

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 West Virginia’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.

W. Va. Code Ann. § 61-14-6(b) (Patronizing a victim of sexual servitude; penalties) expressly applies to buyers of commercial sex with minors but requires the buyer to know the minor is a victim of sexual servitude; it states, “any person who knowingly patronizes<sup>1</sup> a minor to engage in commercial sexual activity<sup>2</sup> and who knows or has reason to know that said minor is a victim of sexual servitude, is guilty of a felony . . . .”

Notably, West Virginia’s core sex trafficking offense, W. Va. Code Ann. § 61-14-2(b) (Human trafficking of an individual; penalties), could also apply to buyers based on the definition of “traffics” under W. Va. Code § 61-14-1(6) (Definitions), which, following federal precedent,<sup>3</sup> applies to those who “obtain[] . . . an individual to engage in

<sup>1</sup> W. Va. Code § 61-14-1(10) (Definitions) defines “patronize” as “giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.”

<sup>2</sup> W. Va. Code § 61-14-1(3) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to or received by a person.”

<sup>3</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to

... sexual servitude.” W. Va. Code § 61-14-1(14)(A) defines “sexual servitude,” in part, as “[m]aintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity.” Because the minor must be obtained in furtherance of sexual servitude, however, W. Va. Code Ann. § 61-14-2(b) is inapplicable to buyers who seek to directly engage in commercial sex with the minor.

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

W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties) criminalizes soliciting commercial sex with a minor but only applies to offenders who use a computer; it states,

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, in order to engage in any illegal act proscribed by the provisions of article eight [§§ 61-8-1 et seq. (Crimes Against Chastity, Morality and Decency)], eight-b [§§ 61-8B-1 et seq. (Sexual Offenses)], eight-c [§§ 61-8C-1 et seq. (Filming of Sexually Explicit Conduct of Minors)] or eight-d [§§ 61-8D-1 et seq. (Child Abuse)] of this chapter, or any felony offense under section four hundred one [§ 60A-4-401 (relating to controlled and counterfeit substances)], article four, chapter sixty-a of this code, is guilty of a felony . . . .

(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor’s, or the person believed to be a minor’s, physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a felony . . . .

- 1.2.1 Recommendation: Amend W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties) criminalize purchasing or soliciting commercial sex with a minor regardless of the mode of communication.

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

West Virginia’s CSEC laws apply to an array of trafficker conduct. Pursuant to W. Va. Code Ann. § 61-8-8 (Receiving support from prostitution; pimping; penalty),

Any person who, knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping . . . .

Further, W. Va. Code Ann. § 61-8-7 (Procuring for house of prostitution; penalty) provides,

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

Any person who shall procure an inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person; or any person who shall, by promises, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into or leave this state for the purpose of prostitution, or who shall procure any person to become an inmate of a house of ill fame within this state or to come into or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this state, or to come into or leave this state for the purpose of prostitution, shall be guilty of pandering . . . .

Under W. Va. Code Ann. § 61-8-6 (Detention of person in place of prostitution; penalty),

Whoever shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly, keep, hold, detain or restrain, or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person shall . . . be punished . . . .

Pursuant to W. Va. Code Ann. § 61-2-14(a) (Abduction of person; kidnapping or concealing child; penalties),

Any person who . . . takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony . . . .

Lastly, W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties) states,

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, in order to engage in any illegal act proscribed by the provisions of article eight [§§ 61-8-1 et seq. (Crimes Against Chastity, Morality and Decency)], eight-b [§§ 61-8B-1 et seq. (Sexual Offenses)], eight-c [§§ 61-8C-1 et seq. (Filming of Sexually Explicit Conduct of Minors)] or eight-d [§§ 61-8D-1 et seq. (Child Abuse)] of this chapter, or any felony offense under section four hundred one [§ 60A-4-401 (relating to controlled and counterfeit substances)], article four, chapter sixty-a of this code, is guilty of a felony . . . .

(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a felony . . . .

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

West Virginia law expressly prohibits a mistake of age defense in certain prosecutions for child sex trafficking but not CSEC. Pursuant to § 61-14-5(c) (Sexual servitude; penalties), “It is not a defense in a prosecution under subsection (b) of this section [involving maintaining or making available a minor for commercial sexual activity] that . . . the defendant believed the minor was an adult.” However, West Virginia’s other trafficking offenses are silent on the permissibility of a mistake of age defense.

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

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

West Virginia law does not prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate trafficking crimes.

- 1.5.1 Recommendation: Statutorily prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor to investigate a child sex trafficking crime.

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

West Virginia's trafficking laws allow for business entity liability and establish a business-specific penalty scheme. Pursuant to W. Va. Code Ann. § 61-14-2 (Human trafficking of an individual; aiding and abetting human trafficking; penalties),

- (a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than 15 years, fined not more than \$200,000, or both confined and fined.
- (b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than 20 years, fined not more than \$300,000, or both confined and fined.

W. Va. Code Ann. § 61-14-1(11) (Definitions) defines "person" as "an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency or instrumentality." Accordingly, business entities can be held liable for aiding, assisting, or abetting in the trafficking of an individual under W. Va. Code Ann. § 61-14-2.

In addition to other penalties, W. Va. Code Ann. § 61-14-7(f)(4) (General provisions and other penalties) states that "[a]ny person or business entity convicted of a violation of this article shall be debarred from state or local government contracts."

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

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>4</sup>

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<sup>4</sup> Regarding asset forfeiture, W. Va. Code Ann. § 61-14-7(f) (General provisions and other penalties) specifically provides for forfeiture in trafficking cases, stating,

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

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Forfeiture; Debarment. —

- (1) The following are declared to be contraband and no person shall have a property interest in them:
  - (a) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article [Human trafficking]; and
  - (b) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.
- (2) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.
- (3) Forfeiture actions under this section shall use the procedure set forth in article seven, chapter sixty-a of this code.
- (4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.

Disposition of property forfeited under W. Va. Code Ann. § 61-14-7(f) is governed by W. Va. Code Ann. § 60A-7-706 (Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds) and W. Va. Code Ann. § 60A-7-707 (Disposition of other forfeited property; distribution of proceeds), neither of which direct a percentage of a trafficking offender's forfeited assets into a victim service fund.

Offenders convicted of violating W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties) face asset forfeiture under W. Va. Code Ann. § 61-8C-7(a) (Items subject to forfeiture; persons authorized to seize property subject to forfeiture), which states,

The following are subject to forfeiture:

- ....
- (2) All raw materials, products and equipment of any kind which are used, or intended for use, . . . in violation of . . . [W. Va. Code Ann. § 61-3C-14b];
  - (3) All books, records, research products and materials, including hard drives, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of . . . [W. Va. Code Ann. § 61-3C-14b];
  - (4) . . . [A]ll moneys, negotiable instruments and securities used, or which are intended to be used, to facilitate any violation of . . . [W. Va. Code Ann. § 61-3C-14b] . . . ;
  - (5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection . . .

Disposition of property forfeited under W. Va. Code Ann. § 61-8C-7(a) is governed by W. Va. Code Ann. § 61-8C-10 (Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds) and § 61-8C-11 (Disposition of other forfeited property; distribution of proceeds), neither of which direct a percentage of a trafficking offender's forfeited assets into a victim service fund.



## ISSUE 2: Identification of & Response to Victims

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

The definition of child sex trafficking victim does not include all commercially sexually exploited children. W. Va. Code Ann. § 61-14-1(15) (Definitions) defines “victim” as “an individual who is subjected to human trafficking, regardless of whether a perpetrator is prosecuted or convicted.” “Human trafficking is defined under W. Va. Code Ann. § 61-14-1(6) as “knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual to engage in sexual servitude.” Because the definition of “sexual servitude” applies only to those who “maintain[] or mak[e] available a minor for the purpose of engaging the minor in commercial sexual activity,” it is inapplicable to buyers who seek to directly engage in commercial sex with a minor, creating a third party control requirement, which excludes commercially sexually exploited children who are not under the control of a trafficker from the definition of sex trafficking victim. W. Va. Code § 61-14-1(14)(A).

Notably, West Virginia’s core sex trafficking offense, W. Va. Code Ann. § 61-14-2(b) (Human trafficking of an individual; penalties), relies on these definitions in defining the offense. Accordingly, third party control is also required under the criminal offense.<sup>5</sup>

Although W. Va. Code Ann. § 61-14-6(b) (Patronizing a victim of sexual servitude; penalties) expressly applies to buyers of commercial sex with minors, the buyer must know the minor is a victim of sexual servitude.<sup>6</sup> Accordingly, third party control is also required under West Virginia’s buyer-applicable trafficking offense.

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

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

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

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

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<sup>5</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under W. Va. Code Ann. § 61-14-2.

<sup>6</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under W. Va. Code Ann. § 61-14-6.

<sup>7</sup> See generally Shared Hope Int’l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

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

West Virginia law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

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

West Virginia law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

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

West Virginia law prohibits the criminalization of some, but not all, minors for prostitution offenses. While the core prostitution offense, W. Va. Code Ann. § 61-8-5 (Houses of ill fame and assignation; penalties; jurisdiction of courts), applies equally to minors and adults, identified child sex trafficking victims are afforded protections from prosecution for conduct in violation of the statute. W. Va. Code Ann. § 61-8-5(b) states,

Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than \$50 and need to exceed \$100 . . . Provided, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under § 61-14-1 [Human Trafficking; Definitions] et seq. of this code.

Further, W. Va. Code § 61-14-8(a), (b) (Immunity for minor victim of sex trafficking) outlines additional non-criminalization protections to identified child sex trafficking victims, providing,

(a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of § 61-8-5(b) [House of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts]<sup>8</sup> of this code, a minor shall not be held criminally liable if the court determines that the minor is a

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<sup>8</sup> Under W. Va. Code Ann. § 61-8-5(b) (Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts),

victim of an offense under this article: Provided, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under § 61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

Consequently, while identified child sex trafficking victims are afforded protection from prosecution for prostitution offenses, minors not identified as victims may still be subject to criminalization, including arrest, detention, or prosecution, for engaging in a commercial sex act.

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

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

West Virginia 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.

West Virginia law prohibits the criminalization of child sex trafficking victims for prostitution-related offenses, including aiding or abetting prostitution, if “the court [determines] that the minor was coerced into the criminal behavior; however, victims can still be charged as sex trafficking offenders or as accomplices alongside their exploiters. Pursuant to W. Va. Code Ann. § 61-14-8(a), (b) (Immunity for minor victim of sex trafficking),

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Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by confinement in a state correctional facility for not less than one year nor more than three years: Provided, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under § 61-14-1 et seq. of this code.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator, or any person benefiting financially or otherwise from the earnings of a prostitute.



(a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of § 61-8-5(b) [House of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts]<sup>9</sup> of this code, a minor shall not be held criminally liable if the court determines that the minor is a victim of an offense under this article: Provided, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under § 61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

- 2.7.1 Recommendation: Amend W. Va. Code Ann. § 61-14-8 (Immunity for minor victim of sex trafficking) to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, without requiring the court to make an additional finding of coercion.

**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.

West Virginia 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.

West Virginia law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While West Virginia law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for jurisdictional purposes and permits automatic

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<sup>9</sup> Under W. Va. Code Ann. § 61-8-5(b) (Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts),

Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by confinement in a state correctional facility for not less than one year nor more than three years: Provided, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under § 61-14-1 et seq. of this code.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator, or any person benefiting financially or otherwise from the earnings of a prostitute.

transfers for some minors charged with certain felony offenses. Additionally, the juvenile court is not required to consider the impact of trauma or past trafficking victimization in making discretionary transfer determinations.

	<b>Minimum Age for Juvenile Court Jurisdiction</b>	<b>Maximum Age for Charging a Minor in Juvenile Court</b>	<b>Automatic Transfers or Direct File</b>	<b>Discretionary Transfers</b>	<b>Requirement for Court to Consider Trauma or Past Victimization</b>
<b>Summary</b>	None. "A person under the age of eighteen years who appears before [the juvenile jurisdiction of] the circuit court in proceedings under this article is a ward of the court and protected accordingly."	17	Yes. Minors: (1); 14+ years of age charged with treason, murder, robbery involving use of a firearm/deadly weapon, kidnapping, 1 <sup>st</sup> degree arson, or 1 <sup>st</sup> degree sexual assault; (2) 14+ years of age charged with a felony offense of violence to a person if the minor was previously adjudicated for a violent felony offense or twice adjudicated for a felony offense.	Yes. Minors: (1) under 14 years of age charged with treason, murder, robbery involving use of a firearm/deadly weapon, kidnapping, 1 <sup>st</sup> degree arson, or 1 <sup>st</sup> degree sexual assault; (2) under 14 years of age charged with a felony offense of violence to a person if the minor was previously adjudicated for a violent felony offense or twice adjudicated for a felony offense; (3) 14+ years of age charged with a felony offense of violence to a person; (4) 14+ years of age charged with a felony offense if the minor was previously adjudicated for a felony; (5) 14+ years of age charged with felony involving the use of a firearm or deadly weapon; (6) charged with an offense involving manufacturing, delivering or possessing with the	No.

				intent to deliver a narcotic drug; or (7) certain arson offenses.	
<b>Relevant Statute(s)</b>	W. Va. Code § 49-4-701(a) (Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts)	W. Va. Code § 49-4-701(a), (b) (Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts)	W. Va. Code § 49-4-710(d) (Waiver and transfer of jurisdiction)	W. Va. Code § 49-4-710(e)–(g) (Waiver and transfer of jurisdiction)	W. Va. Code § 49-4-710(e)–(g) (Waiver and transfer of jurisdiction)

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allow some juvenile cases to be automatically transferred to criminal court; and (3) do not require the juvenile court to consider previous 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.

West Virginia defines “abused child” to include child sex trafficking. Specifically, W. Va. Code Ann. § 49-1-201(1) (Definitions related, but not limited, to child abuse and neglect) defines “abused child” to include the following:

A child whose health or welfare is being harmed or threatened by:

....

(B) . . . sexual exploitation;

....

(E) Human trafficking or attempted human trafficking, in violation of § 61-14-2 of this code.

W. Va. Code Ann. § 49-1-201 further defines “sexual exploitation” to include when “[a] parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of § 61-14-5 [Sexual Servitude] of this code.”

## EXTRA CREDIT



Child labor trafficking is included in the definition of “abused child” under W. Va. Code Ann. § 49-1-201(1)(E), which expressly includes victims of W. Va. Code Ann. § 61-14-2 ((Human trafficking of an individual; penalties), including victims of both sex and labor trafficking.

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

While the definition of “abused child” under W. Va. Code Ann. § 49-1-201(1) (Definitions related, but not limited, to child abuse and neglect) does not expressly require fault by a parent, guardian, or custodian in cases related to child sex trafficking, West Virginia’s child welfare code also does not expressly permit a child welfare response to child sex trafficking victims whose parent or caregiver was not their exploiter and not otherwise responsible for their exploitation. Additionally, no alternative response is statutorily provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

- 2.11.1 Recommendation: Amend the child welfare code to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.



## ISSUE 3: Continuum of Care

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

A child sex trafficking victim may have access to general services; however, West Virginia law does not provide a process to connect child sex trafficking victims with access to specialized services through a non-punitive system. Pursuant to W. Va. Code Ann. § 61-14-7(e) (General provisions and other penalties), law enforcement must report suspected cases of child sex trafficking to the Department of Health and Human Resources; it states,

Should a law enforcement officer encounter a child who reasonably appears to be a victim of an offense under this article [Human Trafficking], the officer shall notify [DHHR]. If available, [DHHR] may notify the Domestic Violence Program serving the area where the child is found.

Additionally, W. Va. Code Ann. § 61-14-8(a) (Immunity for minor victim of sex trafficking) prohibits the criminalization of child sex trafficking victims for prostitution.<sup>10</sup> Instead, a child sex trafficking victim should be identified as an abused child and provided with services under W. Va. Code Ann. § 61-14-8(c), which states,

A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in § 49-1-201 [Definitions] of this code, and may be eligible for services under chapter 49 of this code including, but not limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-informed services that are specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking victims.

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

### **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,<sup>11</sup> West Virginia law does not require an MDT response specific to child sex trafficking cases. Pursuant to W. Va. Code § 49-4-402(a)(1)–(8) (Multidisciplinary investigative teams; establishment; membership; procedures; coordination among agencies; confidentiality),

The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county. The multidisciplinary team shall be headed and directed by the prosecuting attorney, or his or her designee, and includes as permanent members:

- (1) The prosecuting attorney, or his or her designee;

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<sup>10</sup> See *supra* Policy Goal 2.5 for a full discussion of the non-criminalization of minors.

<sup>11</sup> Further, under W. Va. Code § 49-4-406 (Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements), an MDT will be convened to create a robust service plan for adjudicated juveniles including assessments for health, mental health, education, home environment, and service needs.

- (2) A local child protective services caseworker from the Department of Health and Human Resources;
- (3) A local law-enforcement officer employed by a law-enforcement agency in the county;
- (4) A child advocacy center representative, where available;
- (5) A health care provider with pediatric and child abuse expertise, where available;
- (6) A mental health professional with pediatric and child abuse expertise, where available;
- (7) An educator; and
- (8) A representative from a licensed domestic violence program serving the county.

Under W. Va. Code § 49-4-405(a)–(c) (Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions), the MDT will meet to create a comprehensive service plan for victims of abuse and neglect; it states,

(a) Within thirty days of the initiation of a judicial proceeding pursuant to part six [§§ 49-4-601 et seq.], of this article, the Department of Health and Human Services shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

- (1) The child or family's case manager in the Department of Health and Human Resources;
- (2) The adult respondent or respondents;
- (3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;
- (4) Any attorney representing an adult respondent or other member of the treatment team;
- (5) The child's counsel or the guardian ad litem;
- (6) The prosecuting attorney or his or her designee;
- (7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;
- (8) Any court-appointed special advocate assigned to a case;
- (9) Any other person entitled to notice and the right to be heard;
- (10) An appropriate school official; and
- (11) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

### 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.

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

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

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

West Virginia law extends foster care services to youth under 21 years of age through a court process. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>12</sup> W. Va. Code Ann. § 49-1-202 (Definitions related, but not limited, to adult, child, developmental disability, and transitioning adult status) defines “transitioning adult” as follows:

- [A]n individual with a transfer plan to move to an adult setting who meets one of the following conditions:
- (A) Is eighteen years of age but under twenty-one years of age, was in the custody of the Department of Health and Human Resources upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday; or
  - (B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in the custody of the Department of Health and Human Resources upon reaching eighteen years of age and enters into a contract with the Department of Health and Human Resources to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

Specifically, W. Va. Code Ann. § 49-4-110(b), (c) (Foster care; quarterly status review; transitioning adults; annual permanency hearings) provides,

- (b) For each transitioning adult as that term is defined in section two hundred two [§ 49-1-202], article one of this chapter who remains in foster care, the circuit court shall conduct status review hearings as described in subsection (a) of this section once every three months until permanency is achieved.
- (c) For each child or transitioning adult who continues to remain in foster care, the circuit court shall conduct a permanency hearing no later that twelve months after the date the child or transitioning adult is considered to have entered foster care, and at least once every twelve months thereafter until permanency is achieved. For purposes of permanency planning for transitioning adults, the circuit court shall make factual findings and conclusions of law as to whether the department made reasonable efforts to finalize a permanency plan to prepare a transitioning adult for emancipation or independence or another approved permanency option such as, but not limited to, adoption or legal guardianship pursuant to the West Virginia Guardianship and Conservatorship Act.

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

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<sup>12</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, [https://sharedhope.org/wp-content/uploads/2020/12/SH\\_Issue-Brief-3.4\\_2020.pdf](https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf) (discussing the need to extend child welfare protections to youth under 24 years of age).

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

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

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

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

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





## ISSUE 4: Access to Justice for Trafficking Survivors

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

While civil orders of protection exist under West Virginia law, this protection is not expressly available to victims of child sex trafficking and CSEC.

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

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

West Virginia's crime victims' compensation laws provide exceptions to reporting requirements for child sex trafficking victims and other minors; however, additional ineligibility factors may still prevent child sex trafficking victims from accessing an award.

For purposes of accessing crime victims' compensation, W. Va. Code Ann. § 14-2A-3(k)(A) (Definitions) defines "victim" as "[a] person who suffers personal injury or death as a result of . . . [c]riminally injurious conduct." "Criminally injurious conduct" is defined under W. Va. Code Ann. § 14-2A-3(e) to include "conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment."

Further, W. Va. Code Ann. § 61-14-7(d) (General provisions and other penalties) clarifies that trafficking victims may seek crime victims' compensation, stating,

Notwithstanding the definition of victim in section three, article two-a, chapter fourteen of this code [§ 14-2A-3], a victim of any offense under this article [Human Trafficking] is a victim for all purposes of article two-a, chapter fourteen of this code [§ 61-14-2a (Compensation Awards to Victims)] . . .

However, certain ineligibility factors may still limit a commercially sexually exploited child's ability to obtain an award. Pursuant to W. Va. Code Ann. § 14-2A-14(a)–(d) (Grounds for denial of claim or reduction of awards; maximum awards),

(a) Except as provided in § 14-2A-10(b) of this code, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

. . . .

(c) The commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

As noted above, West Virginia law does carve out an exception to reporting requirements. Under W. Va. Code Ann. § 14-2A-14(b),

The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the victim did not undergo a forensic medical examination, within 96 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: Provided, That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the victim is a juvenile in order for a commissioner to approve an award of compensation: Provided, however, That the filing of a civil abuse and neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor child who is the subject of the petition to file an application for benefits, with the claims process to proceed in accordance with this code . . . .

W. Va. Code Ann. § 61-14-7(d) clarifies that trafficking victims are not subject to reporting requirements, stating in part, “for purposes of subsection (b), section fourteen, article two-a, chapter fourteen of this code [§ 14-2A-14], if otherwise qualified, a victim of any offense under this article [Human trafficking] may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.”

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

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

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

West Virginia law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for offenses arising from their victimization; however, relief is limited to prostitution offenses. Pursuant to W. Va. Code Ann. § 61-14-9 (Petition to vacate and expunge conviction or juvenile delinquency adjudication of sex trafficking victim),

- (a) Notwithstanding the age and criminal history limitations set forth in § 61-11-26 [Expungement of certain criminal convictions; procedures; effect] of this code or the provisions in § 49-4-103 [Proceedings may not be evidence against child, or be published; adjudication is not a conviction and not a bar to civil service eligibility] of this code, an individual convicted of prostitution in violation of § 61-8-5(b) [Houses of ill fame and assignation; penalties] of this code as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction or juvenile adjudication to vacate the conviction or adjudication of juvenile delinquency and expunge the record of conviction or record of adjudication of juvenile delinquency. The court may grant the petition upon a finding that the individual’s participation in the offense was a direct result of being a victim of trafficking.
- (b) A victim of trafficking seeking relief under this section is not required to complete any type of rehabilitation in order to obtain expungement.
- (c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted are subject to the procedural requirements of § 61-11-26 of this code: Provided, That the age or criminal history limitations in that section and the provisions of § 49-4-103 of this code are inapplicable to victims of human trafficking.

As noted above, however, W. Va. Code Ann. § 61-14-9 applies only to prostitution offenses, which fails to recognize the array of crimes trafficking victims are charged with and leaves many survivors without any avenue for relief.

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

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

West Virginia law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to W. Va. Code Ann. § 61-14-7(c)(1) (General Provisions and other penalties), “The court shall order a person convicted of an offense under this article [Human Trafficking] to pay restitution to the victim of the offense.”

Restitution is available more generally to victims of other crimes pursuant to W. Va. Code Ann. § 61-11A-4 (Restitution; when ordered), which provides,

- (a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological, or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense to the greatest extent economically practicable when considering the defendant’s financial circumstances . . . .
- (b) The order shall require that the defendant:
  - (1) In the case of an offense resulting in damage to, loss of, or destruction of property of a victim of the offense:
    - (A) Return the property to the owner of the property or someone designated by the owner; or
    - (B) If return of the property under paragraph (A) of this subdivision is impossible, impractical, or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing; or (ii) the value of the property on the date of the damage, loss, or destruction less the value (as of the date the property is returned) of any part of the property that is returned;
  - (2) In the case of an offense resulting in bodily injury to a victim:
    - (A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
    - (B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and
    - (C) Reimburse the victim for income lost by the victim as a result of the offense;

**EXTRA CREDIT**



West Virginia law mandates restitution for victims of child labor trafficking under W. Va. Code Ann. § 61-14-7(c)(1), which requires offenders convicted of any violation of the human trafficking article to pay victim restitution.

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

West Virginia law does not allow victims of child sex trafficking to pursue civil remedies against their exploiters.<sup>13</sup>

4.5.1 Recommendation: Provide child sex trafficking victims with a trafficking-specific civil remedy.

**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 CSEC offenses may commence at any time. In West Virginia, criminal actions for felony offenses are not subject to a statute of limitation,<sup>14</sup> and prosecutions for misdemeanors must commence within 1 year of the commission of the crime. W. Va. Code Ann. § 61-11-9 (Limitation of prosecution; lost indictment). West Virginia law does not provide child sex trafficking victims with a trafficking-specific civil remedy.<sup>15</sup>

4.6.1 Recommendation: Eliminate the civil statute of limitation for all cases involving child sex trafficking.<sup>16</sup>

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<sup>13</sup> However, victims of W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties), a CSEC offense, may bring civil actions; pursuant to W. Va. Code Ann. § 61-3C-16(a) (Civil relief; damages),

Any person whose property or person is injured by reason of a violation of any provision of this article [West Virginia Computer Crime and Abuse Act] may sue therefor in circuit court and may be entitled to recover for each violation:

- (1) Compensatory damages;
- (2) Punitive damages; and
- (3) Such other relief, including injunctive relief, as the court may deem appropriate.

Without limiting the generality of the term, “damages” shall include loss of profits.

<sup>14</sup> See State v. Parsons, 589 S.E.2d 226, 237 (W. Va. 2003) (noting “West Virginia has no statute of limitations affecting felony prosecutions.” (quoting State v. Carrico, 427 S.E.2d 474, 477 (W. Va.1993))).

<sup>15</sup> For personal injury actions, W. Va. Code Ann. § 55-2-12(b) (Personal actions not otherwise provided for) establishes a general 2-year statute of limitation.

<sup>16</sup> The recommendation in this Policy Goal is predicated upon the recommendation in Policy Goal 4.5 being simultaneously or previously enacted.



## 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.

West Virginia law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

**Policy Goal 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

West Virginia law does not provide child sex trafficking victims with an alternative to live, in-court testimony. Although W. Va. Code Ann. § 62-6B-3 (Findings of fact required for taking testimony of child witness by closed-circuit television; considerations for court) permits the court to order the testimony of a child under 16 years of age be taken by closed circuit television (CCTV) during the prosecution of a specified offense, this protection does not extend to victims of sex trafficking or CSEC. Specifically, W. Va. Code Ann. § 62-6B-3(a), (b) states,

- (a) Upon a written motion filed by the prosecuting attorney, the child's attorney or the child's guardian ad litem, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, closed-circuit television.
- (b) Prior to ordering that the testimony of a child witness may be taken through the use of live, closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:<sup>17</sup>
  - (1) The child is an otherwise competent witness;

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<sup>17</sup> Pursuant to W. Va. Code Ann. § 62-6B-3(c), (d),

- (c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, closed-circuit television:
  - (1) The age and maturity of the child witness;
  - (2) The facts and circumstances of the alleged offense;
  - (3) The necessity of the child's live testimony to the prosecution's ability to proceed as well as any prejudice to the defendant by allowing testimony through closed-circuit television;
  - (4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and
  - (5) Any mental or physical handicap of the child witness.
- (d) In determining whether to allow a child witness to testify through live, closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion . . . .

- (2) That, absent the use of live, closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;
- (3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and
- (4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

W. Va. Code Ann. § 62-6B-2(1) (Definitions) defines “child witness” as follows:

[A] person under the age of sixteen years of age who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three [§ 61-8B-3 (Sexual assault in the first degree)], four [§ 61-8B-4 (Sexual assault in the second degree)], five [§ 61-8B-5 (Sexual assault in the third degree)] and seven [§ 61-8B-7 (Sexual abuse in the first degree)] article eight-b, chapter sixty-one of this code in which the child is the alleged victim.

Accordingly, the protection provided for under W. Va. Code Ann. § 62-6B-3 is unavailable to victims of commercial sexual exploitation. Further, child victims who are 16 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

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

**Policy Goal 5.3** Child sex trafficking victims have access to victim protections in the criminal justice system.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims’ identifying information is protected from disclosure in court records</b>
<b>Summary</b>	West Virginia law provides the right to a personal representative of the victim’s choice to accompany them to a hospital or other health care facility and to attend proceedings concerning the alleged assault, including police interviews and court proceedings.	Not statutorily required.	Not statutorily required.
<b>Relevant Statute(s)</b>	W. Va. Code Ann. § 61-11A-9(1) (Sexual assault victims’ bill of rights)	None.	None.

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims are provided courtroom supports when testifying against their exploiter and their identifying information is protected from disclosure in court records.

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

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

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



## ISSUE 6: Prevention & Training

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

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

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

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

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

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

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

West Virginia law authorizes trafficking-specific training for law enforcement. Pursuant to W. Va. Code Ann. § 30-29-3(b) (Duties of the subcommittee),

In addition to the duties authorized and established by this section, the [law-enforcement professional standards] subcommittee may:

- (1) Establish training to effectively investigate human trafficking offenses as defined in §61-2-1 et seq. of this code for entry-level training curricula and for law-enforcement officers who have not received such training as certified by the committee as required by this section; and
- (2) Establish procedures for the implementation of a course in investigation of human trafficking offenses. The course may include methods of identifying and investigating human trafficking and methods for assisting trafficking victims. In order to implement and carry out the intent of this subdivision, the committee may promulgate emergency rules pursuant to §29A-3-15 [Emergency legislative rules; procedure for promulgation; definition] of this code.

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

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



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

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

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

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

West Virginia law does not mandate training on child sex trafficking for school personnel.

6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

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

West Virginia law does not mandate child sex trafficking prevention education in schools.

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

## State Laws Addressing Child Sex Trafficking

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1. W. Va. Code Ann. § 61-14-2(b) (Human trafficking of an individual; penalties) states,

Any person who knowingly and willfully traffics<sup>18</sup> a minor, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than 20 years, fined not more than \$300,000, or both confined and fined.

2. W. Va. Code Ann. § 61-14-5(b) (Sexual servitude; penalties) states,

Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity<sup>19</sup> is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than twenty years, fined not more than \$300,000, or both imprisoned and fined.

3. W. Va. Code Ann. § 61-14-6(b) (Patronizing a victim of sexual servitude; penalties) states,

[A]ny person who knowingly patronizes<sup>20</sup> a minor to engage in commercial sexual activity<sup>21</sup> and who knows or has reason to know that said minor is a victim of sexual servitude,<sup>22</sup> is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both imprisoned and fined.

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<sup>18</sup> W. Va. Code § 61-14-1(6) (Definitions) defines “traffics” as “knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual to engage in . . . sexual servitude.” W. Va. Code § 61-14-1(14)(A) defines “sexual servitude,” in part, as “Maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity.”

<sup>19</sup> W. Va. Code § 61-14-1(3) (Definitions) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to or received by a person.”

<sup>20</sup> W. Va. Code § 61-14-1(10) (Definitions) defines “patronize” as “giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.”

<sup>21</sup> See *supra* note 19 for the definition of “commercial sexual activity.”

<sup>22</sup> See *supra* note 18 for the definition of “sexual servitude.”

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

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1. W. Va. Code Ann. § 61-2-14(a) (Abduction of person; kidnapping or concealing child; penalties) states,

Any person who . . . takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.

2. W. Va. Code Ann. § 61-8-6 (Detention of person in place of prostitution; penalty) states,

Whoever shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; or whoever shall, directly or indirectly, keep, hold, detain or restrain, or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person shall . . . be punished . . . . Provided, That in any offense under this section where the person so kept, held, detained or restrained is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years nor more than five years or fined not more than five thousand dollars, or both.

3. W. Va. Code Ann. § 61-8-7 (Procuring for house of prostitution; penalty) states,

Any person who shall procure an inmate for a house of prostitution, or who, by promises, threats, violence, or by any device or scheme, shall cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person; or any person who shall, by promises, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or any person who shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into or leave this state for the purpose of prostitution, or who shall procure any person to become an inmate of a house of ill fame within this state or to come into or leave this state for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this state, or to come into or leave this state for the purpose of prostitution, shall be guilty of pandering . . . . Provided, That where the inmate referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years nor more than five years or fined not more than five thousand dollars, or both . . . .

4. W. Va. Code Ann. § 61-8-8 (Receiving support from prostitution; pimping; penalty) states,

Any person who, knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution, shall be guilty of pimping . . . . Provided, That where the prostitute referred to in this section is a minor, any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two years or fined not more than five thousand dollars, or both . . . .

5. W. Va. Code Ann. § 61-3C-14b (Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties) states,

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, in order to engage in any illegal act proscribed by the provisions of article eight [§§ 61-8-1 et seq. (Crimes Against Chastity, Morality and Decency)], eight-b [§§ 61-8B-1 et seq. (Sexual Offenses)], eight-c [§§ 61-8C-1 et seq. (Filming of Sexually Explicit Conduct of Minors)] or eight-d [§§ 61-8D-1 et seq. (Child Abuse)] of this chapter, or any felony offense under section four hundred one [§ 60A-4-401 (relating to controlled and counterfeit substances)], article four, chapter sixty-a of this code, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than thirty years, or both: Provided, That subsection (a) shall be deemed a lesser included offense to that created by this subsection.