

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 Tennessee’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.

Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) expressly applies to buyers of commercial sex with any minor based on the term “purchases.” It states, “A person commits the offense of trafficking a person for a commercial sex act who . . . [r]ecruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act.”<sup>1</sup> Further, following federal precedent, Tenn. Code Ann. § 39-13-309(a) could apply to buyers based on the term “obtains.”<sup>2</sup>

<sup>1</sup> Tenn. Code Ann. § 39-13-301(4) (Definitions) defines “commercial sex act” as follows:

- (A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or
- (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

<sup>2</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly

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

Tennessee law criminalizes both purchasing and soliciting commercial sex with a minor. Specifically, Tenn. Code Ann. § 39-13-514(a) (Patronizing prostitution) states,

A person commits an offense under this section:

- (1) Who patronizes prostitution;<sup>3</sup> or
- (2) When a person patronizes prostitution where the subject of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.

Further, Tenn. Code Ann. § 39-13-528(a)(10), (11) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- .....
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
  - (11) Patronizing prostitution, pursuant to § 39-13-514;

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

Tennessee’s CSEC laws address an array of trafficker conduct. Pursuant to Tenn. Code Ann. § 39-13-515(a) (Promoting prostitution),

A person commits an offense under this section:

- (1) Who promotes prostitution;<sup>4</sup> or

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states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” Id. at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>3</sup> Tenn. Code Ann. § 39-13-512(3) (Prostitution – Definitions) defines “patronizing prostitution” as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.”

<sup>4</sup> Tenn. Code Ann. § 39-13-512(4), (5) (Prostitution –Definitions) defines “promoting prostitution” and “promoting prostitution of a minor” as follows:

- (4)
  - (A) “Promoting prostitution” means:

(2) Who promotes prostitution where the subject of the offense is a law enforcement officer or is a law enforcement officer eighteen (18) years of age or older posing as a minor.

Further, Tenn. Code Ann. § 39-13-528(a)(10), (12) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- . . . .
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- . . . .
- (12) Promoting prostitution, pursuant to § 39-13-515; or

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

Tennessee law expressly prohibits a mistake of age defense in certain prosecutions for CSEC but not child sex trafficking. Pursuant to Tenn. Code Ann. § 39-11-502(c) (Ignorance or mistake of fact), “It shall not be a defense to prosecution for a violation of § 39-13-514 [Patronizing prostitution] . . . that the person charged was ignorant or mistaken as to the age of a minor.” However, Tennessee’s other CSEC offenses are silent regarding the permissibility of the defense.

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

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

Tennessee’s child sex trafficking law expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) states,

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- (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
  - (ii) Procuring an inmate for a house of prostitution;
  - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
  - (iv) Soliciting a person to patronize a prostitute;
  - (v) Procuring a prostitute for a patron; or
  - (vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)-(v); and
- (B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:
- (i) The person promoting the prostitute and the prostitute being promoted are the same person; and
  - (ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion;
- (5) “Promoting prostitution of a minor” means engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age . . . .

A person commits the offense of trafficking a person for a commercial sex act who:

- (1) Knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person's provision of a commercial sex act;
- (2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act; or
- (3) Commits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.

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

Tennessee's trafficking chapter expressly allows for business entity liability but does not provide for a business-specific penalty scheme. Pursuant to Tenn. Code Ann. § 39-13-311 (Violations by corporations),

A corporation may be prosecuted for a violation of §§ 39-13-308 [Trafficking for forced labor or services] and 39-13-309 [Trafficking for commercial sex act] for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent's employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

Despite allowing for business entity liability, Tenn. Code Ann. § 39-13-311 does not establish penalties specific to those entities, meaning businesses are subject to penalties that are most pertinent to individuals.

- 1.6.1      Recommendation: Amend Tenn. Code Ann. § 39-13-311 (Violations by corporations) to provide for a business-specific penalty scheme.

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

A percentage of financial penalties, including asset forfeiture, paid by convicted CSEC offenders, but not by convicted trafficking offenders, is statutorily required to be directed into a victim services fund. Tenn. Code Ann. § 39-13-530(a)(1) (Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors) provides for forfeiture of “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual offenses],” including violations of Tenn. Code Ann. § 39-13-514 (Patronizing prostitution), Tenn. Code Ann. § 39-13-515 (Promoting prostitution), and Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor), which is committed “against a person under eighteen (18) years of age and was committed on or after July 1, 2006.”

Disposition of property forfeited under Tenn. Code Ann. § 39-13-530(a)(1) is governed by Tenn. Code Ann. § 39-13-530(b), which states, “The proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.”

Pursuant to Tenn. Code Ann. § 39-13-530(c)–(i), proceeds deposited into the Child Abuse Fund shall be used for the following purposes:

- (c) The general assembly shall appropriate, through the general appropriations act, fifty percent (50%) of the moneys from the child abuse fund to the department of finance and administration for the child

advocacy center fund to be used for child advocacy centers. The appropriations shall be specifically earmarked for the purposes set out in subsection (d).

(d) All moneys appropriated from the child advocacy center fund shall be used exclusively by the department to provide grants to child advocacy centers . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel in child advocacy centers.

(e) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the court appointed special advocate (CASA) fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (f).

(f) All moneys appropriated from the CASA fund shall be used exclusively by the department to provide grants to CASA programs . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel and volunteers in CASA programs.

(g) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the child abuse prevention fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (h).

(h) All moneys appropriated from the child abuse prevention fund shall be used exclusively by the department to provide a grant to Prevent Child Abuse Tennessee . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel to plan and carry out a comprehensive statewide child abuse prevention program that includes emphasis on primary and secondary prevention strategies and includes evaluation strategies to assess the effectiveness of prevention activities.

(i) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall collaborate with each other and also with the department of children's services, the department of children's services' child abuse prevention advisory committee, the child sexual abuse task force established by § 37-1-603(b)(1), the commission on children and youth, the governor's office of children's care coordination, and other appropriate state and local service providers in the planning and implementation of multi-disciplinary, multi-agency approaches to address child abuse, including primary, secondary and tertiary child abuse prevention, investigation and intervention in child abuse cases, and needed treatment and timely permanency for victims of child abuse.

Further, Tenn. Code Ann. § 40-33-101(a) (Conveyances subject to forfeiture) provides for discretionary forfeiture of any “conveyance, including vehicles, aircraft or vessels . . . used in the commission of . . . [a]ny offense under title 39, chapter 13, part 5 [Sexual offenses].” Disposition of property forfeited under Tenn. Code Ann. § 40-33-101(a) is governed by Tenn. Code Ann. § 40-33-110 (Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance), which states that forfeited assets “shall inure to the benefit of the county in which the goods were seized . . . ; provided, that the forfeited conveyance or the funds derived from the confiscated goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes . . . . In all other cases, the proceeds shall be transmitted to the state treasurer and deposited in the state treasury.” Notably, however, Tenn. Code Ann. § 40-33-110 does not direct a percentage of these forfeited assets into a victim services fund.

Lastly, Tenn. Code Ann. § 39-11-703(b), (c) (Criminal proceeds subject to forfeiture) provides for forfeiture in trafficking cases, stating,

(b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:

. . . .



- (2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.
- (c) The following items are subject to judicial forfeiture as provided in this part:
- (1) Conveyances, including aircraft, motor vehicles, and other vessels when used or intended to be used in connection with a violation of . . . 39-13-309 [Trafficking for commercial sex act] committed on or after July 1, 2011;
  - (2) Books, records, telecommunication equipment, or computers when used or intended to be used in connection with a violation of 39-13-309 committed on or after July 1, 2011;
  - (3) Money or weapons when used or intended to be used in connection with a violation of . . . 39-13-309 committed on or after July 1, 2011;
  - (4) Real property when used or intended to be used in connection with a violation of . . . 39-13-309 committed on or after July 1, 2011;
  - (5) Everything of value furnished, or intended to be furnished, in exchange for an act in violation of . . . 39-13-309 committed on or after July 1, 2011, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate the violation;
  - (6) Any property, real or personal, directly or indirectly acquired by or received in violation of such violation or as an inducement to violate such statutes, or any property traceable to the proceeds from the violation; and
  - (7) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of . . . 39-13-309 committed on or after July 1, 2011.

Disposition of property forfeited under Tenn. Code Ann. § 39-11-703(b), (c) is governed by Tenn. Code Ann. § 39-11-713 (Disposition of forfeited property), which provides first for the sale of the property and then use of sale proceeds for expenses incurred. Tenn. Code Ann. § 39-11-713(a). The court shall award the remainder of the funds to the state general fund if a state agency seized the property. Tenn. Code Ann. § 39-11-713(b)(1). If the state was not the seizing entity, the proceeds will be dispersed to the state treasurer or a local government. Tenn. Code Ann. § 39-11-713(b)(2), (b)(3). However, a percentage of these forfeited assets is also not directed into a victim services fund.

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



## ISSUE 2: Identification of & Response to Victims

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**Policy Goal 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) expressly applies to buyers of commercial sex with a minor based on the term “purchases,”<sup>5</sup> meaning a buyer can be charged regardless of whether a trafficker is involved or identified. As such, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

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

Tennessee law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

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

Tennessee 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.

Tennessee 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.

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<sup>5</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Tenn. Code Ann. § 39-13-309.

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

Tennessee law clearly prohibits the prosecution of minors for prostitution offenses; however, state law contemplates the limited use of detention for investigative purposes and the possibility of charging minors engaged in commercial sex with prostitution. Tenn. Code Ann. § 39-13-513 (Prostitution – Defenses) states,

(a) A person commits an offense under this section who engages in prostitution.

....

(d) Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person is immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline, notify the department of children's services, and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

Consequently, while Tennessee law fails to prohibit the limited use detention or potential use of charges in response to commercially sexually exploited children under Tenn. Code Ann. § 39-13-513, statutory protections safeguard minors from prosecution for prostitution offenses.

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

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

Tennessee 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.

Tennessee law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

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



**Policy Goal 2.8**

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

Tennessee law allows child sex trafficking victims to assert self-defense, providing an exception to requirements that the person not be engaged in conduct that would constitute a felony or Class A misdemeanor at the time they used force against another. Pursuant to Tenn. Code Ann. § 39-11-611(b)–(d)(3) (Self-defense),

- (b)
  - (1) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.
  - (2) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury, if:
    - (A) The person has a reasonable belief that there is an imminent danger of death, serious bodily injury, or grave sexual abuse;
    - (B) The danger creating the belief of imminent death, serious bodily injury, or grave sexual abuse is real, or honestly believed to be real at the time; and
    - (C) The belief of danger is founded upon reasonable grounds.
  - (3) For purposes of this subsection (b), a person is not engaged in conduct that would constitute a felony or Class A misdemeanor or in a place where the person does not have a right to be if the person is engaged in the activity or in the place due to the person's status as a victim of human trafficking. The person must prove the person's status as a victim of human trafficking by clear and convincing evidence. The person may provide clear and convincing evidence of the person's status as a victim of human trafficking through testimony.
- (c) Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest, when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, business, dwelling or vehicle, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.
- (d) The presumption established in subsection (c) shall not apply, if:
  - .....
  - (3)
    - (A) Notwithstanding § 39-17-1322, the person using force is engaged in conduct that would constitute a felony or Class A misdemeanor or is using the dwelling, business, residence, or occupied vehicle to further an unlawful activity;
    - (B) For purposes of subdivision (d)(3)(A), a person is not engaged in conduct that would constitute a felony or Class A misdemeanor or using a dwelling, business, residence, or occupied vehicle to further unlawful activity if the person is engaged in the activity or using the dwelling, business, residence, or occupied vehicle due to the person's status as a victim of human trafficking. The person must prove the person's status as a victim of human trafficking by clear and convincing evidence. The person may provide clear and convincing evidence of the person's status as a victim of human trafficking through testimony; or

However, because Tenn. Code Ann. § 39-11-611(b)–(d)(3) does not broadly provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their victimization, some victims would not benefit from this protection.

- 2.8.1 Recommendation: Strengthen existing law to provide child sex trafficking victims with an affirmative defense to all violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.9** Juvenile court jurisdiction aligns with international human rights standards.

Tennessee law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Tennessee law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for jurisdictional purposes, requires direct file for minors previously transferred to and convicted or who pled guilty in criminal court, and fails to require courts to consider the impact of trauma or past victimization in making discretionary transfer determinations.

	<b>Minimum Age for Juvenile Court Jurisdiction</b>	<b>Maximum Age for Charging a Minor in Juvenile Court</b>	<b>Automatic Transfers or Direct File</b>	<b>Discretionary Transfers</b>	<b>Requirement for Court to Consider Trauma or Past Victimization</b>
<b>Summary</b>	None “Child” is defined as, “a person under eighteen (18) years of age . . . .”	17	Yes. Minors previously transferred to and adjudicated in criminal court in a prior matter.	Yes. Minors: (1) under 14 years of age charged with 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder or attempted murder; (2) 14-16 years of age charged with 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder, rape or aggravated rape, rape of a child or aggravated rape of a child, aggravated robbery or burglary, kidnapping or aggravated kidnapping, terrorism, carjacking, or the attempt of any; (3) 16+ years of age charged with robbery or attempted robbery; or (4) 17 years of age.	No.
<b>Relevant Statute(s)</b>	Tenn. Code Ann § 37-1-102(b)(5) (Chapter and part definitions)	Tenn. Code Ann § 37-1-102(b)(5) (Chapter and part definitions)	Tenn. Code Ann. § 37-1-134(c) (Transfer from juvenile court)	Tenn. Code Ann. § 37-1-134(a)(1)(A) (Transfer from juvenile court)	Tenn. Code Ann. § 37-1-134(b) (Transfer from juvenile court)

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

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

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

Tennessee’s child protection statutes define child abuse to include child sex trafficking and commercial sexual exploitation of children. Specifically, Tenn. Code Ann. § 37-1-102(b)(27)(C) (Chapter and part definitions) defines “severe child abuse,” in part, as follows:

The commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act] . . . § 39-13-515 [Promoting prostitution] . . . or the knowing failure to protect the child from the commission of any such act towards the child . . . .

Further, Tenn. Code Ann. § 37-1-602(a)(3)(C)(vi), (vii) (Part definitions – Harm to child’s health or welfare) defines “child sexual abuse,” in part, as follows:

- (vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
  - (a) Solicit for or engage in prostitution; or
  - (b) Engage in an act prohibited by § 39-17-1003; and
- (vii) The commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act] . . . .

**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.

Tennessee allows for a child welfare response to non-familial child sex trafficking victims through the definition of “caregiver” but does not statutorily provide a specialized protocol for responding to child sex trafficking cases involving a non-familial trafficker.

While the definition of “dependent and neglected child” under Tenn. Code Ann. § 37-1-102(b)(13) is limited to the acts of “a parent, relative, guardian or caretaker,”<sup>6</sup> the definition of caretaker expressly includes traffickers. Pursuant to Tenn. Code Ann. § 37-1-102(b)(4),

“Caregiver” may also include a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor or trafficking a minor for a commercial sex act, including, but not limited to, as a trafficker. For purposes of this chapter, “caregiver” and “caretaker” shall have the same meaning . . . .

- 2.11.1 Recommendation: Strengthen existing law to statutorily outline a child sex trafficking-specific protocol for child welfare to respond to non-familial child sex trafficking cases without hinging on caregiver fault.

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<sup>6</sup> Pursuant to Tenn. Code Ann. § 37-1-102(b)(1), “‘Abuse’ exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker.”



## ISSUE 3: Continuum of Care

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

Although Tennessee law requires a commercially sexually exploited child to be referred to a child-serving entity, that entity is not mandated to provide that child with access to specialized services. Pursuant to Tenn. Code Ann. § 39-13-513(d) (Prostitution - defenses),

Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person is immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline, notify the department of children's services, and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

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

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

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse MDT, Tennessee law does not require an MDT response specific to child sex trafficking cases. Tenn. Code Ann. § 9-4-213(a)(3)–(6) (State appropriations for child advocacy centers) summarizes the cross collaboration between agencies to provide services to victims of child abuse,

Except as otherwise provided in subsection (b), on and after July 1, 1998, no state funds appropriated specifically for child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

.....

- (3) Has a signed memorandum of understanding and working protocol executed among:
- (A) The department of children's services;
  - (B) All county and municipal law enforcement agencies within the geographical area served by the center;
  - (C) All district attorneys general offices within the geographical area served by the center; and
  - (D) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the geographical area served by the center;
- (4) Facilitates the use of a multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly:
- (A) Assess victims of child abuse and their families; and
  - (B) Determine the need for services;

- (5) Provides a facility that is child-focused, neutral, comfortable, private, and safe, where the multidisciplinary team can meet to coordinate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;
- (6) Provides for the provision of needed services, referral to such services, and case tracking;

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.

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

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

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

Tennessee law extends foster care services to youth under 24 years of age. This meets the standard set by federal law, which provides that these services should be extended to youth under 23 years of age.<sup>7</sup>

Pursuant to Tenn. Code Ann. § 37-1-102(G) (Chapter and part definitions) and Tenn. Code Ann. § 37-2-417 (Tennessee’s transitioning youth empowerment act of 2010), “A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417,” which provides,

(b)The department of children's services is authorized to develop a program to provide services to youth who are transitioning to adulthood from state custody. Services may be provided on a voluntary basis to any person who is at least eighteen (18) years of age but less than twenty-one (21) years of age, who was in the custody of the department at the time of the person's eighteenth birthday . . . .

(c) Services may also be made available to any person who meets the requirements of subsection (b) but refused such services at the time of the person's eighteenth birthday if at any time the person seeks to regain services prior to the person's twenty-first birthday.

Tenn. Code Ann. § 37-2-603 (Establishment of resource centers to provide or facilitate assistance) extends foster care services to persons from 16 to 24 years of age, stating,

(a) The private, nonprofit community is urged to establish a network to provide information, assistance, services and supports to persons from sixteen (16) to twenty-four (24) years of age who were in foster care on the person's eighteenth birthday and persons from sixteen (16) to twenty-four (24) years of age who have been in foster care at any time after the person's fourteenth birthday.

(b) The resource centers shall provide or facilitate the assistance necessary to:

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<sup>7</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 the need to extend child welfare protections to youth under 24 years of age.



- (1) Deal with the challenges and barriers associated with the transition into adulthood and early adult years;
  - (2) Support post-secondary education, vocational training and job skills development for such person;
  - (3) Find and retain employment, housing, transportation, parenting and family support, health care and mental health care; and
  - (4) Navigate systems and procedures that impact the person's education, employment, health and mental welfare and basic needs.
- (c) These services shall be available at any time until the person reaches twenty-four (24) years of age regardless of whether the youth elects to remain in a voluntary extension of foster care arrangement with the department or the youth chooses to terminate any relationship with the state.

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

2021 Legislative Session				
Bill	Recipient	Amount	Intended Purpose	Term
SB 912	End Slavery Tennessee	\$3,500,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 912	Her Song/Tim Tebow Foundation	\$1,200,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 912	Tennessee Anti-Slavery Alliance	\$600,000	To provide grants to two single point of contact agencies in Tennessee recognized by the Tennessee Bureau of Investigation and the Department of Children's Services to facilitate the provision of comprehensive wraparound services to victims of human trafficking recovered in Tennessee. The services funded in this item shall include, but not be limited to, safe housing, medical care, mental health and substance abuse care, transportation, job training, and other basic human needs. The grants shall be distributed in equal amounts to the following agencies: (a) Grow Free Tennessee in Knoxville, and (b) Restore Corps in Memphis.	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>

SB 912	Thistle Farms	\$100,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring) July 1 <sup>st</sup> -June 30 <sup>th</sup>
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**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 Tennessee 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 Tennessee law, this protection is not expressly available to victims of child sex trafficking and CSEC.<sup>8</sup>

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

### **Policy Goal 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

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

For purposes of accessing crime victims' compensation, Tenn. Code Ann. § 29-13-102(13) (Definitions) defines a victim" as "a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in § 29-13-104." Tenn. Code Ann. § 29-13-104(1) (Offenses to which compensation applies) includes "[a]n act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime under state or federal law," with the exception of certain vehicular offenses.

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Tenn. Code Ann. § 29-13-108(a) (Claims for compensation – Procedure),

A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime<sup>9</sup> upon which the claim is based . . . ; provided, that upon good cause shown,<sup>10</sup> the time period for filing such claim may be extended either before or after the expiration of the filing period. No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, or a member of the victim's family, to the proper authorities; and in no case may an award be made where the law enforcement records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless, for good cause shown,<sup>11</sup> it is found that the delay was justified . . .

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<sup>8</sup> Notably, Tenn. Code Ann. § 36-3-627 (Lifetime order of protection) allows a trafficking survivor to obtain a lifetime order of protection against their exploiter. However, such protection is dependent on the successful prosecution of the exploiter and does not provide survivors with emergency relief.

<sup>9</sup> Tenn. Code Ann. § 29-13-108(a) does provide an exception to this filing deadline for victims of certain sexual offenses; however, victims of child sex trafficking and CSEC are not included.

<sup>10</sup> Tenn. Code Ann. § 29-13-108 does not explain what constitutes "good cause" for purposes of extending filing deadlines.

<sup>11</sup> Tenn. Code Ann. § 29-13-108(a) clarifies what constitutes "good cause" for purposes of the reporting requirement, stating,

Further, Tenn. Code Ann. § 29-13-103(a)(4) (Burden of proof – Documentation) requires the victim to prove they “fully cooperated with the police and the district attorney general in the investigation and prosecution of the offender.”

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

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

Although Tennessee law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Specifically, Tenn. Code Ann. § 40-32-105 (Expungement of person’s public records involving offenses related to status as victim of human trafficking) allows trafficking victims to petition for expungement, and expungement results in vacatur. Pursuant to Tenn. Code Ann. § 40-32-105(a)–(i)(4),

- (a) Notwithstanding § 40-32-101 [Destruction or release of records], a person may file a petition for expunction of that person's public records involving offenses related to the person's status as a victim of human trafficking.
- (b) In order to be eligible for expunction pursuant to this section, the petitioner must meet the following requirements:
  - (1) At the time of the filing of the petition for expunction at least one (1) year has elapsed since the completion of the sentence imposed for the petitioner's most recent criminal offense;
  - (2) The petitioner has fulfilled the following requirements of the sentence imposed by any court in which the individual was convicted of an offense:
    - (A) Completion of any term of imprisonment or probation;
    - (B) Meeting all conditions of supervised or unsupervised release; and
    - (C) If so required by the conditions of any of the sentences imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year;
  - (3) The petitioner has not been convicted of any criminal offense during the one (1) year prior to filing the petition and is not subject to any pending criminal charges;
  - (4) At least one (1) of the convictions to be expunged was for prostitution, as prohibited by § 39-13-513 [Prostitution – Defenses];
  - (5) The petitioner has not had public records previously expunged pursuant to this section;
  - (6) The convictions to be expunged:
    - (A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;
    - (B) Did not involve the use or possession of a deadly weapon; and
    - (C) Are individually eligible for expunction under § 40-32-101(g) [Destruction or release of records]; and

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Failure of the victim to report a crime because:

- (1) The victim is physically unable;
  - (2) The victim is a victim of sexual assault; or
  - (3) The victim is a victim of domestic abuse;
- may all constitute good cause.

(7) Each of the convictions to be expunged resulted from the petitioner's status as a victim of human trafficking, under § 39-13-314 [Offense of human trafficking]. The petitioner may provide evidence of this requirement by testimony or affidavit. This subdivision (b)(7) does not require a conviction for an offense of which the petitioner was the victim. Any offense to be expunged must have occurred on or after the date on which the petitioner became a victim of human trafficking, as determined by the court.

....

(e) If the court determines that the petitioner meets the requirements of subsection (b) and that the expunction is in the best interests of justice and public safety, the court shall order the person's records involving convictions resulting from the person's status as a victim of human trafficking expunged.

....

(i)

(1) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this section entitles the petitioner to have all public records of the expunged convictions destroyed in the manner set forth in this section.

(2) An expunction granted pursuant to this section has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial, and conviction for the expunged offenses. Once the expunction order is granted, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.

....

(4) As used in this section, expunction means, in contemplation of law, the conviction for the expunged offenses never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of the criminal offenses that were expunged.

However, Tenn. Code Ann. § 40-32-105 applies to specifically to “convictions,” and Tenn. Code Ann. § 37-1-133 (Order of adjudication – Noncriminal) states, “An order of disposition or other adjudication in a proceeding under this part [Juvenile Courts and Proceedings – General Provisions] is not a conviction of crime . . . .” Accordingly, relief under Tenn. Code Ann. § 40-32-105 would be unavailable for delinquency adjudications.

Further, Tenn. Code Ann. § 40-32-105(4), (6) limits the types of crimes that are eligible for vacatur, which fails to recognize the array and type of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

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

Tennessee law requires offenders convicted of child sex trafficking and certain CSEC offenses to pay restitution. Pursuant to Tenn. Code Ann. § 39-11-118(b) (Restitution to victims of crime),

In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection (b) that the defendant be sentenced by the court to pay restitution to the victim or victims of §§ 39-13-309 [Trafficking for commercial sex], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Especially aggravated sexual exploitation], 39-13-528(a) [Solicitation of person under 18 years of age], and 39-13-529(a) [Solicitation of minor to observe sexual conduct] in accordance with §§ 40-35-104(c)(2) [Alternative sentences] and 40-35-304 [Restitution; amount; definitions; waiver; procedure].



Further, Tenn. Code Ann. § 39-13-314(a), (c) (Offense of human trafficking) enumerates various costs and losses that can be covered by a restitution order if the case involved a “human trafficking offense.” It states,

- (a) As used in this part, unless the context otherwise indicates:
  - (1) “Human trafficking offense” means the commission of any act that constitutes the criminal offense of:
    - (A) Involuntary labor servitude, under § 39-13-307;
    - (B) Trafficking persons for forced labor or services, under § 39-13-308;
    - (C) Trafficking for commercial sex act, under § 39-13-309; or
    - (D) Promoting the prostitution of a minor, under § 39-13-512; and
  - (2) “Trafficked person” means a victim of a human trafficking offense.
- ....
- (c) Restitution under this section shall include items covered by the criminal injuries compensation fund under § 40-24-107 and any of the following, if not already covered by the court's restitution order:
  - (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
  - (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;
  - (3) Attorney's fees and other court-related costs such as victim advocate fees;
  - (4) The greater of:
    - (A) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) (compiled in 29 U.S.C. § 201 et seq.), or state equivalent; or
    - (B) The gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation;
  - (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
  - (6) Compensation for emotional distress, pain, and suffering;
  - (7)
    - (A) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items;
    - (B) Expenses incurred pursuant to subdivision (c)(7)(A) shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
  - (8) Repatriation of the victim to the victim's home country, if applicable; and
  - (9) Any and all other losses suffered by the victim as a result of human trafficking offenses.

Restitution is available more generally to victims of other crimes pursuant to Tenn. Code Ann. § 39-11-118(a); however, restitution under Tenn. Code Ann. § 39-11-118(a) is discretionary. It states,

In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with §§ 40-35-104(c)(2) [Sentencing alternatives] and 40-35-304 [Restitution as condition for probation – Petition to modify – Civil judgment for non-payment – Procedure].

## EXTRA CREDIT



Tennessee law expressly mandates restitution for victims of child labor trafficking under Tenn. Code Ann. § 39-13-314(a), (c).

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

Tennessee law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Tenn. Code Ann. § 39-13-314(a), (b) (Offense of human trafficking) states,

- (a) As used in this part, unless the context otherwise indicates:
  - (1) “Human trafficking offense” means the commission of any act that constitutes the criminal offense of:
    - (A) Involuntary labor servitude, under § 39-13-307;
    - (B) Trafficking persons for forced labor or services, under § 39-13-308;
    - (C) Trafficking for commercial sex act, under § 39-13-309; or
    - (D) Promoting the prostitution of a minor, under § 39-13-512; and
  - (2) “Trafficked person” means a victim of a human trafficking offense.
- (b)
  - (1) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.
  - (2) A prevailing plaintiff is entitled to an award of attorney's fees and costs.

## EXTRA CREDIT



Tennessee law provides sex trafficked youth with a trafficking-specific civil remedy under Tenn. Code Ann. § 39-13-314(b) based on the definition of “human trafficking offense,” which includes sex trafficking regardless of the victim’s age.



Tennessee law provides child labor trafficking victims with a trafficking-specific civil remedy under Tenn. Code Ann. § 39-13-314(b) based on the definition of “human trafficking offense,” which includes labor trafficking.

**Policy Goal 4.6**

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

Child sex trafficking prosecutions may commence at any time; however, prosecutions for Tennessee’s CSEC offenses may be subject to a statute of limitation as are civil actions. Pursuant to Tenn. Code Ann. § 40-2-101(r) (Felonies), “Notwithstanding subsections (k) and (q), a person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2021, that constitutes the offense of trafficking for commercial sex act under § 39-13-309, at any time after the offense is committed.” Further, Tenn. Code Ann. § 40-2-101(k), (q) lengthens, and in some cases eliminates, the criminal statutes of limitation for Tennessee’s CSEC offenses, stating,

- (k)
  - (1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 [Trafficking for commercial sex act] . . . no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.
  - (2) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 [Patronizing prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.
  - (3)
    - (A) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 [Promoting prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.
    - (B) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

.....

- (q)
  - (1) Notwithstanding subsections (b), (g), (h), (i), (j), (k), or (m), prosecution for the following offenses, when committed against a minor under eighteen (18) years of age shall commence as provided by this subsection (q):
    - (A) Trafficking for a commercial sex act, as prohibited by § 39-13-309;
    - .....
    - (J) Patronizing prostitution, as prohibited by § 39-13-514;
    - (K) Promotion of prostitution, as prohibited by § 39-13-515;
    - .....
    - (O) Solicitation of a minor, as prohibited by § 39-13-528, when the offense is classified as a felony offense;
    - .....
  - (2) A person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:
    - (A) The victim was under thirteen (13) years of age at the time of the offense; or
    - (B)
      - (i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and
      - (ii) The victim reported the offense to another person prior to the victim attaining twenty-three (23) years of age.
  - (3)
    - (A) Except as provided in subdivision (q)(3)(B), a person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:
      - (i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and
      - (ii) The victim did not meet the reporting requirements of subdivision (q)(2)(B)(ii).

- (B) In order to commence prosecution for an offense listed in subdivision (q)(1) under the circumstances described in subdivision (q)(3)(A), at a date that is more than twenty-five (25) years from the date the victim becomes eighteen (18) years of age, the prosecution is required to offer admissible and credible evidence corroborating the allegations or similar acts by the defendant.
- (4) This subsection (q) applies to offenses:
  - (A) Committed on or after July 1, 2019; or
  - (B) Committed prior to July 1, 2019, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2019.

In contrast, Tenn. Code Ann. § 40-2-101(b) establishes the following general statutes of limitation for felony prosecutions:

Prosecution for a felony offense shall begin within:

- (1) Fifteen (15) years for a Class A felony;
- (2) Eight (8) years for a Class B felony;
- (3) Four (4) years for a Class C or Class D felony; and
- (4) Two (2) years for a Class E felony.

Regarding civil actions, Tenn. Code Ann. § 39-13-314 (Offense of human trafficking) does not specify a statute of limitation for filing a claim. Generally, personal tort actions must be commenced within the time periods prescribed by Tenn. Code Ann. § 28-3-104(a)(1)(A), (2) (Personal tort actions; actions against certain professionals), which states,

- (1) Except as provided in subdivision (a)(2), the following actions shall be commenced within one (1) year after the cause of action accrued:
  - (A) Actions for . . . injuries to the person . . . ;
  - . . . .
- (2) A cause of action listed in subdivision (a)(1) shall be commenced within two (2) years after the cause of action accrued, if:
  - (A) Criminal charges are brought against any person alleged to have caused or contributed to the injury;
  - (B) The conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year by:
    - (i) A law enforcement officer;
    - (ii) A district attorney general; or
    - (iii) A grand jury; and
  - (C) The cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct.

- 4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC regardless of the victim's age.



## 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.

Tennessee 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.

Tennessee law allows child sex trafficking victims who are under 14 years of age to testify by an alternative method. Specifically, Tenn. Code Ann. § 24-7-120 (Child's testimony – Closed circuit television) states,

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was thirteen (13) years of age or younger at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as "CCTV." Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

- (1) The particular child involved would be traumatized;
- (2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and
- (3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

....  
(d) This section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was thirteen (13) years of age or younger at the time the offense which gave rise to the criminal case was committed; provided, there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which this section applies are:

- (1) Aggravated sexual battery, as defined in § 39-13-504;
- (2) Rape of a child, as defined in § 39-13-522;
- (3) Incest, as defined in § 39-15-302;
- (4) Aggravated child abuse, as defined in § 39-15-402;
- (5) Kidnapping, as defined in § 39-13-303;
- (6) Aggravated kidnapping, as defined in § 39-13-304;
- (7) Especially aggravated kidnapping, as defined in § 39-13-305;
- (8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this subsection (e);
- (9) Trafficking for commercial sex act as defined in § 39-13-309; and
- (10) Patronizing prostitution as defined in § 39-13-514.

Notably, child victims who are 14 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>	Any victim of crime may have a crime victim advocate from a crime assistance program or a victim-witness coordinator present at any defense interviews with the victim. The role of the crime victim advocate or victim-witness coordinator is to provide emotional support to the victim. The position of victim-witness coordinator is established in each judicial district.	Not statutorily required.	State law provides child crime victims, including child sex trafficking, protections from the inclusion of certain identifying information in public court records, including: (1) home, work and email addresses; (2) phone numbers; (3) social security number; (4) photos or videos of the child; and (5) the child’s familial relationship, if any, to the defendant.
<b>Relevant Statute(s)</b>	Tenn. Code Ann. § 40-38-115 (Crime victim advocate); Tenn. Code Ann. § 8-7-206 (Victim-witness coordinator)	None.	Tenn. Code Ann. § 10-7-504(t)(1) (Confidential records – Exceptions)

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

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

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

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



## ISSUE 6: Prevention & Training

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

Tennessee law authorizes statewide, trafficking-specific training for child welfare agencies. Pursuant to Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking),

- (e)
  - (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
    - ....
    - (B) Department of children’s services;
    - ....
  - (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

Resultingly, training regarding child sex trafficking may be, or become, available to child welfare. However, Tennessee law does not clarify that individuals employed by child welfare agencies are required 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.

Tennessee law authorizes statewide, trafficking-specific training for juvenile justice agencies. Pursuant to Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking),

- (e)
  - (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
    - (A) Council of juvenile and family court judges, including juvenile court administrators, juvenile court youth services officers, and juvenile court probation officers;
    - (B) Department of children’s services;
    - ....

- (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

Resultingly, training regarding child sex trafficking may be, or become, available to juvenile justice agencies. However, Tennessee law does not clarify that individuals employed by juvenile justice agencies are required to receive such training.

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

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

Tennessee law mandates a one-time training on human trafficking for law enforcement officers;<sup>12</sup> however, officers are not required to receive ongoing in-service training on human trafficking. Pursuant to Tenn. Code Ann. § 38-6-114(a)–(c) (Course of instruction concerning human trafficking),

- (a) The Tennessee bureau of investigation shall, by January 1, 2016:
  - (1) Implement a course or courses of instruction, composed of live instruction, telecommunication, video or other medium, or any combination of methods, for the training of law enforcement officers and other government officials who are directly involved with human trafficking, including the investigation of and the intake of human trafficking complaints; and
  - (2) Develop recommended best practice uniform protocols and procedures for law enforcement response to human trafficking.
- (b)
  - (1) The course or courses of instruction and the guidelines shall emphasize:
    - (A) The dynamics and manifestations of human trafficking;
    - (B) Identifying and communicating with victims;
    - (C) Providing documentation that satisfies the peace officers standards and training (POST) commission requirements;
    - (D) Collaboration with federal law enforcement officials;
    - (E) Appropriate investigative techniques for the particular victim or victim type;
    - (F) The availability of civil and immigration remedies and community resources; and
    - (G) Protection of the victim.
  - (2) Where appropriate, the trainers shall include presentations by human trafficking experts with experience in the delivery of direct services to victims of human trafficking.
  - (3) Completion of the course may be satisfied by telecommunication, video recording, or other instruction presentation method where an instructor on site is not required.

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<sup>12</sup> Funding for trafficking-specific training is provided for under Tenn. Code Ann. § 39-13-312(c)(1) (Manner in which proceeds from forfeitures are distributed and used), which states,

The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

- (1) Twenty percent (20%) to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of the human trafficking laws . . . .

- (c)
  - (1) A law enforcement officer who is assigned field or investigative duties shall complete a minimum of two (2) hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subsection (b).
  - (2) An officer must complete the training hours required by subdivision (c)(1) by July 1, 2017, or within six (6) months from the officer's date of employment as a full-time law enforcement officer, whichever is later.

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.

Tennessee law mandates trafficking-specific training for prosecutors.<sup>13</sup> Pursuant to Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking),

- (e)
  - (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
    - ....
    - (I) District attorneys general conference;
    - ....
    - (K) Office of the attorney general and reporter;
    - ....
  - (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

Additional training may be available under Tenn. Code Ann. § 37-1-407 (Guidelines for child safety training programs), which states,

By January 1, 2019, the [Department of Children’s Services] shall develop instructional guidelines for child safety training programs for members of professions that frequently deal with children who may be at risk of abuse, which programs include the common signs of child abuse, human trafficking when a child is the

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<sup>13</sup> Funding for trafficking-specific training is provided for under Tenn. Code Ann. § 39-13-312(c)(2) (Manner in which proceeds from forfeitures are distributed and used), which states,

The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

- ....
- (2) Twenty percent (20%) to the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.

victim, and child sexual abuse; how to identify children at risk of abuse, human trafficking, or sexual abuse; and the reporting requirements of this part. The department shall work with each licensing board to ensure that any child safety training program created by a licensing board fully and accurately reflects the best practices for identifying and reporting child abuse, human trafficking when a child is the victim, and child sexual abuse as appropriate for each profession.

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

Tennessee law mandates trafficking-specific training for school personnel. Pursuant to Tenn. Code Ann. § 37-1-408 (Development of guidelines for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking of children – Annual child abuse training program for teachers),

(a) By January 1, 2019, the department of children’s services shall develop guidelines on the best practices for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child. The department of education shall use the guidelines to identify child abuse training programs appropriate for teachers. The programs identified by the department of education must train teachers on the common signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child; how to identify children at risk of abuse, sexual abuse, or human trafficking; maintenance of professional and appropriate relationships with students; and the requirements for reporting suspected child abuse and sexual misconduct.

(b) Beginning with the 2019-2020 school year, each LEA and each public charter school shall ensure its teachers complete a child abuse training program identified by the department of education pursuant to subsection (a), or a training program that meets the guidelines established by the department of children's services pursuant to subsection (a), as part of the teacher's annual in-service training. Each LEA and each public charter school shall annually report its compliance with this section to the department of education.

Tenn. Code Ann. § 49-6-3004(c)(1)(B) (School term) further provides,

Beginning with the 2021-2022 school year, each local board of education shall require that each teacher employed by the board receive, once every three (3) years, in-service training on the detection, intervention, prevention, and treatment of human trafficking in which the victim is a child, which must be accomplished through the viewing of a video recording approved by the LEA . . . .

Lastly, individuals employed by the Department of Education may receive training under Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking), which states,

(e)  
(1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:

. . . .

(C) Department of education;

. . . .

(2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.

(f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.



**Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.

Tennessee law mandates child sex trafficking prevention education in schools. Pursuant to Tenn. Code Ann. § 49-6-1304(a)(13)(B) (Family life instruction),

A family life curriculum shall, to the extent that the topic and the manner of communication is age-appropriate:<sup>14</sup>

.....

(13) Provide instruction on the detection, intervention, prevention, and treatment of:

.....

(B) Human trafficking in which the victim is a child. The instruction provided under this subdivision (a)(13)(B) must be accomplished through the viewing of a video recording approved by the LEA . . . .

Implementation of family life education is mandated under Tenn. Code Ann. § 49-6-1302(a), (b) (Curriculum for family life education \_ Curriculum on sex education or human sexuality in accordance with curriculum guidelines for family life education), which states,

(a)

(1) Beginning with the 2021-2022 school year, each LEA shall locally devise, adopt, and implement a program of family life education in conformance with the curriculum guidelines established for such programs by this part [Family life curriculum].

(2) Each LEA shall locally develop and adopt a family life curriculum in compliance with the requirements of this part, or shall adopt the family life curriculum adopted by the state board of education.

(b) The state board of education shall adopt a complete family life curriculum suitable for implementation by an LEA that fails to develop, adopt, and implement a local curriculum of family life under subsection

(a). A family life curriculum adopted by the state board under this subsection (b) must be in conformance with the curriculum guidelines established for such programs by this part.

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<sup>14</sup> Tenn. Code Ann. § 49-6-1301(4) (Part definitions) defines” age-appropriate” as “designed to teach concepts, information and skills based on the social, cognitive, emotional and experience level of most students as at particular age level.”

## State Laws Addressing Child Sex Trafficking

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1. Tenn. Code Ann. § 39-13-309(a), (c) (Trafficking for commercial sex act) states,
  - (a) A person commits the offense of trafficking a person for a commercial sex act who:
    - (1) Knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person's provision of a commercial sex act;<sup>15</sup>
    - (2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act; or
    - (3) Commits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.
  - ....
  - (c) A violation of subsection (a) is a Class B felony, except where the victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000') of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park, a violation of subsection (a) is a Class A felony.

A Class B felony is punishable by imprisonment for 8–30 years and a possible fine up to \$25,000. Tenn. Code Ann. § 40-35-111(b)(2) (Authorized terms of imprisonment and fines for felonies and misdemeanor). A Class A felony is punishable by imprisonment for 15–60 years and a possible fine up to \$50,000. Tenn. Code Ann. § 40-35-111(b)(1).

2. Tenn. Code Ann. § 39-13-311 (Violations by corporations) states,

A corporation may be prosecuted for a violation of . . . 39-13-309 [Trafficking for commercial sex act] for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent's employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

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<sup>15</sup> Tenn. Code Ann. § 39-13-301(4) (Definitions) defines “commercial sex act” as

- (A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or
- (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

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

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1. Tenn. Code Ann. § 39-13-514(a), (b) (Patronizing prostitution) states,
  - (a) A person commits an offense under this section:
    - (1) Who patronizes prostitution;<sup>16</sup> or
    - (2) When a person patronizes prostitution where the subject of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.
  - (b)  
.....
    - (3)
      - (A) Patronizing prostitution from a person who is younger than eighteen (18) years of age . . . is punishable as trafficking for commercial sex acts under § 39-13-309.
      - (B) Nothing in this subdivision (b)(3) shall be construed as prohibiting prosecution under any other applicable law.
2. Tenn. Code Ann. § 39-13-515(a), (c)(1) (Promoting prostitution) states,
  - (a) A person commits an offense under this section:
    - (1) Who promotes prostitution;<sup>17</sup> or
    - (2) Who promotes prostitution where the subject of the offense is a law enforcement officer or is a law enforcement officer eighteen (18) years of age or older posing as a minor.
  - .....
  - (c) Promoting prostitution is punishable as:
    - (1) Trafficking for a commercial sex act under § 39-13-309 if the person being promoted is less than eighteen (18) years of age . . . .
3. Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor) states,

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<sup>16</sup> Tenn. Code Ann. § 39-13-512(3) (Prostitution – Definitions) defines “patronizing prostitution” as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.”

<sup>17</sup> Tenn. Code Ann. § 39-13-512(4), (5) defines “promoting prostitution” and “promoting prostitution of a minor” as follows:

- (4)
  - (A) “Promoting prostitution” means:
    - (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
    - (ii) Procuring an inmate for a house of prostitution;
    - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
    - (iv) Soliciting a person to patronize a prostitute;
    - (v) Procuring a prostitute for a patron; or
    - (vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)-(v); and
  - (B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:
    - (i) The person promoting the prostitute and the prostitute being promoted are the same person; and
    - (ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion;
- (5) “Promoting prostitution of a minor” means engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age . . . .

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;
- (9) Sexual activity involving a minor, pursuant to § 39-13-529;
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515; or
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

.....

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.