

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 York’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.

N.Y. Penal Law § 230.34-A (Sex trafficking of a child) does not apply to buyers of commercial sex with minors. Pursuant N.Y. Penal Law § 230.34-A(1), “A person is guilty of sex trafficking of a child when he or she, being twenty-one years old or more, intentionally advances or profits from prostitution of another person and such person is a child less than eighteen years old . . . .” The definition of “advances prostitution” under N.Y. Penal Law § 230.34A(2) specifically excludes “patrons.” Specifically, N.Y. Penal Law § 230.34-A(2)(a) defines “advances prostitution” as “when, acting other than as a person in prostitution or as a patron thereof, and with intent to cause prostitution, he or she directly engages in conduct that facilitates an act or enterprise of prostitution.”

1.1.1 Recommendation: Amend N.Y. Penal Law § 230.34-A (Sex trafficking of a child) to make the statute applicable to the actions of buyers of commercial sex with minors.

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

New York law criminalizes purchasing sex with a minor under several CSEC laws that vary in degree based on the age of the child and the nature of the offense; however, these laws do not protect all minors under 18 years of age. Pursuant to N.Y. Penal Law § 230.06 (Patronizing a person for prostitution in the first degree),

A person is guilty of patronizing a person for prostitution in the first degree when:

1. He or she patronizes a person for prostitution<sup>1</sup> and the person patronized is less than eleven years old; or
2. Being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old.

Under N.Y. Penal Law § 230.05 (Patronizing a person for prostitution in the second degree),

A person is guilty of patronizing a person for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than fifteen years old . . . .

Further, N.Y. Penal Law § 230.13 (Aggravated patronizing a minor for prostitution in the first degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the first degree when he or she patronizes a person for prostitution and the person patronized is less than eleven years old, or being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old, and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . . .

N.Y. Penal Law § 230.12 (Aggravated patronizing a minor for prostitution in the second degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than fifteen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . . .

N.Y. Penal Law § 230.11 (Aggravated patronizing a minor for prostitution in the third degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the third degree when, being twenty-one years old or more, he or she patronizes a person for prostitution and the person patronized is less than seventeen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . . .

Notably, N.Y. Penal Law § 230.08(1) (Patronizing a person for prostitution in a school zone) does protect all minors under 18 years of age, but the offense is limited to offenses committed in a school zone; it states,

A person is guilty of patronizing a person for prostitution in a school zone when, being twenty-one years old or more, he or she patronizes a person for prostitution and the person patronized is less than eighteen years old at a place that he or she knows, or reasonably should know, is in a school zone . . . .

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<sup>1</sup> N.Y. Penal Law § 230.02(1) (Patronizing a person for prostitution; definitions) states,

A person patronizes a person for prostitution when:

- (a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or
- (b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him or her; or
- (c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

- 1.2.1 Recommendation: Amend New York’s CSEC laws to expressly criminalizes purchasing sex with any minor under 18 years of age.

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

New York’s CSEC laws address an array of trafficking conduct. Pursuant to N.Y. Penal Law § 230.32 (Promoting prostitution in the first degree),

A person is guilty of promoting prostitution in the first degree when he or she:

1. knowingly advances<sup>2</sup> or profits from prostitution<sup>3</sup> of a person less than thirteen years old; or
2. being twenty-one years old or more, he or she knowingly advances or profits from prostitution of a person less than fifteen years old.

Under N.Y. Penal Law § 230.30(2) (Promoting prostitution in the second degree), “A person is guilty of promoting prostitution in the second degree when he or she knowingly . . . [a]dvances or profits from prostitution of a person less than eighteen years old.”

In addition, N.Y. Penal Law § 230.25 (Promoting prostitution in the third degree) states,

A person is guilty of promoting prostitution in the third degree when he or she knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or
2. Advances or profits from prostitution of a person less than nineteen years old.

Under N.Y. Penal Law § 230.33 (Compelling prostitution),

A person is guilty of compelling prostitution when, being eighteen years old or more, he or she knowingly advances prostitution by compelling a person less than eighteen years old, by force or intimidation, to engage in prostitution . . . .

Lastly, N.Y. Penal Law § 120.70(1) (Luring a child) states,

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<sup>2</sup> N.Y. Penal Law § 230.15(1) (Promoting prostitution; definitions of terms) defines “advance prostitution” as

when, acting other than as a person in prostitution or as a patron thereof, he or she knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

<sup>3</sup> N.Y. Penal Law § 230.15(2) defines “profit from prostitution” as

when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 [Sentence of imprisonment for a violent felony offense] of this chapter; . . . an offense as defined in sections 230.30 [Promoting prostitution in the second degree], 230.33 [Compelling prostitution], . . . or 230.34-a [Sex trafficking of a child] of this chapter; . . . or an offense as defined in sections 263.05 [Use of a child in a sexual performance], 263.10 [Promoting an obscene sexual performance], or 263.15 [Promoting a sexual performance by a child] of this chapter. For purposes of this subdivision “child” means a person less than seventeen years of age . . .

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

New York law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to N.Y. Penal Law § 230.34-A(1) (Sex trafficking of a child), “Knowledge by the defendant of the age of such child is not an element of this offense and it is not a defense to prosecution therefor that the defendant did not know the age of the child or believed such age to be eighteen or over.”

Conversely, N.Y. Penal Law § 230.07 (Patronizing a person for prostitution; defense) expressly permits the defense in cases involving patronizing a person for prostitution, stating, “In any prosecution for patronizing a person for prostitution in the first or second degrees or patronizing a person for prostitution in a school zone, it is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.” New York’s other CSEC offenses are silent regarding the permissibility of a mistake of age defense.

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

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

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, New York’s criminal attempt statute, N.Y. Penal Law § 110.10 (Attempt to commit a crime; no defense), could provide prosecutors with an alternative avenue to prosecute those cases. N.Y. Penal Law § 110.10 states,

If the conduct in which a person engages otherwise constitutes an attempt to commit a crime pursuant to section 110.00 [Attempt to commit a crime],<sup>4</sup> it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant circumstances been as such person believed them to be.

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

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<sup>4</sup> Pursuant to N.Y. Penal Law § 110.00, “A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.”

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

New York’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>5</sup>

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<sup>5</sup> Regarding asset forfeiture, N.Y. C.P.L.R. § 1311(1) (Forfeiture actions) states in part,

A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property<sup>5</sup> which constitutes the proceeds of a crime,<sup>5</sup> the substituted proceeds of a crime,<sup>5</sup> an instrumentality of a crime<sup>5</sup> or the real property instrumentality of a crime.<sup>5</sup> A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose . . .

Disposal of forfeited property is governed by N.Y. C.P.L.R. § 1349 (Disposal of property), which states,

1. Any judgment or order of forfeiture issued pursuant to this article shall include provisions for the disposal of the property found to have been forfeited.
2. . . . [T]he judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article shall be deposited to an asset forfeiture escrow fund . . . and shall be apportioned and paid in the following descending order of priority:
  - (a) Amounts ordered to be paid by the court in satisfaction of any lien or claim against property forfeited . . . ;
  - (b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the crime . . . ;
  - (c) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of any crime committed by the defendant even though such crime did not constitute the basis for forfeiture under this article, to the extent that such amounts remain unpaid;
  - (d) Amounts actually expended by a claiming authority or claiming agent . . . ;
  - (e) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, fifteen percent of all moneys realized through forfeiture to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action . . . ;
  - (f) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, five percent of all moneys realized through forfeiture to the claiming agent in satisfaction of actual costs incurred for protecting, maintaining and forfeiting the property . . . ;
  - (g) Forty percent of all moneys realized through forfeiture which are remaining after distributions pursuant to paragraphs (a) through (f) of this subdivision, to the chemical dependence service fund . . . ;

- 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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- (h) All moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:
- (i) seventy-five percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses or law enforcement assisted diversion;
  - (ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

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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 does not include all commercially sexually exploited children. N.Y. Penal Law § 230.34-A (Sex trafficking of a child) specifically excludes buyers from criminal liability.<sup>6</sup> Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>7</sup>

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

New York law does provide policy guidance that broadly facilitates appropriate responses to foreign national child sex trafficking victims.

Pursuant to N.Y. Soc. Serv. Law § 483-bb(b) (Services for victims of human trafficking),

The office of temporary and disability assistance shall enter into contracts with non-government organizations for providing services to victims of human trafficking as defined in subdivision (a) of section four hundred eighty-three-aa of this article. Such services shall be culturally competent, to the extent practicable, and shall include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Such services shall also include appropriate voluntary placement in a short-term and/or long-term safe house, as such terms are defined under subdivision (c) or (d) of section four hundred eighty-three-aa of this article . . . Nothing in this article shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter [Aliens] with any benefits or services for which they otherwise may be eligible.

Despite providing policy guidance for serving foreign national trafficking victims under N.Y. Soc. Serv. Law § 483-bb(b), the definition of “human trafficking victim” under N.Y. Soc. Serv. Law § 483-aa(a) (Definitions) does not

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<sup>6</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.Y. Penal Law § 230.34-A.

<sup>7</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).

include those victimized under N.Y. Penal Law § 230.34-A (Sex trafficking of a child), New York’s child sex trafficking offense, stating,

“Human trafficking victim” means a person who is a victim of sex trafficking as defined in section 230.34 [Sex trafficking] of the penal law or a victim of labor trafficking as defined in section 135.35 [Labor trafficking] of the penal law.

Further, the criteria under N.Y. Soc. Serv. Law § 122 (Aliens), referenced in the policy guidance provided for under N.Y. Soc. Serv. Law § 483-bb(b), would exclude many foreign national victims.

- 2.2.1 Recommendation: Statutorily provide policy guidance that facilitates 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.

New York 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 York 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 York law fails to prohibit the criminalization of minors for prostitution; however, some commercially sexually exploited minors may be subject to alternative juvenile justice responses.

Related to minors under 15 years of age or younger, N.Y. Fam. Ct. Act § 311.4(3) (Substitution for petition or finding) outlines an alternative process, stating,

In any proceeding under this article [Juvenile delinquency] based upon an arrest for an act of prostitution, there is a presumption that the respondent meets the criteria as a victim of a severe form of trafficking as defined in section 7105 of title 22 of the United State Code [Trafficking Victims Protection Act of 2000]. Upon motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition. If, however, the respondent has been previously adjudicated as a juvenile delinquent under this article for an act which would be a crime pursuant to article two hundred thirty of the penal law [Prostitution offenses], if the respondent was an adult, or expresses a current unwillingness to cooperate with specialized services for sexually exploited youth, continuing with the delinquency proceeding shall be within the court’s discretion.



Pertaining to 16 and 17 year old minors, N.Y. Crim. Pro. Law § 170.80 (Proceedings regarding certain prostitution charges; certain persons aged sixteen or seventeen) states,

1. Notwithstanding any other provision of law, at any time at or after arraignment on a charge of prostitution pursuant to section 230.00 of the penal law, after consultation with counsel, a knowing and voluntary plea of guilty has been entered to such charged, any judge or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel:
  - (a) conditionally convert such charge in accordance with subdivision three of this section and retain it as a person in need of supervision proceeding for all purposes, and shall make such proceeding fully subject to the provisions and grant any relief available under article seven of the family court act [Proceedings concerning whether a person is in need of supervision]; and/or
  - (b) order the provisions of any of the specialized services enumerated in title eight-A of article six of the social services law [Safe Harbour for Exploited Children Act], as may be reasonably available.
2. In the event of a conviction by plea or verdict to such charge or charges of prostitution or loitering for the purposes of prostitution as described in subdivision one of this section, the court must find that the person is a youthful offender for the purpose of such charge and proceed in accordance with article seven hundred twenty of this chapter [Youthful offender procedure] . . . .
3.
  - (a) When a charge of prostitution or loitering for the purposes of prostitution has been conditionally converted to a person in need of supervision proceeding pursuant to subdivision one of this section, the defendant shall be deemed a “sexually exploited child” as defined in subdivision one of section four hundred forty-seven-a of the social services law [Definitions] and therefore shall not be considered an adult for purposes related to the charges in the person in need of supervision proceeding. Sections seven hundred eighty-one, seven hundred eighty-two, seven hundred eighty-two-a, seven hundred eighty-three and seven hundred eighty-four of the family court act shall apply to any proceeding conditionally converted under this petition.
  - (b) The court after hearing from the parties shall state condition or conditions of such conversion, which may include the individual’s participation in specialized services provided pursuant to title eight-A of article six of the social services law and other appropriate services available to persons in need of supervision in accordance with article seven of the family court act.

Further, N.Y. Crim. Pro. Law § 170.30(4) (Motion to dismiss information, simplified information, prosecutor’s information or misdemeanor complaint) provides,

After arraignment upon an information, a simplified information, a prosecutor’s information or misdemeanor complaint on a charge of prostitution pursuant to section 230.00 of the penal law the local criminal court may dismiss such charged in its discretion in the interest of justice on the ground that the defendant participated in services provided to him or her.

Lastly, for minors who are not subject to the aforementioned alternative responses and, consequently, prosecuted for prostitution, N.Y. Penal Code § 230.01 (Prostitution; affirmative defense) provides an affirmative defense to minors identified as child sex trafficking victims, stating,

In any prosecution under section 230.00 [Prostitution], section 230.03 [Prostitution in a school zone], section 230.19 [Promoting prostitution in a school zone], section 230.20 [Promoting prostitution in the fourth degree], subdivision 2 of section 230.25 [Promoting prostitution in the third degree], subdivision 2 of section 230.30 [Promoting prostitution in the second degree], or section 230.34-a [Sex trafficking of a child] of this article, it is an affirmative defense that the defendant’s participation in the offense was a result of having been a victim of compelling prostitution under section 230.33 of this article, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

Resultantly, while some commercially sexually exploited children may be directed away from traditional juvenile or criminal justice responses, New York law permits arresting, detaining, charging, and prosecuting minors for prostitution and prostitution-related offenses.

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

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

New York 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 York 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.Y. Penal Law § 230.01 (Prostitution; affirmative defense) provides,

In any prosecution under section 230.00 [Prostitution], section 230.03 [Prostitution in a school zone], section 230.19 [Promoting prostitution in a school zone], section 230.20 [Promoting prostitution in the fourth degree], subdivision 2 of section 230.25 [Promoting prostitution in the third degree], subdivision 2 of section 230.30 [Promoting prostitution in the second degree], or section 230.34-a [Sex trafficking of a child] of this article, it is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33 of this article, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

- 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 York 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 York law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While New York law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of seven years for purposes of juvenile court jurisdiction and requires direct file in the Youth Part<sup>8</sup> of the Superior Court in cases involving minors 13 years of age or older who are charged with certain felony offenses.

	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
<b>Summary</b>	7; “Juvenile delinquent” is defined as, “a person over seven and less than eighteen years of age . . . .”	17	Yes. Minors: (1) 13+ years of age charged with certain felony offenses and prosecuted as a “juvenile offender”; and (2) 17+ years of age charged with a felony and prosecuted as a “adolescent offender.” However, state law provides opportunities for such cases to be transferred to Family Court to be tried as juvenile delinquency cases.	No.	No.
<b>Relevant Statute(s)</b>	N.Y. Fam. Ct. Act § 301.2(1) (Definitions)	N.Y. Fam. Ct. Act § 301.2(1) (Definitions)	N.Y. Crim. Proc. Law § 1.20(42), (44) (Definitions of terms of general use in this chapter); N.Y. Crim. Proc. Law § 722.20 (Proceedings upon	N/A	N/A

<sup>8</sup> NY CLS CPL § 722.10 establishes the Youth Part of the Superior Court, stating, “The chief administrator of the courts is hereby directed to establish, in a superior court in each county of the state, a part of the court to be known as the youth part of the superior court for the county in which such court presides. Judges presiding in the youth part shall be family court judges . . . [t]o aid in their work, such judges shall receive training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct of youths . . . . The youth part shall have exclusive jurisdiction in all proceedings in relation to youthful offenders and adolescent offenders, except as provided for in this article or article [725] of this chapter.”

			felony complaint; juvenile offender); N.Y. Crim. Proc. Law 722.21 (Proceedings upon felony complaint; adolescent offender)		
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Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) requires some juvenile cases to be subject to direct file; and (3) do not require the Youth Part of the Superior 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 York’s Family Court Act defines “abused child” to include child sex trafficking. Pursuant to N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions),

“Abused child” means a child less than eighteen years of age whose parent or other person legally responsible for his care

.....  
(iii)

.....  
(B) allows, permits or encourages such child to engage in any act described in sections 230.25 (Promoting prostitution in the third degree), 230.30 (Promoting prostitution in the second degree), 230.32 (Promoting prostitution in the first degree) and 230.34-a (Sex trafficking of a child) of the penal law;

.....  
(E) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute;

(F) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

## EXTRA CREDIT



Child labor trafficking is included in the definition of “abused child” under N.Y. Fam. Ct. Act § 1012(e)(iii), which expressly includes victims of “severe forms of trafficking.” 22 U.S.C. §7102 defines “severe forms of trafficking” to include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

**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 York’s Family Court Act does not expressly allow for a child welfare response in non-familial child sex trafficking cases and does not statutorily provide for a specialized response to child sex trafficking reports. The definition of “abused child” under N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions) specifically limits the definition to acts committed by the child’s “parent or other person legally responsible for his care,” and 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.



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

New York law provides child sex trafficking victims with access to specialized services through a non-punitive system. Under the “Safe Harbour for Exploited Children Act,”<sup>9</sup> New York establishes specialized services for exploited children,<sup>10</sup> including those reported as abused;<sup>11</sup> these services include placing such children in safe houses with specialized advocates trained to work with sexually exploited children and providing necessary services such as “housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services” and “[w]here appropriate . . . counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community.” N.Y. Soc. Serv. Law §§ 447-a(4), 447-b(1).

Pursuant to N.Y. Soc. Serv. Law § 447-b(1) (Services for exploited children),

<sup>9</sup> N.Y. Soc. Serv. Law §§ 447-a to -b.

<sup>10</sup> N.Y. Soc. Serv. Law § 447-a(1) defines “sexually exploited child” as follows:

- [A]ny person under the age of eighteen who has been subject to sexual exploitation because he or she:
- (a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law or the crime of sex trafficking of a child as defined in section 230.34-A of the penal law;
  - (b) engages in any act as defined in section 230.00 [Prostitution] of the penal law;
  - (c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;
  - (d) engages in acts or conduct described in article two hundred sixty-three [Sexual performance by a child] of the penal law.

<sup>11</sup> N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions) defines “abused child” as follows:

- [A] child less than eighteen years of age whose parent or other person legally responsible for his care
- .....
- (iii)
- (a) commits, or allows to be committed an offense against such child defined in article one hundred thirty [Sexual offenses] of the penal law;
  - (b) allows, permits or encourages such child to engage in any act described in sections 230.25 [Promoting prostitution in the third degree], 230.30 [Promoting prostitution in the second degree], 230.32 [Promoting prostitution in the first degree] and 230.34-A [Sex trafficking of a child] of the penal law;
  - .....
  - (d) allows such child to engage in acts or conduct described in article two hundred sixty-three [Sexual performance by a child] of the penal law; or
  - (e) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute;
  - (f) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house<sup>12</sup> or another short-term safe placement<sup>13</sup> such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district . . .

Existing youth programs may also be utilized for this purpose, so long as the staff has received training on child sexual exploitation. N.Y. Soc. Serv. Law § 447-b(1).

**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 MDT, New York law does not require an MDT response to child sex trafficking cases. Pursuant to N.Y. Soc. Serv. Law § 423-a(1)–(3) (Child advocacy centers established),

1. The office of children and family services shall to the greatest extent practicable facilitate the establishment of child advocacy centers in every region of the state so that child victims of sexual abuse or serious physical abuse have reasonable access to such a center and so that their cases are handled in an expert and timely manner, by a coordinated and cooperative effort that minimizes trauma to the children and their non-offending family members. Child advocacy centers shall be established by either a governmental entity or a private, nonprofit incorporated agency and shall meet the state office of children and family services program standards for child advocacy centers approval and strive to co-locate members of the local multi-disciplinary team at the child advocacy center.
2. Child advocacy centers may assist in the investigation of child abuse and maltreatment cases and shall provide at a minimum for the following:
  - (a) a comfortable, private setting that is both physically and psychologically safe for children;
  - (b) sound program, fiscal and administrative practices;
  - (c) policies, practices and procedures that are culturally competent; for the purpose of this paragraph “culturally competent” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community;
  - (d) a multidisciplinary investigative team established pursuant to subdivision six of section four hundred twenty-three of this article;

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<sup>12</sup> “Short-term safe house” is defined in N.Y. Soc. Serv. Law § 447-a(2) as follows:

[A] residential facility . . . that provides emergency shelter, services and care to sexually exploited children including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child . . .

<sup>13</sup> N.Y. Soc. Serv. Law § 447-b(5) states in part,

To the extent funds are specifically appropriated therefore, the office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one long-term safe house . . . which shall provide safe and secure long term housing and specialized services for sexually exploited children throughout the state . . .

- (e) a written set of interagency protocols for an interdisciplinary and coordinated approach to the investigation of child abuse;
- (f) forensic interviews to be conducted in a manner which is neutral and fact-finding and coordinated to avoid duplicative interviewing;
- (g) specialized medical evaluation and treatment as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (h) specialized mental health services as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (i) victim support and advocacy as part of the multidisciplinary team investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (j) a routine interdisciplinary case review process for purposes of decision making, problem solving, systems coordination and information sharing concerning case status and services needed by the child and family;

....

3. Child advocacy centers may also provide space for medical evaluation, therapeutic intervention, support services for child abuse victims and their families, community education about child abuse, and any other services the center deems critical to the provision of service to child victims and their families and the multidisciplinary investigation of abuse allegations.

Similarly, N.Y. Soc. Serv. Law § 423(6) (Child protective service responsibilities) expands discussion on the role of the social service districts in utilizing multi-disciplinary teams in collaboration with child advocacy centers to provide services to child abuse victims; it states,

A social services district may establish a multidisciplinary investigative team or teams and may establish or work as part of a child advocacy center established pursuant to section four hundred twenty-three-a of this title, at a local or regional level, for the purpose of investigating reports of suspected child abuse or maltreatment. The social services district shall have discretion with regard to the category or categories of suspected child abuse or maltreatment such team or teams may investigate, . . . . Members of multidisciplinary teams shall include but not be limited to representatives from the following agencies: child protective services, law enforcement, district attorney’s office, physician or medical provider trained in forensic pediatrics, mental health professionals, victim advocacy personnel and, if one exists, a child advocacy center. . . . Such other members shall provide victim advocacy, emotional support, and access to medical and mental health care, where applicable. All members, consistent with their respective agency missions, shall facilitate efficient delivery of services to victims and appropriate disposition of cases through the criminal justice system and/or the family court system in a collaborative manner, however, non-investigative team members shall note their specific role in the team for reports covered under this title. Notwithstanding any other provision of law to the contrary, members of a multidisciplinary investigative team or a child advocacy center may share with other team members client-identifiable information concerning the child or the child’s family to facilitate the investigation of suspected child abuse or maltreatment. Nothing in this subdivision shall preclude the creation of multidisciplinary teams or child advocacy centers which include more than one social services district. Each team shall develop a written protocol for investigation of child abuse and maltreatment cases and for interviewing child abuse and maltreatment victims. The social services district is encouraged to train each team member in risk assessment, indicators of child abuse and maltreatment, and appropriate interview techniques.

- 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 York law does not provide access to specialized services for all identified sex trafficked children and youth in the juvenile justice system. A child sex trafficking victim who is arrested for prostitution may be identified as a person in need of supervision (PINS) and, resultantly, receive specialized services following the filing of a petition and the court's approval; however, a child seeking diversion from a delinquency process into a PINS process could face numerous barriers and processes that are inherently punitive.<sup>14</sup>

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

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

New York law extends foster care services to youth under 21 years of age through a voluntary extended foster care agreement. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>15</sup> Specifically, N.Y. Fam. Ct. Act § 1055(e)(i) (Placement) provides,

No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement may make a motion pursuant to section one thousand ninety-one of this act to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with paragraph two of subdivision (a) of section one thousand ninety-one of this act.

Additionally, N.Y. Fam. Ct. Act § 1091 (Motion to return to foster care placement) states,

A motion to return a former foster care youth under the age of twenty-one, who was discharged from foster care due to a failure to consent to continuation of placement, to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, may be made by such former foster care youth, or by a local social services official upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care; provided however, that the court shall not entertain a motion filed after twenty-four months from the date of the first final discharge that occurred on or after the former foster care youth's eighteenth birthday . . . .

- 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.

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<sup>14</sup> For more information, see N.Y. Fam. Ct. Act §§ 732, 735, 311.4, 739, 754, 756; N.Y. Crim. Proc. Law § 170.80.

<sup>15</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).

**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 York state legislature made appropriations during the 2021 session to support the development and provision of community-based specialized services for survivors of human trafficking, including child and youth survivors of sex trafficking.

Bill	Recipient	Amount	Intended Purpose	Term
A 3003	Department of Family Assistance, Office of Temporary and Disability Assistance	\$2,397,000	For services related to the Human Trafficking Program as established pursuant to art.10-D of social services law. <sup>16</sup> Among other tasks, the Human Trafficking Program provides grants to community-based organizations, including those providing services to child and youth survivors of sex trafficking.	FY 2021-2022
2021 Legislative Session				April 1 <sup>st</sup> to March 31 <sup>st</sup>

**EXTRA CREDIT**



The New York legislature appropriated funds during the 2021 session to support the Human Trafficking Program, which, in turn, provides grants to community-based organizations that serve survivors of human trafficking, including older youth and adult survivors of sex trafficking.



The New York legislature appropriated funds during the 2021 session to support the Human Trafficking Program which, in turn, provides grants to community-based organizations that service survivors of human trafficking, including child survivors of labor trafficking.

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<sup>16</sup> For purposes of accessing services under the Victims of Human Trafficking Program, N.Y. Soc. Serv. Law § 483-AA(a) (Definitions) defines, “human trafficking victim” as, “a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law.” However, child sex trafficking is criminalized under N.Y. Penal Law § 230.34-a.

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

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



## ISSUE 4: Access to Justice for Trafficking Survivors

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

While civil orders of protection exist under New York 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 York's crime victims' compensation laws exempt victims of child sex trafficking, but not CSEC, from some, but not all, ineligibility factors, leaving some commercially sexually exploited children without access to an award.

For purposes of accessing crime victims' compensation, N.Y. Exec. Law § 621(5), (11) (Definitions) defines "victim" and "child victim" as follows:

5. "Victim" shall mean (a) a person who suffers personal physical injury as a direct result of a crime;<sup>17</sup> (b) a person who is the victim of either the crime of . . . (12) labor trafficking as defined in section 135.35 of the penal law, (13) sex trafficking as defined in section 230.34 of the penal law; or (14) sex trafficking of a child as defined in section 230.34-a of the penal law . . . .

. . . .

11. For purposes of this article "child victim" shall mean a person less than eighteen years of age who suffers physical, mental or emotional injury, or loss or damage, as a direct result of a crime . . . .

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to N.Y. Exec. Law § 624(2) (Eligibility), "A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive an award with respect to such claim." Further, N.Y. Exec. Law § 631(5), (17) (Awards) provides,

5.

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<sup>17</sup> N.Y. Exec. Law § 621(3) defines "crime" to include the following:

- (a) an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by law; or
- (b) an act committed outside the state of New York against a resident of the state of New York which would be compensable had it occurred within the state of New York and which occurred in a state which does not have an eligible crime victim compensation program as such term is defined in the federal victims of crime act of 1984; or
- (c) an act of terrorism, as defined in section 2331 of title 18, United States Code, committed outside of the United States against a resident of New York state.

(a) In determining the amount of an award, the office shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the office shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

....  
....

17. Notwithstanding the provisions of subdivision one of this section, where a child victim has not been physically injured as a direct result of a crime . . . , the claimant shall only be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property of the child victim that has been lost, damaged or destroyed as a direct result of a crime . . . , transportation expenses incurred by the claimant for necessary court appearances of the child victim in connection with the prosecution of such crimes, and, if counseling is commenced within one year from the date of the incident or its discovery, (1) the unreimbursed cost of counseling provided to the child victim on account of mental or emotional stress resulting from the incident in which the crime . . . , and/or (2) the unreimbursed cost of counseling provided to the claimant eligible under paragraph (h) of subdivision one of section six hundred twenty-four of this article and resulting from the incident in which the crime . . . occurred.

Notably, New York law carves out an exception to reporting requirements. Because the exception is offense-specific, however, only victims of trafficking, not CSEC, will be protected. Under N.Y. Exec. Law § 631(1),

No award shall be made unless the office finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency<sup>18</sup> records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the office, for good cause shown, finds the delay to have been justified. Notwithstanding the foregoing provisions of this subdivision, in cases involving . . . labor trafficking as defined in section 135.35 of the penal law or sex trafficking as defined in sections 230.34 and 230.34-a of the penal law . . . , the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation . . . .

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

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

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<sup>18</sup> N.Y. Exec. Law § 631(1) defines "criminal justice agency" to include the following:

[A] police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense or family offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to title six of article six of the social services law and/or title one of article nine-B of the social services law, and any medical facility established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault.

**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 York law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to N.Y. Crim. Proc. Law § 440.10(1)(i), (6) (Motion to vacate judgment),

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

....

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution crime that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii) official documentation of the defendant's status as a victim of trafficking, compelling prostitution or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph;

....

6. If the court grants a motion under paragraph (i) . . . of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances.

Because N.Y. Crim. Proc. Law § 440.10(1)(i) applies specifically to "convictions," however, this protection does not clearly extend to delinquency adjudications. Further, N.Y. Crim. Proc. Law § 440.10(1)(i) applies only to violations of New York'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 child sex trafficking and CSEC cases. Pursuant to N.Y. Penal Law § 60.27(1) (Restitution and reparation),

In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence

imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby . . . . The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss . . . . In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

#### EXTRA CREDIT



New York law mandates restitution for victims of child labor trafficking under N.Y. Penal Law § 60.27, which applies broadly to any offense.

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

New York law allows victims of child sex trafficking to pursue civil remedies against their exploiters. N.Y. Soc. Serv. Law § 483-bb(c)(i) (Services for victims of human trafficking) states,

An individual who is a victim of the conduct prohibited by section 230.33 [Compelling prostitution], 230.34 [Sex trafficking], 230.34-a [Sex trafficking of a child], 135.35 [Labor trafficking] or 135.37 [Aggravated labor trafficking] of the penal law may bring a civil action against the perpetrator or whoever knowingly advances or profits from, or whoever should have known he or she was advancing or profiting from, an act in violation of section 230.33, 230.34, 230.34-a, 135.35 or 135.37 of the penal law to recover actual, compensatory and punitive damages, injunctive relief, any combination of those or any other appropriate relief, as well as reasonable attorney's fees.

## EXTRA CREDIT



New York law provides sex trafficked youth with a trafficking-specific civil remedy under N.Y. Soc. Serv. Law § 483-bb(c)(i), which expressly includes victims of sex trafficking under N.Y. Penal Law § 230.34 (Sex trafficking).



New York law provides child labor trafficking victims with a trafficking-specific civil remedy under N.Y. Soc. Serv. Law § 483-bb(c)(i), which expressly includes victims of labor trafficking under N.Y. Penal Law § 135.35 (Labor trafficking) and N.Y. Penal Law § 135.37 (Aggravated 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.

New York law lengthens, but does not eliminate, the statute of limitation for filing trafficking-specific civil actions; however, the criminal statutes of limitation for trafficking and CSEC offenses are not eliminated or lengthened. Regarding civil actions, N.Y. Soc. Serv. Law § 483-bb(c)(ii)–(iv) (Services for victims of human trafficking) provides,

- (ii) An action brought pursuant to this subdivision shall be commenced within fifteen years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within fifteen years after the date the victim attains the age of majority.
- (iii) If a person entitled to sue is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action under this subdivision, the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitations for this action.
  - (A) Disability includes being a minor, lacking legal capacity to make decisions, imprisonment, or other incapacity or incompetence.
  - (B) The statute of limitations shall not run against a victim who is a minor or who lacks the legal competence to make decisions simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a victim's action within the applicable limitation period will not prejudice the victim's right to do so after his or her disability ceases.
  - (C) The perpetrator is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to conduct by such perpetrator inducing the victim to delay the filing of the action, or due to threats made by the perpetrator causing duress upon the victim.
  - (D) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.
  - (E) The running of the statute of limitations is postponed during the pendency of criminal proceedings against the victim.
- (iv) The running of the statute of limitations may be suspended if a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.



N.Y. Civ. Prac. Law § 212(e) (Actions to be commenced within ten or fifteen years) echoes this extension, stating,

An action by a victim of sex trafficking, compelling prostitution, labor trafficking or aggravated labor trafficking, brought pursuant to subdivision (c) of section four hundred eighty-three-bb of the social services law, may be commenced within fifteen years after such victimization occurs provided, however, that such fifteen year period shall not begin to run and shall be tolled during any period in which the victim is or remains subject to such conduct.

Regarding criminal actions, N.Y. Crim. Proc. Law § 30.10(2)(b), (c) establishes a 5-year statute of limitation for most felony prosecutions, and a 2-year statute of limitation for misdemeanors.

- 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.

New York 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 York law does not provide child sex trafficking victims with an alternative to live, in-court testimony. Although N.Y. Crim. Pro. Law § 65.10 (Closed-circuit television; general rule; declaration of vulnerability)<sup>19</sup> permits the court to authorize the testimony of a child under 15 years of age be taken by closed circuit television (CCTV) during the prosecution of a specified offense, this protection does not extend to victims of sex trafficking or CSEC. Specifically, N.Y. Crim. Pro. Law § 65.10 states,

1. A child witness shall be declared vulnerable when the court, in accordance with the provisions of section 65.20 [Closed-circuit television; procedure for application and grounds for determination], determines by clear and convincing evidence that it is likely that such child witness will suffer serious mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of, such harm.

2. When the court declares a child witness to be vulnerable, it shall, except as provided in subdivision four of section 65.30 [Closed-circuit television; special testimonial procedures], authorize the taking of the testimony of the vulnerable child witness from the testimonial room by means of live, two-way closed-circuit television. Under no circumstances shall the provisions of this article be construed to authorize a closed-circuit television system by which events in the courtroom are not transmitted to the testimonial room during the testimony of the vulnerable child witness.

N.Y. Crim. Pro. Law § 65.00 (Definitions) defines “child witness” as “a person fourteen years old or less who is or will be called to testify in a criminal proceeding, other than a grand jury proceeding,<sup>20</sup> concerning an offense defined in article one hundred thirty [Sexual offenses] of the penal law or section 255.25 [Incest in the third degree], 255.26 [Incest in the second degree], or 255.27 [Incest in the first degree] of such law which is the subject of such criminal proceeding.”

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<sup>19</sup> The provisions set forth in Article 65 (Use of closed-circuit television for certain child witnesses), including N.Y. Crim. Pro. Law § 65.10, will expire on September 1, 2023.

<sup>20</sup> Notably, N.Y. Crim. Pro. Law § 190.32 (Videotaped examination; definitions, application, order and procedure) allows a victim of a sexual offense or incest to “give evidence in a grand jury proceeding” by video tape “[i]n lieu of requiring [the child] to appear in person.”

Accordingly, the protection provided for under N.Y. Crim. Pro. Law § 65.10 is unavailable to victims of commercial sexual exploitation. Further, child victims who are 15 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

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

**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.	New York law requires that a person supportive of the child witness be permitted to be always present and accessible to a child witness during testimony and requires the judge to be attentive to the psychological and emotional stress a child witness may undergo during testimony.	Not statutorily required.
<b>Relevant Statute(s)</b>	None.	N.Y. Exec. Law § 642-a(6), (7) (Fair treatment of child victims as witnesses)	None.

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate and their identifying information is protected from disclosure in court records.

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

New York law does not provide for privileged communications between caseworkers and child sex trafficking victims.<sup>21</sup>

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<sup>21</sup> Although not available in cases related to child sex trafficking, N.Y. Civ. Prac. Law and Rules § 4510(b) (Rape crisis counselor) provides protection in cases involving sexual offenses, stating,

A rape crisis counselor shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or for the rape crisis counselor be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or

- 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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recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records, except:

1. that a rape crisis counselor may disclose such otherwise confidential communication to the extent authorized by the client;
2. that a rape crisis counselor shall not be required to treat as confidential a communication by a client which reveals the intent to commit a crime or harmful act;
3. in a case in which the client waives the privilege by instituting charges against the rape crisis counselor or the rape crisis program and such action or proceeding involves confidential communications between the client and the rape crisis counselor.



## 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.

New York law authorizes trafficking-specific training for social service providers. Pursuant to N.Y. Soc. Serv. Law § 483-ee(b) (Establishment of interagency task force on human trafficking),

The [interagency task force on human trafficking] shall: . . . (6) evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel, criminal defense attorneys, social service providers and non-governmental organizations, and make recommendations for improving the quality and effectiveness of such programs . . . and (8) convene any subcommittee necessary . . . to consider specific issues, including, but not limited to . . . juveniles and human trafficking; [and] the importance of training and who should receive such training . . . .

Further, N.Y. Soc. Serv. Law § 447-b(1) (Services for exploited children) requires staff members utilizing existing respite or crisis intervention services to receive training on sexually exploited children, stating,

Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children . . . .

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

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

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

New York 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 York law authorizes trafficking-specific training for law enforcement. Pursuant to N.Y. Exec. Law § 214-d (Human trafficking awareness),

The superintendent, in consultation with the office of temporary and disability assistance and the division of criminal justice services, shall: (1) develop, maintain and disseminate to all members of the state police, including new and veteran officers, written policies, procedures and educational materials relating to human trafficking victims, including services available for victims of human trafficking, as referenced in section four hundred eighty-three-bb of the social services law; and (2) establish and implement written procedures and policies in the event a member of the division of state police encounters an individual believed to be a victim of human trafficking, which shall include, but not be limited to, the provision of information and/or referral to an appropriate provider of social and legal services to human trafficking victims, in accordance with such section four hundred eighty-three-bb.

Further, N.Y. Soc. Serv. Law § 447-b(6) (Services for exploited children) provides,

The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

Lastly, N.Y. Soc. Serv. Law § 483-ee(6) (Establishment of interagency task force on human trafficking) requires the interagency task force on human trafficking to “evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel . . . and [to] make recommendations for improving the quality and effectiveness of such programs . . . .”

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

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

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

New York law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 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 York law does not mandate training on child sex trafficking for school personnel.<sup>22</sup>

- 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 York law mandates child sexual exploitation prevention education for students in grades K-8. Pursuant to N.Y. CLS Educ. Law § 803-b (Courses of study in prevention of child sexual exploitation and child sexual abuse),

1. All pupils in grades K-8 in all public schools in the state shall receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program shall be defined by the commissioner in regulations after consultation with the department of health and be designed to educate students, parents and school personnel about the prevention of child sexual exploitation and child sexual abuse in grades kindergarten through eight. Such program shall include, but not be limited to students and parents. Nothing in this section shall prevent the department from making model curriculum and resource materials available on the department's website.
2. The commissioner may provide technical assistance to assist in the development of curricula for such courses of study which shall be age appropriate and developed according to the needs and abilities of pupils at successive grade levels in order to provide awareness, skills, information, self-confidence and support to aid in the prevention of child sexual exploitation and child sexual abuse.

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<sup>22</sup> Although not statutorily mandated, training for school personnel on the sexual exploitation of children is contemplated under N.Y. CLS Educ. Law § 803-b (Courses of study in prevention of child sexual exploitation and child sexual abuse), which states,

1. All pupils in grades K-8 in all public schools in the state shall receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program shall be defined by the commissioner in regulations after consultation with the department of health and be designed to educate students, parents and school personnel about the prevention of child sexual exploitation and child sexual abuse in grades kindergarten through eight. Such program shall include, but not be limited to students and parents. Nothing in this section shall prevent the department from making model curriculum and resource materials available on the department's website.
2. The commissioner may provide technical assistance to assist in the development of curricula for such courses of study which shall be age appropriate and developed according to the needs and abilities of pupils at successive grade levels in order to provide awareness, skills, information, self-confidence and support to aid in the prevention of child sexual exploitation and child sexual abuse.

Resultingly, education regarding child sex trafficking may be, or become, available for use by school personnel. However, state law does not statutorily require school personnel to receive such training.

## State Laws Addressing Child Sex Trafficking

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1. N.Y. Penal Law § 230.34-A(1) (Sex trafficking of a child) states,

A person is guilty of sex trafficking of a child when he or she, being twenty-one years old or more, intentionally advances<sup>23</sup> or profits from prostitution<sup>24</sup> of another person and such person is a child less than eighteen years old. Knowledge by the defendant of the age of such child is not an element of this offense and it is not a defense to a prosecution therefor that the defendant did not know the age of the child or believed such age to be eighteen or over.

....

Sex trafficking of a child is a class B felony.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

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<sup>23</sup> N.Y. Penal Law § 230.34-A(2)(a) defines “advances prostitution” as “when, acting other than as a person in prostitution or as a patron thereof, and with intent to cause prostitution, he or she directly engages in conduct that facilitates an act or enterprise of prostitution.”

<sup>24</sup> N.Y. Penal Law § 230.34-A(2)(b) defines “profits from prostitution” as “when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, and with intent to facilitate prostitution, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates in the proceeds of prostitution activity.”



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

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1. N.Y. Penal Law § 230.06 (Patronizing a person for prostitution in the first degree) states,

A person is guilty of patronizing a person for prostitution in the first degree when:

1. He or she patronizes a person for prostitution<sup>25</sup> and the person patronized is less than eleven years old; or
2. Being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old.

Patronizing a person for prostitution in the first degree is a class D felony.

A class D felony sex offense<sup>26</sup> is punishable by imprisonment for 2–7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iii), 80.00(1).

2. N.Y. Penal Law § 230.05 (Patronizing a person for prostitution in the second degree) states,

A person is guilty of patronizing a person for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution<sup>27</sup> and the person patronized is less than fifteen years old.

Patronizing a person for prostitution in the second degree is a class E felony.

A class E felony sex offense<sup>28</sup> is punishable by imprisonment for 1 ½–4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iv), 80.00(1).

3. N.Y. Penal Law § 230.08(1) (Patronizing a person for prostitution in a school zone) states,

A person is guilty of patronizing a person for prostitution in a school zone when, being twenty-one years old or more, he or she patronizes a person for prostitution<sup>29</sup> and the person patronized is less than eighteen years old at a place that he or she knows, or reasonably should know, is in a school zone.

....

Patronizing a person for prostitution in a school zone is a class E felony.

A class E felony is punishable by imprisonment for up to 4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(e), (3)(b), (4), 80.00(1).

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- <sup>25</sup> N.Y. Penal Law § 230.02(1) (Patronizing a person for prostitution; definitions) states,

A person patronizes a person for prostitution when:

- (a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or
- (b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him or her; or
- (c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

<sup>26</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.06.

<sup>27</sup> See *supra* note 25 for the definition of “patronizes a person for prostitution.”

<sup>28</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.05.

<sup>29</sup> See *supra* note 25 for the definition of “patronizes a person for prostitution.”

4. N.Y. Penal Law § 230.13 (Aggravated patronizing a minor for prostitution in the first degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the first degree when he or she patronizes a person for prostitution<sup>30</sup> and the person patronized is less than eleven years old, or being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old, and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the first degree is a class B felony.

A class B felony sex offense<sup>31</sup> is punishable by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(i), 80.00(1).

5. N.Y. Penal Law § 230.12 (Aggravated patronizing a minor for prostitution in the second degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution<sup>32</sup> and the person patronized is less than fifteen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the second degree is a class D felony.

A class D felony sex offense<sup>33</sup> is punishable by imprisonment for 2–7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iii), 80.00(1).

6. N.Y. Penal Law § 230.11 (Aggravated patronizing a minor for prostitution in the third degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the third degree when, being twenty-one years old or more, he or she patronizes a person for prostitution<sup>34</sup> and the person patronized is less than seventeen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the third degree is a class E felony.

A class E felony sex offense<sup>35</sup> is punishable by imprisonment for 1 ½–4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iv), 80.00(1).

7. N.Y. Penal Law § 230.32 (Promoting prostitution in the first degree) states,

A person is guilty of promoting prostitution in the first degree when he or she:

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<sup>30</sup> See *supra* note 25 for the definition of “patronizes a person for prostitution.”

<sup>31</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.13.

<sup>32</sup> See *supra* note 25 for the definition of “patronizes a person for prostitution.”

<sup>33</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.12.

<sup>34</sup> See *supra* note 25 for the definition of “patronizes a person for prostitution.”

<sup>35</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.05.

1. knowingly advances<sup>36</sup> or profits from prostitution<sup>37</sup> of a person less than thirteen years old; or
2. being twenty-one years old or more, he or she knowingly advances or profits from prostitution of a person less than fifteen years old.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

8. N.Y. Penal Law § 230.30(2) (Promoting prostitution in the second degree) states,

A person is guilty of promoting prostitution in the second degree when he or she knowingly:

....

2. Advances<sup>38</sup> or profits from prostitution<sup>39</sup> of a person less than eighteen years old.

Promoting prostitution in the second degree is a class C felony.

A class C felony is punishable by imprisonment for 1–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(c), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class C felony sex offense by imprisonment for 3 ½–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(ii), 80.00(1).

9. N.Y. Penal Law § 230.25 (Promoting prostitution in the third degree) states,

A person is guilty of promoting prostitution in the third degree when he or she knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or

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<sup>36</sup> N.Y. Penal Law § 230.15(1) (Promoting prostitution; definitions of terms) defines “advance prostitution” as

when, acting other than as a person in prostitution or as a patron thereof, he or she knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

<sup>37</sup> N.Y. Penal Law § 230.15(2) defines “profit from prostitution” as

when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

<sup>38</sup> See *supra* note 36 for the definition of “advance prostitution.”

<sup>39</sup> See *supra* note 37 for the definition of “profit from prostitution.”

2. Advances<sup>40</sup> or profits from prostitution<sup>41</sup> of a person less than nineteen years old.  
Promoting prostitution in the third degree is a class D felony.

A class D felony is punishable by imprisonment for up to 7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(d), (3)(b), (4), 80.00(1).

10. N.Y. Penal Law § 230.33 (Compelling prostitution) states,

A person is guilty of compelling prostitution when, being eighteen years old or more, he or she knowingly advances prostitution by compelling a person less than eighteen years old, by force or intimidation, to engage in prostitution.

Compelling prostitution is a class B felony.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

11. N.Y. Penal Law § 120.70 (Luring a child) states,

1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 [Sentence of imprisonment for a violent felony offense] of this chapter; . . . an offense as defined in sections 230.30 [Promoting prostitution in the second degree], 230.33 [Compelling prostitution], . . . or 230.34-a [Sex trafficking of a child] of this chapter; . . . or an offense as defined in sections 263.05 [Use of a child in a sexual performance], 263.10 [Promoting an obscene sexual performance], or 263.15 [Promoting a sexual performance by a child] of this chapter. For purposes of this subdivision “child” means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.

2. Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense of luring a child in violation of this section shall be deemed respectively, a class C felony or class D felony.

A class E felony is punishable by imprisonment for up to 4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(e), (3)(b), (4), 80.00(1). A class D felony is punishable by imprisonment for up to 7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(d), (3)(b), (4), 80.00(1). A class C felony is punishable by imprisonment for 1–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(c), (3)(b), 80.00(1).

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<sup>40</sup> See *supra* note 36 for the definition of “advance prostitution.”

<sup>41</sup> See *supra* note 37 for the definition of “profit from prostitution.”