of child alleged victim of illegal sexual activity) states,

(1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS . . . 510.155 [Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities – Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent], 529.030 to 529.050 [Promoting prostitution], 529.070 [Permitting prostitution], 529.100 [Human Trafficking], 529.110 [Promoting human trafficking], . . . or any specified in KRS 439.3401 [Parole for violent offenders] and all dependency proceedings pursuant to KRS Chapter 620 [Dependency, neglect, and abuse], when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.

(2) The court may, on the motion of the attorney for any party and upon a finding of compelling need,¹⁷ order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding

(3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding

Notably, child victims who are 13 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

¹⁷ Ky. Rev. Stat. Ann. § 421.350(5) defines “compelling need” as “the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant’s presence.”

Policy Goal 5.3

Child sex trafficking victims have access to victim protections in the criminal justice system.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims' identifying information is protected from disclosure in court records
Summary	Crime victims can request a victim advocate to accompany them to all court proceedings.	Children can have the court room changed for their needs (small chairs, frequent breaks, positioning out of defendant's sight, etc.)	Not statutorily required.
Relevant Statute(s)	Ky. Rev. Stat. Ann. § 421.575 (Role of Victim Advocates in court proceedings)	Ky. Rev. Stat. Ann. § 26A.140(b), (d) (Accommodation of special needs of children)	None.

5.3.1 Recommendation: Statutorily require that child sex trafficking victims' identifying information is protected from disclosure in court records.

Policy Goal 5.4

State law provides for privileged communications between caseworkers and child sex trafficking victims.

Kentucky law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with their caseworker from being disclosed. Under Ky. Rev. Stat. Ann. § 422.295(2) (Confidentiality of communications between human trafficking victim and caseworker),

A human trafficking¹⁸ victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications¹⁹ made to a trafficking victim counselor²⁰ for the purpose of receiving counseling, therapy, services, information, or treatment related to human trafficking.

¹⁸ Ky. Rev. Stat. Ann. § 529.010(7) (Definitions) defines "human trafficking" as "criminal activity whereby one (1) or more persons are subjected to engaging in: (a) Forced labor or services; or (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion."

¹⁹ Ky. Rev. Stat. Ann. § 422.295(1)(a) defines "confidential communication" as follows:

[I]nformation transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted and includes all information regarding the facts and circumstances involving the trafficking;

²⁰ Ky. Rev. Stat. Ann. § 422.295(1)(c) defines "trafficking victim counselor" to include the following:

1. A counselor, as that term is defined in Rule 506 of the Kentucky Rules of Evidence;

EXTRA CREDIT



Kentucky law prevents disclosure of confidential communications made between a sex trafficking victim and their caseworker under Ky. Rev. Stat. Ann. § 422.295 regardless of the victim's age.



Kentucky law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under Ky. Rev. Stat. Ann. § 422.295, which applies broadly to all cases involving human trafficking, including both sex and labor trafficking.

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2. A psychotherapist as that term is defined in Rule 507 of the Kentucky Rules of Evidence; and
 3. A person employed and supervised by one (1) of the persons specified in this paragraph to render services to human trafficking victims and who has received forty (40) hours of training in the history of human trafficking; civil and criminal law as it relates to human trafficking; societal attitudes towards human trafficking; peer counseling techniques; housing, public assistance, and other financial resources available to meet the financial needs of human trafficking victims; and referral services available to human trafficking victims.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Kentucky law authorizes trafficking-specific training for child welfare staff. Pursuant to Ky. Rev. Stat. Ann. § 620.029(2)(a) (Duties of cabinet relating to children who are victims of human trafficking),

In order to effectuate the requirements of this section, the [Cabinet for Health and Family Services] shall:
(a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement

Resultingly, training regarding child sex trafficking may be, or become, available to child welfare. However, Kentucky law does not statutorily require individuals employed by child welfare to receive such training.

- 6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Kentucky law authorizes trafficking-specific training for juvenile justice agencies. Pursuant to Ky. Rev. Stat. Ann. § 15A.068(2) (Duties of department if child may be victim of human trafficking – Administrative regulations),

After consultation with agencies serving victims of human trafficking, the [Department of Juvenile Justice] shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.

Resultingly, training regarding child sex trafficking may be, or become, available to juvenile justice agencies. However, Kentucky law does not statutorily require individuals employed by juvenile justice agencies to receive such training.

- 6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Kentucky law mandates a one-time training on human trafficking as part of a law enforcement training course; however, officers are not required to receive ongoing in-service training on human trafficking. Pursuant to Ky. Rev.

Stat. Ann. § 15.334(1)(e) (Mandatory training subjects for law enforcement students – Mandatory in-service training courses for certified peace officers – Administrative regulations – Sexual assault investigation training course – Domestic violence and abuse training),

The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:

.....
(e) The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but not limited to screening for human trafficking, and resources for assistance to the victims of human trafficking;

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Kentucky law mandates trafficking-specific training for prosecutors. Pursuant to Ky. Rev. Stat. Ann. § 15.718 (Training and continuing education for Commonwealth's attorneys and county attorneys and their staffs; completion requirements),

- (1) The Attorney General shall provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:
- (a) The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims services, and reporting requirements; and
 - (b) The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.
- (2) The training shall be developed in consultation with prosecutors, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, human trafficking, and rape.
- (3) Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

Kentucky law does not mandate training on child sex trafficking for school personnel.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

Kentucky law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

State Laws Addressing Child Sex Trafficking

1. Ky. Rev. Stat. Ann. § 529.100 (Human trafficking) states,

(1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to engage in:

.....

(b) Commercial sexual activity²¹ through the use of force, fraud, or coercion, except that if the person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.

(2)

(a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.

(b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

If the victim is a minor, Ky. Rev. Stat. Ann. § 529.100 is punishable as a Class B felony by imprisonment for 10–20 years and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense, whichever is greater.” Ky. Rev. Stat. Ann. §§ 529.100(2)(a), (2)(b), 532.060(2)(b), 534.030(1). If the minor was injured, Ky. Rev. Stat. Ann. § 529.100 is punishable as a Class A felony by imprisonment for 20–50 years or life and a fine of \$1,000–\$10,000 or “double [the] gain from commission of the offense, whichever is greater.” Ky. Rev. Stat. Ann. §§ 529.100(2)(a), (2)(b), 532.060(2)(a), 534.030(1).

2. Ky. Rev. Stat. Ann. § 529.110 (Promoting human trafficking) states,

(1) A person is guilty of promoting human trafficking when the person intentionally:

(a) Benefits financially or receives anything of value from knowing participation in human trafficking; or

(b) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.

(2) Promoting human trafficking is a Class D felony unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.

If the victim is a minor, Ky. Rev. Stat. Ann. § 529.110 is punishable as a Class C felony by imprisonment for 5–10 years and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense, whichever is greater.” Ky. Rev. Stat. Ann. §§ 529.110(2), 532.060(2)(c), 534.030(1).

²¹ Ky. Rev. Stat. Ann. § 529.010(3) (Definitions) defines “commercial sexual activity” as

(a) Any sex act, for which anything of value is given to, promised to, or received by any person;

(b) Participation in the production of obscene material as set out in KRS Chapter 531; or

(c) Engaging in a sexually explicit performance;

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Ky. Rev. Stat. Ann. § 510.155 (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities – Prohibition of multiple convictions arising from single course of conduct – Solicitation as evidence of intent) states,
 - (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of:
 - (a) Procuring or promoting the use of a minor, including a peace officer, or a person working in coordination with law enforcement, posing as a minor if the person believes that the peace officer or the person working in coordination with law enforcement is a minor or is wanton or reckless in that belief; or
 - (b) Procuring or promoting the use of a minor from an adult intermediary, including a peace officer, or a person working in coordination with law enforcement, posing as an adult intermediary for a minor if the person believes that the peace officer or the person working in coordination with law enforcement is an adult intermediary for a minor or is wanton or reckless in that belief;for any activity in violation of KRS 510.040 [Rape in the first degree], 510.050 [Rape in the second degree], 510.060 [Rape in the third degree], 510.070 [Sodomy in the first degree], 510.080 [Sodomy in the second degree], 510.090 [Sodomy in the third degree], 510.110 [Sexual abuse in the first degree], 529.100 [Human trafficking] where that offense involves commercial sexual activity, or 530.064(1)(a) [Unlawful transaction with a minor in the first degree], or KRS Chapter 531 [Relating to child pornography].
.....
 - (6) Except as provided in subsection (7) of this section, a violation of this section is punishable as a Class D felony.
 - (7) A violation of this section is punishable as a Class C felony if:
 - (a) The minor or perceived minor procured or promoted is under twelve (12) years old;
 - (b) The offender is a registrant; or
 - (c) A person enters into the Commonwealth from another jurisdiction for the purpose of procuring or promoting the use of a minor or perceived minor in violation of this section.

A Class D felony is punishable by imprisonment for 1–5 years and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense, whichever is greater.” Ky. Rev. Stat. Ann. §§ 532.060(2)(d), 534.030(1). A Class C felony by imprisonment for 5–10 years and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense, whichever is greater.” Ky. Rev. Stat. Ann. §§ 532.060(2)(c), 534.030(1).