



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.

Two offenses within the trafficking chapter expressly apply to buyers of commercial sex. N.D. Cent. Code § 12.1-41-06(1) (Patronizing a minor for commercial sexual activity) is specific to minor victims, stating,

A person commits the offense of patronizing a minor for commercial sexual activity if:

- a. With the intent that an individual engage in commercial sexual activity¹ with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
- b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

N.D. Cent. Code § 12.1-41-05(1) (Patronizing a victim of sexual servitude) requires the buyer to know the other person is a victim of sexual servitude; it states,

A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity² with another individual and the person knows that the other individual is a victim of sexual servitude.

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

North Dakota lacks a CSEC law that criminalizes 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.

North Dakota lacks a CSEC law that addresses the exploitive conduct engaged in by traffickers.

¹ N.D. Cent. Code § 12.1-41-01(3) (Definitions) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received, by a person.”

² See *supra* note 1 for the definition of “commercial sexual activity.”

- 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.

North Dakota law prohibits a mistake of age defense in certain prosecutions for child sex trafficking but not CSEC. Pursuant to N.D. Cent. Code § 12.1-41-04(2) (Sexual servitude), “It is not a defense in a prosecution under subdivision a of subsection 1 [involving maintaining or making available a minor for commercial sexual activity] . . . that the defendant believed the minor was an adult.” However, North Dakota’s other trafficking offenses are silent regarding the permissibility of the defense.

- 1.4.1 Recommendation: Prohibit a mistake of age defense in all cases involving child sex trafficking and CSEC.

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

Although state trafficking laws do not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, North Dakota’s criminal attempt statute, N.D. Cent. Code § 12.1-06-01 (Criminal attempt), could provide prosecutors with an alternative avenue to prosecute those cases. N.D. Cent. Code § 12.1-06-01(1) states,

A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A “substantial step” is any conduct which is strongly corroborative of the firmness of the actor’s intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense despite the use of a law enforcement decoy.

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

North Dakota’s trafficking chapter expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, N.D. Cent. Code § 12.1-41-07 (Business entity liability) provides,

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 [including trafficking an individual; forced labor; sexual servitude; patronizing a victim of sexual servitude; and patronizing a minor for commercial sexual activity] as provided by chapter 12.1-03 [Accomplices – Corporations – Agents].
2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity’s conduct and order penalties in addition to those otherwise provided for the offense, including:
 - a. A fine of not more than one million dollars per offense;
 - b. Disgorgement of profit from activity in violation of this chapter; and
 - c. Debarment from state and local government contracts.

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.

A percentage of financial penalties, including asset forfeiture, paid by convicted trafficking offenders, but not by convicted CSEC offenders, is statutorily required to be directed into a victim services fund. Regarding asset forfeiture, N.D. Cent. Code § 29-31.1-01(1)(a)–(e) (Definitions – Property Forfeiture and Disposition) defines “forfeitable property” to include the following:

- a. Property that is illegally possessed or is contraband.
- b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
- c. Property that is acquired as or from the proceeds of a criminal offense.
- d. Property offered or given to another as an inducement for the commission of a criminal offense.
- e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.

Disposition of forfeited assets is generally governed by N.D. Cent. Code § 29-31.1-06 (Disposition of forfeited property), which states,

When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.
2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund.
3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

However, N.D. Cent. Code § 54-12-14 (Assets forfeiture fund – Created – Purpose – Continuing appropriation) directs funds related to human trafficking cases toward victim services. N.D. Cent. Code § 54-12-14 provides, “Notwithstanding subsection 1,³ the amount of deposits into the fund related to human trafficking are

³ N.D. Cent. Code § 54-12-14(1) states in part,

The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

- a. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
- b. For repayment of rewards to qualified local programs . . .
- c. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited . . . , or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.

appropriated, as a standing and continuing appropriation, to the attorney general for awarding grants to organizations providing prevention and treatment services for human trafficking victims.”

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

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- d. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
 - e. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.
 - f. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants



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. N.D. Cent. Code Ann. § 12.1-41-01(12) (Definitions) defines “victim” as “an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.” “Human trafficking” is defined under N.D. Cent. Code Ann. § 12.1-41-01(5) as “the commission of an offense created by sections 12.1-41-02 through 12.1-41-06 [including trafficking an individual, forced labor, sexual servitude, patronizing a victim of sexual servitude, and patronizing a minor for commercial sexual activity].”

N.D. Cent. Code § 12.1-41-06(1) (Patronizing a minor for commercial sexual activity) expressly applies to buyers of commercial sex with minors regardless of whether a trafficker is involved or identified.⁴ Accordingly, third party control is not required to establish the crime of patronizing a minor for commercial sexual activity or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

Notably, however, North Dakota’s other trafficking laws do require third party control. N.D. Cent. Code § 12.1-41-05(1) (Patronizing a victim of sexual servitude) requires the buyer to know the other person is a victim of sexual servitude, and neither N.D. Cent. Code § 12.1-41-02 (Trafficking an individual)⁵ nor N.D. Cent. Code § 12.1-41-04 (Sexual servitude)⁶ apply to buyers.

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

North Dakota law provides policy guidance that facilitates access to services and assistance for trafficked foreign national children. Specifically, N.D. Cent. Code § 12.1-41-17(2) (Eligibility for benefit or service) provides, “A

⁴ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.D. Cent. Code § 12.1-41-06.

⁵ N.D. Cent. Code § 12.1-41-02(1)(b) states,

A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

....

b. Sexual servitude in violation of section 12.1-41-04.

⁶ N.D. Cent. Code § 12.1-41-04(1)(a) states,

1. A person commits the offense of sexual servitude if the person knowingly:

a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity⁶

minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state,⁷ regardless of immigration status.”

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

North Dakota 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.

North Dakota 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.

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

North Dakota law prohibits the criminalization of minors for prostitution offenses; however, alternative responses direct child sex trafficking victims towards punitive processes to access care and services. Pursuant to N.D. Cent. Code § 12.1-29-03 (Prostitution), the core prostitution offense is inapplicable to minors, stating,

An adult is guilty of prostitution of prostitution, a Class B misdemeanor, if the adult:

- 1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
- 2. Solicits another person with the intention of being hired to engage in sexual activity; or
- 3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

N.D. Cent. Code § 12.1-41-12(1)(a), (3) (Immunity of minor) provides additional protections against the criminalization of minors for prostitution, stating,

- 1. If an individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for:
 - a. Prostitution under section 12.1-29.03;
 -
 -

⁷ Notably, N.D. Cent. Code § 12.1-41-17(4) states,

For purposes of this section, “a benefit or service available through the state” does not include a benefit or service of a program administered by the department of health and human services using federal or special funds, if the victim or minor does not meet program eligibility requirements including an eligibility requirement that is based on immigration status.

3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.

However, N.D. Cent. Code § 12.1-41-12(4) provides, “a minor who, under subsection 1 or 3, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be a child in need of services under chapter 50-25.1.”⁸ Under both N.D. Cent. Code § 50-25.1-02(6) (Definitions) and N.D. Cent. Code § 27-20.2-01(5) (Definitions), “child in need of services” is defined as follows:

- [A] child who in any of the following circumstances is in need of treatment or rehabilitation:
- a. Is habitually and without justification truant from school or absent from school without an authorized excuse for more than five days during a school year;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child’s parent, guardian, or other custodian including runaway and is ungovernable or who is willfully in a situation that is dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Except for an offense committed by a minor who is fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution, has committed an offense applicable only to a child; or
 - d. Is under fourteen years of age and has purchased, possessed, smoked, or used tobacco, a tobacco-related product, an electronic smoking device, or an alternative nicotine product . . .

While N.D. Cent. Code § 27-20.2-03 (Jurisdiction) provides the juvenile court with jurisdiction over all cases involving minors, including “child in need of services” cases, N.D. Cent. Code § 27-20.2-05 (Powers and duties of the director of the juvenile court) clarifies that such cases are directed to punitive, rather than protective, processes. N.D. Cent. Code § 27-20.2-05(1)(d) states,

For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a director shall:

.....

- (d) Supervise and assist a child placed on probation for delinquency or a child in need of services, or both.

Further, N.D. Cent. Code § 27-20.3-11 (Diversion) states, “a child in need of services may be diverted.” N.D. Cent. Code § 27-20.2-01(10) defines “diversion” as “an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child’s actions.”

Consequently, while minors may not be subject to delinquency or criminal proceedings for a prostitution offense, commercially sexually exploited minors may be identified as a “child in need of services” and directed to punitive process in response to their trafficking victimization.

- 2.5.1 Recommendation: Amend state law to prohibit the criminalization of minors for conduct in violation of the prostitution law.

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.

⁸ While Chapter 50-25.1 (Child abuse and neglect) defines “child in need of services,” Chapter 27-20.2 (Juvenile court act) outlines the process.

North Dakota law prohibits the criminalization of child sex trafficking victims for specified offenses; however, victims can still be charged with status offenses. Pursuant to N.D. Cent. Code § 12.1-41-12(1)–(3) (Immunity of minor),

1. If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for:
 - a. Prostitution under section 12.1-29-03;
 - b. Misdemeanor forgery under section 12.1-24-01;
 - c. Misdemeanor theft offenses under chapter 12.1-23;
 - d. Insufficient funds or credit offenses under section 6-08-16;
 - e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
 - f. Drug paraphernalia offenses under chapter 19-03.4.
2. It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.
3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.

N.D. Cent. Code § 12.1-41-13 (Affirmative defense to victim) extends protections to adult trafficking victims, stating,

An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

- 2.6.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for a broader range of offenses, including status offenses.

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.

North Dakota 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.

- 2.7.1 Recommendation: Enact a law that 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.

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.

North Dakota law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. Under N.D. Cent. Code § 12.1-41-12(1)–(3) (Immunity of minor) non-criminalization and affirmative defense protections are limited as follows:

1. If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for:
 - a. Prostitution under section 12.1-29-03;
 - b. Misdemeanor forgery under section 12.1-24-01;
 - c. Misdemeanor theft offenses under chapter 12.1-23;
 - d. Insufficient funds or credit offenses under section 6-08-16;
 - e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
 - f. Drug paraphernalia offenses under chapter 19-03.4.
2. It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.
3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.

2.8.1 Recommendation: Amend N.D. Cent. Code § 12.1-41-12 (Immunity of minor) 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.

North Dakota law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While North Dakota law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of 10 years for juvenile court jurisdiction, requires automatic transfers for minors charged with certain offenses or previously convicted in criminal court, 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	10; While “child” is defined as an individual who is under the age of eighteen, state law finds, “an individual under the age of ten years is deemed incapable of commission of an offense defined by the constitution or statutes of this state.”	17	Yes. Minors: (1) 14+ years of age charged with murder or attempted murder, gross sexual imposition or the attempted gross imposition of a victim; and (2) previously transferred to and convicted in criminal court.	Yes. Minors: (1) 14+ years of age charged with an offense involving the infliction or threat of serious bodily harm; and (2) 16+ years of age.	No.

Relevant Statute(s)	N.D. Cent. Code § 27-20-02(4) (Definitions); N.D. Cent. Code § 12.1-04-01(1) (Juveniles)	N.D. Cent. Code § 27-20-02(4), (7) (Definitions); N.D. Cent. Code § 27-20-03 (Jurisdiction)	N.D. Cent. Code § 27-20-34(1)(b), (4) (Transfer to other courts)	N.D. Cent. Code § 27-20-34(1)(c) (Transfer to other courts)	N.D. Cent. Code § 27-20-34(1)(c), (3) (Transfer to other courts)
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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 or automatically transferred to criminal court; 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.

North Dakota law does not include child sex trafficking or commercial sexual exploitation of children in the definition of “abused child” under N.D. Cent. Code § 50-25.1-02(3) (Definitions).⁹ While N.D. Cent. Code § 50-25.1-02(19)(h) (Definitions) defines “neglected child” to include “a child who, due to the action or inaction of a person responsible for the child’s welfare . . . [i]s a victim of human trafficking as defined in title 12.1,” identifying trafficked children as neglected rather than abused limits the response to child sex trafficking cases. Child welfare’s response to neglect may be inappropriate for child sex trafficking cases, especially non-familial child sex trafficking cases, as neglect is focused on meeting the unmet needs of the child while abuse is focused on addressing harm and preventing future harm. Thus, defining “neglect” rather than “abuse” to include child sex trafficking does not promote the goal of recognizing any child sex trafficking victim as abused for purposes of accessing child welfare services.

- 2.10.1 Recommendation: Amend the definition of “abused child” 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.

North Dakota’s child welfare code does not allow for a child welfare response in non-familial child sex trafficking cases and does not provide for a specialized response to child sex trafficking reports. While the definition of “abused child” under N.D. Cent. Code Ann. § 50-25.1-02(3) (Definitions) is not limited to acts committed by a caregiver in so far as it applies to certain sex offenses committed against a juvenile “by any individual,” those

⁹ N.D. Cent. Code § 50-25.1-02(3) (Definitions) provides,

“Abused child” means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 [Abuse of child – Mandatory sentence – Penalty] caused by a person responsible for the child’s welfare and “sexually abused child” means an individual under the age of eighteen years who is subjected by a person responsible for the child’s welfare, or by any individual, including a juvenile, who acts in violation of sections 12.1-20-01 [General provisions] through 12.1-20-07 [Sexual assault] [includes Gross sexual imposition, Continuous sexual abuse of a child, Sexual imposition, Corruption or solicitation of minors, and Sexual assault], sections 12.1-20-11 [Incest] through 12.1-20-12.3 [Sexual extortion], or chapter 12.1-27.2 [Sexual performances by children].

offenses do not include child sex trafficking or commercial sexual exploitation of children.¹⁰ Additionally, while N.D. Cent. Code § 50-25.1-02(19)(h) (Definitions) defines “neglected child” to include “a child who . . . [i]s a victim of human trafficking as defined in title 12.1,” this definition only applies when the child is trafficked “due to the action or inaction of a person responsible for the child’s welfare,” and no alternative response is provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

- 2.11.1 Recommendation: Amend the child welfare code to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.

¹⁰ N.D. Cent. Code § 50-25.1-02(3) (Definitions) defines “abused child” as follows:

[A]n individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 [Abuse of child – Mandatory sentence – Penalty] caused by . . . any individual, including a juvenile, who acts in violation of sections 12.1-20-01 [General provisions] through 12.1-20-07 [Sexual assault] [includes Gross sexual imposition, Continuous sexual abuse of a child, Sexual imposition, Corruption or solicitation of minors, and Sexual assault], sections 12.1-20-11 [Incest] through 12.1-20-12.3 [Sexual extortion], or chapter 12.1-27.2 [Sexual performances by children].



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.

North Dakota law does not mandate access to specialized services for child sex trafficking victims through a non-punitive system; however, general services may be available. Pursuant to N.D. Cent. Code § 12.1-41-12(4) (Immunity of minor), “A minor who, under subsection 1 or 3, is not subject to criminal liability or a juvenile delinquency proceeding¹¹ is presumed to be a child in need of services under chapter 50-25.1 [Child abuse and neglect].” Further, a commercially sexually exploited child could be identified as “neglected.” N.D. Cent. Code § 50-25.1-02(18)(h) (Definitions) defines “neglected child” as “a child who, due to the action or inaction of a person responsible for the child’s welfare . . . [i]s a victim of human trafficking as defined in title 12.1.”¹²

Further, N.D. Cent. Code § 50-25.1-06 (Protective and other services to be provided) states,

1. The department shall provide protective services for a child meeting the definition of an abused or neglected child and who is at substantial risk of continued abuse or neglect due to a supported state of impending danger, as well as other children under the same care as may be necessary for their well-being and safety and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children The department may provide protective services, as resources permit, for any child, other children under the same care, parents, custodian, or other persons serving in loco parentis upon concurrence of the parent, custodian, or other persons serving in loco parentis.
2. The department shall provide appropriate services to a child referred as a child in need of services and shall provide appropriate services to the person responsible for the child’s welfare and the children under the same care as may be necessary for the well-being and safety of the children.

- 3.1.1 Recommendation: Strengthen existing law to provide a clear process for child sex trafficking victims to access specialized services through a non-punitive system.

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

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse and neglect MDT, North Dakota law does not require an MDT response specific to child sex trafficking cases. Under N.D. Cent. Code § 50-25.1-04.1 (State child protection team – How created – Duties),

¹¹ See *supra* Policy Goal 2.5

for a full discussion of North Dakota’s non-criminalization protections.

¹² N.D. Cent. Code Ann. § 12.1-41-01(12) (Definitions) defines “victim” as “an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.” “Human trafficking” is defined under N.D. Cent. Code Ann. § 12.1-41-01(5) as “the commission of an offense created by sections 12.1-41-02 through 12.1-41-06 including trafficking an individual, forced labor, sexual servitude, patronizing a victim of sexual servitude, and patronizing a minor for commercial sexual activity].”

1. The department shall name the members of the state child protection team. The members must be appointed for three-year staggered terms. The member who represents the department shall serve as presiding officer and is responsible for the transmittal of all team reports made pursuant to this chapter. The presiding officer shall set meetings for the purposes of fulfilling the duties set forth in sections 50-25.1-02 [Definitions] and 50-25.1-04.

2. Under procedures adopted by the team, it may meet at any time, confer with any individuals, groups, and agencies, and may issue reports or recommendations on any aspect of child abuse, neglect, or death resulting from abuse or neglect it deems appropriate. All reports or recommendations issued are subject to section 50-25.1-11 [Confidentiality of records – Authorized disclosures], except that the team shall make available information reflecting the disposition of reports of institutional child abuse, neglect, or death resulting from abuse or neglect, when the identity of persons reporting, and of the children and parents of children involved, is protected.

3. In every case of alleged institutional child abuse or neglect, the state child protection team shall make a determination that child abuse or neglect is or is not indicated. Upon a determination that institutional child abuse or neglect is indicated, the state child protection team promptly shall make a written report of the determination. When the subject of the report is a state-operated institution, the state child protection team promptly shall notify the governor of the determination.

- 3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response specific 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.

As soon as practicable after a first encounter with an individual who reasonably appears to law enforcement to be a victim or a minor who has engaged in commercial sexual activity, the law enforcement agency shall notify the victim services division of the department of corrections and rehabilitation that the individual may be eligible for a benefit or service under the law of this state.

- 3.3.1 Recommendation: Strengthen existing law to mandate access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

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

North Dakota 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.¹³ N.D. Cent. Code § 27-20-30.1(1) (Disposition of child needing continued foster care services)¹⁴ defines “child” as “an individual between the ages of eighteen and twenty-one years who is in need of continued foster care services.”

Further, N.D. Cent. Code § 27-20-30.1(4) states,

If a child is in need of continued foster care services as determined by the human service zone and the department of human services and as set forth in a continued foster care agreement, the court shall make the following judicial determination:

¹³ 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).

¹⁴ This statute is effective September 1, 2022.

....
 f. That the child has attained the age of eighteen or older but does not exceed the age of twenty-one years;

Additionally, N.D. Cent. Code § 50-11-00.1(12) (Definitions)¹⁵ provides that a “supervised independent living program” includes “a licensed or approved setting providing supervision and service delivery to youth transitioning into adulthood.”

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 North Dakota state legislature appropriated funds to support the development and provision of specialized, community-based services and care to survivors of human trafficking, which could include child and youth survivors of sex trafficking.

2021 Legislative Session				
Bill	Recipient	Amount	Intended Purpose	Term
HB 1003	Office of the Attorney General	\$1,101,879	To provide grants to organizations involved in providing prevention and treatment services related to human trafficking victims and related administrative costs. The attorney general is authorized to provide grants for the development and implement of direct care emergency or long-term crisis services, residential care, training for law enforcement, support of advocacy services, and programs promoting positive outcomes for victims.	FY 2021-2023
2021 Legislative Session				July 1 st -June 30 th

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 North Dakota 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.

¹⁵ This statute is effective September 1, 2022.

- 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.

North Dakota law allows trafficking victims to seek ex parte civil orders of protection against their exploiters. Pursuant to N.D. Cent. Code § 12.1-31.2-01(2) (Disorderly conduct restraining order – Penalty), “A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.”

N.D. Cent. Code § 12.1-31.2-01(1) defines “disorderly conduct” as “intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. For the purposes of this section, disorderly conduct includes human trafficking or attempted human trafficking as defined in this title [Criminal code]” “Human trafficking” is defined under N.D. Cent. Code Ann. § 12.1-41-01(5) as “the commission of an offense created by sections 12.1-41-02 through 12.1-41-06 [including trafficking an individual, forced labor, sexual servitude, patronizing a victim of sexual servitude, and patronizing a minor for commercial sexual activity].” Accordingly, civil orders of protection are available to victims of child sex trafficking.

Further, N.D. Cent. Code § 12.1-31.2-01(4) allows those orders to be granted on an ex parte basis, stating,

If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. Unless otherwise terminated by the court, the temporary restraining order is in effect until a restraining order issued under subsection 5 is served.

EXTRA CREDIT



N.D. Cent. Code § 12.1-31.2-01 expressly allows child labor trafficking victims to seek 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 North Dakota’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, N.D. Cent. Code § 54-23.4-01(8) (Definitions) defines "victim" to include "a person who suffers bodily injury or death as a result of criminally injurious conduct"¹⁶ "Criminally injurious conduct" is defined under N.D. Cent. Code § 54-23.4-01(4), in part, as "conduct that results in bodily injury or death, and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime."

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to N.D. Cent. Code § 54-23.4-06(2)–(6) (Application for compensation – Awards – Limitations on awards),

2. A claim for compensation must be filed within one year from the date the criminally injurious conduct was reported to a law enforcement officer. The division may extend the time for filing if it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.
4. Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within ninety-six hours after its occurrence or the division finds there was good cause¹⁷ for the failure to report within that time
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of compensation.
6. Compensation otherwise payable to a claimant must be reduced or denied:
 - a. To the extent the economic loss¹⁸ upon which the claim is based is recouped from other persons, including collateral sources;
 - b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf compensation is claimed; and
 - c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.

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

¹⁶ Further, N.D. Cent. Code § 12.1-41-17(1) (Eligibility for benefit or service) expressly provides that human trafficking victims are entitled to victim compensation, stating, "A victim is eligible for a benefit or service available through the state, including compensation under chapter 54-23.4 [Crime victims compensation], regardless of immigration status."

¹⁷ N.D. Cent. Code § 54-23.4-06 does not explain what constitutes "good cause" for purposes of this subsection. Further, N.D. Cent. Code § 54-23.4-06(2) provides an exception for victims of "child abuse or sexual molestation of a child," but this protection is not expressly available to victims of child sex trafficking and CSEC.

¹⁸ N.D. Cent. Code § 54-23.4-01(7)(a), (d) defines "economic loss" as follows:

[E]conomic detriment consisting only of allowable expense Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.

a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care

. . . .

d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.

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

[Although North Dakota law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to N.D. Cent. Code § 12.1-41-14(1), (2) (Motion to vacate and expunge conviction),

- (1) An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 [Immunity of a minor]¹⁹ which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.
- (2) Official determination or documentation is not required to grant a motion by an individual under subsection 1, but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

However, N.D. Cent. Code § 12.1-41-14 applies specifically to “convictions,” and N.D. Cent. Code § 27-20-33 (Order of adjudication – Noncriminal) states, “An order of disposition or other adjudication in a proceeding under this chapter [Uniform Juvenile Court Act] is not a conviction of a crime” Accordingly, delinquency adjudications cannot be vacated under N.D. Cent. Code § 12.1-41-14. In fact, N.D. Cent. Code § 12.1-41-14 applies only to offenses for which minors have immunity, foreclosing the law's usefulness to child sex trafficking victims. Further, limiting availability of vacatur to certain offenses fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 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.

North Dakota law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to N.D. Cent. Code § 12.1-41-09(1), (2) (Restitution),

1. The court shall order a person convicted of an offense under section 12.1-41-02 [Trafficking an individual], 12.1-41-03 [Forced labor], or 12.1-41-04 [Sexual servitude] to pay restitution to the victim of the offense for:
 - a. Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and
 - b. An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

¹⁹ Under N.D. Cent. Code § 12.1-41-14, eligible offenses include:

- a. Prostitution under section 12.1-29-03;
- b. Misdemeanor forgery under section 12.1-24-01;
- c. Misdemeanor theft offenses under chapter 12.1-23;
- d. Insufficient funds or credit offenses under section 6-08-16;
- e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
- f. Drug paraphernalia offenses under chapter 19-03.4.

- (1) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - (2) The amount the defendant contracted to pay the victim; or
 - (3) The value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, [29 U.S.C. 201 et seq.] or section 34-06-22 [State minimum wage rate], whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.
2. The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution.

Restitution is available more generally to victims of other crimes pursuant to N.D. Cent. Code § 12.1-32-08(1) (Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses – Conditions – Collection of restitution for insufficient funds checks – Continuing appropriation), which states in part,

The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 [Sex offenses] and 12.1-27.2 [Sexual performance by children]

EXTRA CREDIT



North Dakota law mandates restitution for victims of child labor trafficking under N.D. Cent. Code § 12.1-41-09, which requires offenders convicted of N.D. Cent. Code § 12.1-41-02 (Trafficking an individual) or N.D. Cent. Code § 12.1-41-3 (Forced labor) to pay victim restitution.

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

North Dakota law allows victims of child sex trafficking to pursue civil remedies against their exploiters. N.D. Cent. Code § 12.1-41-15(1), (2) (Civil action) states,

1. A victim may bring a civil action against a person that commits an offense against the victim under section 12.1-41-02 [Trafficking an individual], 12.1-41-03 [Forced labor], or 12.1-41-04 [Sexual servitude] for compensatory damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.
2. If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.

However, victims of North Dakota’s buyer-applicable trafficking offenses, N.D. Cent. Code § 12.1-41-06 (Patronizing a minor for commercial sexual activity) and N.D. Cent. Code § 12.1-41-05(1) (Patronizing a victim of sexual servitude), are not afforded a cause of action under N.D. Cent. Code § 12.1-41-15.

EXTRA CREDIT



North Dakota law provides sex trafficked youth with a trafficking-specific civil remedy under N.D. Cent. Code § 12.1-41-15, which allows a minor or adult victim of N.D. Cent. Code § 12.1-41-02 (Trafficking an individual) or N.D. Cent. Code § 12.1-41-04 (Sexual servitude) to bring a civil action against their exploiter.



North Dakota law provides child labor trafficking victims with a trafficking-specific civil under N.D. Cent. Code § 12.1-41-15, which allows victim of N.D. Cent. Code § 12.1-41-02 (Trafficking an individual) or N.D. Cent. Code § 12.1-41-3 (Forced labor) to bring a civil action against their exploiter.

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.

North Dakota law lengthens, but does not eliminate, statutes of limitation for criminal and civil actions related to child sex trafficking. Pursuant to N.D. Cent. Code § 29-04-02.1 (Prosecution for gross sexual imposition), “Except as otherwise provided by law, a prosecution for a violation of . . . the crime of human trafficking must be commenced in the proper court within seven years after the commission of the offense.”²⁰ Otherwise, N.D. Cent. Code § 29-04-02 (Prosecution for felony other than murder within three years) provides a general 3-year statute of limitation for felony prosecutions other than murder.

Regarding civil actions, N.D. Cent. Code § 12.1-41-15(3) (Civil action) provides,

An action under this section must be commenced not later than ten years after the later of the date on which the victim:

- a. No longer was subject to human trafficking; or
- b. Attained eighteen years of age.

In contrast, N.D. Cent. Code § 28-01-16 (Actions having six-year limitations) establishes a 6-year statute of limitation for personal injury actions.

²⁰ Pursuant to N.D. Cent. Code § 29-04-03.2 (Statute of limitations as to child victims), “If the victim of . . . the crime of human trafficking is under the age of fifteen, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of fifteen.”

- 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.

North Dakota 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.

North Dakota law does not provide child sex trafficking victims with an alternative to live, in-court testimony. Although N.D. Cent. Code § 31-04-04.1 (Videotaped statement of child sexual offense victim – Criteria for admission as evidence) allows for admission of a videotaped statement in lieu of a child's testimony, that protection only applies to children under 15 years of age who are the victim of an enumerated sexual offense. Specifically, N.D. Cent. Code § 31-04-04.1 states,

1. In any prosecution for a violation of section 12.1-20-03 [Gross sexual imposition – Penalty], 12.1-20-03.1 [Continuous sexual abuse of a child], 12.1-20-04 [Sexual imposition], 12.1-20-05 [Corruption or solicitation of minors], 12.1-20-06 [Sexual abuse of wards], 12.1-20-07 [Sexual assault], or 12.1-20-11 [Incest] in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:
 - a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;²¹
 - b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;
 - c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;
 - d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and

²¹ Pursuant to N.D. Cent. Code § 31-04-04.1(2),

- The court, in making its findings and determinations under this subsection, shall consider at least the following:
- a. The nature of the offense;
 - b. The significance of the child's testimony to the case;
 - c. The child's age;
 - d. The child's psychological maturity and understanding; and
 - e. The nature, degree, and duration of potential injury to the child from testifying.

- e. All questioning must be done by the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child
2. A child victim’s videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable²² as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence

According, this protection likely does not extend to victims of sex trafficking or CSEC or child victims who are 15 years of age or older, 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.

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.	Child witnesses (14 and under) may be accompanied by a court selected person during proceedings for support while giving testimony. The court can also determine whether the testimony of and relating to a child may be closed to the public in order to protect the child’s reputation and can protect child witnesses from the trauma of lengthy testimony.	Name and biological information of child victims will be redacted and are not public record; the name will be replaced with Jane or John Doe. The identity, pictures, and images of human trafficking victims must also be kept confidential.
Relevant Statute(s)	None.	N.D. Cent. Code § 12.1-35-05.1 (Assistance during proceedings); N.D. Cent. Code § 12.1-35-05.2 (Confidentiality of testimony); N.D. Cent. Code § 12.1-35-04 (Limits on interviews and testimony)	N.D. Cent. Code § 12.1-35-03 (Information about child victims or witnesses of crimes generally may not appear in public record); N.D. Cent. Code § 12.1-41-10 (Victim confidentiality)

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate and are provided courtroom supports when testifying against their exploiter.

²² N.D. Cent. Code § 31-04-04.1(2) defines “unavailable” to include “a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if required to testify at trial.”

Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.

North Dakota law does not provide for privileged communications between caseworkers and child sex trafficking victims.

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.



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.

North Dakota law authorizes statewide, trafficking-specific training for state and local employees, which would include child welfare employees. Pursuant to N.D. Cent. Code § 54-12-33 (Human trafficking commission),

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:

....

- c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;

....

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by child welfare. However, establishment of the task force is discretionary, making such training contingent on its creation, and North Dakota law does not statutorily require individuals employed by child welfare to receive the 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.

North Dakota law authorizes statewide, trafficking-specific training for state and local employees, which would include juvenile justice agency employees. Pursuant to N.D. Cent. Code § 54-12-33 (Human trafficking commission),

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:

....

- c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;

....

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by juvenile justice agencies. However, establishment of the task force is discretionary, making such training contingent on its

creation, and North Dakota law does not statutorily require individuals employed by juvenile justice agencies to receive the 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.

North Dakota law authorizes trafficking-specific training for law enforcement. Pursuant to N.D. Cent. Code § 54-12-33 (Human trafficking commission),

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
 -
 - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;
 - d. Promote training on human trafficking investigation and prosecution . . . with the North Dakota state’s attorney’s association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies;
 -

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by law enforcement. However, establishment of the task force is discretionary, making such training contingent on its creation. Further, 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.

North Dakota law authorizes trafficking-specific training for prosecutors. Pursuant to N.D. Cent. Code § 54-12-33 (Human trafficking commission),

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
 -
 - c. Promote training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators;

d. Promote training on human trafficking investigation and prosecution . . . with the North Dakota state’s attorney’s association, the North Dakota peace officers standards and training board, and state and local law enforcement agencies;

.....

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by prosecutors. However, establishment of the task force is discretionary, making such training contingent on its creation, and North Dakota law does not statutorily require prosecutors to receive the 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.

North Dakota law does not mandate training on child sex trafficking for school personnel.²³

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.

North Dakota 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.

²³ However, N.D. Cent. Code § 54-12-33 (Human trafficking commission) states,

1. The attorney general may establish a human trafficking commission, comprised of designees from state, local, and tribal agencies which have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the commission. The attorney general may establish the commission by appointing an existing statewide coalition.
2. The commission shall:
 -
 - b. Promote awareness and provide information to education personnel and the general public about human trafficking, victim remedies and services, and trafficking prevention;
 -
 - e. Present annually regarding human trafficking awareness and prevention at professional development conferences directed toward teachers, administrators, and support staff which are hosted by educational organizations in this state or by the department of public instruction; and
 -

Resultingly, resources regarding child sex trafficking may be, or become, available for use by school personnel. However, establishment of the task force is discretionary, making access contingent on its creation, and state law does not statutorily require school personnel to receive trafficking-specific training.

State Laws Addressing Child Sex Trafficking

1. N.D. Cent. Code § 12.1-41-02(1), (3) (Trafficking an individual) states,

1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

.....

- b. Sexual servitude in violation of section 12.1-41-04.

.....

3. Trafficking an individual who is a minor is a class AA felony.

A class AA felony is punishable by imprisonment for up to life. N.D. Cent. Code §§ 12.1-32-01(1) (Classification of offenses – Penalties).

2. N.D. Cent. Code § 12.1-41-04(1), (3) (Sexual servitude) states,

1. A person commits the offense of sexual servitude if the person knowingly:

- a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity²⁴

.....

.....

3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.

A class AA felony is punishable by imprisonment for up to life. N.D. Cent. Code §§ 12.1-32-01(1) (Classification of offenses – Penalties).

3. N.D. Cent. Code § 12.1-41-05(1), (3) (Patronizing a victim of sexual servitude) states,

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity²⁵ with another individual and the person knows that the other individual is a victim of sexual servitude.

.....

3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

A class A felony is punishable by imprisonment for up to 20 years, a fine up to \$20,000, or both. N.D. Cent. Code § 12.1-32-01(2) (Classification of offenses – Penalties).

4. N.D. Cent. Code § 12.1-41-06 (Patronizing a minor for commercial sexual activity) states,

1. A person commits the offense of patronizing a minor for commercial sexual activity if:

²⁴ N.D. Cent. Code § 12.1-41-01(3) (Definitions) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received, by a person.”

²⁵ See *supra* note 24 for the definition of “commercial sexual activity.”

- a. With the intent that an individual engage in commercial sexual activity²⁶ with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
 - b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.
2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.
 3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony

A class A felony is punishable by imprisonment for up to 20 years, a fine up to \$20,000, or both. N.D. Cent. Code §§ 12.1-32-01(2) (Classification of offenses – Penalties). A class B felony is punishable by imprisonment for up to 10 years, a fine up to \$20,000, or both. N.D. Cent. Code §§ 12.1-32-01(3).

5. N.D. Cent. Code § 12.1-41-07 (Business entity liability) states,
 1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06²⁷ as provided by chapter 12.1-03 [Accomplices – Corporations – Agents].
 2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity’s conduct and order penalties in addition to those otherwise provided for the offense, including:
 - a. A fine of not more than one million dollars per offense;
 - b. Disgorgement of profit from activity in violation of this chapter; and
 - c. Debarment from state and local government contracts.

²⁶ See *supra* note 24 for the definition of “commercial sexual activity.”

²⁷ This includes N.D. Cent. Code § 12.1-41-02 (Trafficking an individual), N.D. Cent. Code § 12.1-41-04 (Sexual servitude), N.D. Cent. Code § 12.1-41-05 (Patronizing a victim of sexual servitude), and N.D. Cent. Code § 12.1-41-06 (Patronizing a minor for commercial sexual activity).

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

None