

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 Nebraska’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.

Nebraska’s trafficking law can apply to buyers of commercial sex with minors based on the terms “solicit” and, following federal precedent, “obtain.”<sup>1</sup> Specifically, Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) states, “Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.” Neb. Rev. Stat. Ann. § 28-830(12) (Human trafficking; forced labor or services; terms, defined) defines “sex trafficking of a minor” as follows:

[K]nowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor

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<sup>1</sup> 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.

for the purpose of having such minor engage in commercial sexual activity,<sup>2</sup> sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.

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

Nebraska law criminalizes soliciting commercial sex with a minor. Specifically, Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution) states,

Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318 [Terms, defined], in exchange for money or other thing of value, commits solicitation of prostitution.

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

Although Neb. Rev. Stat. Ann. § 28-707 (Child abuse; privileges not available; penalties) applies to traffickers who cause a minor to be exploited through sex trafficking victimization, this offense is located within Chapter 28, Article 7 of the Nebraska Code, which criminalizes “offenses involving the family relation,” thereby limiting its applicability to familial cases. Neb. Rev. Stat. Ann. § 28-707 states,

A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

....

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

....

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

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.

Nebraska law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to Neb. Rev. Stat. Ann. § 28-831(4)(c) (Human trafficking; forced labor or services; terms defined), “It is not a defense in a prosecution under this section . . . that the defendant believed that the minor victim was an adult.”

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

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<sup>2</sup> Neb. Rev. Stat. Ann. § 28-830(2) defines “commercial sexual activity” as “any sex act on account of which anything of value is given, promised to, or received by any person.”

**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, Nebraska’s criminal attempt statute, Neb. Rev. Stat. Ann. § 28-201 (Criminal attempt; conduct; penalties), could provide prosecutors with an alternative avenue to prosecute those cases. Neb. Rev. Stat. Ann. § 28-201(1)(b) states,

- A person shall be guilty of an attempt to commit a crime if he or she:
  - (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or
  - (b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

Accordingly, Neb. Rev. Stat. Ann. § 28-201 could be used to prosecute trafficking offenders who engage in prohibited conduct believing the intended victim to be a child rather than a law enforcement decoy.

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

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

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

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

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>3</sup>

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<sup>3</sup> Regarding asset forfeiture, Neb. Rev. Stat. Ann. § 25-21,302(1) (Property used in commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds) states,

- (a) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of . . . 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties) . . . may be forfeited through proceeding as provided in this section.
- (b) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of . . . 28-831 . . . :
  - (i) Conveyances, including aircraft, vehicles, or vessels;
  - (ii) Books, records, telecommunication equipment, or computers;
  - (iii) Money or weapons;
  - (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
  - (v) Negotiable instruments and securities;

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

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- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
  - (vii) Any property traceable to proceeds from a violation; and
  - (viii) Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land, used in furtherance of a violation of . . .28-831 . . . .

Disposition of forfeited property is governed by Neb. Rev. Stat. Ann. § 25-21,302(13)–(15), which provides,

(13) Unless otherwise provided in this section, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be remitted to the county treasurer of the county in which the seizure was made. The county treasurer shall remit all such proceeds from property forfeited pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.<sup>3</sup>

(14) All money forfeited under this section shall be remitted in the same manner as provided in subsection (13) of this section.

(15) All real estate forfeited under this section shall be sold to the highest bidder at a public auction for cash, the auction to be conducted by the county sheriff or his or her designee at such place, on such notice, and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens, and encumbrances of record on the property. The remaining proceeds shall be remitted in the same manner as provided in subsection (13) of this section.

However, state asset forfeiture laws do not direct a percentage of a sex trafficking offender’s forfeited assets into a victim services fund nor do those laws apply to CSEC offenders.



## ISSUE 2: Identification of & Response to Victims

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**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. Neb. Rev. Stat. Ann. § 28-830(14) (Human trafficking; forced labor or services; terms; defined) defines “trafficking victim” as “a person subjected to any act or acts prohibited by section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties].”

Neb. Rev. Stat. Ann. § 28-831(1) can apply directly to buyers of commercial sex with minors based on the terms “solicit” and, following federal precedent, “obtain,”<sup>4</sup> 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 human 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.

Nebraska 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.

Nebraska law requires the Department of Health and Human Services to utilize a specialized screening tool in all cases involving a child reported or suspected of experiencing or is at high risk of experiencing sex trafficking victimization. Neb. Rev. Stat. Ann. § 28-713(7)(a)(iii) (Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations) states,

In addition to the responsibilities under subsections (1) through (6) of this section, upon receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] and without regard to the subject of the report, the department shall:

.....

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child

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<sup>4</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Neb. Rev. Stat. Ann. § 28-831.

advocacy enters, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors . . . .

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

Nebraska 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.

Nebraska law clearly prohibits the prosecution of minors for prostitution offenses; however, state law contemplates the limited use of detention for investigative purposes and the possibility of charging minors engaged in commercial sex with prostitution. Neb. Rev. Stat. Ann. § 28-801 (Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties) states,

(1) Except as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318 [Terms, defined], with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.

. . . .

(5) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected or charged with a violation of subsection (1) of this section is a . . . (b) a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 [Temporary custody of juvenile without warrant; when] and further disposition under Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 [Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties] to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.

Consequently, while Nebraska law fails to prohibit the limited use of detention or potential use of charges in response to commercially sexually exploited minors, statutory protections provide alternative mechanisms for taking such minors into protective custody and safeguards from prosecution for prostitution.

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

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

Nebraska 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.

- 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.

Nebraska law prohibits the criminalization of trafficking victims for participating in, or benefitting from, a venture that has engaged in trafficking; however, victims can still be charged as sex trafficking and CSE offenders or as accomplices alongside their exploiters. Pursuant to Neb. Rev. Stat. Ann. § 28-831(3) (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties), “Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.” Accordingly, victims are protected from criminalization under Neb. Rev. Stat. Ann. § 28-831(3); however, this protection from criminalization does not extend to Neb. Rev. Stat. Ann. § 28-831(1), which prohibits engaging in sex trafficking of a minor, or to CSEC offenses that might be used to charge child sex trafficking victims who are forced to recruit or commit other acts in furtherance of their trafficker’s scheme.

- 2.7.1 Recommendation: Strengthen existing protections to prohibit the criminalization of child sex trafficking victims for commercial sexual exploitation offenses 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.

Nebraska 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.

Nebraska law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Nebraska law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of 11 years for purposes of juvenile court jurisdiction, permits direct file in cases involving minors 14 years of age or older 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	11	17	Yes. Minors: 14+ years of age charged with a Class I, IA, IB, IC,	Yes. Minors 14+ years of age charged with a Class I, IA, IB, IC, ID, II, or IIA felony offense.	No.

			ID, II, or IIA felony offense.		
<b>Relevant Statute(s)</b>	Neb. Rev. Stat. Ann. § 43-247(1), (2) (Juvenile court ; jurisdiction)	Neb. Rev. Stat. Ann. § 43-247(1), (2) (Juvenile court jurisdiction; Neb. Rev. Stat. § 43-245(11) (Terms, defined)	Neb. Rev. Stat. Ann. § 29-1816(1)(a)(ii) (Arrestment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal); Neb. Rev. Stat. Ann. § 43-246.01(3) (Juvenile court; exclusive original and concurrent original jurisdiction); Neb. Rev. Stat. § 274(4) (County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal); Neb. Rev. Stat. § 43-276(1) (County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources)	Neb. Rev. Stat. Ann. § 43-246.01(3)(c) (Juvenile court; exclusive original and concurrent original jurisdiction); Neb. Rev. Stat. Ann. § 29-1816(1)(a)(ii) (Arrestment of accused; when considered waived; accused younger than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect; appeal); Neb. Rev. Stat. Ann. § 43-274(4), (5) (County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal)	Neb. Rev. Stat. Ann. § 43-276(1) (County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources)

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 in 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.

Nebraska’s Child Protection and Family Safety Act clearly defines “child abuse or neglect” to include child sex trafficking. Neb. Rev. Stat. Ann. § 28-710(2)(b) (Act, how cited; terms, defined) states in part,

Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:

- .....
- (v) Placed in a situation to be sexually abused;
- (vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or
- (vii) Placed in a situation to be a trafficking victim as defined in section 28-830.

**EXTRA CREDIT**



Child labor trafficking is included in the definition of “child abuse or neglect” under Neb. Rev. Stat. Ann. § 28-710(2)(b)(vii).

**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.

Nebraska’s Child Protection and Family Safety Act allows for a child welfare response in non-familial child sex trafficking cases and establishes an alternative specialized process for responding to child sex trafficking cases. Pursuant to Neb. Rev. Stat. Ann. § 28-713(7)–(8) (Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations),

- (7)
  - (a) In addition to the responsibilities under subsections (1) through (5) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] and without regard to the subject of the report, the department shall:
    - (i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child’s

- household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;
- (ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729 [Teams; members; training; child advocacy center; duties; meetings];
  - (iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and
  - (iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.
- (b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.
- (8) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.



## 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.

Nebraska law provides child sex trafficking victims with access to specialized services through a non-punitive system. Specifically, children who are taken into law enforcement custody, as provided for under Neb. Rev. Stat. Ann. § 43-248(7) (Temporary custody of juvenile without warrant; when.), shall be delivered to the Department of Health and Human Services, which can authorize necessary emergency treatment and services.

Neb. Rev. Stat. Ann. § 28-713(7)(a) (Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations) provides for a specialized response, stating,

In addition to the responsibilities under subsections (1) through (5) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] and without regard to the subject of the report, the department shall:

- (i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;
- (ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729 [Teams; members; training; child advocacy center; duties; meetings];
- (iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation . . . ; and
- (iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

### EXTRA CREDIT



Nebraska law extends access to specialized services to victims of child labor trafficking under Neb. Rev. Stat. Ann. § 28-713(7), which expressly applies to victims of both sex and labor trafficking.

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

Nebraska law requires a multi-disciplinary team response to child sex trafficking cases. Pursuant to Neb. Rev. Stat. Ann. § 28-713(7)(a)(ii) (Reports of child abuse or neglect; law enforcement agency; department; duties; rules and regulations),

In addition to the responsibilities under subsections (1) through (5) of this section, upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] and without regard to the subject of the report, the department shall:

.....

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729 [Teams; members; training; child advocacy center; duties; meetings];

Membership of the multidisciplinary team is governed by Neb. Rev. Stat. Ann. § 28-729(1)–(3) (Teams; members; training; child advocacy center; duties; meetings), which states,

(1) A child abuse and neglect investigation team shall include a representative from the county attorney’s office, a representative from the Division of Children and Family Services of the Department of Health and Human Services, a representative from each law enforcement agency which has jurisdiction within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team.

(2) A child abuse and neglect treatment team shall include a representative from the Division of Children and Family Services of the Department of Health and Human Services, a juvenile probation officer, a representative from each of the mental health profession and the medical profession actively practicing within the county or contiguous group of counties, a representative from each school district which provides services within the county or contiguous group of counties, a representative from the child advocacy center, and representatives from such other agencies as determined by the team. For purposes of this subsection, more than one school district may be represented by the same individual.

(3) The teams established pursuant to this section and section 28-728 [Legislative findings and intent; child abuse and neglect investigation team; child advocacy center; child abuse and neglect treatment team; powers and duties]<sup>5</sup> shall be encouraged to expand their membership to include the various relevant disciplines which exist within the county or contiguous group of counties . . . .

**EXTRA CREDIT**



Nebraska law requires a multi-disciplinary response to child labor trafficking cases under Neb. Rev. Stat. Ann. § 28-713(7)(a)(ii), which expressly applies to cases involving both sex and labor trafficking.

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<sup>5</sup> See Neb. Rev. Stat. Ann. § 28-728 for a detailed examination of a child abuse and neglect investigation team’s responsibilities.

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

Nebraska 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.

Nebraska 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.<sup>6</sup> Neb. Rev. Stat. Ann. § 43-4503(2) (Terms, defined) defines “child” as “an individual who has not attained twenty-one years of age.” Under Neb. Rev. Stat. Ann. § 43-4503(6), “young adult” is defined as “an individual who has attained nineteen years of age but who has not attained twenty-one years of age.” Additionally, Neb. Rev. Stat. Ann. § 43-4503(1) defines “bridge to independence program” as “the extended services and support available to a young adult under the Young Adult Bridge to Independence Act other than extended guardianship assistance described in section 43-4511 and extended adoption assistance described in section 43-4512.”<sup>7</sup>

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

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

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

The Nebraska 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.

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<sup>6</sup> 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](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).

<sup>7</sup> The Bridge to independence program is further described in Neb. Rev. Stat. Ann. §§ 43-4504 (Bridge to independence program; availability) and 43-4505 (Extended services and support; services enumerated).



## 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 Nebraska 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 Nebraska’s crime victims’ compensation laws provide child sex trafficking victims with a limited exception to reporting deadlines, other ineligibility factors may still prevent victims of child sex trafficking and CSEC from accessing an award.

For purposes of accessing crime victims’ compensation, Neb. Rev. Stat. Ann. § 81-1801(7) (Terms, defined) defines “victim” as “a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted].” Under Neb. Rev. Stat. Ann. § 81-1818,

The committee or hearing officer may order the payment of compensation from the Victim’s Compensation Fund for personal injury or death which resulted from:

- ....
- (2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

Neb. Rev. Stat. Ann. § 81-1801 does not define “unlawful criminal act,” but the term should encompass violations of Nebraska’s child sex trafficking and CSEC laws.

Regarding ineligibility factors, Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) states,

No compensation shall be awarded from the Victim’s Compensation Fund:

- (1) If the victim aided or abetted the offender in the commission of the unlawful act;
- ....
- (3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death . . . .

Further, Neb. Rev. Stat. Ann. § 81-1821(1) (Application; statute of limitations) provides,

No order for the payment of compensation shall be entered under the Nebraska Crime Victim’s Reparations Act unless the application has been submitted to the committee within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

Notably, Neb. Rev. Stat. Ann. § 81-1821(2) carves out an exception to the reporting deadline, stating,

An application submitted by or for a victim of . . . sex trafficking is not subject to the three-day reporting requirement in subsection (1) of this section if, prior to submitting the application the:

- (a) Applicant or victim has reported such crime to the police;
- (b) Applicant or victim has obtained a protection order related to such incident or offense; or
- (c) Victim has presented for a forensic medical exam.

However, this exception is limited and does not likewise protect victims of Nebraska's CSEC offenses. Further, the other ineligibility factors noted above may still limit a commercially sexually exploited child's ability to seek crime victims' compensation.

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from all 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.

Nebraska law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization. Pursuant to Neb. Rev. Stat. Ann. § 29-3005(2)–(7) (Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect),

(2) At any time following the completion of sentence or disposition, a victim of sex trafficking<sup>8</sup> convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense<sup>9</sup> committed while the movant was a victim of sex trafficking or proximately caused by the movant's status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant's status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication . . . .

- (3)
  - (a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant's participation in the prostitution-related offense was proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense.
  - (b) If the court finds that the movant's participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense.

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<sup>8</sup> Neb. Rev. Stat. Ann. § 29-3005(1)(c) defines "victim of sex trafficking" as "a person subjected to sex trafficking or sex trafficking of a minor, as those terms are defined in section 28-830 [Human trafficking; forced labor or services; terms, defined]."

<sup>9</sup> Neb. Rev. Stat. Ann. § 29-3005(1)(a) defines "prostitution-related offense" to include the following:

- (i) Prostitution under section 28-801, solicitation of prostitution under section 28-801.01, keeping a place of prostitution under section 28-804, public indecency under section 28-806, or loitering for the purpose of engaging in prostitution or related or similar offenses under local ordinances; and
- (ii) Attempt, conspiracy, solicitation, being an accessory to, aiding and abetting, aiding the consummation of, or compounding a felony with any of the offenses in subdivision (1)(a) of this section as the underlying offense;

(4) Official documentation of a movant’s status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense . . . .

(5) In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony . . . .

.....

(7) An order setting aside a conviction or an adjudication under this section shall have the same effect as an order setting aside a conviction as provided in subsections (5) and (6) of section 29-2264 [Probation; completion; conviction may be set aside; conditions; retroactive effect].

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

Restitution is discretionary in child sex trafficking and CSEC cases. Pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when),

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the actual damages sustained by the victim.

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281 (Restitution; determination of amount; manner of payment). Further, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

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

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

Nebraska’s Human Trafficking Victims Civil Remedies Act allows victims of child sex trafficking to pursue civil remedies against their exploiters. Neb. Rev. Stat. Ann. § 25-21,299(1)–(3) (Civil action authorized; recovery; attorney’s fees and costs; injunctive relief) states,

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim’s death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Victims Civil Remedy Act may recover his or her damages proximately caused by the actions of the defendant plus any and all attorney’s fees and costs reasonably associated with the civil action.

(3) Damages recoverable pursuant to subsection (2) of this section include all damages otherwise recoverable under the law and include, but are not limited to:

- (a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;
- (b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;
- (c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;
- (d) The reasonable value of the plaintiff's labor and services the plaintiff has lost because he or she was a trafficking victim;
- (e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;
- (f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant's associates;
- (g) In the event of death, damages available as in other actions for wrongful death; and
- (h) The reasonable costs incurred by the plaintiff to participate in the criminal investigation or prosecution or attend criminal proceedings related to trafficking the plaintiff.

### EXTRA CREDIT



Nebraska law provides sex trafficked youth with a trafficking-specific civil remedy under Neb. Rev. Stat. Ann. § 25-21,299, which allows a victim of human trafficking to bring a civil action against their exploiter. Importantly, Neb. Rev. Stat. Ann. § 28-830(14) (Human trafficking; forced labor or services; terms; defined) defines “trafficking victim” as “a person subjected to any act or acts prohibited by section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties],” which criminalizes sex trafficking of both minors and adults.



Nebraska law provides child labor trafficking victims with a trafficking-specific civil remedy under Neb. Rev. Stat. Ann. § 25-21,299, which allows a victim of human trafficking to bring a civil action against their exploiter. Importantly, Neb. Rev. Stat. Ann. § 28-830(14) (Human trafficking; forced labor or services; terms; defined) defines “trafficking victim” as “a person subjected to any act or acts prohibited by section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties],” which criminalizes both sex trafficking and labor trafficking.

#### 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.

Child sex trafficking prosecutions may commence at any time; however, prosecutions for CSEC offenses are subject to a statute of limitation as are civil actions. Pursuant to Neb. Rev. Stat. Ann. § 29-110(3)–(4), (11) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions),

(3) Except as otherwise provided by law, no person shall be prosecuted for . . . child abuse under section 28-707 [Child abuse; privileges not available; penalties]. . . when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties] (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

. . . .  
(11) There shall not be any time limitations for prosecution or punishment for . . . labor trafficking of a minor or sex trafficking of a minor under subsection (1) of section 28-831 . . . .

In general, Neb. Rev. Stat. Ann. § 29-110(1) establishes a 3-year statute of limitation for felonies, stating,

Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

Regarding civil actions, Neb. Rev. Stat. Ann. § 25-21,300 (Time for bringing action; limitation) provides,

Notwithstanding any other provision of law, any action to recover damages under the Human Trafficking Victims Civil Remedy Act shall be filed within ten years after the later of:

- (1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;
- (2) The receipt of actual or constructive notice sent or given to the trafficking victim or his or her parent or legal guardian by a member of a law enforcement entity informing the victim or his or her parent or legal guardian that the entity has identified the person who knowingly (a) engaged in human trafficking of such victim or (b) aided or assisted with the human trafficking of such victim;
- (3) The time at which the human trafficking of the trafficking victim ended if he or she was eighteen years of age or older; or
- (4) The victim reaching the age of majority if the victim was under eighteen years of age at the time he or she was a victim of human trafficking.

- 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.

Nebraska 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.

Nebraska law allows for in camera testimony by a child under 12 years of age or admission of a videotaped deposition in lieu of the child's live testimony during the prosecution of any felony but specifically allows the defendant to be present, which can be a highly traumatic experience. Specifically, Nev. Rev. Stat. Ann. § 29-1926(1) (Child victim or child witness; video deposition and in camera testimony; conditions; use; findings by court; release; procedure; violation; penalty) states,

- (a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need,<sup>10</sup> the court shall order the taking of a video deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child . . . .
- (b) Unless otherwise required by the court, the deposition shall be conducted in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court . . . .
- . . . .
- (d) If the child testifies at trial in person rather than by video deposition, the taking of the child's testimony may, upon request of the prosecuting attorney and upon a showing of compelling need, be conducted in camera.
- (e) Unless otherwise required by the court, the child shall testify in the presence of the prosecuting attorney, the defense attorney, the defendant, and any other person deemed necessary by the court . . . .

<sup>10</sup> Pursuant to Neb. Rev. Stat. Ann. § 29-1926(1)(h),

In deciding whether there is a compelling need that child testimony accommodation is required by pretrial video deposition, in camera live testimony, in camera video testimony, or any other accommodation, the court shall make particularized findings on the record of:

- (i) The nature of the offense;
- (ii) The significance of the child's testimony to the case;
- (iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;
- (iv) The child's age;
- (v) The child's psychological maturity and understanding; and
- (vi) The nature, degree, and duration of potential injury to the child from testifying.

(f) If deemed necessary to preserve the constitutionality of the child’s testimony, the court may direct that during the testimony the child shall at all times be in a position to see the defendant live or on camera.

....

Neb. Rev. Stat. Ann. § 29-1926(1)(g) defines “child” as “a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial.” Accordingly, child victims who are 12 years of age or older are not afforded protection under Neb. Rev. Stat. Ann. § 29-1926, 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.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims’ identifying information is protected from disclosure in court records</b>
<b>Summary</b>	Sexual assault victims, including child sex trafficking victims, may request an advocate of the victim’s choosing to be present during forensic medical exams, defense depositions, and law enforcement or prosecutor interviews.	Not statutorily required.	Not statutorily required.
<b>Relevant Statute(s)</b>	Neb. Rev. Stat. Ann § 29-4311 (Medical evidentiary or physical examinations; rights of victim); Neb. Rev. Stat. Ann § 29-4312 (Interview or deposition; rights of victim); Neb. Rev. Stat. Ann § 29-1917 (Deposition of witness or sexual assault victim; when; procedure use at trial)	None.	None.

5.3.1 Recommendation: Statutorily require that child sex trafficking victims are provided courtroom supports when testifying against their exploiter 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.

Nebraska law does not provide for privileged communications between caseworkers and child sex trafficking victims.<sup>11</sup>

- 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.

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<sup>11</sup> Although not specific to child sex trafficking cases, Neb. Rev. Stat. Ann. § 4303(1) (Confidential communications; disclosure; when) provides for privileged communications between advocates and victims of sexual assault or domestic violence, stating,

A victim, an advocate without the consent of the victim, a third party as described in subdivision (3) of section 29-4302 [Terms, defined] without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, shall not be compelled to give testimony or to produce records concerning a confidential communication for any purpose in any criminal, civil, legislative, administrative, or other proceeding, except as follows:

- (a) The party seeking disclosure of a confidential communication shall, in a criminal, civil, or administrative proceeding, file a motion that sets forth specifically the issues on which disclosure is sought and enumerates the reasons why the party is seeking disclosure and why disclosure is necessary, accompanied by an affidavit or affidavits containing specific information which establishes that the confidential communication constitutes relevant and material evidence in the case; and
- (b) If the party seeking disclosure has complied with subdivision (a) of this subsection, the court or a hearing officer shall review the confidential communication in camera and out of the presence and hearing of all persons, except the victim, the advocate, and any other person the victim is willing to have present, to determine whether a failure to disclose the confidential communication would violate the constitutional rights of the party seeking disclosure.

For purposes of protection under Neb. Rev. Stat. Ann. § 4303(1), Neb. Rev. Stat. Ann. § 29-4302 (Terms, defined) provides,

- (1) Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor’s office, whose primary purpose is assisting domestic violence and sexual assault victims;
- (2) Victim means a person who communicates with an advocate for assistance in overcoming the adverse effects of domestic violence or sexual assault; and
- (3) Confidential communication means any written or spoken information exchanged between a victim and an advocate in private or in the presence of a third party who is necessary to facilitate communication or further the advocacy process and which is disclosed to the advocate for the purposes of overcoming the adverse effects of domestic violence or sexual assault.

Notably, “sexual assault” is not defined for purposes of protection under Neb. Rev. Stat. Ann. § 4303. In contrast, Neb. Rev. Stat. Ann. § 29-4309(3) (Terms, defined) contains an expansive definition of “sexual assault,” which expressly includes “sex trafficking of a minor under section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties].” However, that definition only applies for “purposes of the Sexual Assault Victims’ Bill of Rights Act” (Neb. Rev. Stat. Ann. § 29-4308 through Neb. Rev. Stat. Ann. § 29-4315), not the confidential communication protection provided for under Neb. Rev. Stat. Ann. § 29-4303.



## 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.

Nebraska law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

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.

Nebraska law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.<sup>12</sup>

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

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<sup>12</sup> While not statutorily mandated, Neb. Rev. Stat. Ann. § 81-1431 (Training regarding issues in human trafficking; task force; duties) does clarify the legislature's intent that trafficking-specific training be provided. It states,

(1) It is the intent of the Legislature that law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, and others involved in the juvenile justice system and the criminal justice system and other relevant officials be provided mandatory training regarding issues in human trafficking. The task force established in section 81-1430 [Task force; established; members; terms; duties; quorum; report; department of labor; posters] shall work with such agencies, persons, and staff to develop a proper curriculum for the training and to determine how the training should be provided. The determination and accompanying legislative recommendations shall be made by December 1, 2012. Such training shall focus on:

- (a) State and federal law regarding human trafficking;
  - (b) Methods used in identifying victims of human trafficking who are United States citizens and foreign nationals, including preliminary interview techniques and appropriate questioning methods;
  - (c) Methods for prosecuting human traffickers;
  - (d) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
  - (e) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women and minor victims;
  - (f) The necessity of treating victims of human trafficking as crime victims rather than as criminals; and
  - (g) Methods for promoting the safety and well-being of all victims of human trafficking.
- (2) The task force shall also seek the input and participation of appropriate nongovernmental organizations and other relevant organizations regarding the provision, preparation, and presentation of the training called for in this section.

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

Nebraska law does not mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.<sup>13</sup>

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.

Nebraska law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.<sup>14</sup>

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.

Nebraska 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.

Nebraska 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.

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<sup>13</sup> See *supra* note 12 regarding legislative intent.

<sup>14</sup> See *supra* note 12 regarding legislative intent.

## State Laws Addressing Child Sex Trafficking

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1. Neb. Rev. Stat. Ann. § 28-831(1), (3) (Human trafficking; forced labor or services; prohibited acts; penalties) states,
  - (1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.
  - ....
  - (3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.

Neb. Rev. Stat. Ann. § 28-830(12) (Human trafficking; forced labor or services; terms, defined) defines “sex trafficking of a minor” as

knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity,<sup>15</sup> sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.

A Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation). A Class IIA felony is punishable by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. § 28-105(1).

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<sup>15</sup> Neb. Rev. Stat. Ann. § 28-830(2) defines “commercial sexual activity” as “any sex act on account of which anything of value is given, promised to, or received by any person.”

## State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

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1. Neb. Rev. Stat. Ann. § 28-707 (Child abuse; privileges not available; penalties)<sup>16</sup> states,

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

.....  
(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

.....  
(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

.....  
(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 [Terms, defined] or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

A Class I misdemeanor is punishable by imprisonment for up to 1 year, a fine up to \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1) (Misdemeanors; classification of penalties; sentences; where served). A Class IIIA felony is punishable by imprisonment for up to 3 years, a fine up to \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation). A Class IIA felony is punishable by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. § 28-105(1). A Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

2. Neb. Rev. Stat. Ann. § 28-801.01(1), (2)(a) (Solicitation of prostitution) states,

(1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318 [Terms, defined], in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony . . .

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<sup>16</sup> Notably, this offense is located within Chapter 28, Article 7 of the Nebraska Code, which criminalizes “offenses involving the family relation.”

A Class IV felony is punishable by imprisonment up to 2 years, a fine up to \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation).

3. Neb. Rev. Stat. Ann. § 28-804 (Keeping a place of prostitution) states,

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

A Class III felony is punishable by imprisonment up to 4 years, a fine up to \$25,000, or both. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation).