

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 New Jersey’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



## ISSUE 1: Criminal Provisions

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

Following federal precedent, New Jersey’s human trafficking law could apply to buyers of commercial sex with minors based on the term “obtains.”<sup>1</sup> Specifically, N.J. Stat. Ann. § 2C:13-8(a)(3) (Human trafficking) states,

A person commits the crime of human trafficking if he:

....

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

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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.

However, to ensure buyers are held accountable as trafficking offenders, N.J. Stat. Ann. § 2C:13-8(a) should be amended to expressly apply to persons who “patronize” a minor for commercial sex.

Notably, a buyer who “procures” a person for commercial sex may also be held accountable under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree); however, the buyer must know, or should have known, the person is a victim of human trafficking. N.J. Stat. Ann. § 2C:13-9(a)(2) states,

A person commits a crime of the second degree if he:

....

(2) procures or attempts to procure a person to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], or to provide labor or services, whether for himself or another person, knowing that the person provided or to be provided was a victim of human trafficking, or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking . . . .

- 1.1.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8(a) (Human trafficking) and N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) to expressly apply to buyers of commercial sex with minors without requiring the buyer to know the minor is a victim of human trafficking.

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

New Jersey law criminalizes both purchasing and soliciting commercial sex with a minor. Specifically, N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) provides,

A person commits an offense if:

....

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity . . . .

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

N.J. Stat. Ann. § 2C:34-1(b)(3), (b)(4) (Prostitution and related offenses) addresses an array of trafficker conduct, stating,

A person commits an offense if:

....

(3) The actor knowingly promotes prostitution of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor’s child, ward, or any other person for whose care the actor is responsible;

N.J. Stat. Ann. § 2C:34-1(a)(4) defines “promoting prostitution” as

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

- (b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;
- (c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
- (d) Soliciting a person to patronize a prostitute;
- (e) Procuring a prostitute for a patron;
- (f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

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

New Jersey law prohibits a mistake of age defense in certain prosecutions for child sex trafficking and CSEC. Pursuant to N.J. Stat. Ann. § 2C:13-8(a)(3) (Human trafficking), an offender will be held accountable for knowingly “hold[ing], recruit[ing], lur[ing], entic[ing], harbor[ing], transport[ing], provid[ing] or obtain[ing], by any means, a child under 18 years of age, to engage in sexual activity . . . whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.” However, N.J. Stat. Ann. § 2C:13-9(a)(2)(b) (Human trafficking in the second degree) is silent regarding the permissibility of the defense.

Regarding CSEC prosecutions, N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses) criminalizes promoting prostitution of a child “whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.” Similarly, N.J. Stat. Ann. § 2C:34-1(b)(7) states,

The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable . . . .

**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, New Jersey’s criminal attempt statute, N.J. Stat. Ann. § 2C:5-1 (Criminal attempt), could provide prosecutors with an alternative avenue to prosecute those cases. N.J. Stat. Ann. § 2C:5-1(a)(1) states,

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

- (1) Purposely engages in conduct which would constitute the crime if the attendant circumstances were as a reasonable person would believe 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.

New Jersey's trafficking laws do 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.

New Jersey law levies financial penalties on sex trafficking and CSEC offenders; although the mandatory fees will be directed into a victim services fund, a percentage of forfeited assets is not.

Regarding mandatory fees, N.J. Stat. Ann. § 2C:13-8(d) (Human trafficking) requires offenders to pay a \$25,000 fine for deposit into the Human Trafficking Survivor's Assistance Fund. N.J. Stat. Ann. § 2C:13-8(d) provides,

Notwithstanding the provisions of N.J.S.2C:43-3 [Fines and restitutions], the sentence for a conviction for a crime of the first degree under this section shall include a fine in an amount of not less than \$25,000, which shall be collected . . . and forwarded to the Department of the Treasury to be deposited in the "Human Trafficking Survivor's Assistance Fund" established by section 2 of P.L.2013, c.51 (C.52:17B-238).

Similarly, offenders convicted under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) must pay a \$15,000 fine for deposit into the Human Trafficking Survivor's Assistance Fund; N.J. Stat. Ann. § 2C:13-9(c)(1) states,

Notwithstanding the provisions of N.J.S.2C:43-3, the sentence for a conviction under this section shall include a fine in an amount of not less than \$15,000, which shall be collected . . . and forwarded to the Department of the Treasury to be deposited in the "Human Trafficking Survivor's Assistance Fund" established by section 2 of P.L.2013, c.51 (C.52:17B-238).

Lastly, N.J. Stat. Ann. § 2C:34-1(b)(2)–(7) (Prostitution and related offenses) directs all fines levied upon conviction of that offense to the Human Trafficking Survivor's Assistance Fund. N.J. Stat. Ann. § 2C:34-1(f)(2) provides,

In addition to any fine, fee, assessment, or penalty authorized under the provisions of Title 2C of the New Jersey Statutes, a person convicted of an offense of prostitution or related offense under paragraph (2), (3), (4), (5), (6), or (7) of subsection b. shall be assessed a penalty of at least \$10,000 but not more than \$50,000, except if the offense involved promotion of the prostitution of a child under the age of 18, the penalty shall be at least \$25,000. All penalties provided for in this subsection . . . shall be forwarded to the Department of the Treasury to be deposited in the "Human Trafficking Survivor's Assistance Fund" established by section 2 of P.L.2013, c.51 (C.52:17B-238).

Pursuant to N.J. Stat. Ann. § 52:17B-238(a) ("Human trafficking survivors assistance fund"), money deposited in the Human Trafficking Survivor's Assistance Fund" must be used "for the provision of services to victims of human trafficking, to promote awareness of human trafficking, and the development, maintenance, revision, and distribution of training course and other educational materials, and the operation of educational or training programs . . . ."

Regarding asset forfeiture, N.J. Stat. Ann. § 2C:64-1(a)(2)–(4) (Property subject to forfeiture) provides for forfeiture of the following:

- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.
- (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
- (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Disposition of forfeited property is governed by N.J. Stat. Ann. § 2C: 64-6(a) (Disposal of forfeited property), which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

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



## ISSUE 2: Identification of & Response to Victims

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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. New Jersey's core sex trafficking offense, N.J. Stat. Ann. § 2C:13-8(a)(3) (Human trafficking), does not require third party control because it can apply directly to buyers of commercial sex with minors based on federal precedent.<sup>2</sup> It states,

A person commits the crime of human trafficking if he:

.....

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

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

Notably, however, third party control is required under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree), which applies to buyers who knew, or should have known, the person procured is a victim of human trafficking.<sup>3</sup> Consequently, the victim must be under the control of a trafficker to establish the crime of human trafficking in the second degree under N.J. Stat. Ann. § 2C:13-9.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>4</sup>

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

New Jersey 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.

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<sup>2</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.J. Stat. Ann. § 2C:13-8.

<sup>3</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.J. Stat. Ann. § 2C:13-9.

<sup>4</sup> See generally Shared Hope Int'l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

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

New Jersey 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.

New Jersey 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.

New Jersey law fails to prohibit the criminalization of minors of prostitution; however, minors engaged in conduct in violation of the prostitution laws may receive alternative juvenile justice responses or may be permitted to raise an affirmative defense in a related prosecution.

While the state prostitution laws, N.J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses)<sup>5</sup> and N.J. Stat. Ann. § 2C-34.1.1 (Loitering for the purpose of engaging in prostitution), apply equally to adults and minors, N.J. Stat. Ann. § 2A-4A-22(g)(5) (General definitions) defines children engaged in commercial sex as a “juvenile-family crisis,” stating,

“Juvenile-family crisis” means behavior, conduct or a condition of a juvenile, parent or juvenile or other family member which presents or results in . . . an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.

Should a commercially sexually exploited minor be identified as a “juvenile-family crisis,” the minor may be subject to a number of dispositions, including mandatory participation in court-ordered services and programs. N.J. Stat. Ann. §§ 2C:4A-43(b), 2C:4A-46. Further, N.J. Stat. Ann. § 2C:4A-71 (Reviewing and processing complaints) delineates the process for diverting child sex trafficking victims away from a standard juvenile justice response. Referring to the possibility of diversion, N.J. Stat. Ann. § 2A-4A-71(b) states,

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<sup>5</sup> N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses) states,

- (a) As used in this section:
  - (1) “Prostitution” is sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.
  - . . . .
- b. A person commits an offense if:
  - (1) The actor engages in prostitution as a patron;
  - . . . .

Every complaint shall be reviewed by court intake service for recommendation as to whether the complaint shall be dismissed, diverted, or referred for court action . . . Court intake services shall consider the following factors in determining whether to recommend diversion:

- .....
- (11) Any information relevant to the offense in any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.

If a recommendation for diversion is unsuccessful or the child is not identified as a “juvenile-family crisis” and, thus, is subject to delinquency proceedings for conduct in violation of the prostitution law, N.J. Stat. Ann. § 2C:34-1(e) provides an affirmative defense to prostitution and related charges for human trafficking victims, including child sex trafficking victims, stating,

It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to [N.J. Stat. Ann. § 2C:13-8] or compelled by another to engage in sexual activity, regardless of the defendant’s age.

Consequently, while New Jersey law acknowledges the inseparable relationship between commercial sex and sex trafficking victimization as it relates to minors, minors may still be subject to arrest, detention, prosecution, and adjudication for prostitution offenses.

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

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

New Jersey 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.

Although New Jersey law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization, an affirmative defense may be available.

Specifically, N.J. Stat. Ann. § 2C:13-8(c) (Human trafficking) provides trafficking victims with an affirmative defense to human trafficking charges, stating,

It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense of human trafficking created by this section, the defendant was a victim of human trafficking.



Similarly, N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) provides an affirmative defense to trafficking victims charged with human trafficking in the second degree. N.J. Stat. Ann. § 2C:13-9(b) states,

- (1) It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the crime, the defendant was a victim of human trafficking.
- (2) There shall be a rebuttable presumption that a child under the age of 18 years of age charged with a violation of this section was a victim of human trafficking.

Lastly, N.J. Stat. Ann. § 2C:24-1(e) (Prostitution and related offenses) provides trafficking victims with an affirmative defense to promoting prostitution charges, stating,

It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or compelled by another to engage in sexual activity, regardless of the defendant’s age.

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

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

New Jersey 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.

New Jersey law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While New Jersey law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute fails to establish a minimum age for purposes of juvenile court jurisdiction, requires direct file in cases involving minors 15 years of age or older who are charged with certain offenses, and fails to require courts to consider the impact of trauma or past victimization in make discretionary transfer determinations.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	None. “Juvenile” is defined as, “an individual who is under the age of 18 years.”	17	Yes. Minors 15+ years of age charged with certain felony offenses.	Yes. Any minor charged with a felony offense.	No; however, in seeking a waiver of juvenile court jurisdiction, prosecutors are required to consider any “mental health

					concerns . . . or emotional instability of the juvenile . . . .”
<b>Relevant Statute(s)</b>	N.J. Stat. Ann. § 2A:4A-22(a) (General definitions)	N.J. Stat. Ann. § 2A:4A-22(a) (General definitions)	N.J. Stat. Ann. § 2A:4A-26.1(c) (Filing motion seeking waiver of jurisdiction; hearing)	N.J. Stat. Ann. § 2A:4A-26.1(a), (b) (Filing motion seeking waiver of jurisdiction; hearing)	N.J. Stat. Ann. § 2A:4A-26.1(3)(a)–(k) (Filing motion seeking waiver of jurisdiction; hearing)

Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allow some juvenile cases to be subject to direct file; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

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

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

New Jersey law defines “abused child” to include commercial sexual exploitation of children but not child sex trafficking. Specifically, N.J. Stat. Ann. § 9:6-8.9(c) (“Abused child” defined) defines “abused child” as “a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . commits or allows to be committed an act of sexual abuse against the child,” and N.J. Stat. Ann. § 9:6-8.84(b) (Definitions relative to child abuse, neglect) defines “sexual abuse” to include “prostitution, other forms of sexual exploitation of children.”

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

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

New Jersey’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. The definition of “abused child” under N.J. Stat. Ann. § 9:6-8.9(c) (“Abused child” defined) is limited to acts committed by the child’s “parent, guardian, or other person having his custody and control,” and the definition of “sexual abuse” under N.J. Stat. Ann. § 9:6-8.84(b) (Definitions relative to child abuse, neglect) is similarly limited to “contacts or actions between a child and a parent or caretaker.” Additionally, no alternative response is statutorily 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.



## 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.

Child sex trafficking victims may have access to specialized services through family justice centers; however, creation of those centers is discretionary. Pursuant to N.J. Stat. Ann. § 52:4B-72 (Establishment of family justice centers),

- a.
  - (1) A county or a non-governmental, community-based agency, in partnership with the county and municipal governments therein, may provide multi-agency governmental and non-governmental assistance, including but not limited to legal, law enforcement, social services, and health care assistance, to any victim of domestic violence . . . sexual assault . . . human trafficking as defined in section 1 of P.L.2005, c.77 (C.2C:13-8) [Human trafficking], . . . as well as assistance to the victim's family members, by establishing a centralized location, to be referred to as a family justice center, through which the victim and family members can request and access all available multi-agency assistance, and this assistance can be efficiently coordinated.
  - (2) A county or non-governmental, community-based agency may establish more than one family justice center, so long as the same forms of multi-agency governmental and non-governmental assistance are available at each center. If multiple centers are established in a county, they shall coordinate and collaborate with one another with respect to the provision of services.
- b. The family justice center shall operate under a director, who shall have, by education, training, or experience, an expertise in victim advocacy, and who may be an existing county official or employee, or a designated professional from a community-based agency. The family justice center shall be additionally staffed by a privacy officer designated by the director, who may be an existing county official or employee, or a professional from a community-based agency, and who is responsible for overseeing the center's privacy policies and procedures, as described in section 4 [C.52:4B-75] [Compliance with privacy laws] of this act, concerning the maintenance of confidential records on victims and their family members, and the limited sharing of information from those records and other sources, when consented to by the victim, amongst the providers of assistance at the center, as well as third-party service providers. The county or community-based agency may also provide for any additional administrative and other personnel which it deems necessary for the proper operation of the center.
- c. In cooperation with the Judiciary, municipalities, and non-governmental entities, the multi-agency assistance available at a county's or community-based agency's family justice center may be provided by, but is not limited to, the following professionals or volunteers:
  - (1) law enforcement officers;
  - (2) county or municipal prosecutors;
  - . . . .
  - (6) victim counselors as defined in subsection e. of section 3 of P.L.1987, c.169 (C.2A:84A-22.14), . . . or representatives of providers of services to victims of human trafficking that have been designated as victim service providers by the Director of the State's Office of Victim-Witness Advocacy pursuant to section 6 of P.L.1985, c.404 (C.52:4B-44) [Standards for law enforcement agencies to ensure rights of crime victims] ;
  - (7) staff from the county's child advocacy center . . . or members of the county's multidisciplinary team, established pursuant to that same section, which investigates child abuse and neglect and provides victim services to abused children and their families;

- 3.1.1 Recommendation: Enact legislation requiring access to 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, New Jersey law does not require an MDT response specific to child sex trafficking cases. Pursuant to N.J. Stat. Ann. § 9:6-8.104 (Establishment; maintenance of county-based multidisciplinary teams),

Regional centers<sup>6</sup> shall act as a resource in the establishment and maintenance of county-based multidisciplinary teams which work in conjunction with the county prosecutor and the Department of Children and Families in the investigation of child abuse and neglect in the county in which the child who is undergoing evaluation and treatment resides. The Commissioner of Children and Families, in consultation with the New Jersey Task Force on Child Abuse and Neglect, shall establish standards for a county team. The county team shall consist of representatives of the following disciplines: law enforcement; child protective services; mental health; substance abuse identification and treatment; and medicine; and, in those counties where a child advocacy center has been established, shall include a staff representative of a child advocacy center, all of whom have been trained to recognize child abuse and neglect. The county team shall provide: facilitation of the investigation, management and disposition of cases of criminal child abuse and neglect; referral services to the regional diagnostic center; appropriate referrals to medical and social service agencies; information regarding the identification and treatment of child abuse and neglect; and appropriate follow-up care for abused children and their families.

- 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.

New Jersey law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.<sup>7</sup>

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

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<sup>6</sup> Under N.J. Stat. Ann. § 9:6-8.99 (Regional diagnostic and treatment centers for child abuse and neglect established),

The Commissioner of Children and Families shall establish four regional diagnostic and treatment centers for child abuse and neglect affiliated with medical teaching institutions in the State that meet the standards adopted by the commissioner, in consultation with the New Jersey Task Force on Child Abuse and Neglect. The regional centers shall be located in the northern, north central, south central and southern regions of the State. Each center shall have experience in addressing the medical and mental health diagnostic and treatment needs of abused and neglected children in the region in which it is located.

<sup>7</sup> Notably, child sex trafficking is treated as a juvenile-family crisis case; however, this process does not statutorily require a specific service response for commercially sexually exploited children. *See supra* Policy Goal 2.5 for a full discussion of a juvenile-family crisis case.

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

New Jersey 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>8</sup> Under N.J. Stat. Ann. § 30:4C-2.3 (Provision of services to certain individuals ages 18 to 21), provides services to transition age youth, stating that:

Notwithstanding any provision of law to the contrary, the Department of Children and Families shall provide services to individuals who are between 18 and 21 years of age and meet the following conditions:

- a. The individual was receiving services from the department, on or after the individual's 16th birthday;
- b. The individual, on or after the individual's 18th birthday, has not refused or requested that these services be terminated, as applicable; and
- c. The commissioner determines that a continuation of services would be in the individual's best interest and would assist the individual to become an independent and productive adult.

- 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 New Jersey 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 New Jersey 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

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<sup>8</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).



## 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 New Jersey 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.

New Jersey's crime victims' compensation laws define "victim" to include child sex trafficking victims; however, CSEC victims are not expressly included, and ineligibility factors may prevent child sex trafficking victims from accessing an award.

For purposes of accessing crime victims' compensation, N.J. Stat. Ann. § 52:4B-2 (Definitions) defines "victim" as follows:

[A] person who suffers personal, physical, or psychological injury or death as a result of the conduct of another person who commits against that person any of the offenses specified in section 11 of P.L.1971, c.317 (C.52:4B-11) [Victim compensation] or an act by a juvenile, which if committed by an adult, would constitute a violation of any of these offenses.

Although N.J. Stat. Ann. § 52:4B-11(b)(13) (Victim compensation) includes "the commission or attempt to commit . . . a violation of human trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8)," New Jersey's CSEC offenses are not among the other enumerated offenses. However, N.J. Stat. Ann. § 52:4B-11(10) does include "any other crime involving violence," which could include victims of CSEC.

In addition to the narrow definition of "victim," certain ineligibility factors may limit a commercially sexually exploited child's ability to seek crime victims' compensation. N.J. Stat. Ann. § 52:4B-10 (Persons entitled to compensation; order) states in part, "In determining whether to make an order under this section, the office may consider any facts that provide relevant evidence as to whether the victim contributed to the victim's injury or death and as to whether the victim's conduct was the proximate cause of the victim's injury or death."

Further, N.J. Stat. Ann. § 52:4B-18 (Compensation for criminal injuries; statute of limitations for claims) states in part,

An order for the payment of compensation shall not be made . . . unless the application has been made within five years after the date of the personal injury or death or after that date upon determination by the office that good cause<sup>9</sup> exists for the delayed filing, and the personal injury or death was the result of an

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<sup>9</sup> N.J. Stat. Ann. § 52:4B-18 states in part, "For the purposes of this section, 'good cause' shall include, but not be limited to, instances where the victim or the victim's dependents were not appropriately informed of the benefits offered by the office as required by law."

offense listed in section 11 of P.L.1971, c.317 (C.52:4B-11) which had been reported to the police or other appropriate law enforcement agency within nine months after its occurrence or reasonable discovery. If the victim is under 18 years of age, the five-year limit on filing shall commence on the day the victim turns 18 years old . . . .

In determining the amount of an award, the office shall determine whether, because of the victim's conduct, the victim of such crime contributed to the infliction of the victim's injury, and the office shall reduce the amount of the award or reject the application altogether, in accordance with the determination . . . .

The office may reduce an award where the victim has not paid in full any payments owed on assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution ordered following conviction for a crime and the office may deduct any amount due for these assessments or restitution from an award of compensation and make payments to satisfy these obligations prior to making any payments of compensation to the victim.

No compensation shall be awarded if:

- a. Compensation to the victim proves to be substantial unjust enrichment to the offender or if the victim did not cooperate with the reasonable requests of law enforcement authorities unless the victim demonstrates a compelling health or safety reason for not cooperating; or  
.....
- c. The victim was guilty of a violation of subtitle 10 [Crimes] or 12 [Disorderly persons] of Title 2A or subtitle 2 [Specific offenses] of Title 2C of the New Jersey Statutes, which caused or contributed to the victim's injuries; or  
.....

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

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

Although New Jersey law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to N.J. Stat. Ann. § 2C:44-1.1 (Certain convictions vacated expunged),

- a.
  - (1) A person convicted of N.J.S.2C:34-1, prostitution and related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance, may file an application with the Superior Court in accordance with the Rules of Court to have the conviction vacated at any time following entry of a judgment of conviction, when the person's participation in the offense was a result of having been a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. § 7102.
  - (2) Notwithstanding any law to the contrary, the person may also in the same application seek an order for the expungement of any reference to the person's arrest, conviction, and any proceeding for prostitution in any records in the custody of a court, or law enforcement or correctional agency entitled to be served with the application pursuant to subsection b. of this section.
- b.  
.....
  - (2) The application shall be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking or has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the person, family members of the person,

or other victims of human trafficking that may be jeopardized by the bringing of the application, or for other reasons consistent with the purposes of this paragraph.

....  
d. If the court finds, pursuant to subsection c. of this section, that the person was a victim of human trafficking,<sup>10</sup> it shall enter an order vacating the conviction and directing that all court records be revised accordingly. When the person's application also seeks an order for expungement, the court order shall require that any court, law enforcement and correctional agencies, and other noticed parties pursuant to subsection b. of this section expunge all references to the person's arrest, conviction, and related proceedings for the violation of N.J.S.2C:34-1, prostitution and related offenses, or section 3 of P.L.1997, c.93 (C.2C:34-1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance from all records in their custody that relate to the vacated conviction. An expungement ordered pursuant to this section shall have the same force as an expungement ordered pursuant to N.J.S.2C:52-1 et seq.

Because N.J. Stat. Ann. § 2C:44-1.1 applies specifically to "convictions," however, this protection does not clearly extend to delinquency adjudications. Accordingly, child sex trafficking victims are likely unable to vacate delinquency adjudications under N.J. Stat. Ann. § 2C:44-1.1. Further, N.J. Stat. Ann. § 2C:44-1.1 applies only to violations of New Jersey's prostitution-related offenses, which fails to recognize the array of crimes trafficking victims are charged with 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.

Restitution is mandatory in cases involving child sex trafficking but not CSEC. Under N.J. Stat. Ann. § 2C:13-8(e) (Human trafficking),

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the laws

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<sup>10</sup> Pursuant to N.J. Stat. Ann. § 2C:44-1.1(c),

- (1) The court may vacate a conviction pursuant to this section if it finds by a preponderance of the evidence that the person was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. § 7102 at the time of the offense, and that the violation was a result of the person having been a victim of human trafficking.
- (2) In making a determination:
  - (a) evidence documenting the person's status as a victim of human trafficking at the time of the offense from a federal, state, or local governmental agency shall create a rebuttable presumption that the person's participation in the offense was a result of having been a victim, but shall not be required to vacate a conviction under this section; and
  - (b) the court may additionally consider other evidence it deems appropriate in determining whether the person was a victim of human trafficking . . . .



concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq., or any other applicable federal law.

Restitution is available more generally to victims of other crimes under N.J. Stat. Ann. § 2C:43-3 (Fines and restitution; however, restitution under N.J. Stat. Ann. § 2C:43-3 is discretionary. It states, “A person who has been convicted of an offense may be sentenced . . . to make restitution . . . . The restitution ordered paid to the victim shall not exceed the victim’s loss . . . .”

4.4.1 Recommendation: Statutorily mandate restitution in CSEC cases.

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

New Jersey law allows victims of child sex trafficking to pursue civil remedies against their exploiters. N.J. Stat. Ann. § 2C:13-8.1 (Civil action permitted by injured person) states,

a. Any person injured, including injury due to the loss of moneys or property, real or personal, by an actor and all those acting in concert with that actor who committed a human trafficking offense in violation of section 1 of P.L.2005, c.77 (C.2C:13-8) or section 5 of P.L.2013, c.51 (C.2C:13-9) may bring a civil action in any court of competent jurisdiction against the actor and all those acting in concert with that actor. A civil action brought under this section shall not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law.

....

c. In any civil action brought pursuant to this section, the court shall, in addition to any other appropriate legal or equitable relief, including damages for pain and suffering, recovery of reasonable costs for necessary medical, dental, and psychological services and punitive damages, award damages in an amount that is the greater of:

- (1) the gross income or value to the defendant of the injured party’s labor or services; or
- (2) the value of the injured party’s labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq., or any other applicable federal law.

d. In addition to any damages, penalty, injunction, or other appropriate relief awarded in an action brought pursuant to this section, the court may award to the injured person bringing suit reasonable attorney’s fees and costs.

## EXTRA CREDIT



New Jersey law provides sex trafficked youth with a trafficking-specific civil remedy under N.J. Stat. Ann. § 2C:13-8.1, which expressly includes victims of sex trafficking under N.J. Stat. Ann. § 2C:13-8 (Human trafficking) regardless of their age.



New Jersey law provides child labor trafficking victims with a trafficking-specific civil remedy under N.J. Stat. Ann. § 2C:13-8.1, which expressly includes victims of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), inclusive of both sex trafficking and labor trafficking victims.

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

New Jersey law does not expressly eliminate statutes of limitation for criminal<sup>11</sup> and civil actions<sup>12</sup> involving child sex trafficking and CSEC.

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

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<sup>11</sup> Regarding criminal actions, N.J. Stat. Ann. § 2C:1-6(b)(1) (Time limitations) generally requires “[a] prosecution for a crime [to] be commenced within five years after it is committed.”

<sup>12</sup> Regarding civil actions, N.J. Stat. Ann. § 2A:14-2a(a)(1) (Statute of limitations for action at law resulting from certain sexual crimes against a minor) lengthens the statute of limitation for crimes of a sexual nature but does not clarify that actions filed by trafficking victims under N.J. Stat. Ann. § 2C:13-8.1 (Civil action permitted by injured person) are subject to the lengthened statute of limitation. N.J. Stat. Ann. § 2A:14-2a(a)(1) states,

Every action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against a minor under the age of 18 that occurred prior to, on or after the effective date of P.L.2019, c.120 (C.2A:14-2a et al.) shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.

Otherwise, N.J. Stat. Ann. § 2A:14-2(a) (Actions for injury caused by wrongful act, appointment of guardian ad litem) provides, “Except as otherwise provided by law, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued . . . .”



## 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.

New Jersey 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.

New Jersey law allows a victim to testify by an alternative method during the prosecution of an offender charged with sex trafficking, regardless of the victim's age; however, this protection is offense-specific, meaning victims of New Jersey's CSEC offense are not equally protected. Specifically, N.J. Stat. Ann. § 2A:84A-32.4(a), (b) (Prosecutions, certain actions, closed circuit testimony) states,

a.

(1) In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, human trafficking involving sexual activity, a crime involving domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19), endangering the welfare of a child pursuant to N.J.S.2C:24-4, abuse or neglect of a child pursuant to R.S.9:6-3, or in any action alleging an abused or neglected child under P.L.1974, c.119 (C.9:6-8.21 et seq.), the court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim or witness on closed circuit television<sup>13</sup> at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in subsection b. of this section.

(2) In granting such an order, the court shall assure that:

(a) the victim or witness will testify under oath;

(b) the victim or witness will submit to cross-examination by the defendant's attorney; and

(c) the defendant, jury, and judge will be permitted to observe the demeanor of the victim or witness when making testimonial statements using closed circuit television.

b. An order under this section may be made only if the court determines by clear and convincing evidence that there is a substantial likelihood that the victim or witness would suffer severe emotional or mental distress if required to testify in the presence of spectators, the defendant, the jury, or all of them. The order shall be specific as to whether the victim or witness will testify outside the presence of spectators, the

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<sup>13</sup> N.J. Stat. Ann. § 2A:84A-32.4(f) defines "closed circuit television" as follows:

[A]ny closed-circuit, videoconferencing or other audio-visual electronic technology capable of producing a simultaneous, one-way broadcast from a victim or witness to a defendant in a separate physical location. The technology shall allow for the live observation of the victim or witness by the defendant, jury, and judge during the course of testimony or cross-examination, while excluding a victim or witness from directly hearing or viewing the defendant during the proceedings.

defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

As noted above, however, victims of New Jersey’s CSEC offenses are not protected under N.J. Stat. Ann. § 2A:84A-32.4.

- 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>	Not statutorily required.	Not statutorily required.	The name, address, and identity of child sex trafficking victims shall not appear on the indictment, complaint, or any other public record.
<b>Relevant Statute(s)</b>	None.	None.	N.J. Stat. Ann. § 2A:82-46 (Disclosure of identity of victims of certain crimes under age 18 prohibited)

- 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.

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

New Jersey law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim’s communications with their caseworker from being disclosed. Under N.J. Stat. Ann. § 2A:8A-22.15 (Victim counselor confidentiality privilege),

Subject to Rule 37 of the Rules of Evidence, a victim counselor<sup>14</sup> has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication.<sup>15</sup> The privilege shall be claimed by the counselor unless otherwise instructed by prior written consent of the victim. When a victim is incapacitated or deceased consent to disclosure may be given by the guardian, executor, or administrator except when the guardian, executor, or administrator is the defendant or has a relationship with the victim such that the guardian, executor, or administrator has an interest in the outcome of the proceeding. The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding . . .

N.J. Stat. Ann. § 2A-8A-22.14(c) (Definitions) defines “victim” as “a person who consults a counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition cause by an act of violence.” The definition of “act of violence” under N.J. Stat. Ann. § 2A-8A-22.14(a) includes “the commission or attempt to commit any of the offenses set forth in [N.J. Stat. Ann. § 52:4B-11(b) (Victim compensation)],” which expressly includes “a violation of human trafficking, section 1 of P.L. 2005, c.77 (C.2C:13-8).”

### EXTRA CREDIT



New Jersey law prevents disclosure of confidential communications made between a sex trafficking victim and their caseworker under N.J. Stat. Ann. § 2A:8A-22.15 regardless of the victim’s age.



New Jersey law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under N.J. Stat. Ann. § 2A:8A-22.15, which applies broadly to all cases involving human trafficking, including both sex trafficking and labor trafficking.

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<sup>14</sup> N.J. Stat. Ann. § 2A:8A-22.14(e) (Definitions) defines “victim counselor” as follows:

[A] person engaged in any office, institution or center defined as a victim counseling center by this act, who has undergone 40 hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence.

<sup>15</sup> N.J. Stat. Ann. § 2A:8A-22.14(b) defines “confidential communication as follows:

[A]ny information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor’s treatment of the victim for any emotional or psychological condition resulting from an act of violence. It includes any advice, report or working paper given or made in the course of the consultation and all information received by the victim counselor in the course of that relationship.



## ISSUE 6: Prevention & Training

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

New Jersey 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.

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

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

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

New Jersey law mandates trafficking-specific training for law enforcement. Pursuant to N.J. Stat. Ann. § 52:4B-47(a) (Training),

The curriculum for police training courses required pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.) shall include training on responding to the needs of crime victims, and specific training on responding to the needs of victims of human trafficking as defined in section 1 of P.L.2005, c.77 (C.2C:13-8), and on services available to provide assistance, including information on federal, State, and local hotlines available to receive reports of and provide assistance to victims of human trafficking.

Further, N.J. Stat. Ann. § 2C:13-12(a) (Training courses on handling, response procedures, investigation, prosecution of human trafficking cases) provides,

The Police Training Commission, in consultation with the Attorney General and the Director of the Division of Criminal Justice in the Department of Law and Public Safety, shall develop and approve, as part of the police training courses required pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), courses of study on the handling, response procedures, investigation, and prosecution of human trafficking cases. These courses shall be reviewed at least every two years and modified from time to time as need may require.

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

New Jersey law authorizes trafficking-specific training for prosecutors. Pursuant to N.J. Stat. Ann. § 52:4B-47 (Training),

- a. The curriculum for police training courses required pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.) shall include training on responding to the needs of crime victims, and specific training on responding to the needs of victims of human trafficking as defined in section 1 of P.L.2005, c.77(C.2C:13-8), and on services available to provide assistance, including information on federal, State, and local hotlines available to receive reports of and provide assistance to victims of human trafficking.
- b. In-service training shall be made available for police officers, assistant prosecutors, county detectives and investigators on specialized needs of crime victims and available services.

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

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

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

New Jersey 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.

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

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

## State Laws Addressing Child Sex Trafficking

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1. N.J. Stat. Ann. § 2C:13-8(a) (Human trafficking) states,

A person commits the crime of human trafficking if he:

....

- (2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1)<sup>16</sup> of this subsection; or
- (3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

A violation of N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3) is punishable as a crime of the first degree by imprisonment for “either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life” and a fine of \$25,000–\$200,000. N.J. Stat. Ann. §§ 2C:13-8(b), (d), 2C:43-3(a)(1).

2. N.J. Stat. Ann. § 2C:13-9(a) (Human trafficking in the second degree) states,

A person commits a crime of the second degree if he:

- (1) provides services, resources, or assistance with the knowledge that the services, resources, or assistance are intended to be used in furtherance of the commission of the crime of human trafficking in violation of section 1 of P.L.2005, c.77 (C.2C:13-8) [Human trafficking] . . . .
- (2) procures or attempts to procure a person to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], or to provide labor or services,

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<sup>16</sup> Pursuant to N.J. Ann. § 2C:13-8(a)(1),

A person commits the crime of human trafficking if he:

- (1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses] or to provide labor or services:
  - (a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person;
  - (b) by means of any scheme, plan, or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;
  - (c) by committing a violation of N.J.S.2C:13-5 [Criminal coercion] against the person;
  - (d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L.1997, c.1 (C.2C:21-31) [Unauthorized practice of immigration law; penalties], or other document issued by a governmental agency to any person which could be used as a means of verifying the person’s identity or age or any other personal identifying information;
  - (e) by means of the abuse or threatened abuse of the law or legal process;
  - (f) by means of fraud, deceit, or misrepresentation against the person; or
  - (g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes . . . .



whether for himself or another person, knowing that the person provided or to be provided was a victim of human trafficking, or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking . . . .

A violation of N.J. Stat. Ann. § 2C:13-9(a) is punishable as a crime of the second degree by imprisonment for 5–10 years and a fine of \$15,000–\$150,000. N.J. Stat. Ann. §§ 2C:13-9(a), (c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

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

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1. N.J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses) states,

A person commits an offense if:

.....

(3) The actor knowingly promotes prostitution<sup>17</sup> of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;

.....

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable; or

.....

A violation of N.J. Stat. Ann. § 2C:34-1(b)(3) or (b)(4) is punishable as a crime of the first degree by imprisonment for 10–20 years and a fine up to \$200,000. N.J. Stat. Ann. §§ 2C:34-1(c)(1), 2C:43-6(a)(1), 2C:43-3(a)(1). A violation of N.J. Stat. Ann. § 2C:34-1(b)(7) is punishable as a crime of the second degree by imprisonment for 5–10 years and a fine up to \$150,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

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<sup>17</sup> N.J. Stat. Ann. § 2C:34-1(a)(4) defines “promoting prostitution” as

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

(b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;

(d) Soliciting a person to patronize a prostitute;

(e) Procuring a prostitute for a patron;

(f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or

(g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.