

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 Texas’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.

Tex. Penal Code Ann. § 20A.02(a) (Trafficking of persons) expressly applies to buyers who engage in sexual conduct within a child; it states,

A person commits an offense if the person knowingly:

....

(7) traffics<sup>1</sup> a child<sup>2</sup> and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

- (A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
- (B) Section 21.11 (Indecency with a Child);
- (C) Section 22.011 (Sexual Assault);
- (D) Section 22.021 (Aggravated Sexual Assault);
- (E) Section 43.02 (Prostitution);
- (E-1) Section 43.021 (Solicitation of Prostitution);
- (F) Section 43.03 (Promotion of Prostitution);
- (F-1) Section 43.031 (Online Promotion of Prostitution);
- (G) Section 43.04 (Aggravated Promotion of Prostitution);
- (G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);
- (H) Section 43.05 (Compelling Prostitution);
- (I) Section 43.25 (Sexual Performance by a Child);
- (J) Section 43.251 (Employment Harmful to Children); or
- (K) Section 43.26 (Possession or Promotion of Child Pornography); or

<sup>1</sup> Tex. Penal Code § 20A.01(4) (Definitions) defines “traffic” as “to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.”

<sup>2</sup> Tex. Penal Code § 20A.01(1) defines “child” as “a person younger than 18 years of age.”

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

A buyer may also face charges under Tex. Penal Code Ann. § 20A.03(a) (Continuous trafficking of persons), which states, “A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] against one or more victims.”

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

Texas law criminalizes both purchasing and soliciting commercial sex with a minor. Pursuant to Tex. Penal Code Ann. § 43.021(a) (Solicitation of prostitution), “A person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.”

Further, Tex. Penal Code Ann. § 15.031(b), (f) (Criminal solicitation of a minor) states,

(b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or disabled individual], 21.11 [Indecency with a child], 22.011 [Sexual assault], 22.021 [Aggravated sexual assault], 43.02 [Prostitution], 43.021 [Solicitation of prostitution], 43.05(a)(2) [Compelling prostitution], or 43.25 [Sexual performance by a child] be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

....

(f) In this section, “minor” means an individual younger than 17 years of age.

Lastly, under Tex. Penal Code Ann. § 21.02(b) (Continuous sexual abuse of young child or disabled individual),

A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse,<sup>3</sup> regardless of whether the acts of sexual abuse are committed against one or more victims; and

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<sup>3</sup> Tex. Penal Code Ann. § 21.02(c) defines “act of sexual abuse” as follows:

[A]ny act that is a violation of one or more of the following penal laws:

- (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
- (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;
- (3) sexual assault under Section 22.011;
- (4) aggravated sexual assault under Section 22.021;
- (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)—(4);
- (6) sexual performance by a child under Section 43.25;
- (7) trafficking of persons under Section 20A.02(a) (3), (4), (7) or (8); and
- (8) compelling prostitution under Section 43.05.

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense; or

....

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

Texas’s CSEC laws address an array of trafficker conduct. Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution) prohibits a person from knowingly “caus[ing] by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.”

Further, under Tex. Penal Code Ann. § 43.03(a) (Promotion of prostitution),

A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

- (1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or
- (2) solicits another to engage in sexual conduct with another person for compensation.

Tex. Penal Code Ann. § 15.031(b), (f) (Criminal solicitation of a minor) provides,

A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or disabled individual], 21.11 [Indecency with a child], 22.011 [Sexual assault], 22.021 [Aggravated sexual assault], 43.02 [Prostitution], 43.021 [Solicitation of prostitution], 43.05(a)(2) [Compelling prostitution], or 43.25 [Sexual performance by a child] be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor’s conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

....

(f) In this section, “minor” means an individual younger than 17 years of age.

Under Tex. Penal Code Ann. § 21.02(b) (Continuous sexual abuse of young child or disabled individual),

A person commits an offense if:

- (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse,<sup>4</sup> regardless of whether the acts of sexual abuse are committed against one or more victims; and

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<sup>4</sup> Tex. Penal Code Ann. § 21.02(c) defines “act of sexual abuse” as follows:

[A]ny act that is a violation of one or more of the following penal laws:

- (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
- (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense; or

....

Tex. Penal Code Ann. § 43.031(a) (Online promotion of prostitution) states, “A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution or solicitation of prostitution.” Tex. Penal Code Ann. § 43.041(a) (Aggravated online promotion of prostitution) makes it an aggravated offense “if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution or solicitation of prostitution.”

Lastly, Tex. Penal Code Ann. § 43.251(b) (Employment harmful to children) provides, “A person commits an offense if the person employs, authorizes, or induces a child<sup>5</sup> to work: (1) in a sexually oriented commercial activity; or (2) in any place of business permitting, requesting, or requiring a child to work nude or topless.”

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

Texas law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to Tex. Penal Code Ann. § 20A.02(b)(1) (Trafficking of persons), “the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense.”

Regarding Texas’s CSEC offenses, Tex. Penal Code Ann. § 43.03(b)(2) (Promotion of prostitution), Tex. Penal Code Ann. § 43.021(b)(2)(A) (Solicitation of prostitution), Tex. Penal Code Ann. § 21.02(b) (Continuous sexual abuse of young child or disabled individual), Tex. Penal Code Ann. § 43.05(a)(2) (Compelling prostitution), Tex. Penal Code Ann. § 43.251(c), (d) (Employment harmful to children), Tex. Penal Code Ann. § 43.031(b)(2) (Online promotion of prostitution), and Tex. Penal Code Ann. § 43.041(b)(2) (Aggravated online promotion of prostitution) all hold offenders accountable for the respective conduct “regardless of whether the actor knows the age of the [child/victim/person/persons] at the time of the offense.”

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

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Texas’s criminal attempt statute could provide prosecutors with an alternative avenue to prosecute those cases. Pursuant to Tex. Penal Code Ann. § 15.01(a) (Criminal attempt), “A

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(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)—(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a) (3), (4), (7) or (8); and

(8) compelling prostitution under Section 43.05.

<sup>5</sup> For purposes of this section, Tex. Penal Code Ann. § 43.251(a)(1) defines “child” as “a person younger than 21 years of age.”

person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the offender intended to commit the trafficking offense and acted on that intent even though the offender was prevented from perpetrating the offense since the intended victim was a law enforcement decoy rather than an actual minor.

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

Texas’s trafficking law allows for business entity liability but does not provide for a business-specific penalty scheme. Pursuant to Tex. Penal Code Ann. § 20A.02(a) (Trafficking of persons),

A person commits an offense if the person knowingly:

....

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(E-1) Section 43.021 (Solicitation of Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(F-1) Section 43.031 (Online Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision

(7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

Importantly, Tex. Penal Code Ann. § 1.07(a)(38) (Definitions) defines “person” as “an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.” Accordingly, business entities can be held liable for a human trafficking violation.

Despite allowing for business entity liability, a violation of Tex. Penal Code Ann. § 20A.02(a) is punishable as a felony of the first degree, carrying penalties most pertinent to individuals. Tex. Penal Code Ann. § 20A.02(b)(1).

1.6.1      Recommendation: Strengthen state law 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.

Texas law levies financial penalties, including asset forfeiture, on sex trafficking and CSEC offenders and directs funds from forfeited assets toward the provision of victim services. Tex. Code Crim. Proc. Ann. art. 59.02(a) (Forfeiture of contraband) states, “Property that is contraband is subject to seizure and forfeiture under this chapter.” Tex. Code Crim. Proc. Ann. art. 59.01(2) (Definitions) defines “contraband” to include the following:

[P]roperty of any nature, including real, personal, tangible, or intangible, that is:



- (A) used in the commission of:
  - (i) any first or second degree felony under the Penal Code;
  - (ii) any felony under Section 15.031(b) [Criminal solicitation of a minor] . . . ;
  - (iii) any felony under Chapter 43 [Public indecency], Penal Code, except as provided in Paragraph (B);
  - . . . .
- (B) used or intended to be used in the commission of:
  - . . . .
  - (iv) any felony under Chapter 20A [Trafficking of persons] or 34 [Money laundering], Penal Code;
  - . . . .
  - (xii) any offense under . . . 43.05 [Compelling prostitution], Penal Code; or
  - . . . .
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii) of this subdivision, or a crime of violence;
- (E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or Chapter 43, Penal Code; or
- (F) used to facilitate or intended to be used to facilitate the commission of an offense under . . . Chapter 20A, Penal Code.

Disposition of forfeited property is governed by Tex. Code Crim. Proc. Ann. art. 59.06 (Disposition of forfeited property), which provides special disposition procedures in certain cases involving sex trafficking and CSEC;<sup>6</sup> specifically, Tex. Code Crim. Proc. Ann. art. 59.06(t), (u) directs funds toward victim services, stating,

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<sup>6</sup> Otherwise, Tex. Code Crim. Proc. Ann. art. 59.06(a)–(k) provides for disposition as follows:

- (a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold . . . . The proceeds of the sale shall be distributed as follows:
  - (1) to any interest holder to the extent of the interest holder’s nonforfeitable interest;
  - (2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and
  - (3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.
  - . . . .
- (c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:
  - (1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;
  - (2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

- (t)
- (1) This subsection applies only to contraband for which forfeiture is authorized with respect to an offense under Section . . . 43.05 or Chapter 20A, Penal Code.
  - (2) Notwithstanding any other provision of this article, the gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency under Subsection (c) from the forfeiture of contraband described by Subdivision (1) shall be:
    - (A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or
    - (B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.
  - (3) An expenditure of money in the manner required by this subsection is considered to be for an official purpose of the office of the attorney representing the state or for a law enforcement purpose, as applicable.
- (u) As a specific exception to Subsection (c) that the funds described by that subsection be used only for the official purposes of the attorney representing the state or for law enforcement purposes, to cover the costs of a contract with a municipal or county program to provide services to domestic victims of trafficking, the attorney representing the state or the head of a law enforcement agency, as applicable, may use any portion of the gross amount credited to the attorney's or agency's special fund under Subsection (c) from the forfeiture of contraband that:
- (1) is used in the commission of, or used to facilitate or intended to be used to facilitate the commission of, an offense under Chapter 20A, Penal Code; or
  - (2) consists of proceeds gained from the commission of, or property acquired with proceeds gained from the commission of, an offense under Chapter 20A, Penal Code.

In addition, Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Suit to abate certain common nuisances; bond) authorizes a person to “bring a suit [to enjoin and abate a common nuisance] against any person who maintains, owns, uses, or is a party to the use of a place for purposes constituting a nuisance under this subchapter and may bring an action in rem against the place itself.” Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(a), (c) (Common nuisance) states,

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- (3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or
  - (4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

- .....
- (k)
- (1) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.
- .....
- (3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, “victim” has the meaning assigned by Article 56B.003.

(a) A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

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(6) prostitution as described by Section 43.02, Penal Code, solicitation of prostitution as described by Section 43.021, Penal Code, promotion of prostitution as described by Section 43.03, Penal Code, or aggravated promotion of prostitution as described by Section 43.04, Penal Code;

(7) compelling prostitution as prohibited by the Penal Code;

.....

(17) continuous sexual abuse of young child or disabled individual as described by Section 21.02, Penal Code;

.....

(20) trafficking of persons as described by Section 20A.02, Penal Code;

.....

(22) employment harmful to a child as described by Section 43.251, Penal Code;

.....

.....

(c) A person operating a web address or computer network in connection with an activity described by Subsection (a)(3), (6), (7), (10), (11), (17), (18), (19), (20), (21), or (22) maintains a common nuisance.<sup>7</sup>

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<sup>7</sup> Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(d) exempts the following entities:

- (1) a provider of remote computing services or electronic communication services to the public;
- (2) a provider of an interactive computer service as defined by 47 U.S.C. Section 230;
- (3) an Internet service provider;
- (4) a search engine operator;
- (5) a browsing or hosting company;
- (6) an operating system provider; or
- (7) a device manufacturer.





## ISSUE 2: Identification of & Response to Victims

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

The definition of child sex trafficking victim does not include all commercially sexually exploited children. Although Tex. Penal Code Ann. § 20A.02(a) (Trafficking of persons) expressly applies to buyers who engage in sexual conduct within a child, the child must also have been “trafficked in a manner described in Subdivision (7).” Tex. Penal Code Ann. § 20A.02(a) states,

A person commits an offense if the person knowingly:

.....

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(E-1) Section 43.021 (Solicitation of Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(F-1) Section 43.031 (Online Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision

(7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

Tex. Penal Code § 20A.01(4) (Definitions) defines trafficking as “transport[ing], entic[ing], recruit[ing], harbor[ing], provid[ing], or otherwise obtain[ing] another person by any means.” Accordingly, because Texas law requires a buyer to engage in sexual conduct with a child who has been subjected to trafficking in accordance with subsection (a)(7), third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>8</sup>

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<sup>8</sup> See generally Shared Hope Int’l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

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

Texas 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.

Texas law does not require child welfare to screen all referred or system-involved children at risk of sex trafficking victimization; however, Tex. Fam. Code § 264.123 (Reports concerning children who are missing or victims of sex trafficking) requires child welfare to screen all children who were previously missing from care to determine whether the child experienced sex trafficking victimization. Tex. Fam. Code § 264.123 (f), (g) states,

(f) After a missing child returns to the child’s substitute care provider, the department shall interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under Section 20A.02(a)(7) [Trafficking of persons], Penal Code. The department shall report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. The department shall make a report under this subsection not later than 24 hours after the time the disclosure is made. The department is not required to interview a missing child under this subsection if, at the time the child returns, the department knows that the child was abducted and another agency is investigating the abduction.

(g) The department shall collect information on each child in the department’s managing conservatorship who is missing from the child’s substitute care provider and on each child who, while in the department’s managing conservatorship, is a victim of conduct that constitutes an offense under Section 20A.02(a)(7), Penal Code. The collected information must include information on:

- (1) whether the managing conservatorship of the department is temporary or permanent;
- (2) the type of substitute care in which the child is placed; and
- (3) the child’s sex, age, race, and ethnicity and the department region in which the child resides.

Further, Tex. Hum. Res. Code § 40.081 (Implementation of federal law) provides,

(a) In furtherance of department duties under Section 40.002(d) [Department of family and protective services; child welfare protective services], the department shall to the greatest extent possible develop capacity for placement settings that are eligible for federal financial participation under 42 U.S.C. Section 672, including settings:

....

(2) providing high-quality residential care and supportive services to children and youth who this state has reasonable cause to believe are, or who are at risk of being, sex trafficking victims in accordance with 42 U.S.C. Section 671(a)(9)(C);

....

(b) In developing capacity for settings described by Subsection (a)(2), the department shall:

(1) promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool (CSE-IT) and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization; and

(2) use providers that:

- (A) use a trauma-informed care model;

- (B) have defined programming to address the specific needs of trafficking survivors and youth at risk of trafficking;
- (C) have leadership and direct-care staff who have completed training regarding the specific needs of trafficking survivors and youth at risk of trafficking;
- (D) have established policies and procedures to minimize risk to a child who is a victim of trafficking placed with the provider and other children placed with the provider, including risks related to running away from the placement or becoming a victim of trafficking; and
- (E) provide case management services or contract with an entity in the geographic area of the provider to provide case management services to trafficking victims or potential victims.

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

Although Texas law does not mandate juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking, the Texas Juvenile Justice Department is required to evaluate the use of screening tools for purposes of identifying and responding to commercial sexual exploitation. Tex. Hum. Res. Code § 221.0035(b), (c) (Best practices to identify and assess victims of sex trafficking) states,

- (b) The [Texas Juvenile Justice Department] shall evaluate the practices and screening procedures used by juvenile probation departments for the early identification of juveniles who are victims of sex trafficking for the purpose of developing a recommended set of best practices that may be used by a juvenile probation department to improve the juvenile probation department’s ability to identify a juvenile who is a victim of sex trafficking.
- (c) Best practices may include:
  - (1) examining a juvenile’s referral history, including whether the juvenile has a history of running away from home or has been adjudicated for previous offenses;
  - (2) making inquiries into a juvenile’s history of sexual abuse;
  - (3) assessing a juvenile’s need for services, including counseling through a rape crisis center or other counseling; and
  - (4) asking the juvenile a series of questions designed to determine whether the juvenile is at high risk of being a victim of sex trafficking.

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

Texas law fails to prohibit the criminalization of minors for prostitution offenses. While state statute provides alternative juvenile justice responses to identified child sex trafficking victims, including avenues to avoid a delinquency adjudication, such responses direct child victims towards punitive processes to access care and services.

The core prostitution offense, Tex. Penal Code § 43.02(a), (d) (Prostitution) recognizes trafficking victimization as a mitigating factor; however, the statute is age neutral, applying equally to minors and adults, stating,

- (a) A person commits an offense if the person knowingly offers or agrees to receive from another to engage in sexual conduct.
- ....
- (d) It is a defense to prosecution for an offense under Subsection (a) that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] or 43.05 [Compelling prostitution].

Additionally, Tex. Fam. Code § 51.03(b)(5) (Delinquent conduct; conduct indicating a need for supervision) classifies minors engaged in commercial sex as “conduct indicating a need for supervision [CINS],” stating,

Conduct involving a need for supervision is:

....

(5) notwithstanding Subsection (a)(1) [delinquent conduct], conduct described by Section 43.02 [Prostitution] . . . .

The CINS process is inherently punitive in nature and tracks closely with the delinquency process, permitting similar disposition outcomes, including orders of probations. Tex. Fam. Code § 54.04(d) (Disposition hearing). However, unlike delinquency adjudications, minors adjudicated under a CINS petition cannot be confined in a post-adjudication secure facility. Tex. Fam. Code § 54.04(o).

Further, if a court of joint jurisdiction determines that a child may be a victim of sex trafficking, the court may transfer the case to juvenile court or alternative juvenile court under Tex. Fam. Code § 51.04 (Jurisdiction). Tex. Fam. Code § 51.0413 (Jurisdiction over and transfer of combination proceedings). The presiding court “may defer adjudication proceedings . . . until the child’s 18th birthday and require [the] child to participate in a program established under Section 152.0017, Human Resources Code . . . .” Tex. Fam. Code § 54.0326(b) (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program). Specifically, Tex. Fam. Code § 54.0326 states,

- (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5, in the manner authorized by Section 51.0413.
- (b) A juvenile court may defer adjudication proceedings under Section 54.03 until the child’s 18th birthday and require a child to participate in a program established under Section 152.0017, Human Resources Code [Trafficked persons program], if the child:
  - (1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and
  - (2) presents to the court an oral or written request to participate in the program.
- (c) Following a child’s completion of the program, the court shall dismiss the case with prejudice at the time the child presents satisfactory evidence that the child successfully completed the program.

Consequently, while child sex trafficking victims be may eligible for alternative juvenile justice processes and programs, such responses still allow minors to experience arrest, detention, and juvenile justice proceedings in response to their trafficking victimization. Further, minors not identified as child sex trafficking victims, or those who do not request to participate in the Trafficking Persons Program, may be adjudicated and receive a CINS disposition.

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

**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.

Texas 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.

Texas 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.

Texas law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

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

Texas law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. In addition to setting a low minimum age for purposes of juvenile court jurisdiction, Texas law does not extend the court’s jurisdiction to all minors under 18 years of age. Further, Texas law permits direct file of some juvenile cases in criminal court and fails to require juvenile 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>	10; “Child” is defined as, “ten years of age or older and under 17 years of age . . . .”	16	Yes. Minors charged with a felony and who were previously transferred to criminal court in a prior matter.	Yes. Minors: (1) 10+ years of age charged with a capital felony or murder; (2) 14+ years of age charged with capital felony, aggravated controlled substance felony, or 1 <sup>st</sup> degree felony; or (3) 15+ years of age charged with 2 <sup>nd</sup> or three degree or state jail felony offense.	No.



<b>Relevant Statute(s)</b>	Tex. Fam. Code § 51.02(2) (Definitions)	Tex. Fam. Code § 51.02(2) (Definitions)	Tex. Fam. Code § 54.02(m) (Waiver of jurisdiction and discretionary transfer to criminal court)	Tex. Fam. Code Ann. § 54.02(a), (j) (Waiver of jurisdiction and discretionary transfer to criminal court)	Tex. Fam. Code § 54.02(f) (Waiver of jurisdiction and discretionary transfer to criminal court)
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Consequently, some minors may still be subjected to 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) does not extend juvenile court jurisdiction to all minors under 18 years of age; (3) 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 in 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.

Texas law expressly includes child sex trafficking within the definition of child abuse. Tex. Fam. Code Ann. § 261.001(1)(E), (G), (L) (Definitions) provides,

“Abuse” includes the following acts or omissions by a person:

....

(E) sexual conduct harmful to a child’s mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code . . . .

....

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, solicitation of prostitution under Section 43.021, Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

....

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections;

**EXTRA CREDIT**



Child labor trafficking is included in the definition of “abuse” under Tex. Fam. Code Ann. § 261.001(1)(L).

**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.

Texas law allows an emergency child welfare response in non-familial child sex trafficking cases for up to 14 days, but there is not a specialized process for providing ongoing access to services without a finding of caregiver fault in connection with the child’s trafficking victimization.<sup>9</sup> Pursuant to Tex. Fam. Code Ann. § 262.104(a)(3), (4) (Taking possession of a child in emergency without a court order), a law enforcement officer or representative of the Department of Family and Protective Services may take possession of a child sex trafficking victim without a court order if there was not time to get a temporary order; it states,

- (3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 [Trafficking of persons] or 20A.03[Continuous trafficking of persons], Penal Code;
- (4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code . . . .

Under Tex. Fam. Code Ann. § 262.107(a)(1)(B) (Standard for decision at initial hearing after taking possession of child without a court order in emergency), if the evidence shows that “the child has been the victim of . . . trafficking under 20A.02 or 20A.03 . . . on one or more occasions and that there is a substantial risk that the child will be the victim of . . . trafficking in the future,” the court need not order the return of the child at the initial hearing. Instead, under Tex. Fam. Code Ann. § 262.011 (Placement in secure agency foster home), if the court deems necessary,

A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with Section 42.0531, Human Resources Code, if the court finds that:

- (1) the placement is in the best interest of the child; and
- (2) the child’s physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in 20A.02 or 20A.03.

Pursuant to Tex. Fam. Code Ann. § 262.201(a) (Full adversary hearing; findings of the court), if the child has not been returned to the child’s parent, guardian, caretaker, or related individual, the court will hold a full adversary hearing within 14 days of the date the child was taken into custody. Ultimately, Tex. Fam. Code Ann. § 262.201(g) requires the court to return the child unless the court finds all the following:

- (1) there was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under 20A.02 or 20A.03 . . . , which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;
- (2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

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<sup>9</sup> Pursuant to Tex. Fam. Code Ann. § 262.201(a)(1) (Full adversary hearing; findings of the court), a child sex trafficking victim may not receive ongoing services through child welfare without a finding by the court that the child is in danger “which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child.”

Similarly, Tex. Fam. Code Ann. § 262.201(g-1) provides,

[I]f the court does not order the return of the child under Subsection (g) and finds that another parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, the court shall order possession of the child by that person unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that, specific to each person entitled to possession:

- (1) the person cannot be located after the exercise of due diligence by the Department of Family and Protective Services, or the person is unable or unwilling to take possession of the child; or
- (2) reasonable efforts have been made to enable the person's possession of the child, but possession by that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking under Section 20A.02 or 20A.03, Penal Code.

Accordingly, since Tex. Fam. Code Ann. § 262.201 requires a finding of danger resulting from “an act or failure to act of the person entitled to possession” in order to access ongoing services through child welfare, child sex trafficking victims whose parent or caregiver is available to provide support and is not otherwise at fault for the child's victimization may not be able to access services beyond initial emergency child welfare services.

- 2.11.1 Recommendation: Strengthen existing law to statutorily outline a child sex trafficking-specific protocol for child welfare's response to non-familial child sex trafficking cases that does not hinge on caregiver fault.



## 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.

Texas law provides child sex trafficking victims with access to specialized services through the Governor's Program for Victims of Child Sex Trafficking, regardless of system-involvement. Pursuant to Tex. Gov't Code § 772.0063 (Governor's Program for Victims of Child Sex Trafficking),

- (a) The governor shall establish and implement a program to provide comprehensive, individualized services to address the rehabilitation and treatment needs of child victims of an offense under [Tex. Penal Code Ann. § 20A.02(a)(7) or (8)] [Trafficking of persons].
- (b) The governor shall appoint a director of the program to serve at the pleasure of the governor.
- (c) The director of the program shall coordinate with state and local law enforcement agencies, state agencies, and service providers to identify victims of child sex trafficking who are eligible to receive services under the program.
- (d) For each victim of child sex trafficking identified by the director, the program shall immediately facilitate the assignment of a caseworker to the victim to coordinate with local service providers to create a customized package of services to fit the victim's immediate and long-term rehabilitation and treatment needs. Services provided under the program must address all aspects of the medical, psychiatric, psychological, safety, and housing needs of victims.

Funding for dedicated housing and specialized services, including those facilitated through the Governor's Program for Victims of Child Sex Trafficking, may be provided for under the Trafficked Persons Grant Program.<sup>10</sup> Pursuant to Tex. Health & Safety Code Ann. § 50.0155(a), (b) (Trafficked persons grant program),

- (a) The commission shall establish the trafficked persons grant program to provide grants to applicants for dedicated housing and treatment facilities provided to human trafficking victims.
- (b) The commission by rule shall establish and publish on its Internet website eligibility criteria for grant recipients. The commission must develop the criteria using research-based best practices and require the recipient to provide:
  - (1) immediate trauma support to a human trafficking victim on the victim's initial rescue or recovery from trafficking;

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<sup>10</sup> Pursuant to Tex. Health & Safety Code Ann. § 50.0152 (Purpose),

The purpose of the trafficked persons program account is to provide money:

- (1) to substantiate this state's interest in publicly operated and funded shelter and treatment for victims of an offense of trafficking of persons as defined by Article 56B.003, Code of Criminal Procedure;
- (2) to prevent the recruitment of human trafficking victims within mixed-status child, youth, and young adult shelters;
- (3) for consistent and recurring funding of long-term solutions for providing research-based treatment and safe and secure shelter to child, youth, and young adult victims of human trafficking;
- (4) for financial stability of local governments, private partners, and medical facilities in planning, building, and maintaining dedicated housing and recovery programs for victims of human trafficking; and
- (5) to raise awareness of the account among businesses and philanthropists in this state and to strengthen public and private partnerships established to end the practice of human trafficking.

- (2) wraparound services to facilitate a continuity of care for human trafficking victims placed in the recipient’s facility as assisted by:
  - (A) the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code; or
  - (B) the governor’s program for victims of child sex trafficking established under Section 772.0063, Government Code; and
- (3) safe and constitutionally secure shelter that considers the clear and present danger of organized crime to the children and youth housed in the facility.

Under, Tex. Fam. Code Ann. § 264.004(d) (Allocation of state funds),

The Health and Human Services Commission may use money appropriated from the trafficked persons program account established under Section 50.0153, Health and Safety Code, to establish, maintain, and operate facilities to provide care and recovery and to ensure the general well-being of children and youth who are victims of an offense of trafficking of persons<sup>11</sup> as defined by Article 56B.003, Code of Criminal Procedure.

Further, children in the foster care system may have access to services through specialized, residential placements. Pursuant to Tex. Hum. Res. Code Ann. § 42.0531(a) (Secure agency foster homes), “a municipality may contract with a child-placing agency to verify a secure agency foster home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.” Under Tex. Human Res. Code Ann. § 42.0531(c)(1), verified homes must provide an array of services including mental health, behavioral health, counseling, treatment for sexual assault, treatment for substance abuse, life skills, mentoring, 24-hour services, and “individualize services based on the trauma endured by a child.”

Lastly, victims with specific and acute healthcare needs may also have access to a treatment program designed to “improve the quality and accessibility of care for victims of child sex trafficking” under Tex. Health & Safety Code Ann. § 50.0002 (Establishment; purpose). Pursuant to Tex. Health & Safety Code Ann. § 50.0003(a)–(b)(2) (Designation of institution; operation of program),

- (a) The [Health and Safety Commission] shall designate a health-related institution of higher education to operate the program.
- (b) The designated institution shall improve quality and accessibility of care for victims of child sex trafficking by:
  - (1) dedicating a unit at the institution to provide or contract for inpatient care for victims of child sex trafficking;
  - (2) dedicating a unit at the institution to provide or contract for outpatient care for victims of child sex trafficking;
  - ....

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<sup>11</sup> Tex. Code Crim. Proc. Ann. art. 56B.003(13) defines “trafficking of persons” as follows:

[A]ny offense that results in a person engaging in forced labor or services, including sexual conduct, and that may be prosecuted under Section 20A.02 [Trafficking of persons], 20A.03 [Continuous trafficking of persons], 43.03 [Promotion of prostitution], 43.031 [Online promotion of prostitution], 43.04 [Aggravated promotion of prostitution], 43.041 [Aggravated online promotion of prostitution], 43.05 [Compelling prostitution], 43.25 [Sexual performance of a child], 43.251 [Employment harmful to children], or 43.26 [Possession or promotion of child pornography], Penal Code.



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

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse and neglect MDT, Texas law does not require an MDT response specific to child sex trafficking cases. Pursuant to Tex. Fam. Code Ann. § 264.406(c), (d) (Multidisciplinary team),

- (c) A multidisciplinary team shall be actively involved in the following multidisciplinary team response:
  - (1) coordinating the actions of the participating agencies involved in the investigation and prosecution of cases and the delivery of services to alleged abuse or neglect victims and the victims' families; and
  - (2) conducting at regularly scheduled intervals multidisciplinary review of appropriate abuse or neglect cases as provided by the working protocol adopted under Section 264.4031 [Multidisciplinary team working protocol].
- (d) A multidisciplinary team may review an abuse or neglect case in which the alleged perpetrator is not a person responsible for a child's care, custody, or welfare.

Further, Tex. Fam. Code Ann. § 264.4031 (Multidisciplinary Team Working Protocol) provides for a working protocol, stating,

- (a) A center shall adopt a multidisciplinary team working protocol. The working protocol must include:
  - (1) the center's mission statement;
  - (2) the role of each participating agency on the multidisciplinary team and the agency's commitment to the center;
  - (3) specific criteria for referral of cases for a multidisciplinary team response and specific criteria for the referral and provision of each service provided by the center;
  - (4) processes and general procedures for:
    - (A) the intake of cases, including direct referrals from participating agencies described by Section 264.403 (Interagency Memorandum of Understanding) (a) and reports from the department that involve the suspected abuse or neglect of a child or the death of a child from abuse or neglect;
    - (B) the availability outside scheduled business hours of a multidisciplinary team response to cases and provision of necessary center services;
    - (C) information sharing to ensure the timely exchange of relevant information;
    - (D) forensic interviews;
    - (E) family and victim advocacy;
    - (F) medical evaluations and medical treatment;
    - (G) mental health evaluations and mental health treatment;
    - (H) multidisciplinary team case review; and
    - (I) case tracking; and
  - (5) provisions for addressing conflicts within the multidisciplinary team and for maintaining the confidentiality of information shared among members of the multidisciplinary team.

- 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.

Texas law provides child sex trafficking victims with access to specialized services through the Governor's Program for Victims of Child Sex Trafficking, regardless of system-involvement. Pursuant to Tex. Gov't Code § 772.0063 (Governor's Program for Victims of Child Sex Trafficking),

- (a) The governor shall establish and implement a program to provide comprehensive, individualized services to address the rehabilitation and treatment needs of child victims of an offense under [Tex. Penal Code Ann. § 20A.02(a)(7) or (8)] [Trafficking of persons].
- (b) The governor shall appoint a director of the program to serve at the pleasure of the governor.
- (c) The director of the program shall coordinate with state and local law enforcement agencies, state agencies, and service providers to identify victims of child sex trafficking who are eligible to receive services under the program.
- (d) For each victim of child sex trafficking identified by the director, the program shall immediately facilitate the assignment of a caseworker to the victim to coordinate with local service providers to create a customized package of services to fit the victim’s immediate and long-term rehabilitation and treatment needs. Services provided under the program must address all aspects of the medical, psychiatric, psychological, safety, and housing needs of victims.

Further, under Tex. Fam. Code Ann. § 54.0326 (Deferral of adjudication and dismissal of certain cases on completion of trafficked persons program), for children identified as trafficking victims, the court “may defer adjudication proceedings . . . until the child’s 18th birthday and require [the] child to participate in a program established under Section 152.0017, Human Resources Code . . . .” Specifically, Tex. Fam. Code Ann. § 54.0326(a), (b) provides,

- (a) This section applies to a juvenile court or to an alternative juvenile court exercising simultaneous jurisdiction over proceedings under this title and Subtitle E, Title 5, in the manner authorized by Section 51.0413 [Jurisdiction over and transfer of combination of proceedings].
- (b) A juvenile court may defer adjudication proceedings under Section 54.03 [Adjudication hearing] until the child's 18th birthday and require a child to participate in a program established under Section 152.0017 [Trafficked persons program], Human Resources Code, if the child:
  - (1) is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision and may be a victim of conduct that constitutes an offense under Section 20A.02, Penal Code; and
  - (2) presents to the court an oral or written request to participate in the program.

Tex. Hum. Res. Code Ann. § 152.0017 (Trafficked persons program) authorizes development of the Trafficked Persons Program and allows for referral through the Governor’s Program for Victims of Child Sex Trafficking, stating,

- (a) A juvenile board may establish a trafficked persons program under this section for the assistance, treatment, and rehabilitation of children who:
  - (1) are alleged to have engaged in or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision;
  - (2) may be victims of an offense of trafficking of persons<sup>12</sup> as defined by Article 56B.003, Code of Criminal Procedure; and
  - (3) have been referred to the program by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, or the governor’s program for victims of child sex trafficking established under Section 772.0063, Government Code.
- (b) A program established under this section must:
  - (1) if applicable, allow for the integration of services available to a child pursuant to proceedings under Title 3, Family Code, and Subtitle E, Title 5, Family Code;
  - (2) if applicable, allow for the referral to a facility that can address issues associated with human trafficking; and
  - (3) require a child participating in the program to periodically appear in court for monitoring and compliance purposes.

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<sup>12</sup> See *supra* note 11 for the definition of “trafficking of persons.”

(c) A facility qualified to provide one or more services under this section may apply for a grant under Section 50.0155, Health and Safety Code, only for the purposes of providing constitutionally secure shelter and research-based treatment services to human trafficking victims.

Lastly, the Child Sex Trafficking Prevention Unit within the criminal justice division, established by Tex. Gov't Code § 772.0062 (Child Sex Trafficking Prevention Unit), must facilitate inter-agency collaboration to prevent and respond to child sex trafficking victims by placing them in “suitable short-term and long-term housing” The Child Sex Trafficking Prevention Unit must also “refer victims of child sex trafficking to available rehabilitation programs and other resources [and] provide support for child sex trafficking prosecutions.”

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

Texas law extends foster care services to youth under 21 years of age through a voluntary extended permanency care assistance agreement. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>13</sup> Specifically, Tex. Fam. Code § 264.855 (Continued Eligibility for Permanency Care Assistance Benefits After Age 18) provides,

If the department first entered into a permanency care assistance agreement with a foster child's kinship provider after the child's 16th birthday, the department may continue to provide permanency care assistance payments until the last day of the month of the child's 21st birthday, provided the child is:

- (1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;
- (2) regularly attending an institution of higher education or a postsecondary vocational or technical program;
- (3) participating in a program or activity that promotes, or removes barriers to, employment;
- (4) employed for at least 80 hours a month; or
- (5) incapable of any of the activities described by Subdivisions (1)—(4) due to a documented medical condition.

Additionally, Tex. Fam. Code § 264.101(a-1), (a-2) (Foster Care Payments) provides for a staggered approach to extended services, stating,

(a-1) The department shall continue to pay the cost of foster care for a child for whom the department provides care, including medical care, until the last day of the month in which the child attains the age of 18. The department shall continue to pay the cost of foster care for a child after the month in which the child attains the age of 18 as long as the child is:

- (1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;
- (2) regularly attending an institution of higher education or a postsecondary vocational or technical program;
- (3) participating in a program or activity that promotes, or removes barriers to, employment;
- (4) employed for at least 80 hours a month; or
- (5) incapable of performing the activities described by Subdivisions (1)—(4) due to a documented medical condition.

(a-2) The department shall continue to pay the cost of foster care under:

- (1) Subsection (a-1)(1) until the last day of the month in which the child attains the age of 22; and

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<sup>13</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, [https://sharedhope.org/wp-content/uploads/2020/12/SH\\_Issue-Brief-3.4\\_2020.pdf](https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf) (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

(2) Subsections (a-1)(2)–(5) until the last day of the month the child attains the age of 21.

3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

**Policy Goal 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Texas state legislature appropriated funds during the 2021 legislative session to support the development and provision of specialized, community-based services and care to child and youth survivors. Specifically, the Texas Legislature appropriated \$5.6 million over the 2019-20 biennium to the Child Sex Trafficking Team in the Office of the Governor. The duties of this team include supporting specialized services and a continuum of care for sex trafficked children regardless of system involvement.<sup>14</sup> Additionally, the Texas Legislature has appropriated “approximately \$2.5 million of these funds to provide grants to support victim services” and “\$1,750,000 in each fiscal year of the 2019-20 biennium for the purpose of making grants to counties to address commercial sexual exploitation.”<sup>15</sup>

2021-2022 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
SB 1 (General Appropriations Bill)	Office of the Governor; Child Sex Trafficking Team	\$3,837,650	Operating the Child Sex Trafficking Team and providing grants to prevent victimization, to identify and to recover survivors.	FY 2022
2021 Regular Session		\$1,847,650		FY 2023
HB 1 (General Appropriations Act)	Child Sex Trafficking Prevention Unit	\$570,650	For the General Revenue	FY 2021-2022 (Non-recurring)
2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021
HB 1 (General Appropriations Act)	Child Sex Trafficking Prevention Unit	\$1,260,000	To provide grants to support victim services for victims of child sex trafficking.	FY 2021-2022 (Non-recurring)

<sup>14</sup> Texas Human Trafficking Prevention Task Force Fiscal Year 2020 Report of Annual Activities, OFFICE OF THE ATTORNEY GENERAL, Dec. 2020, <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/human-trafficking/HumanTraffickingAnnualReport2020.pdf>

<sup>15</sup> *Id.*

2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021
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2019-2020 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
HB 1 (General Appropriations Act)	Child Sex Trafficking Prevention Unit	\$2,000,000	For the General Revenue - Dedicated Sexual Assault Program Account No. 5010	FY 2020-2021 (Non-recurring)
2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021
HB 1 (General Appropriations Act)	Child Sex Trafficking Prevention Unit	\$577,650	For the General Revenue	FY 2020-2021 (Non-recurring)
2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021
HB No. 1 (General Appropriations Act)	Child Sex Trafficking Prevention Unit	\$1,260,000	To provide grants to support victim services for victims of child sex trafficking.	FY 2020-2021 (Non-recurring)
2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021

**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 Texas legislature appropriated 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.



2021-2022 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
SB 1 (General Appropriations Bill)	Department of Family and Protective Services	\$574,999	(1) To identify human trafficking victims in DFPS conservatorship and develop a process for referring identified victims to appropriate entities for treatment services; (2) Coordinate with the Human Trafficking Task Force, the implementation for training DFPS staff regarding the identification and deterrence of youth at risk of human trafficking within DFPS conservatorship; (3) Coordinate investigative activities related to human trafficking of youth with the Department of Public Safety, Office Attorney General, Texas Juvenile Justice Department and Office of Inspector General, and other state or local law enforcement agencies in order to ensure detection, deterrence, enforcement and prosecution of human traffickers.	FY 2022
				FY 2023
HB No. 1 (General Appropriations Act)	Department of Family and Protective Services (Human Trafficking Prevention)	\$595,527	To fund the continuation and expansion of prevention of human trafficking.	FY 2021-2022 (Non-recurring)
2019 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021

2019-2020 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
HB No. 1 (General Appropriations Act)	Department of Family and Protective Services (Human Trafficking Prevention)	\$615,619	To fund the continuation and expansion of prevention of human trafficking.	FY 2021-2022 (Non-recurring)
2019-2020 Legislative Session				August 31 <sup>st</sup> , 2020 – August 31, 2021



## ISSUE 4: Access to Justice for Trafficking Survivors

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

Texas law allows trafficking victims to seek ex parte civil orders of protection against their exploiters.<sup>16</sup> Pursuant to Tex. Code Crim. Proc. Ann. art. 7B.001(a) (Application for protective order),

The following persons may file an application for a protective order under this subchapter without regard to the relationship between the applicant and the alleged offender:

- (1) a person who is the victim of an offense under Section 21.02 [Continuous sexual abuse of young child or disabled individual] . . . ;
- (2) a person who is the victim of an offense under Section 20A.02 [Trafficking of persons], 20A.03 [Continuous trafficking of persons], or 43.05 [Compelling prostitution], Penal Code;
- (3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);
- (4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or
- (5) a prosecuting attorney acting on behalf of a person described by Subdivision (1), (2), (3), or (4).

Further, Tex. Code Crim. Proc. Ann. art. 7B.002 (Temporary ex parte order) allows those orders to be granted on an ex parte basis, stating,

If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may issue a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

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<sup>16</sup> Further, Tex. Code Crim. Proc. Ann. art. 7B.001(a-1), (a-2) states,

(a-1) Except as provided by Subsection (a-2), if an application has not yet been filed in the case under Subsection (a), the attorney representing the state shall promptly file an application for a protective order with respect to each victim of an offense listed in Subdivision (1) or (2) of that subsection following the offender's conviction of or placement on deferred adjudication community supervision for the offense.

(a-2) The attorney representing the state may not file an application under Subsection (a-1) with respect to a victim who is at least 18 years of age if the victim requests that the attorney representing the state not file the application.

## EXTRA CREDIT



Victims of child labor trafficking may seek ex parte civil orders of protection against their exploiters under Tex. Code Crim. Proc. Ann. art. 7B.001, which expressly makes victims of Tex. Penal Code Ann. § 20A.02 (Trafficking of persons), including both sex and labor trafficking victims, eligible for protection.

### **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.

Texas's crime victims' compensation laws exempt victims of child sex trafficking, but not CSEC, from some, but not all, ineligibility factors, leaving some commercially sexually exploited children without access to an award.

For purposes of accessing crime victims' compensation, Tex. Code Crim. Proc. Ann. art. 56B.003(14)(A)(i), (ii) (Definitions) defines "victim" as "an individual who:(i) suffers personal injury or death as a result of criminally injurious conduct . . . if the conduct or actions occurred in this state; and (ii) is a resident of this state or another state of the United States." "Criminally injurious conduct" is defined under Tex. Code Crim. Proc. Ann. art. 56B.003(4) to include "conduct that: (A) occurs or is attempted; (B) poses a substantial threat of personal injury or death; (C) is punishable by fine, imprisonment, or death, or would be punishable by fine, imprisonment, or death if the person engaging in the conduct possessed capacity to commit the conduct; and (D) does not arise out of the ownership, maintenance, or use of motor vehicle, aircraft, or water vehicle . . . ."

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Tex. Code Crim. Proc. Ann. art. 56B.052(a) (Period for filing application), "a claimant or victim must file an application not later than the third anniversary of the date of the criminally injurious conduct." If, however, the victim is a child, Tex. Code Crim. Proc. Ann. art. 56B.052(c) states that "the application must be filed not later than the third anniversary of the date the claimant or victim is made aware of the offense, but not after the child attains 21 years of age."<sup>17</sup>

Further Tex. Code Crim. Proc. Ann. art. 56B.057(b)(4) (Approval of application) provides for denial of an application if the victim is found to be an accomplice to the offender.

In addition, Tex. Code Crim. Proc. Ann. art. 56B.107(a)(1)–(2), (c) (Denial or reduction of award) states,

- (a) Except as otherwise provided by this act, the attorney general may deny or reduce an award otherwise payable:
  - (1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;
  - (2) if, as a result of the claimant's or victim's behavior, the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim;

. . . .

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<sup>17</sup> Tex. Code Crim. Proc. Ann. art. 56B.052(b) also allows the filing deadline to be extended for "good cause;" however, Tex. Code Crim. Proc. Ann. art. 56B.052 does not explain what constitutes "good cause" for purposes of this section.

(c) The attorney general may not deny or reduce an award under Subsection (a)(1) based on the interactions of the claimant or victim with a law enforcement agency at the crime scene or hospital unless the attorney general finds that the claimant or victim, subsequent to the claimant's or victim's interactions at the crime scene or hospital, failed or refused to substantially cooperate with the law enforcement agency.

Notably, Texas law carves out exceptions to other ineligibility factors. Because those exceptions are offense-specific, however, only victims of trafficking, not CSEC, will be protected. Under Tex. Code Crim. Proc. Ann. art. 56B.057(b)(3), (c),

(b) The attorney general shall deny an application for compensation under this chapter if:  
.....  
(3) the claimant or victim knowingly and willingly participated in the criminally injurious conduct;  
.....

(c) Subsection (b)(3) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:  
(1) in violation of Section 20A.02(a)(7) [Trafficking in persons], Penal Code; or  
(2) trafficking of persons, other than an offense described by Subdivision (1), if the criminally injurious conduct the claimant or victim participated in was the result of force, fraud, or coercion.

Similarly, Tex. Code Crim. Proc. Ann. art. 56B.107(a)(4), (b) provides,

(a) The attorney general may deny or reduce an award otherwise payable:  
.....  
(4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law, including a rule.  
(b) Subsection (a)(4) does not apply to a claimant or victim who seeks compensation for criminally injurious conduct that is:  
(1) in violation of Section 20A.02(a)(7) [Trafficking in persons], Penal Code; or  
(2) trafficking of persons, other than an offense described by Subdivision (1), if the activity the claimant or victim engaged in was the result of force, fraud, or coercion.

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 Texas law allows child sex trafficking victims to vacate delinquency adjudications, vacatur is unavailable for criminal convictions arising from trafficking victimization, leaving sex trafficked youth without access to this important form of relief. Specifically, Texas law allows child sex trafficking victims to seal certain juvenile records after a waiting period or upon completion of a trafficked persons program. The sealing order results in automatic vacatur of the underlying adjudication.

Tex. Fam. Code Ann. § 58.255 (Sealing records without application: conduct indicating need for supervision) sets out the requirements for sealing juvenile records related to conduct indicating a need for supervision, which includes prostitution. Tex. Fam. Code Ann. §§ 58.255, 51.03(b)(5). According to Tex. Fam. Code Ann. § 58.255(a),

A person who was referred to a juvenile court for conduct indicating a need for supervision is entitled to have all records related to all conduct indicating a need for supervision matters sealed without applying to the juvenile court if the person:  
(1) has records relating to conduct filed with the court clerk;  
(2) is at least 18 years of age;

- (3) has not been referred to the juvenile probation department for delinquent conduct;
- (4) has not as an adult been convicted of a felony; and
- (5) does not have any pending charges as an adult for a felony or misdemeanor punishable by confinement in jail.

Tex. Fam. Code Ann. § 58.253 (Sealing records without application: Delinquent conduct) sets out the requirements for sealing juvenile delinquency records for misdemeanor offenses. According to Tex. Fam. Code Ann. § 58.253(b),

A person who was referred to a juvenile probation department for delinquent conduct is entitled to have all records related to the person’s juvenile matters, including records relating to any matters involving conduct indicating a need for supervision, sealed without applying to the juvenile court if the person:

- (1) is at least 19 years of age;
- (2) . . . if adjudicated for delinquent conduct, was not adjudicated for delinquent conduct violating a penal law of the grade of felony;
- (3) does not have any pending delinquent conduct matters;
- (4) has not been transferred by a juvenile court to a criminal court for prosecution under Section 54.02;
- (5) has not as an adult been convicted of a felony or a misdemeanor punishable by confinement in jail; and
- (6) does not have any pending charges as an adult for a felony or a misdemeanor by confinement in jail.

Additional records may be sealed by application under Tex. Fam. Code Ann. § 58.256(a)–(d) (Application for sealing records), which states,

(a) Notwithstanding Sections 58.253 and 58.255, a person may file an application for the sealing of records related to the person in the juvenile court served by the juvenile probation department to which the person was referred . . . .

. . . .  
 (c) Except as provided by Subsection (d), the juvenile court may order the sealing of records related to all matters for which the person was referred to the juvenile probation department if the person:

- (1) is at least 17 years of age, or is younger than 17 years of age and at least one year has elapsed after the date of final discharge in each matter for which the person was referred to the juvenile probation department;
- (2) does not have any delinquent conduct matters pending with any juvenile probation department or juvenile court;
- (3) was not transferred by a juvenile court to a criminal court for prosecution under Section 54.02;
- (4) has not as an adult been convicted of a felony; and
- (5) does not have any pending charges as an adult for a felony or misdemeanor punishable by confinement in jail.

(d) A court may not order the sealing of the records of a person who:

- (1) received a determinate sentence for engaging in:
  - (A) delinquent conduct that violated a penal law listed under Section 53.045 [Offenses eligible for determinate sentence]; or
  - (B) habitual felony conduct as described by Section 51.031 [Habitual felony conduct];
- (2) is currently required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
- (3) was committed to the Texas Juvenile Justice Department or to a post-adjudication secure correctional facility under Section 54.04011, unless the person has been discharged from the agency to which the person was committed.

Upon entry of a sealing order, Tex. Fam. Code Ann. § 58.258(c) (Order sealing records) provides, “all adjudications relating to the person are vacated and the proceedings are dismissed and treated for all purposes as though the proceedings had never occurred.” Accordingly, the sealing order results in automatic vacatur of the underlying delinquency adjudication.



Because Tex. Fam. Code Ann. § 58.253, Tex. Fam. Code Ann. § 58.255, and Tex. Fam. Code Ann. § 58.256 mandate a waiting period, however, a child sex trafficking victim may face collateral consequences associated with having a delinquency record during that time. Tex. Fam. Code Ann. § 54.04012(d) (Trafficked Persons Program) removes that waiting period but requires the victim to complete a trafficking persons program, stating, “Following a child’s successful completion of the program, the court may order the sealing of the records of the case in the manner provided by Subchapter C-1, Chapter 58 [Sealing and destruction of juvenile records].” Accordingly, records sealed under this provision appear to result in automatic vacatur based on the provisions of Tex. Fam. Code Ann. § 58.258(c). However, record sealing is non-mandatory under Tex. Fam. Code Ann. § 54.04012(d) and would not apply in cases where a survivor is unable or unwilling to complete the program.

- 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.

Texas law requires an offender convicted of child sex trafficking or compelling prostitution to pay restitution. Pursuant to Tex. Code Crim. Proc. Ann. art. 42.0372(a) (Mandatory restitution for child victims of trafficking of persons or compelling prostitution),

The court shall order a defendant convicted of an offense under Section 20A.02 [Trafficking of persons] or 43.05(a)(2) [Compelling prostitution], Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.

Restitution is available more generally to victims of other offenses pursuant to Tex. Code Crim. Proc. Ann. art. 42.037 (Restitution); however, restitution under Tex. Code Crim. Proc. Ann. art. 42.037 is discretionary. Subsections (a)–(c) state,

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter J [Funds], Chapter 56B [Crime Victims’ Compensation], to the extent that fund has paid compensation to or on behalf of the victim. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

(b)

(1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:

(A) to return the property to the owner of the property or someone designated by the owner; or  
(B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:

(i) the value of the property on the date of the damage, loss, or destruction; or  
(ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.

(2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:

(A) the victim for any expenses incurred by the victim as a result of the offense; or  
(B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.

(3) If the victim or the victim’s estate consents, the court may, in addition to an order under Subdivision (2), order the defendant to make restitution by performing services instead of by paying

- money or make restitution to a person or organization, other than the compensation to victims of crime fund, designated by the victim or the estate.
- (c) The court, in determining whether to order restitution and the amount of restitution, shall consider:
- (1) the amount of the loss sustained by any victim and the amount paid to or on behalf of the victim by the compensation to victims of crime fund as a result of the offense; and
  - (2) other factors the court deems appropriate.

## EXTRA CREDIT



Texas law mandates restitution for victims of child labor trafficking under Tex. Code Crim. Proc. Ann. art. 42.0372(a), which requires offenders convicted of Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) to pay victim restitution.

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

Texas law allows victims of child sex trafficking to pursue civil remedies against their exploiters.<sup>18</sup> Tex. Civ. Prac. & Rem. Code Ann. § 98.002 (Liability) states,

- (a) A defendant who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked, as provided by this chapter [Liability for trafficking of persons], for damages arising from the trafficking of that person by the defendant or venture.
- (b) It is not a defense to liability under this chapter that a defendant has been acquitted or has not been prosecuted or convicted under Chapter 20A [Trafficking of persons], Penal Code, or has been convicted of a different offense or of a different type or class of offense, for the conduct that is alleged to give rise to liability under this chapter.

Tex. Civ. Prac. & Rem. Code Ann. § 98.003 (Damages) allows for the following damages:

- (a) A claimant who prevails in a suit under this chapter shall be awarded:
  - (1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
  - (2) court costs; and
  - (3) reasonable attorney's fees.
- (b) In addition to an award under Subsection (a), a claimant who prevails in a suit under this chapter may recover exemplary damages.

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<sup>18</sup> Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 98.005 (Joint and several liability),

A person who engages in the trafficking of persons or who intentionally or knowingly benefits from participating in a venture that traffics another person and is found liable under this chapter or other law for any amount of damages arising from the trafficking is jointly liable with any other defendant for the entire amount of damages arising from the trafficking.

Further, Tex. Civ. Prac. & Rem. Code Ann. § 98A.002(a) (Liability) provides for civil causes of action in cases involving compelled prostitution. It states,

A defendant is liable to a victim of compelled prostitution, as provided by this chapter [Liability for compelled prostitution and certain promotion of prostitution], for damages arising from the compelled prostitution if the defendant:

- (1) engages in compelling prostitution with respect to the victim;
- (2) knowingly or intentionally engages in promotion of prostitution, online promotion of prostitution, aggravated promotion of prostitution, or aggravated online promotion of prostitution that results in compelling prostitution with respect to the victim; or
- (3) purchases an advertisement that the defendant knows or reasonably should know constitutes promotion of prostitution or aggravated promotion of prostitution, and the publication of the advertisement results in compelling prostitution with respect to the victim.

### EXTRA CREDIT



Texas law provides sex trafficked youth with a trafficking-specific civil remedy under Tex. Civ. Prac. & Rem. Code Ann. § 98.002(a), which applies to victims of sex trafficking under Tex. Penal Code Ann. § 20A.02(a) (Trafficking of persons) regardless of their age.



Texas law provides child labor trafficking victims with a trafficking-specific civil remedy under Tex. Civ. Prac. & Rem. Code Ann. § 98.002(a), which applies to victims of Tex. Penal Code Ann. § 20A.02(a) (Trafficking of persons).

**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.

Prosecutions for child sex trafficking and certain CSEC offenses may commence at any time; however, the statute of limitation for trafficking-specific civil actions is only lengthened, not eliminated. Pursuant to Tex. Code Crim. Proc. Ann. art. 12.01 (Felonies),

Except as provided in Article 12.03 [Aggravated offenses, attempt, conspiracy, solicitation, organized criminal activity], felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

.....

(D) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code;

.....

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(H) continuous trafficking of persons under Section 20A.03, Penal Code; or

(I) compelling prostitution under Section 43.05(a)(2), Penal Code;

- (2) ten years from the date of the commission of the offense:
  - .....
  - (G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or
  - (H) compelling prostitution under Section 43.05(a)(1), Penal Code;
  - .....
- (6) ten years from the 18th birthday of the victim of the offense:
  - (A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;
  - .....
- .....
- (8) three years from the date of the commission of the offense: all other felonies.

Regarding civil actions, Tex. Civ. Prac. & Rem. Code Ann. § 16.0045 (Limitations period for claims arising from certain offenses) provides,

- (a) A person must bring suit for personal injury not later than 30 years after the day the cause of action accrues if the injury arises as a result of conduct that violates:
  - .....
  - (3) Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual);
  - (4) Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or Section 20A.02(a)(8), Penal Code, involving an activity described by Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or sexual conduct with a child trafficked in the manner described by Section 20A.02(a)(7), Penal Code (certain sexual trafficking of a child);
  - (5) Section 43.05(a)(2), Penal Code (compelling prostitution by a child); or
  - .....
- (b) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:
  - .....
  - (3) Section 20A.02, Penal Code (trafficking of persons), other than conduct described by Subsection (a)(4); or
  - (4) Section 43.05(a)(1), Penal Code (compelling prostitution).
  - .....
- (d) A limitations period under this section is tolled for a suit on the filing of a petition by any person in an appropriate court alleging that the identity of the defendant in the suit is unknown and designating the unknown defendant as “John or Jane Doe.” The person filing the petition shall proceed with due diligence to discover the identity of the defendant and amend the petition by substituting the real name of the defendant for “John or Jane Doe” not later than the 30th day after the date that the defendant is identified to the plaintiff. The limitations period begins running again on the date that the petition is amended.

In contrast, Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (Two-year limitations period) establishes a general 2-year statute of limitation for other personal injury claims.

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



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

**Policy Goal 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Texas law allows out-of-court statements made by a commercially sexually exploited child under 14 years of age to be admitted into evidence. Specifically, Tex. Code Crim. Proc. Ann. art. 38.072, § 1, 2 (Hearsay statement of certain abuse victims) states,

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age . . . :

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

. . . .

(4) Section 43.05(a)(2) (Compelling Prostitution);

(5) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or

(6) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), or (5) of this section.

Sec. 2.

(a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 284] This article applies only to statements that describe the alleged offense that:

(1) were made by the child . . . against whom the offense was allegedly committed; and

(2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child . . . made a statement about the offense.

Sec. 2.

(a) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 710] This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child who is the victim of the offense or another child younger than 14 years of age; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and



(3) the child . . . testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Notably, child victims who are 14 years of age or older are not protected by this hearsay exception, thereby increasing their risk of re-traumatization from testifying.

- 5.1.1 Recommendation: Amend Tex. Code Crim. Proc. Ann. art. 38.072 (Hearsay statement of certain abuse victims) to extend the hearsay exception to any case involving the 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.

Texas law allows for testimony by an alternative method, but limitations based on the victim’s age exclude some commercially sexually exploited children from protection. Specifically, Tex. Code Crim. Proc. Ann. art. 38.071 (Testimony of child who is victim of offense) provides,

Sec. 1. This article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by any of the following sections of the Penal Code:

.....

- (14) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
- (15) Section 43.05(a)(2) (Compelling Prostitution); or
- (16) Section 20A.02(a)(7) or (8) (Trafficking of Persons).

Sec. 2.

- (a) The recording of an oral statement of the child made before the indictment is returned or the complaint has been filed is admissible into evidence if the court makes a determination that the factual issues of identity or actual occurrence were fully and fairly inquired into in a detached manner by a neutral individual experienced in child abuse cases that seeks to find the truth of the matter.
- (b) If a recording is made under Subsection (a) of this section and after an indictment is returned or a complaint has been filed, by motion of the attorney representing the state or the attorney representing the defendant and on the approval of the court, both attorneys may propound written interrogatories that shall be presented by the same neutral individual who made the initial inquiries, if possible, and recorded under the same or similar circumstances of the original recording with the time and date of the inquiry clearly indicated in the recording.
- (c) A recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding.

Notably, child victims who are 13 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.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims' identifying information is protected from disclosure in court records
<b>Summary</b>	Not statutorily required.	Any party can petition the court for an order authorizing a qualified facility dog or therapy dog to be present with a witness who is testifying.	A minor may choose a pseudonym to be used in all law enforcement and court records.
<b>Relevant Statute(s)</b>	None.	Tex. Gov't. Code Ann. § 21.012(b) (Presence of Qualified Facility Dog or Qualified Therapy dog in Court Proceeding)	Tex. Code Crim. Proc. Art. 58.253 (Victim Information Confidential)

5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate.

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

Texas law does not provide for privileged communications between caseworkers and child sex trafficking victims.<sup>19</sup>

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

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<sup>19</sup> Although not expressly available in cases related to child sex trafficking, Tex. Fam. Code Ann. § 93.003 (Privileged communications) provides for privileged communications in cases involving family violence, stating,

- (a) A victim has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication described by Section 93.002 [Confidential communications].
- (b) The privilege may be claimed by:
  - (1) a victim or a victim's attorney on a victim's behalf;
  - (2) a parent, guardian, or conservator of a victim under 18 years of age; or
  - (3) an advocate or a family violence center on a victim's behalf.

Under Tex. Stat. & Codes Ann. § 93.002 (Confidential Communications), "A written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential and may not be 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.

Texas law mandates statewide, trafficking-specific training for Department of Family and Protective Services personnel. Specifically, Tex. Gov't. Code Ann. § 402.035(d)(6)(B)–(D) (Human trafficking prevention task force) requires the Human Trafficking Prevention Task Force to work with the Department of Family and Protective Services to ensure training, stating,

The task force shall:

.....

(6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

.....

(B) develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(C) train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(D) develop and conduct training for personnel from the Department of Family and Protective Services and the Health and Human Services Commission on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking; and

Further, Tex. Fam. Code Ann. § 264.153(a)(4) (Community-Based Care Implementation Plan) provides,

The [Department of Family and Protective Services] shall develop and maintain a plan for implementing community-based care. The plan must:

.....

(4) identify any training needs and include long-range and continuous plans for training and cross-training staff, including plans to train caseworkers using the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code, as that section existed on August 31, 2017;

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

Texas law mandates trafficking-specific training for juvenile correctional officers; however, such training is not statutorily mandated for other juvenile justice agency employees who are interacting with children who are not in custody. Pursuant to Tex. Hum. Res. Code § 242.009(b) (Juvenile correctional officers; staffing),

The department shall provide competency-based training to each juvenile correctional officer<sup>20</sup> employed by the department, which must include on-the-job training. Each officer must complete at least 300 hours of training in the officer's first year of employment, with at least 240 hours of training before the officer independently commences the officer's duties at the facility. The officer must demonstrate competency in the trained subjects as required by the department. The training must provide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

.....

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse, sexual assault, and human trafficking, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

.....

(19) trauma-informed care.

Accordingly, such training may aid in serving children who are already in the juvenile justice system but would not assist in the identification of children for purposes of directing them away from the juvenile justice system.

Although not trafficking specific, Texas law also provides for training on trauma-informed care. Tex. Hum. Res. Code § 221.002(a), (c-1) (General rules governing juvenile boards, probation departments, probation officers, programs, and facilities) states,

(a) The board shall adopt reasonable rules that provide:

.....

(3) appropriate educational, preservice and in-service training, and certification standards for probation and detention officers or court-supervised community-based program personnel;

.....

(c-1) In adopting rules under Subsection (a)(3), the board shall require probation officers, juvenile supervision officers, and court-supervised community-based program personnel to receive trauma-informed care training. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

6.2.1 Recommendation: Statutorily mandate statewide training for other juvenile justice agency employees 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.

Texas law mandates a one-time training on human trafficking for law enforcement officers; however, advanced education is voluntary. Pursuant to Tex. Occ. Code Ann. § 1701.258(a), (b) (Education and Training Programs on Trafficking of Persons),

(a) The [Texas Commission on Law Enforcement] by rule shall require an officer to complete a one-time basic education and training program on the trafficking of persons. The program must:

(1) consist of at least four hours of training; and

(2) include a review of the substance of Sections 20A.02 [Trafficking of persons] and 43.05 [Compelling prostitution], Penal Code.

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<sup>20</sup> Tex. Hum. Res. Code § 242.009(a) defines “juvenile correctional officer” as “a department employee whose primary duties include the custodial supervision of children in the custody of the department.”

(b) The commission shall make available to each officer a voluntary advanced education, instruction, and training program on the trafficking of persons and compelling prostitution prohibited under Sections 20A.02 and 43.05, Penal Code.

Tex. Occ. Code Ann. § 1701.402 (Proficiency Certificates) provides for the issuance of proficiency certificates for officers who meet the training requirements outlined above. Tex. Occ. Code Ann. § 1701.402(a), (j)–(k) states,

(a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

....

(j) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

(k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children. The commission by rule shall establish the program. The program must:

- (1) consist of at least four hours of training;
- (2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;
- (3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and
- (4) include a review of the substance of Chapters 20 [Kidnapping, unlawful restraint, and smuggling of persons] and 43 [Public indecency], Penal Code.

Further, training is authorized under Tex. Gov't. Code Ann. § 402.035(d)(5) (Human trafficking prevention task force) and Tex. Gov't Code Ann. § 531.384 (Training Programs). Pursuant to Tex. Gov't. Code Ann. § 402.035(d)(5), "The task force shall . . . work with the Texas Commission on Law Enforcement to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking." Under Tex. Gov't Code Ann. § 531.384,

The commission, with assistance from the Office of Court Administration of the Texas Judicial System, the Department of Public Safety, and local law enforcement agencies, shall create training programs designed to increase the awareness of judges, prosecutors, and law enforcement personnel of the needs of domestic victims,<sup>21</sup> the availability of services under this subchapter [Assistance program for domestic victims of trafficking], the database of services described by Section 531.382 [Victim assistance program established], and potential funding sources for those services.

Lastly, Tex. Health & Safety Code Ann. § 50.0101(a) (Establishment of Grant Program) established a grant program for trafficking-specific training, stating, "The office of the governor, in collaboration with the Child Sex Trafficking Prevention Unit established under Section 772.0062 [Child sex trafficking prevention unit], Government Code, shall establish and administer a grant program to train local law enforcement officers to recognize signs of sex trafficking."

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

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<sup>21</sup> Tex. Gov't Code Ann. § 531.381(1) defines "domestic victim" as "a victim of trafficking who is a permanent legal resident or citizen of the United States."



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

Texas law authorizes trafficking-specific training for prosecutors. Pursuant to Tex. Gov't. Code Ann. § 402.035(d)(7) (Human trafficking prevention task force),

The task force shall:

.....

(7) on the request of a judge of a county court, county court at law, or district court or a county attorney, district attorney, or criminal district attorney, assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking;

Further, Tex. Gov't Code Ann. § 531.384 (Training Programs) provides,

The commission, with assistance from the Office of Court Administration of the Texas Judicial System, the Department of Public Safety, and local law enforcement agencies, shall create training programs designed to increase the awareness of judges, prosecutors, and law enforcement personnel of the needs of domestic victims,<sup>22</sup> the availability of services under this subchapter [Assistance program for domestic victims of trafficking], the database of services described by Section 531.382 [Victim assistance program established], and potential funding sources for those services.

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

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

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

Texas law mandates trafficking-specific training for school personnel. Pursuant to Tex. Educ. Code § 38.0041(c) (Policies Addressing Sexual Abuse and Other Maltreatment of Children),

The methods . . . for increasing awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children<sup>23</sup> must include training, as provided by this subsection, concerning prevention

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<sup>22</sup> Tex. Gov't Code Ann. § 531.381(1) defines "domestic victim" as "a victim of trafficking who is a permanent legal resident or citizen of the United States."

<sup>23</sup> Pursuant to Tex. Educ. Code § 38.0041(a)-(b),

(a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan under Section 11.252 [District-level planning and decision-making] and any informational handbook provided to students and parents.

(a-1) A school district may collaborate with local law enforcement and outside consultants with expertise in the prevention of sexual abuse and sex trafficking to create the policy required under Subsection (a), and to create a referral protocol for high-risk students.

(b) A policy required by this section must address:

techniques for and recognition of sexual abuse, sex trafficking, and all other maltreatment of children, including the sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities. The training:

- (1) must be provided:
  - (A) in accordance with the policy adopted under Section 21.4515 [Annual adoption of professional development policy]; and
  - (B) as part of a new employee orientation to all new school district and open-enrollment charter school employees; and
- (2) must include training concerning:
  - (A) factors indicating a child is at risk for sexual abuse, sex trafficking, or other maltreatment;
  - (B) likely warning signs indicating a child may be a victim of sexual abuse, sex trafficking, or other maltreatment;
  - (C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, sex trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;
  - (D) techniques for reducing a child’s risk of sexual abuse, sex trafficking, or other maltreatment; and
  - (E) community organizations that have relevant existing research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff members, students, and parents.

Further, trafficking-specific training is provided for under Tex. Gov’t. Code Ann. § 402.035(d)(6)(A)–(C) (Human trafficking prevention task force), which states,

The task force shall:

- .....
- (6) work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:
    - (A) develop a list of key indicators that a person is a victim of human trafficking;
    - (B) develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;
    - (C) train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

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

Texas does not statutorily mandate child sex trafficking prevention education in schools. Although Tex. Educ. Code § 38.004(b) (Child abuse reporting and programs) requires “each school district to provide child abuse

- 
- (1) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, sex trafficking, or other maltreatment, using resources developed by the agency or the commissioner regarding those issues, including resources developed by the agency under Section 38.004;
  - (2) actions that a child who is a victim of sexual abuse, sex trafficking, or other maltreatment should take to obtain assistance and intervention; and
  - (3) available counseling options for students affected by sexual abuse, sex trafficking, or other maltreatment.

antivictimization programs in elementary and secondary schools,” such programs are not expressly required to provide education on preventing child sex trafficking.<sup>24</sup>

Further, Tex. Educ. Code § 38.0041 (Policies addressing sexual abuse and other maltreatment of children) provides for the distribution of awareness materials but does not contain a child sex trafficking prevention education requirement. Tex. Educ. Code § 38.0041(a), (b) states,

(a) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, sex trafficking, and other maltreatment of children, to be included in the district improvement plan under Section 11.252 [District-level planning and decision-making] and any informational handbook provided to students and parents.

....

(b) A policy required by this section must address:

- (1) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, sex trafficking, and other maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim of sexual abuse, sex trafficking, or other maltreatment, using resources developed by the agency or the commissioner regarding those issues, including resources developed by the agency under Section 38.004 [Child abuse reporting programs];
- (2) actions that a child who is a victim of sexual abuse, sex trafficking, or other maltreatment should take to obtain assistance and intervention; and
- (3) available counseling options for students affected by sexual abuse, sex trafficking, or other maltreatment.

Resultingly, resources on child sex trafficking prevention may be available to students; however, Texas law does not mandate the provision of child sex trafficking prevention education in schools.

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

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<sup>24</sup> Notably, Tex. Educ. Code § 38.004(a) does, however, require policies on reporting child abuse and neglect reports to include reporting of child sex trafficking; it states,

The agency shall develop a policy governing the reports of child abuse or neglect, including reports related to the trafficking of a child under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, as required by Chapter 261, Family Code, for school districts, open-enrollment charter schools, and their employees. The policy must provide for cooperation with law enforcement child abuse investigations without the consent of the child’s parents if necessary, including investigations by the Department of Family and Protective Services. The policy must require each school district and open-enrollment charter school employee to report child abuse or neglect, including the trafficking of a child under Section 20A.02(a)(5) or (7), Penal Code, in the manner required by Chapter 261, Family Code. Each school district and open-enrollment charter school shall adopt the policy.

## State Laws Addressing Child Sex Trafficking

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1. Tex. Penal Code Ann. § 20A.02(a), (b)(1) (Trafficking of persons) states,

(a) A person commits an offense if the person knowingly:

....

(7) traffics<sup>25</sup> a child<sup>26</sup> and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(E-1) Section 43.021 (Solicitation of Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(F-1) Section 43.031 (Online Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

(b) . . . . An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense;

A felony of the first degree is punishable by imprisonment for “for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.32 (First degree felony punishment).

2. Tex. Penal Code Ann. § 20A.03(a), (e) (Continuous trafficking of persons) states,

(a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 [Trafficking of persons] against one or more victims.

....

(e) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

In addition to the term of imprisonment noted above, offenders may be required to pay a \$10,000 fine. Tex. Penal Code Ann. § 12.32(b) (First degree felony punishment).

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<sup>25</sup> Tex. Penal Code § 20A.01(4) (Definitions) defines “traffic” as “to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.”

<sup>26</sup> Tex. Penal Code § 20A.01(1) defines “child” as “a person younger than 18 years of age.”

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

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1. Tex. Penal Code Ann. § 43.05(a), (b) (Compelling prostitution) states,

(a) A person commits an offense if the person knowingly:

.....

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.

(b) An offense under this section is a felony of the first degree.

A felony of the first degree is punishable by imprisonment for “for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.32 (First degree felony punishment).

2. Tex. Penal Code Ann. § 43.03 (Promotion of prostitution) states,

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) .....

.....

(2) a felony of the first degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

A felony of the first degree is punishable by imprisonment for “for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.32 (First degree felony punishment).

3. Tex. Penal Code Ann. § 43.021 (Solicitation of prostitution) states,

(a) A person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.

(b) An offense under Subsection (a) is a state jail felony, except that the offense is:

.....

(2) a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

A felony of the second degree is punishable by imprisonment for 2–20 years and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.33 (Second degree felony punishment).

4. Tex. Penal Code Ann. § 15.031(b)–(f) (Criminal solicitation of a minor) states,

(b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8) [Trafficking of persons], 21.02 [Continuous sexual abuse of young child or disabled individual], 21.11 [Indecency with a child], 22.011 [Sexual assault], 22.021 [Aggravated sexual assault], 43.02 [Prostitution],



43.021 [Solicitation of prostitution], 43.05(a)(2) [Compelling prostitution], or 43.25 [Sexual performance by a child] be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

....

(e) An offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

(f) In this section, "minor" means an individual younger than 17 years of age.

5. Tex. Penal Code Ann. § 21.02(b), (h) (Continuous sexual abuse of young child or disabled individual) states,

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse,<sup>27</sup> regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense; or

....

(h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

In addition to the term of imprisonment noted above, offenders may be required to pay a \$10,000 fine. Tex. Penal Code Ann. § 12.32(b) (First degree felony punishment).

6. Tex. Penal Code Ann. § 43.031 (Online promotion of prostitution) states,

(a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to

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<sup>27</sup> Tex. Penal Code Ann. § 21.02(c) defines "act of sexual abuse" as follows:

[A]ny act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)—(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a) (3), (4), (7) or (8); and

(8) compelling prostitution under Section 43.05.

promote the prostitution of another person or facilitate another person to engage in prostitution or solicitation of prostitution.

(b) An offense . . . is a felony of the second degree if the actor:

. . . .

(2) engages in conduct described by Subsection (a) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

A felony of the second degree is punishable by imprisonment for 2–20 years and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.33 (Second degree felony punishment).

7. Tex. Penal Code Ann. § 43.041 (Aggravated online promotion of prostitution) states,

(a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution or solicitation of prostitution.

(b) An offense . . . is a felony of the first degree if the actor:

. . . .

(2) engages in conduct described by Subsection (a) involving two or more persons younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

A felony of the first degree is punishable by imprisonment for “for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. § 12.32 (First degree felony punishment).

8. Tex. Penal Code Ann. § 43.251(b) (Employment harmful to children) states, “A person commits an offense if the person employs, authorizes, or induces a child<sup>28</sup> to work: (1) in a sexually oriented commercial activity; or (2) in any place of business permitting, requesting, or requiring a child to work nude or topless.”

If the victim was 14–18 years of age, a violation of Tex. Penal Code Ann. § 43.251(b) is punishable as a felony of the second degree by imprisonment for 2–20 years and a possible fine up to \$10,000. Tex. Penal Code Ann. §§ 43.251(c), 12.33. If, however, the victim was under 14 years of age, a violation of Tex. Penal Code Ann. § 43.251(b) is punishable as a felony of the first degree by imprisonment for “for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. §§ 43.251(c), 12.32.

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<sup>28</sup> For purposes of this section, Tex. Penal Code Ann. § 43.251(a)(1) defines “child” as “a person younger than 21 years of age.”