

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 Michigan’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.

Following federal precedent, Michigan’s trafficking law could apply to buyers of sex with minors based on the term “obtain.”¹ Specifically, Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) states,

A person shall not do any of the following, regardless of whether the person knows the age of the minor:

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

- (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity.²
- (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.³

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

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

Michigan law specifically criminalizes both purchasing and soliciting commercial sex with a minor. Pursuant to Mich. Comp. Laws Ann. § 750.449a(2) (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty),

A person who engages or offers to engage the services of another person, who is less than 18 years of age and who is not his or her spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration, is guilty of a crime

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

Mich. Comp. Laws Ann. § 750.13 (Taking or enticing away minor under sixteen years; violation as felony; penalty) applies to traffickers but is limited in application to traffickers who take a child from a legal guardian; it states,

A person who takes or entices away a minor under the age of 16 years from the minor’s father, mother, guardian, or other person having the legal charge of the minor, without their consent, for the purpose of prostitution, concubinage, sexual intercourse, or marriage is guilty of a felony

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

² Mich. Comp. Laws Ann. § 750.462a(c) defines “commercial sexual activity” as

- 1 or more of the following for which anything of value is given or received by any person:
 - (i) An act of sexual penetration or sexual contact as those terms are defined in section 520a.
 - (ii) Any conduct prohibited under section 145c.
 - (iii) Any sexually explicit performance as that term is defined in section 3 of 1978 PA 33, MCL 722.673.

³ Mich. Comp. Laws Ann. § 750.462a(g) defines “forced labor or services” as “labor or services that are obtained or maintained by force, fraud, or coercion.” In turn, Mich. Comp. Laws Ann. § 750.462a(l) defines “services” as “an ongoing relationship between a person and an individual in which the individual performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.”

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

Michigan law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it relates to the age of minor), an offender will be held accountable for child sex trafficking “regardless of whether the person knows the age of the minor.”

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.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Michigan’s criminal attempt statute, Mich. Comp. Laws Ann. § 750.92 (Attempt to commit crime), could provide prosecutors with an alternative avenue to prosecute those cases. Mich. Comp. Laws Ann. § 750.92 criminalizes, “[a]ny person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the offender committed an act in furtherance of child sex trafficking but was prevented from perpetrating the offense since the intended victim was a law enforcement decoy rather than an actual minor.

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

Michigan’s trafficking laws allow for business entity liability but do not provide for a business-specific penalty scheme. Pursuant to Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor),

- A person shall not do any of the following, regardless of whether the person knows the age of the minor:
- (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity.
 - (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.

Further, Mich. Comp. Laws Ann. § 750.462d (Prohibited conduct) states,

- A person shall not do either of the following:
-
 - (b) Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in section 159f [Definitions generally], if the enterprise has engaged in an act proscribed under this chapter.

Importantly, Mich. Comp. Laws Ann. § 750.10 (Sexually delinquent person, definitions) defines “person” to include “public and private corporations, copartnerships, and unincorporated or voluntary associations.” Accordingly, business entities can be held liable for a human trafficking violation. However, despite allowing for business entity liability, neither Mich. Comp. Laws Ann. § 750.462e nor Mich. Comp. Laws Ann. § 750.462d establish a business-specific penalty scheme, leaving a violation of these laws punishable by penalties most pertinent to individuals.

1.6.1 Recommendation: Strengthen state law to provide for 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.

Michigan law levies financial penalties on sex trafficking and CSEC offenders; although a percentage of the mandatory assessment will be directed toward victim services, a percentage of forfeited assets is not. Regarding the mandatory assessment. Mich. Code Ann. § 780.905(1)–(7)(a) (Payment and use of assessments; order; duties of clerk of court) states,

(1) The court shall order each person charged with an offense that is a felony, misdemeanor, or ordinance violation that is resolved by conviction, assignment of the defendant to youthful trainee status, a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, to pay an assessment as follows:

(a) If the offense is a felony, \$130.00.

(b) If the offense is a misdemeanor or ordinance violation, \$75.00.

....

(4) Except as otherwise provided under this act, an assessment under this section shall be used to pay for crime victim’s rights services.

....

(7) The clerk of the court shall do both of the following on the last day of each month:

(a) Transmit 90% of the assessments received under this section to the department of treasury with a written report of those assessments as the department of treasury prescribes. To provide funding for costs incurred under this section and for providing crime victim’s rights services, the court may retain 10% of the assessments received under this section and transmit that amount to the court’s funding unit.

Mich. Code Ann. § 780.904(1)–(3) (Crime victim’s rights fund; creation; investment; expenditures; use of additional excess revenue; expenditure for statewide trauma system; limitation; report; “minor crime victim” defined.) governs disposition of funds transmitted to the state treasurer; it states,

(1) The crime victim’s rights fund is created as a separate fund in the state treasury. The state treasurer shall credit to the fund all amounts received under this act and as provided by law . . .

(2) The fund must be expended only as provided in this act. Amounts in the fund in excess of the necessary revenue needed to pay for crime victim’s rights services as determined by the commission under section 3(a) may be used for crime victim compensation under 1976 PA 223, MCL 18.351 to 18.368, including compensation to minor crime victims. Any additional excess revenue that has not been used for crime victim compensation may be used to provide for establishment and maintenance of a statewide trauma system, including staff support associated with trauma and related emergency medical services program activities. Not more than \$3,500,000.00 must be expended for this purpose from the fund in any fiscal year

....

(3) Beginning October 1, 2021, the amount expended for the statewide trauma system from the fund must not exceed 50% of the maximum allowable under subsection (2), unless the amount expended is reasonably proportional to crime victims’ utilization of the statewide trauma system.

Regarding asset forfeiture, Mich. Comp. Laws Ann. § 600.4702(1) (Property subject to seizure and forfeiture; exception; encumbrances; substituted proceeds of crime) states,

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

(a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime, except real property that is the primary residence of the spouse or a

dependent child of the owner, unless that spouse or dependent child had prior knowledge of, and consented to the commission of, the crime.

(c) In the case of a crime that is a violation of . . . 750.462a to 750.462h [Human trafficking], all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions:

- (i) Contributed directly and materially to the commission of the crime.
- (ii) Was used to conceal the crime.
- (iii) Was used to escape from the scene of the crime.
- (iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime.

Mich. Comp. Laws Ann. § 600.4701(a)(viii)(A)–(B) (Definitions) defines “crime” as follows:

committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of the following offenses in connection with which the forfeiture of property is sought:

. . . .

(viii) A violation of any of the following:

- (A) . . . 750.459 [Transporting person for prostitution; sale of travel services for purposes of prostitution or human trafficking; conduct against minor; felony; “travel services” defined]
- (B) Chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking].

However, state asset forfeiture laws do not direct a percentage of a sex trafficking or CSEC offender’s forfeited assets 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. Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) can apply directly to buyers of commercial sex with minors based on federal precedent,⁴ meaning a buyer can be charged regardless of whether a trafficker is involved or identified. Accordingly, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

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

Michigan 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.

Michigan law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

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

Michigan law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

⁴ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Mich. Comp. Laws Ann. § 750.462e.

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

Michigan law prohibits some, but not all, minors from being criminalized for prostitution offenses. Pursuant to Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime),

A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime punishable as provided in section 451.

Further, Mich. Comp. Laws Ann. § 750.451(6), (7) (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior conviction; penalty; prosecution of persons under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) outlines the procedures for prosecuting minors who are 16 and 17 years of age; it states,

(6) In any prosecution of a person under 18 years of age for an offense punishable under this section or a local ordinance substantially corresponding to an offense punishable under this section, it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity in violation of section 462e [Forced labor or services; prohibited conduct as it relates to age of a minor] or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of sections 462a to 462h [Human trafficking]. The prosecution may overcome this presumption by providing beyond a reasonable doubt that the person was not forced or coerced into committing the offense. The state may petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of chapter XIIA of the probate code [Authority and jurisdiction of the court] . . . A person under 18 years of age who fails to substantially comply with court-ordered services under section 2(b)(3) of chapter XIIA of the probate code . . . is not eligible for the presumption under this section.

(7) Excluding any reasonable period for investigation purposes, a law enforcement officer who encounters a person under 18 years of age engaging in any conduct that would be a violation of section 448, 449 [Admitting to place for purposes of prostitution], 450 [Aiding, assisting, or abetting; penalty], or 462 [Female 16 years of age or less in house of prostitution; crime], or a local ordinance substantially corresponding to section 448, 449, 450, or 462, if engaging in by a person 16 years of age or over shall immediately report to the department of health and human services as a suspected violation of human trafficking involving a person under 18 years of age in violation of sections 462a to 462h.

Consequently, children 15 years of age and younger are protected from criminalization for prostitution offenses, and 16 and 17 year olds may avoid adjudication based on a rebuttable presumption of victimization. However, Michigan law fails to prohibit arresting, detaining, or charging older minors for conduct in violation of the state prostitution laws. Further, the presumption may be overcome if a prosecutor “provid[es] beyond a reasonable doubt that the person was not forced into committing the offense.” Accordingly, this protection essentially hinges on a finding of victimization, excluding older minors who are not identified as trafficking victims from protection, while adding a force or coercion requirement that is inconsistent with the definition of victim under the trafficking law, which does not require proof of force, fraud, or coercion when the victim is under 18 years of age.⁵

⁵ Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) criminalizes child sex trafficking as follows:

A person shall not do any of the following, regardless of whether the person knows the age of the minor:

- (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity.
- (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.

- 2.5.1 Recommendation: Amend state law to prohibit the criminalization of all minors for prostitution offenses.

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.

Michigan law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization. However, some minors engaged in delinquent conduct as a result of their trafficking victimization may be deemed “dependent” juveniles. Mich. Comp. Laws Stat. § 712A.2(B)(3)(C) states,

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

....

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

....

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

....

(C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 362a of the Michigan penal code . . . or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization

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.

Michigan law prohibits the criminalization of some, but not all, child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability.

Mich. Comp. Laws Ann. § 750.450 (Aiding, assisting, or abetting; penalty.) does not apply to younger minors, stating, “A person 16 years of age or older who aids, assists, or abets another person to commit or offer to an act prohibited under section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime], 449 [Admitting to place for purpose of prostitution; crime], or 449a [Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty] is guilty of a crime punishable as provided in section 451.”

Additionally, a minor engaged in trafficking or CSEC conduct is presumed to be a victim of human trafficking. Mich. Comp. Laws Ann. § 750.451(7) (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) provides,

Excluding any reasonable period of detention for investigation purposes, a law enforcement officer who encounters a person under 18 years of age engaging in any conduct that would be a violation of section 448, 449, 450, or 462 [Human Trafficking], or a local ordinance substantially corresponding to section 448, 449, 450, or 462, if engaged in by a person 16 years of age or older shall immediately report to the department of health and human services a suspected violation of human trafficking involving a person under 18 years of age in violation of sections 462a to 462h.

Consequently, while Michigan law fails to insulate 16- and 17-year-old minors from criminalization for sex trafficking or CSEC offenses, existing protections provide a presumption of trafficking victimization for all minors under 18 years of age and explicitly prohibit the criminalization of minors under 16 for related offenses.

- 2.7.1 Recommendation: Amend state law to prohibit the criminalization of all 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.

Michigan law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides 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.

Michigan law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Michigan law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for juvenile court jurisdiction, permits direct file for minors 14 years of age or older who are charged with certain offenses, 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. “Juvenile” is defined as, “a person who is less than 18 years of age who is the subject of a delinquency petition.”	17	Yes. Minors 14+ years of age who are charged with “specified juvenile violation.”	Yes. Minors: (1) charged with any offense; (2) 14+ years of age who are charged with a felony; or (3) 17 years of age who have exhausted or refused voluntary services and repeatedly use substances, “associate with prostitutes, pimps, or procurers,” or “found of his or her own free will . . . in a house of prostitution.”	No.

Relevant Statute(s)	Mich. Comp. Laws Ann. § 712A.1(1)(i) (Definitions; proceedings not considered criminal proceedings; construction of chapter); Mich. Comp. Laws Ann. § 712A.2 (Authority and jurisdiction of court)	Mich. Comp. Laws Ann. § 712A.1(1)(i) (Definitions; proceedings not considered criminal proceedings; construction of chapter); Mich. Comp. Laws Ann. § 712A.2 (Authority and jurisdiction of court)	Mich. Comp. Laws Ann. § 712A.2(a)(1) (Authority and jurisdiction of court); Mich. Comp. Laws Ann. § 712A.2d(1), (9)(a)–(i) (Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; “specified juvenile violation” defined)	Mich. Comp. Laws Ann. § 712A.2d(2) (Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; “specified juvenile violation” defined); Mich. Comp. Laws Ann. § 712A.4 (Waiver of jurisdiction when child of 14 or older accused of felony); 712A.2(d)(1)–(5) (Authority and jurisdiction of court)	Mich. Comp. Laws Ann. § 712A.2d(2)(a)–(f) (Juvenile to be tried as adult; designation by prosecuting attorney or court; factors; probable cause hearing; setting case for trial; proceedings as criminal proceedings; disposition or imposition of sentence; “specified juvenile violation” defined)
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Consequently, some minors may still be subject 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; (2) allow some juvenile cases to be subject to direct file; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 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.

Michigan law defines “child abuse” to include commercial sexual exploitation of children but not child sex trafficking. Specifically, Mich. Comp. Laws Ann. § 722.622(g) (Definitions) defines “child abuse” as “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy,” and “sexual exploitation” is defined under Mich. Comp. Laws Ann. § 722.622(aa) to include “allowing, permitting, or encouraging a child to engage in prostitution.”

- 2.10.1 Recommendation: Amend the definition of “child abuse” to expressly include child sex trafficking.

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.

Michigan law provides that a commercially sexually exploited juvenile⁶ may be deemed “dependent” for purposes of accessing child welfare services and protection, regardless of whether the child’s parent or caregiver was the perpetrator of the harm. Mich. Comp. Laws Ann. § 712A.2(b)(3)(C) (Authority and jurisdiction of court) states,

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

....

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

....

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

Further, Mich. Comp. Laws Ann. § 750.451(8) (Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of persons under 18 years of age; presumption; report; investigation by department of human services; “prior conviction” defined) states,

The department of health and human services shall begin an investigation of a human trafficking violation reported to the department of health and human services under subsection (7) within 24 hours after the report is made to the department of health and human services, as provided in section 8 of the child protection law . . . MCL 722.628. The investigation shall include a determination as to whether the person under 18 years of age is dependent and in danger of substantial physical and psychological harm . . .

However, while child sex trafficking victims who are identified as “dependent” children may be subject to the Family Division of the Circuit Court and eligible for child welfare services and care, no alternative, specialized response is provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker. Consequently, child sex trafficking victims may be subject to standard child protection and child welfare processes and responses.

2.11.1 Recommendation: Amend the child welfare code to set out a trafficking-specific response protocol for non-familial child sex trafficking cases.

⁶ For purposes of Chapter XIA (Jurisdiction, procedure, and dispositions involving minors) (§§ 712A.1—712A.32), Mich. Comp. Laws Ann. § 712A.1(1)(i) (Definitions; proceedings not considered criminal proceedings; construction of chapter) states in part, “Beginning October 1, 2021, ‘juvenile’ means a person who is less than 18 years of age who is the subject of a delinquency petition.”



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.

Michigan law does not provide specialized services for child sex trafficking victims except in the limited circumstance where a child is removed from the care of their parent or guardian and placed in the Department of Health and Human Services' care. Pursuant to Mich. Comp. Laws Ann. § 722.954e (Child as victim of human trafficking; placement in setting providing mental health services, counseling, or other specialized services), the Department of Health and Human Services must consider a child's status as a human trafficking victim in making placement decisions; Mich. Comp. Laws Ann. § 722.954e states,

Before determining placement of a child in its care, a supervising agency⁷ shall give special consideration to information that a child may be the victim of human trafficking. If a supervising agency finds that a child is or may be a victim of human trafficking, the supervising agency shall place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.

Further, Mich. Comp. Laws Ann. § 722.954c(4), (6) (Release of child's medical records; medical passport; contents; transfer; performance of assessment or psychological evaluation; medical examination; indication that child may have been victim of human trafficking; counseling) provides for psychological assessments and counseling services, stating,

....
(4) If a child under the care of a supervising agency has suffered sexual abuse, serious physical abuse, mental illness, or is alleged to be the victim of human trafficking, the supervising agency shall have an experienced and licensed mental health professional as defined under section 100b (18)(a), (b), or (d) of the mental health code, 1980 PA 299, MCL 339.1606, who is trained in children's psychological assessments perform an assessment or psychological evaluation of the child. The costs of the assessment or evaluation must be borne by the supervising agency.

....
(6) If an assessment or psychological evaluation required under subsection (4) indicates that a child may have been a victim of human trafficking, the supervising agency shall provide, in addition to any reunification, adoption, or other services provided to a child under the supervising agency's care, counseling services appropriate for minor victims of human trafficking.

3.1.1 Recommendation: Enact legislation requiring access to specialized services through a non-punitive system.

⁷ Mich. Comp. Laws. Ann. § 722.952(m) (Definitions) defines "supervising agency" as "the [Department of Health and Human Services] if a child is placed in the department's care for foster care, or a child placing agency in whose care a child is placed for foster care."

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

Michigan does not statutorily require a multi-disciplinary team response to child sex trafficking cases.

- 3.2.1 Recommendation: Enact legislation requiring a 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.

Michigan law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

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

Michigan law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.⁸ Mich. Comp. Laws Ann. § 400.643 (Definitions) defines “youth” as “an individual who is at least 18 years of age but less than 21 years of age,” and Mich. Comp. Laws Ann. § 400.647 (Foster care; reentry; extended foster care services) provides that “[a] youth who exited foster care after reaching 18 years of age but before reaching 21 years of age may reenter foster care and receive extended foster care services.”

Additionally, Mich. Comp. Laws Ann. § 400.649 (Extended foster care services; conditions; eligibility) provides access to extended foster care services, stating,

[T]he youth meets 1 of the following conditions for eligibility:

- (a) The youth is completing secondary education or a program leading to an equivalent credential.
 - (b) The youth is enrolled in an institution that provides postsecondary or vocational education.
 - (c) The youth is participating in a program or activity designed to promote employment or remove barriers to employment.
 - (d) The youth is employed for at least 80 hours per month.
 - (e) The youth is incapable of doing any part of the activities in subdivisions (a) to (d) due to a medical condition. This assertion of incapacity must be supported by regularly updated information in the youth’s case plan.
- 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.

⁸ 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 federal laws that allow for funded foster care services to be extended 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 Michigan state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors. However, appropriations were made during the 2019–2020 session to support the provision of intervention services, generally, which may encompass child and youth survivors of sex trafficking, and as well as services specifically for adult survivors of sex trafficking.

2019-2020 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
HB 5396	Department of Health and Human Services	\$200,000	For human trafficking intervention services.	FY 2019-2020
2020 Legislative Session				
SB 151	Department of Health and Human Services	\$500,000	To support a long-term women’s shelter in southeastern Michigan for women aged 18 and older who are survivors of human trafficking that offers housing and comprehensive services to address the physical, psychological, and spiritual aspects of recovery through a voluntary two-year program.	FY 2019-2020 (Non-recurring)
2020 Legislative Session				October 1 st -September 30 th
SB 151	Department of Health and Human Services	\$500,000	To support a long-term women’s shelter in a city with a population between 188,000 and 189,000... The shelter shall offer housing and comprehensive services to women who are survivors of human trafficking	FY 2019-2020
2020 Legislative Session				October 1 st -September 30 th
HB 5396	Department of Attorney General	\$170,000	For human trafficking commission fund.	FY 2019-2020
2020 Legislative Session				October 1 st -September 30 th

3.5.1 Recommendation: Appropriate state funds during each legislative session 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 Michigan 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 Michigan 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.

Although Michigan's crime victims' compensation laws define "victim" broadly enough to include victims of child sex trafficking and CSEC, ineligibility factors may prevent a commercially sexually exploited child from accessing an award.

For purposes of accessing crime victims' compensation, Mich. Comp. Laws Ann. § 18.351(i) (Definitions) defines "victim" as "a person who suffers a personal physical injury as a direct result of a crime." "Crime" is defined under Mich. Comp. Laws Ann. § 18.351(c)(i), (ii) to include the following:

[A]n act that is 1 of the following:

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

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Mich. Comp. Laws Ann. § 18.354(2), (3) (Eligibility for awards; limitations; waiver),

- (2) A person is not eligible to receive an award if the person is either of the following:
 - (a) Criminally responsible for the crime.
 - (b) An accomplice to the crime.
- (3) An award shall not be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of \$200.00 or has lost at least 2 continuous weeks' earnings or support

Lastly, Mich. Comp. Laws Ann. § 18.355(2), (3) (Claim; filing; notice; pending criminal prosecution; emergency award or certain payment to health care provider not prohibited) provides,

- (2) Except as provided in subsection (3), a claim shall be filed by the claimant not later than 1 year after the occurrence of the crime upon which the claim is based
- (3) Upon petition by the claimant and for good cause shown, the commission may extend the period in

which a claim may be filed under subsection (2).⁹

- 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.

Michigan law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions; however, relief may be limited based on the crime for which vacatur is sought, the number of offenses, or other relevant conditions.

Specifically, Mich. Comp. Laws Ann. § 712A.18e(10)(b) (Application for entry of order setting aside adjudication; filing) allows a delinquency adjudication to be set aside if:

The person was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime], 449 [Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty], or 450 [Aiding, assisting, or abetting; penalties] of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, and he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.

Vacatur is available under this section after a minimum 1 year waiting period; Mich. Comp. Laws § 712A.18e(3) states, "An application under this section shall not be filed until the expiration of 1 year after the termination of jurisdiction." However, relief may be barred based on the number and type of adjudications. Mich. Comp. Laws Ann. § 712A.18e(1) states in part,

A person may have only 1 adjudication for an offense that would be a felony if committed by an adult and not more than 2 adjudications for an offense that would be a misdemeanor if committed by an adult or if there is no adjudication for a felony if committed by an adult, not more than 3 adjudications for an offense that would be a misdemeanor if committed by an adult set aside under this section.

Further, under Mich. Comp. Laws Ann. § 712A.18e(10)(b), child sex trafficking victims only have the right to vacate adjudications for prostitution-related offenses. Vacatur of other offenses is a conditional privilege. Mich. Comp. Laws Ann. § 712A.18e(9).

Adjudications not vacated under Mich. Comp. Laws Ann. § 712A.18e may be eligible for automatic vacatur under Mich. Comp. Laws Ann. § 712A.18t(1), (2) (Automatic set aside of adjudication; applicability; nonpublic records; divulgement, use or publication of information concerning set aside), which states,

(1) Except as otherwise provided in this section, beginning 2 years after the effective date of the amendatory act that added this section, an adjudication is set aside under this section without filing an application under section 18e of this chapter 2 years after the termination of court supervision or when the person becomes 18 years of age, whichever is later.

(2) Subsection (1) does not apply to an adjudication for an offense described under section 2(a)(1)(A) to

⁹ However, Mich. Comp. Laws Ann. § 18.355 does not clarify what constitutes "good cause" under Mich. Comp. Laws Ann. § 18.355(3) for a claimant's failure to file within the time limits imposed under Mich. Comp. Laws Ann. § 18.355(2).

(I)¹⁰ of this chapter, to a conviction or adjudication as described under section 18e(2)¹¹ of this chapter, or to a conviction or adjudication for a violation of section 81a [Assault; infliction of serious or aggravated injury; penalties; previous convictions; “dating relationship” defined], 82 [Felonious assault; violation of subsection (1) in weapon free school zone; definitions], 90 [Sexual intercourse under pretext of medical treatment], 136b [Definitions; child abuse; degrees; penalties; exception; affirmative defense], 321 [Manslaughter], 322

¹⁰ Mich. Comp. Laws Ann. § 712A.2(a)(1)(A)–(I) includes the following:

(A) A violation of section 72 [Burning dwelling house], 83 [Assault with intent to commit murder], 86 [Assault with intent to maim], 89 [Assault with intent to rob and steal], 91 [Attempt to murder], 316 [First degree murder], 317 [Second degree murder], 349 [Kidnapping], 520b [Criminal sexual conduct in the first degree], 529 [Use or possession of dangerous weapon; aggravated assault], 529a [Carjacking], or 531 [Bank, safe and vault robbery] of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.83, 750.86, 750.89, 750.91, 750.316, 750.317, 750.349, 750.520b, 750.529, 750.529a, and 750.531.

(B) A violation of section 84 [Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation] or 110a(2) [Definitions; home invasion] of the Michigan penal code, 1931 PA 328, MCL 750.84 and 750.110a, if the juvenile is armed with a dangerous weapon. As used in this paragraph, “dangerous weapon” means 1 or more of the following:

(i) A loaded or unloaded firearm, whether operable or inoperable.

(ii) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(iii) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(iv) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (i) to (iii).

(C) A violation of section 186a of the Michigan penal code, 1931 PA 328, MCL 750.186a, regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was 1 of the following:

(i) A high-security or medium-security facility operated by the department or a county juvenile agency.

(ii) A high-security facility operated by a private agency under contract with the department or a county juvenile agency.

(D) A violation of section 7401(2)(a)(i) [Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance] or 7403(2)(a)(i) [Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form] of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403.

(E) An attempt to commit a violation described in paragraphs (A) to (D).

(F) Conspiracy to commit a violation described in paragraphs (A) to (D).

(G) Solicitation to commit a violation described in paragraphs (A) to (D).

(H) A lesser included offense of a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

(I) Another violation arising out of the same transaction as a violation described in paragraphs (A) to (G) if the individual is charged with a violation described in paragraphs (A) to (G).

¹¹ Pursuant to Mich. Comp. Laws Ann. § 712A.18e(2),

A person shall not apply under this section to have set aside, and a judge shall not under this section set aside, any of the following:

(a) An adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

(b) An adjudication for a traffic offense under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or a local ordinance substantially corresponding to that act, that involves the operation of a vehicle and at the time of the violation is a felony or misdemeanor.

(c) A conviction under section 2d of this chapter [Juvenile to be tried as adult]. This subdivision does not prevent a person convicted under section 2d of this chapter from having that conviction set aside as otherwise provided by law.

[Manslaughter; wilful killing of unborn quick child], 397 [Mayhem], 411h [Stalking; definitions; violation as misdemeanor], 411i [Definitions; aggravated stalking; circumstances; violation as felony], 520d [Criminal sexual conduct in the third degree; felony], 520g [Assault with intent to commit criminal sexual conduct; felony], or 543k [Providing material support for terrorist acts or soliciting material support for terrorism as felonies; penalty] of the Michigan penal code, 1931 PA 328, MCL 750.81a, 750.82, 750.90, 750.136b, 750.321, 750.322, 750.397, 750.411h, 750.411i, 750.520d, 750.520g, and 750.543k.

Further, Mich. Comp. Laws Ann. § 780.621(1), (3) (Application for order setting aside conviction; misdemeanor conviction; setting aside of certain convictions prohibited; victim of human trafficking violation; time and contents of application; submitting application and fingerprints to department of state police; report; application fee; contest of application by attorney general or prosecuting attorney; notice to victim; affidavits and proofs; court order; definitions) allows sex trafficked youth to vacate criminal convictions, stating,

(1) Except as otherwise provided in this act, a person who is convicted of 1 or more criminal offenses may file an application with the convicting court for the entry of an order setting aside 1 or more convictions as follows:

(a) Except as provided in subdivisions (b) and (c), a person convicted of 1 or more criminal offenses, but not more than a total of 3 felony offenses, in this state, may apply to have all of his or her convictions from this state set aside.

(b) An applicant may not have more than a total of 2 convictions for an assaultive crime set aside under this act during his or her lifetime.

(c) An applicant may not have more than 1 felony conviction for the same offense set aside under this section if the offense is punishable by more than 10 years imprisonment.

(d) A person who is convicted of a violation or an attempted violation of section 520e [Criminal sexual conduct in the fourth degree; misdemeanor] of the Michigan penal code, 1931 PA 328, MCL 750.520e, before January 12, 2015 may petition the convicting court to set aside the conviction if the individual has not been convicted of another offense other than not more than 2 minor offenses. As used in this subdivision, “minor offense” means a misdemeanor or ordinance violation to which all of the following apply:

(i) The maximum permissible term of imprisonment does not exceed 90 days.

(ii) The maximum permissible fine is not more than \$1,000.00.

(iii) The person who committed the offense is not more than 21 years old.

....

(3) A person who is convicted of a violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime], 449 [Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty], or 450 [Aiding, assisting, or abetting; penalties] of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, or a local ordinance substantially corresponding to section 448, 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to have that conviction set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.¹²

Pursuant to Mich. Comp. Laws Ann. § 780.621d(12)–(14) (Timing of applications to set aside multiple convictions),

(12) For an application under [Mich. Comp. Laws Ann. § 780.621d(3)], if the applicant proves to the court by a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, the court may, subject to the requirements of subsection (13), enter an order setting aside the conviction.

¹² Mich. Comp. Laws Ann. § 780.621(4)(e) defines “human trafficking violation” as “a violation of chapter LXVIII of the Michigan penal code [Human trafficking], 1931 PA 328, MCL 750.462a to 750.462h, or of former section 462i or 462j of that act.”

(13) If the court determines that the circumstances and behavior of an applicant under [Mich. Comp. Laws Ann. § 780.621d(1), (3)], from the date of the applicant's conviction or convictions to the filing of the application warrant setting aside the conviction or convictions, and that setting aside the conviction or convictions is consistent with the public welfare, the court may enter an order setting aside the conviction or convictions.

(14) The setting aside of a conviction or convictions under this act is a privilege and conditional and is not a right.

As noted above, however, limitations based on the crime for which vacatur is sought, the number of offenses, or other relevant conditions may prevent sex trafficked children and youth from obtaining relief under these laws.

- 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.

Michigan law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Mich. Comp. Laws Ann. § 780.766b (Conviction of offense described in MCL 750.462a to 750.462h; restitution),

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

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

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

In addition to any mandatory restitution applicable under section 16 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766, the court may order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766b, and to reimburse any governmental entity for its expenses incurred in relation to the violation in the same manner that expenses may be

ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

Restitution is available more generally to victims of other crimes pursuant to Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole), which provides,

[W]hen sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim¹³ of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate. For an offense that is resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.

To determine the amount of restitution, Mich. Comp. Laws Ann. § 780.766(4) states,

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

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

¹³ Mich. Comp. Laws Ann. § 780.766(1) defines “victim” as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.”

EXTRA CREDIT



Michigan law mandates restitution for victims of child labor trafficking under Mich. Comp. Laws Ann. § 780.766b and Mich. Comp. Laws Ann. § 750.462f(6), which expressly make victims of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it related to age of minor), Michigan's child labor trafficking offense, eligible for restitution.

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

Michigan law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Mich. Comp. Laws Ann. § 752.983 (Violation of MCL 750.462a to 750.462h; liability to victim; damages) states,

- (1) A person who violates chapter LXVIIA [Human trafficking] of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, is liable to the victim of the violation for economic and noneconomic damages that result from the violation, including, but not limited to, all of the following:
 - (a) Physical pain and suffering.
 - (b) Mental anguish.
 - (c) Fright and shock.
 - (d) Denial of social pleasure and enjoyments.
 - (e) Embarrassment, humiliation, or mortification.
 - (f) Disability.
 - (g) Disfigurement.
 - (h) Aggravation of a preexisting ailment or condition.
 - (i) Reasonable expenses of necessary medical or psychological care, treatment, and services.
 - (j) Loss of earnings or earning capacity.
 - (k) Damage to property.
 - (l) Any other necessary and reasonable expense incurred as a result of the violation.
- (2) A victim is entitled to damages under subsection (1) to the extent the victim has sustained the damages, regardless of whether the victim suffered any physical injury as a result of the violation.
- (3) A victim is entitled to damages under subsection (1) regardless of whether the damages sustained were foreseeable to the violator.
- (4) A victim is entitled to damages under subsection (1) regardless of whether the violator was charged with or convicted of a violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h.

EXTRA CREDIT



Michigan law provides sex trafficked youth with a trafficking-specific civil remedy under Mich. Comp. Laws Ann. § 752.983, which expressly applies to violations of Chapter LXVIIA (Human trafficking), including sex trafficking of both minor and adult victims.



Michigan law provides child labor trafficking victims with a trafficking-specific civil remedy under Mich. Comp. Laws Ann. § 752.983, which expressly includes victims of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it related to age of minor), Michigan's child labor trafficking offense.

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.

Michigan law lengthens, but does not eliminate, statutes of limitation for criminal and civil actions related to child sex trafficking and CSEC. Pursuant to Mich. Comp. Laws Ann. § 767.24(1)(c) (Indictments; crimes; subsection (2) to be known as “Theresa Flores's Law”; subsection (4) to be known as Brandon D'Annunzio's law; findings and filing; limitations; extension or tolling), prosecutions under Chapter 750 (Human trafficking) may be brought at any time if the crime would be punishable by life imprisonment; however, this does not include offenses under Mich. Comp. Laws Ann. § 750.462d (Prohibited conduct) and Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as it relates to age of minor), which specifically criminalize child sex trafficking. Specifically, Mich. Comp. Laws Ann. § 767.24(1)(c) states, “An indictment for any of the following crimes may be found and filed at any time: . . . A violation of chapter LXVIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to 750.462h, that is punishable by imprisonment for life.” Instead, Mich. Comp. Laws Ann. § 767.24(2) provides,

An indictment for a violation or attempted violation of section 13, 462b, 462c, 462d, or 462e of the Michigan penal code, 1931 PA 328, MCL 750.13 [Taking or enticing away minor under sixteen years; violation as felony; penalty], . . . 750.462d [Prohibited conduct], and 750.462e [Forced labor or services; prohibited conduct as relates to age of minor], may be found and filed within 25 years after the offense is committed

Otherwise, Mich. Comp. Laws Ann. § 767.24(10) requires “[a]ll other indictments [to] be found and filed within 6 years after the offense is committed.”

Regarding civil actions, Mich. Comp. Laws Ann. § 752.984 requires civil actions based on a trafficking offense to be “filed within 3 years after the last violation that is the subject of the action occurred.” Otherwise, Mich. Comp. Laws § 600.5805(1), (2) (Injuries to persons or property; period of limitations; “dating relationship” defined) requires civil actions for personal injury to be filed within 3 years “after the claim first accrued.”

4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC.



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.

Although Michigan law does not expressly allow non-testimonial, out-of-court statements made by commercially sexually exploited children to be admitted into evidence, there is a broad hearsay exception that applies to victims of criminal conduct that encompasses the abuse experienced by child sex trafficking victims; however, this protection is only available to younger minors. Pursuant to Michigan Rules of Evidence Rule 803A (Hearsay exception; child's statement about sexual act),

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

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

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule This rule applies in criminal and delinquency proceedings only.

Notably, child victims who are 10 years of age or older are not protected by this hearsay exception.

- 5.1.1 Recommendation: Strengthen existing hearsay protections to expressly apply in child sex trafficking and CSEC cases.

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

Michigan law does not provide child sex trafficking victims with an alternative to live, in-court testimony. Although Mich. Comp. Laws Ann. § 600.2163a (Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support persons; notice; videorecorded statement; special arrangements to protect welfare of witness; videorecorded deposition; section additional to other protections or procedures; violation as misdemeanor; penalty) permits the court to order the testimony of a child under 16 years of age be taken by closed circuit television (CCTV) during the prosecution of a specified offense, this protection does not extend to victims of sex trafficking or CSEC. Specifically, Mich. Comp. Laws Ann. § 600.2163a(20) states,

If, upon the motion of a party or in the court's discretion, the court finds on the record that the witness is or will be psychologically or emotionally unable to testify at a court proceeding even with the benefit of the protections afforded the witness in subsections (3), (4), (17), and (19),¹⁴ the court must order that the witness may testify outside the physical presence of the defendant by closed circuit television or other

¹⁴ Additional protections provided for under Mich. Comp. Laws Ann. § 600.2163a include use of dolls or mannequins, accompaniment by a support person, exclusion of non-essential persons from the courtroom, and placement of the defendant out of the child's direct line of sight.

electronic means that allows the witness to be observed by the trier of fact and the defendant when questioned by the parties.

Mich. Comp. Laws Ann. § 600.2163a(1)(g)(i) defines “witness” to include “an alleged victim of an offense listed under subsection (2) who is . . . [a] person under 16 years of age.” However, Mich. Comp. Laws Ann. § 600.2163(2)(a) only includes the following:

[P]rosecutions and proceedings under section 136b [Definitions; child abuse; degrees; penalties; exception; affirmative defense], 145c [Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited], 520b to 520e [Criminal sexual conduct in the first through fourth degrees], or 520g [Assault with intent to commit criminal sexual conduct; felony] of the Michigan penal code, 1931 PA 328, MCL 750.136b, 750.145c, 750.520b to 750.520e, and 750.520g.

- 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.

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	Not statutorily required.	Witnesses under 16 who testify can have a support person during testimony, and during the testimony of a witness under 16, the court may clear the room of persons not necessary to the proceeding. Minors may also have support dog in proximity during testimony.	Identifying information of minor victims of child abuse, criminal sexual conduct, assault with intent to commit criminal sexual conduct, or a similar crime is exempt from public disclosure.
Relevant Statute(s)	None.	Mich. Comp. Laws Ann. § 24.275a(1)(a), (4), (5) (Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures); Mich. Comp. Laws Ann. § 600.2163a(4)	Mich. Comp. Laws Ann. § 780.758 (Motion not to compel testimony of victim or other witness; hearing; address and phone number of victim not to be in court file or documents; exemption from disclosure; exception)

		(Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special arrangements to protect welfare of witness; videorecorded deposition; section additional to other protections or procedures; violation as misdemeanor; penalty)	
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5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate and their 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.

Michigan law does not provide for privileged communications between caseworkers and child sex trafficking victims.¹⁵

5.4.1 Recommendation: Enact a child sex trafficking-specific caseworker privilege law that protects a child sex trafficking victim’s communications with a caseworker from being disclosed.

¹⁵ Although not available in cases related to child sex trafficking, Mich. Comp. Laws Ann. § 600.2157a(2) (Definitions; consultation between victim and sexual assault or domestic violence counselor; admissibility) provides protection in cases involving sexual assault or domestic violence, stating,

Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.



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.

Michigan law authorizes statewide, trafficking-specific training for social services personnel. Pursuant to Mich. Comp. Laws Ann. § 752.974(c), (e) (Commission; duties),

The [human trafficking] commission shall do all of the following subject to funding:

.....

(c) Provide information and training regarding human trafficking to police officers, prosecutors, court personnel, health care providers, social services personnel, and other individuals the commission considers appropriate.

.....

(e) Identify state and local agencies within this state and other states, as well as within the federal government, that are involved with issues relating to human trafficking, and coordinate the dissemination of information regarding human trafficking in this state to those agencies.

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by child welfare. However, Michigan 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.

Michigan law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

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.

Michigan law authorizes trafficking-specific training for law enforcement. Pursuant to Mich. Comp. Laws Ann. § 752.974(c) (Commission; duties),

The [human trafficking] commission shall do all of the following subject to funding:

.....

(c) Provide information and training regarding human trafficking to police officers, prosecutors, court personnel, health care providers, social services personnel, and other individuals the commission considers appropriate.

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by law enforcement. However, law enforcement officers are not statutorily mandated to receive such training nor is the training required to be ongoing.

- 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.

Michigan law authorizes trafficking-specific training for prosecutors. Pursuant to Mich. Comp. Laws Ann. § 752.974(c) (Commission; duties),

The [human trafficking] commission shall do all of the following subject to funding:

....

- (c) Provide information and training regarding human trafficking to police officers, prosecutors, court personnel, health care providers, social services personnel, and other individuals the commission considers appropriate.

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by prosecutors. However, prosecutors are not statutorily mandated to receive such training.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

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

Michigan 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.

Michigan 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. Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) states,

A person shall not do any of the following, regardless of whether the person knows the age of the minor:

- (a) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity.¹⁶
- (b) Recruit, entice, harbor, transport, provide, or obtain by any means a minor for forced labor or services.¹⁷

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

2. Mich. Comp. Laws Ann. § 750.462d (Prohibited conduct) states,

A person shall not do either of the following:

....

- (b) Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in section 159f [Definitions generally], if the enterprise has engaged in an act proscribed under this chapter.

A violation of Mich. Comp. Laws Ann. § 750.462d is a felony generally punishable by imprisonment up to 10 years, a fine of up to \$10,000, or both. Mich. Comp. Laws Ann. § 750.462f(2) (Violation of MCL 750.462b, 750.462c, and 750.462d; violation of MCL 750.462e; attempting, conspiring, or soliciting another to violate chapter; violation of law arising out of same transaction; consecutive terms; restitution).¹⁸ Further, “A person

¹⁶ Mich. Comp. Laws Ann. § 750.462a(c) defines “commercial sexual activity” as

1 or more of the following for which anything of value is given or received by any person:

- (i) An act of sexual penetration or sexual contact as those terms are defined in section 520a.
- (ii) Any conduct prohibited under section 145c.
- (iii) Any sexually explicit performance as that term is defined in section 3 of 1978 PA 33, MCL 722.673.

¹⁷ Mich. Comp. Laws Ann. § 750.462a(g) defines “forced labor or services” as “labor or services that are obtained or maintained by force, fraud, or coercion.” In turn, Mich. Comp. Laws Ann. § 750.462a(l) defines “services” as “an ongoing relationship between a person and an individual in which the individual performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.”

¹⁸ However, pursuant to Mich. Comp. Laws Ann. § 750.462f(1)(b)–(d), the penalty will be enhanced under the following circumstances:

who attempts, conspires, or solicits another to violate this chapter is subject to the same penalty as a person who commits a violation of this chapter.” Mich. Comp. Laws Ann. § 750.462f(3).

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- (b) If the violation results in bodily injury to an individual or results in an individual being engaged in commercial sexual activity, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$15,000.00, or both.
 - (c) If the violation results in serious bodily injury to an individual, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.
 - (d) If the violation involves kidnapping or attempted kidnapping, criminal sexual conduct in the first degree or attempted criminal sexual conduct in the first degree, or an attempt to kill or the death of an individual, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Mich. Comp. Laws Ann. § 750.13 (Taking or enticing away minor under sixteen years; violation as felony; penalty) states,

A person who takes or entices away a minor under the age of 16 years from the minor's father, mother, guardian, or other person having the legal charge of the minor, without their consent, for the purpose of prostitution, concubinage, sexual intercourse, or marriage is guilty of a felony punishable by imprisonment for not more than 10 years.

2. Mich. Comp. Laws Ann. § 750.449a(2) (Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; penalty) states,

A person who engages or offers to engage the services of another person, who is less than 18 years of age and who is not his or her spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration, is guilty of a crime punishable as provided in section 451 [Violation of MCL 750.448, 750.449, 750.449a(1), 750.450, or 750.462; prior convictions; penalty; prosecution of person under 18 years of age; presumption; report; investigation by department of human services; "prior conviction" defined].

A violation of Mich. Comp. Laws Ann. § 750.449a(2) is punishable as a felony by imprisonment for up to 5 years, a fine up to \$10,000, or both. Mich. Comp. Laws Ann. § 750.451(4).

3. Mich. Comp. Laws Ann. § 750.459(2), (3) (Transporting person for prostitution; sale of travel services for purposes of prostitution or human trafficking; conduct against minor; felony; "travel services" defined) states,

(2) A person shall not knowingly sell or offer to sell travel services¹⁹ that include or facilitate travel for the purpose of engaging in what would be a violation of this chapter, concerning prostitution, or of chapter LXVIIA, concerning human trafficking, if the violation occurred in this state

(3) If a person violates subsection (2) and the violation involves conduct against a minor, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

¹⁹ Mich. Comp. Laws Ann. § 750.459(5) defines "travel services" as "transportation by air, sea, or ground, hotel or other lodging accommodations, package tours, or the provision of vouchers or coupons to be redeemed for future travel, or accommodations for a fee, commission, or other valuable consideration."