

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 Arkansas’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.¹



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.

Arkansas’s core sex trafficking offense, Ark. Code Ann. § 5-18-103(a)(4) (Trafficking of persons), applies to the actions of buyers, stating, “A person commits the offense of trafficking in persons if he or she knowingly . . . [r]ecruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity” Subsection (d) clarifies that this section was intended to apply to buyers by imposing an additional fine on those who violated “this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity”

Further, Ark. Code Ann. § 5-18-104(a) (Patronizing a victim of human trafficking) expressly applies to buyers of commercial sex. It states, “A person commits the offense of patronizing a victim of human trafficking if he or she knowingly engages in commercial sexual activity with another person knowing that the other person is a victim of human trafficking.” As noted, however, this offense requires the buyer to know the other person is a victim of human trafficking.

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

Arkansas’s CSEC laws do not criminalize purchasing or soliciting commercial sex with a minor.

1.2.1 Recommendation: Enact a CSEC law that specifically criminalizes purchasing or soliciting sex with any minor under 18.

¹ Evaluations of state laws are based on legislation enacted as of August 1, 2022.

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

Arkansas’s CSEC laws address an array of trafficker conduct. Specifically, Ark. Code Ann. § 5-70-104(a) (Promoting prostitution in the first degree) criminalizes “advance[ing] prostitution² or profit[ing] from prostitution³ of a person less than eighteen (18) years of age.”

Further, Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) applies to traffickers who transport minors, stating,

A person commits the offense of transportation of a minor for prohibited sexual conduct if the person transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and the actor:

- (1) Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and
- (2) Acts with the purpose that the minor will engage in:
 - (A) Prostitution; or
 - (B) Sexually explicit conduct.

Lastly, Ark. Code Ann. § 5-18-105(a) (Grooming a minor for future sex trafficking) provides, “A person commits grooming a minor for future sex trafficking if the person knowingly grooms⁴ a minor with a purpose to make it more likely that the minor can be enticed or induced into a future sex trafficking act with a person.”

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

Although Arkansas law expressly prohibits a mistake of age defense in prosecutions of its core child sex trafficking offense, the defense is not likewise prohibited under the buyer-applicable trafficking law or the state’s CSEC laws. Pursuant to Ark. Code Ann. § 5-18-103(b) (Trafficking of persons), “It is not a defense to prosecution under

² Pursuant to Ark. Code Ann. § 5-70-101(1) (Definitions),

‘Advances prostitution’ means a person if, acting other than as a prostitute or a patron of a prostitute, that person knowingly:

- (A) Causes or aids a person to commit or engage in prostitution;
- (B) Procures or solicits a patron for prostitution;
- (C) Provides a person or premises for prostitution purposes;
- (D) Operates or assists in the operation of a house of prostitution or a prostitution enterprise; or
- (E) Engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

³ Pursuant to Ark. Code Ann. § 5-70-101(3) (Definitions),

‘Profits from prostitution’ means a person if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person in which the person participates or is to participate in the proceeds of prostitution.”

⁴ Ark. Code Ann. § 5-18-102(6) (Definitions) defines “grooms” as “expos[ing] a minor to sexually explicit language or to a visual or print medium depicting sexually explicit conduct with the purpose [of] gain[ing] the trust of the minor.”

subdivision (a)(4)⁵ of this section that the actor: (1) Did not have knowledge of a victim's age; or (2) Mistakenly believed a victim was not a minor.” However, Ark. Code Ann. § 5-18-104 (Patronizing a victim of human trafficking) does not prohibit a defendant from asserting a defense based on mistake of age and expressly requires that a defendant know that the person from whom sexual acts are purchased is a victim of human trafficking. Arkansas’s CSEC offenses are silent regarding the availability of the defense.

- 1.4.1 Recommendation: Amend state law to 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.

Although state trafficking laws do not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Arkansas’s criminal attempt statute, Ark. Code Ann. § 5-3-201 (Conduct constituting attempt), could provide prosecutors with an alternative avenue to prosecute those cases. Ark. Code Ann. § 5-3-201(a) states,

- A person attempts to commit an offense if he or she purposely engages in conduct that:
 - (1) Would constitute an offense if the attendant circumstances were as the person believes them to be; or
 - (2) Constitutes a substantial step in a course of conduct intended to culminate in the commission of an offense whether or not the attendant circumstances are as the person believes them to be.

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

Arkansas’s trafficking chapter expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, Ark. Code Ann. § 5-18-105 (Enhanced liability of an organization) provides,

- In addition to any other statutorily authorized sentence or fine, an organization convicted of an offense under this chapter [Human Trafficking Act of 2013] is subject to any combination of the following:
 - (1) A suspension or revocation of a license, permit, or prior approval granted to the organization by a state or local government agency;
 - (2) A court order to dissolve or reorganize; and
 - (3) Other relief as is equitable.

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.

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

⁵ Ark. Code Ann. § 5-18-103(a)(4) states,

- A person commits the offense of trafficking of persons if he or she knowingly:
 -
 - (4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity;

Regarding mandatory fees, Ark. Code Ann. § 5-18-103(d) (Trafficking of persons) requires offenders convicted under the trafficking law to pay a \$250 fee to be deposited in the Safe Harbor Fund for Sexually Exploited Children. Ark. Code Ann. § 5-18-103(d) provides,

In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

Further, Ark. Code Ann. § 5-4-703 (Additional fine – Offenses committed against a child) requires sex trafficking and CSEC offenders to pay a \$100 fee to be deposited in the Arkansas Children’s Advocacy Center Fund, stating,

(a) In addition to any other sentence, the court shall assess an additional fine of one hundred dollars (\$100) for the following offenses if the finder of fact determines that the offense was committed against a child or in the presence of a child:

....

(9) Trafficking of persons, § 5-18-103, or patronizing a victim of human trafficking, § 5-18-104;

....

(12) . . . [T]ransportation of minors for prohibited sexual conduct, § 5-27-305 . . . ;

....

(b)

(1) A fine assessed and collected under this section shall be remitted on or before the fifteenth day of the following month to the Arkansas Children’s Advocacy Center Fund under § 19-5-1260.

....

Regarding asset forfeiture, Ark. Code Ann. § 5-5-201(a)(2) (Forfeiture requirement – Exceptions) provides for forfeiture in trafficking cases; it states, “Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel, is subject to forfeiture under this subchapter if it is used in the commission or attempt of . . . Trafficking of persons, § 5-18-103.” Ark. Code Ann. § 5-5-202 (Seizure of conveyances) governs seizure of those conveyances while Ark. Code Ann. § 5-5-204 (Use or sale of conveyances – Disposition of sale proceeds) provides for their sale and distribution. Pursuant to Ark. Code Ann. § 5-5-204(a)(1)(B), the proceeds from such sale will first be directed toward satisfying any outstanding victim restitution. If no restitution is owed or proceeds remain, Ark. Code Ann. § 5-5-204(b) distributes proceeds as follows:

(1) Forty percent (40%) to be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund;

(2)

(A) Forty percent (40%) to the law enforcement agency that perfected the arrest.

(B) However, if a federal agency perfected the arrest, the forty percent (40%) under subdivision

(b)(2)(A) of this section shall be distributed to the county sheriff’s office of the county responsible for the prosecution; and

(3) Twenty percent (20%) to the county sheriff’s office of the county responsible for the prosecution.

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



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 includes all commercially sexually exploited children without requiring third party control. Ark. Code Ann. § 5-18-102(15) (Definitions) defines “victim of human trafficking”⁶ to include victims under Arkansas’s core sex trafficking offense, Ark. Code Ann. § 5-18-103 (Trafficking of persons). Ark. Code Ann. § 5-18-103(a)(4) does not require third party control because it applies directly to buyers of sex with minors.⁷ Accordingly, third party control is not required to identify a commercially sexually exploited child as a trafficking victim or to establish the crime of trafficking of persons under Ark. Code Ann. § 5-18-103.

Notably, however, the definition of “victim of trafficking” does not include a person who has been subjected to Ark. Code Ann. § 5-18-104 (Patronizing a victim of human trafficking), which requires the buyer to know the person patronized was a victim of human trafficking.⁸ Consequently, the victim must be under the control of a trafficker to establish the crime of patronizing a victim of human trafficking under Ark. Code Ann. § 5-18-104.

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

Policy guidance on responding to foreign national victims of child sex trafficking may be developed through the Arkansas State Attorney General’s Task Force for the Prevention of Human Trafficking, which includes representatives from various child-serving entities.⁹ Specifically, Ark. Code Ann. § 12-19-101(a), (d)(6) (State task force for the prevention of human trafficking) states,

⁶ Ark. Code Ann. § 5-18-102(15) defines “victim of human trafficking” as “a person who has been subjected to trafficking of persons, § 5-18-103.”

⁷ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Ark. Code Ann. § 5-18-103(a)(4).

⁸ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Ark. Code Ann. § 5-18-104.

⁹ Ark. Code Ann. § 12-19-101(b), (c) governs appointment of task force members, stating,

(b) If established, representatives on the task force shall be appointed by the Attorney General and may include representatives from:

- (1) The office of the Attorney General;
- (2) The office of the Governor;
- (3) The Department of Labor and Licensing;
- (4) The Department of Health;
- (5) The Department of Human Services;
- (6) The Arkansas Association of Chiefs of Police;
- (7) The Arkansas Sheriffs' Association;
- (8) The Division of Arkansas State Police;
- (9) The Arkansas Prosecuting Attorneys Association;
- (10) Local law enforcement; and
- (11) Nongovernmental organizations such as:

- (a)
 - (1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.
 - (2) The task force shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.
-
- (d) If the task force is created by the Attorney General, the task force shall:
 -
 - (6) Establish policies to enable state government to work with nongovernmental organizations and other elements of the private sector to prevent human trafficking and provide assistance to victims of human trafficking who are United States citizens or foreign nationals;

Accordingly, while Arkansas law mandates the development of policy guidance that facilitates access to services and assistance for trafficked foreign national children, such development hinges upon the creation of the task force, which is discretionary.

- 2.2.1 Recommendation: Statutorily provide policy guidance that facilitates access to services and assistance for trafficked foreign national children without hinging its provision on the discretionary creation of a task force.

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

Arkansas 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: Statutorily require 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.

Arkansas 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: Statutorily require juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

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- (A) Those specializing in the problems of human trafficking;
 - (B) Those representing diverse communities disproportionately affected by human trafficking;
 - (C) Agencies devoted to child services and runaway services; and
 - (D) Academic researchers dedicated to the subject of human trafficking.
- (c) If the task force is created by the Attorney General, he or she may invite federal agencies that operate in the state to be members of the task force, including without limitation:
 - (1) The Federal Bureau of Investigation;
 - (2) United States Immigration and Customs Enforcement; and
 - (3) The United States Department of Labor.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest.

Arkansas law prohibits the criminalization of some, but not all, minors for prostitution offenses. While protections exist, they are limited to individuals identified as trafficking victims, potentially allowing individuals who are not identified as victims under Ark. Code § 5-18-103 (Trafficking in persons) to be prosecuted for prostitution. Ark. Code Ann. § 5-70-102(a), (c) (Prostitution) states,

(a) A person commits prostitution if in return for or in expectation of a fee he or she engages in or agrees or offers to engage in sexual activity with any other person.

....

(c) It is not an offense under this section if at the time of the person’s commission of or arrest for act that meets the elements of the offense of prostitution, the person was a victim of trafficking of persons, § 5-18-103.

Ark. Code Ann. § 5-70-102 further fails to establish a protocol requiring law enforcement to refer impacted children to a direct services organization or child-serving agency in lieu of arrest. Instead, Ark. Code Ann. § 5-70-102(d) only requires law enforcement to make a determination of trafficking victimization and, if identifying the minor as a trafficking victim, to notify the prosecuting attorney. Ark. Code Ann. § 5-70-102(d) states,

(1) If a law enforcement agency is investigating an offense under this section that has allegedly been committed by a minor, the law enforcement agency shall make every effort to determine whether the minor, at the time of the offense, was a victim of trafficking in persons, § 5-18-103 [Trafficking in persons].

(2) If a determination under subdivision (d)(1) of this section is made that the minor was a victim of trafficking of persons, § 5-18-103, the law enforcement agency investigating the offense shall immediately notify the prosecuting attorney.

Notably, minors may also be subject to criminalization under Ark. Code Ann. § 5-70-103(a)(2) (Sexual solicitation), which criminalizes persons who “[s]olici[t] or reques[t] a person to engage in sexual activity with a him or her in return for a fee.” Some minors may be able to assert an affirmative defense to charges pursuant Ark. Code Ann. § 5-70-103(c), which states, “It is an affirmative defense to prosecution under this section that the person engaged in an act of sexual solicitation as a result of being a victim of trafficking of persons, § 5-18-103.” Similarly, Ark. Code Ann. § 5-2-210(b), (c)(3) (Human trafficking – Affirmative defense) allows trafficking victims to assert an affirmative defense to any prostitution offense, stating,

(b) It is an affirmative defense to an offense listed under subsection (c) of this section if at the time a person engaged in the conduct charged to constitute the offense the person was:

- (1) A victim of trafficking of persons;¹⁰ and
- (2) Engaged in the offense as a result of the trafficking of persons.

(c) The affirmative defense under this section may be raised only in a prosecution for one (1) or more of the following offenses:

....

- (3) A prostitution offense under § 5-70-101 et seq.;

However, these affirmative defense laws do not prohibit minors from being arrested, charged, detained, or prosecuted for engaging in conduct in violation of the law.

¹⁰ Ark. Code Ann. § 5-2-210(a) defines “victim of trafficking of persons” as “a person who has been subjected to trafficking of persons, § 5-18-103.”

- 2.5.1 Recommendation: Strengthen existing law to expressly prohibit the criminalization of any person under 18 years of age, regardless of whether the minor is identified as a victim of child sex trafficking, and establish a services-referral protocol in response to minors engaged in commercial sex.

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

Although state law does not prohibit the criminalization of child sex trafficking victims for status offenses or for misdemeanors or non-violent felonies committed as a result of their trafficking victimization, an affirmative defense may be available. Pursuant to Ark. Code Ann. § 5-2-210(b), (c) (Human trafficking – Affirmative defense),

- (b) It is an affirmative defense to an offense listed under subsection (c) of this section if at the time a person engaged in the conduct charged to constitute the offense the person was:
- (1) A victim of trafficking of persons;¹¹ and
 - (2) Engaged in the offense as a result of the trafficking of persons.
- (c) The affirmative defense under this section may be raised only in a prosecution for one (1) or more of the following offenses:
- (1) Forgery, § 5-37-201;
 - (2) Defrauding a prospective adoptive parent, § 5-37-216;
 - (3) A prostitution offense under § 5-70-101 et seq.;
 - (4) Obscene performance at a live public show, § 5-68-305; or
 - (5) A controlled substance offense under § 5-64-401 et seq. that is not a Class Y felony.

- 2.6.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Although state law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, an affirmative defense may be available for promoting prostitution charges. Pursuant to Ark. Code Ann. § 5-2-210(b), (c)(3) (Human trafficking – Affirmative defense),

- (b) It is an affirmative defense to an offense listed under subsection (c) of this section if at the time a person engaged in the conduct charged to constitute the offense the person was:
- (1) A victim of trafficking of persons;¹² and
 - (2) Engaged in the offense as a result of the trafficking of persons.
- (c) The affirmative defense under this section may be raised only in a prosecution for one (1) or more of the following offenses:
- ...
 - (3) A prostitution offense under § 5-70-101 et seq.;

¹¹ See *supra* note 10 for the definition of “victim of trafficking of persons.”

¹² See *supra* note 10 for the definition of “victim of trafficking of persons.”

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

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

Arkansas 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: Amend state law to provide 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.

Arkansas law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While juvenile court jurisdiction extends to all minors under 18 years of age, Arkansas law establishes a minimum age of 10 years for purposes of juvenile court jurisdiction, permits direct file and transfers to criminal court for minors accused of certain offenses, and fails to require courts to consider the impact of trauma or past victimization in making discretionary transfer determinations.

	Minimum Age of Juvenile Court Jurisdiction	Maximum Age for Charging Youth in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	10. “Delinquent juvenile” is defined as, “a juvenile ten (10) years of age or older”	17	Yes. Minors 16+ years old who have been charged with felony offenses and minors previously convicted in criminal court.	Yes. 14 and 15 year olds charged with certain offenses may be transferred to criminal court.	No.
Relevant Statute(s)	Ark. Code Ann. § 9-27-303(15)(A) (Definitions); Ark. Code Ann. § 9-27-306(a)(1)(A)(i) (Jurisdiction)	Ark. Code Ann. § 9-27-306(a)(1)(A)(i) (Jurisdiction)	Ark. Code Ann. § 9-27-318(a) (Filing and transfer to criminal division of circuit court)	Ark. Code Ann. § 9-27-318(b) (Filing and transfer to criminal division of circuit court)	Ark. Code Ann. § 9-27-318(g) (Filing and transfer to criminal division of circuit court)

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns 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 past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Statutorily require 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.

Child sex trafficking is included in the definition of “sexual abuse” under Title 12, Chapter 18 (Child Maltreatment Act) as well as in the definition of “sexual abuse” and the definition of “dependent juvenile” under Title 9, Chapter 27 (Juvenile Courts and Proceedings).

Pursuant to Ark. Code Ann. § 12-18-103(20)(F) (Definitions),

“Sexual abuse” means:

....

(F) By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act;

Additionally, Ark. Code Ann. § 9-27-303(17)(G) (Definitions) defines “dependent juvenile” as follows:

- (i) A child who has been a victim of human trafficking.
- (ii) If the parent knew or should have known the child was a victim of human trafficking, the child is not a dependent juvenile but may be dependent-neglected;

Further, Ark. Code Ann. § 9-27-303(18)(A) defines “dependent-neglected juvenile” to include child sex trafficking through the definition of “sexual abuse.” Ark. Code Ann. § 9-27-303(18) states,

(A) “Dependent-neglected juvenile” means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

- (i) Abandonment;
- (ii) Abuse;
- (iii) Sexual abuse;
- (iv) Sexual exploitation;¹³
- (v) Neglect;

....

(B) “Dependent-neglected juvenile” includes dependent juveniles.

Ark. Code Ann. § 9-27-303(53)(F) provides:

“Sexual abuse” means:

....

By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.¹⁴

¹³ Additionally, the definition of dependent-neglected child includes commercial sexual exploitation of children (CSEC) through the definition of “sexual exploitation.” Ark. Code Ann. § 9-27-303(54)(A)(i) defines “sexual exploitation” to include “[a]llowing, permitting, or encouraging participation or depiction of the juvenile in . . . Prostitution.”

¹⁴ Regarding the definition of “sexual abuse” in the Child Maltreatment Act, Ark. Code Ann. § 12-18-103(20)(F) also includes:

By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

EXTRA CREDIT



Child labor trafficking is included in the definitions of “sexual abuse” under Ark. Code Ann. § 9-27-303(3)(A) (Definitions) and “dependent juvenile” under Ark. Code Ann. § 9-27-303(17).

Policy Goal 2.11 State law allows for child welfare involvement in non-familial child sex trafficking cases without hinging involvement on caregiver fault and provides for an alternative, specialized investigation in those cases.

Arkansas’s child welfare code does not allow for a child welfare response in non-familial child sex trafficking cases regardless of caregiver fault. While the definitions of “dependent juvenile” and “dependent-neglected juvenile” under Ark. Code Ann. § 9-27-303(17) and (18) are not limited to acts committed by a caregiver, the inclusion of these definitions in Chapter 27 of Title 9, which governs the dependency process, results in a requirement of caregiver fault in order for a child to access child welfare services. Further, a specialized investigation is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

2.11.1 Recommendation: Statutorily allow for child welfare involvement in child sex trafficking cases regardless of parent or caregiver fault and provide for a specialized investigation in those cases.



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

Arkansas law does not mandate a process for coordinating access to specialized, community-based services for child sex trafficking victims; however, statutory law requires the development of a state plan for delivering appropriate services to child victims. Pursuant Ark. Code Ann. § 9-27-323(k) (Diversion – Conditions – Agreement – Completion – Definition),

- (1) The Department of Human Services shall develop a statewide referral protocol for helping to coordinate the delivery of services to sexually exploited children.
- (2) As used in this section, “sexually exploited child” means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:
 - (A) Is a victim of trafficking of persons under § 5-18-103;
 - (B) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or
 - (C) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

3.1.1 Recommendation: Strengthen existing law to mandate a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

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

Arkansas law may provide a multi-disciplinary team (MDT) response to child sex trafficking cases; however, the response hinges on development of the MDT protocol, and the MDT protocol may include, but is not specific to, child sex trafficking cases. Pursuant to Ark. Code Ann. § 20-82-209(b), (c) (Multidisciplinary teams – Protocols created – Responsibilities – Definitions),

- (b) The [Multidisciplinary Team Oversight Committee] shall:
 - (1)
 - (A) Prepare and issue a statewide model protocol for multidisciplinary teams regarding cases of child abuse and the provision of safety and services to victims of child abuse, who may include child victims of human trafficking.
 - (B) The statewide model protocol shall describe coordinated investigation or coordinated services, or both, of state and local law enforcement, the Department of Human Services, and medical, mental health, and child safety centers; and
 - (2) Review and approve a protocol prepared by each multidisciplinary team.
- (c) Each multidisciplinary team¹⁵ shall:
 - (1) Develop a protocol consistent with the statewide model protocol issued by the committee;
 - (2) Submit the protocol to the Children’s Advocacy Centers of Arkansas for review and approval; and
 - (3) Ensure the timely exchange of relevant information.

¹⁵ Ark. Code Ann. § 20-82-209(a) defines “multidisciplinary team” as “a local team operating under a statewide model protocol developed by the Multidisciplinary Team Oversight Committee.”

- 3.2.1 Recommendation: Statutorily require a multi-disciplinary team response in cases of child sex trafficking.

Policy Goal 3.3 State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.

Child sex trafficking victims who are adjudicated dependent-neglected and placed in the custody of the Department of Human Services (DHS) may have access to specialized services through a “child welfare agency.”¹⁶ Ark. Code Ann. § 9-27-334(a)(1)–(2)(B) (Disposition – Dependent-neglected – Generally) states,

If a juvenile is found to be dependent-neglected, the circuit court may enter an order making any of the following dispositions:

- (1) Order family services;
- (2)
 - (A) If it is in the best interest of the juvenile, transfer custody of the juvenile to the Department of Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual.
 - (B) If the court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility, or an exempt child welfare agency¹⁷ as defined at § 9-28-402 [Definitions].

¹⁶ Further, Ark. Code Ann. § 9-27-323(k) (Diversion – Conditions – Agreement – Completion – Definition) mandates the development of a state plan for delivering appropriate services to child victims. *See supra* Policy Goal 3.1 for the substantive provisions of Ark. Code Ann. § 9-27-323(k).

¹⁷ Ark. Code Ann. § 9-28-402(12) defines “exempt child welfare agency” as follows:

[A]ny person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, that otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

- (A) A facility or program owned or operated by an agency of the United States Government;
- (B)
 - (i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.
 - (ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards.
 - (iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;
- (C) A facility or program owned or operated by or under contract with the Division of Correction;
- (D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;
- (E) Any facility governed by the Department of Human Services State Institutional System Board or its successor;
- (F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;
- (G) Any facility licensed as a family home pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;
- (H) Any boarding school as defined in this section;
- (I) Any temporary camp as defined in this section;
- (J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on

....

Pursuant to Arkansas’s Child Welfare Agency Licensing Act, the definitions of “child welfare agency” and “child placement agency” include entities that house or assist in the placement of juvenile sex trafficking victims. Specifically, Ark. Code Ann. § 9-28-402(8)(D) defines “child welfare agency” to include the following:

[A]ny person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that . . . [r]eceives, places, plans or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility.

Further, Ark. Code Ann. § 9-28-402(7)(D) defines “child placement agency” to include “a child welfare agency . . . that . . . [p]laces, plans for the placement or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility.”

Accordingly, Ark. Code Ann. § 9-27-334(a)(2)(B) allows DHS to refer child sex trafficking victims to specialized entities that serve child sex trafficking victims provided that those entities have been licensed in their jurisdiction. However, requiring a child sex trafficking victim to be adjudicated as “dependent-neglected” to receive services through child welfare could unjustly involve non-offending parents in the family court system and result in harmful, albeit unintentional, consequences for the child and family.

- 3.3.1 Recommendation: Strengthen existing law by requiring child welfare to provide access to specialized services for child sex trafficking victims without requiring that the child be adjudicated as dependent-neglected or placed outside of the home.

Policy Goal 3.4 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

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

- 3.4.1 Recommendation: Statutorily require the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.5 State law extends foster care services to older foster youth.

Arkansas law allows extended foster care services to be provided to youth under 21 years of age through extended court jurisdiction. However, these services are not extended to youth under 23 years of age as permitted under

nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services; and

(M) Any intellectual or other developmental disabilities services waiver provider licensed under § 20-48-208 or the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

federal law.¹⁸ Specifically, Ark. Code Ann. § 9-27-306(a)(1)(B) (Jurisdiction) allows for extended juvenile court jurisdiction over youth over 18 and under 21 years of age as follows:

- (a)
 - (1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including without limitation:
 -
 - (B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years of age, except for the following:
 - (i)
 - (a) A juvenile who has been adjudicated dependent or dependent-neglected before eighteen (18) years of age may request the court to continue jurisdiction over the juvenile until twenty-one (21) years of age so long as the juvenile is:
 - (1) Completing secondary education or a program leading to an equivalent credential;
 - (2) Enrolled in an institution providing post-secondary or vocational education;
 - (3) Participating in a program or activity designed to promote or remove barriers to employment;
 - (4) Employed for at least eighty (80) hours per month; or
 - (5) Incapable of completing school or work requirements due to a documented medical condition.
 - (b) The court shall retain jurisdiction only if the juvenile meets the requirements of subdivision (a)(1)(B)(i)(a) of this section or has a viable plan to meet the requirements.
 -
 - (ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction if the juvenile:
 - (a) Was adjudicated dependent or dependent-neglected;
 - (b) Was in foster care at eighteen (18) years of age; and
 - (c) Left foster care but desires to submit to the jurisdiction of the court before reaching twenty-one (21) years of age to benefit from extended foster care

Additionally, Ark. Code Ann. § 9-27-306(a)(1)(D)(i) provides for extended juvenile court jurisdiction over “[p]roceedings in which a family is alleged to be in need of services” as follows:

A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before 18 years of age may request that the court continue jurisdiction until 21 years of age if the juvenile is engaged in a course of instruction or treatment, or is working at least 80 hours a month towards self-sufficiency to receive independent living or transitional services . . .

¹⁸ For more information, see Shared Hope Int'l, *Issue Brief 3.5: Continuum of Care*, <https://reportcards.sharedhope.org/wp-content/uploads/2022/10/2022-Issue-Briefs-3.5.pdf> (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

Lastly, both Ark. Code Ann. § 9-27-363 (Foster youth transition),¹⁹ codified under the Arkansas Juvenile Code, and Ark. Code Ann. § 9-28-114 (Foster youth transition),²⁰ codified under the Children and Family Services subchapter, set out a range of duties of the department in relation to providing services to transition age foster youth.

3.5.1 Recommendation: Amend state law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

¹⁹ Pursuant to Ark. Code Ann. § 9-27-363(a)(3), (j),

(a) The General Assembly finds that:

.....
(3) The Department of Human Services shall:

- (A) Include the juvenile in the process of developing a plan to transition the child into adulthood;
- (B) Empower the juvenile with information about all of the options and services available;
- (C) Provide the juvenile with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;
- (D) Assist the juvenile in developing and maintaining healthy relationships with nurturing adults who can be a resource and positive guiding influences in his or her life after he or she leaves foster care; and
- (E) Provide the juvenile with basic information and documentation regarding his or her biological family and personal history.

.....
(j) A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with § 9-28-114.

²⁰ Pursuant to Ark. Code Ann. § 9-28-114(a)(3)(F),

The General Assembly finds that:

.....
(3) The Department of Human Services shall:

.....
(F) Offer an extended foster care program that provides:

- (i) Case management services and supports; and
- (ii) Financial assistance with room and board costs for a juvenile who:
 - (a) Was adjudicated dependent or dependent-neglected;
 - (b) Was in foster care at eighteen (18) years of age but is not yet twenty-one (21) years of age or such other age as may be required under federal law;
 - (c) Wishes to participate in extended foster care to benefit from the program; and
 - (d) Either:
 - (1) Is completing secondary education or a program leading to an equivalent credential;
 - (2) Is enrolled in an institution that provides postsecondary or vocational education;
 - (3) Is participating in a program or activity designed to promote or remove barriers to employment;
 - (4) Is employed for at least eighty (80) hours per month;
 - (5) Has a viable plan to meet the requirements of subdivisions (a)(3)(F)(ii)(d)(1)-(4) of this section; or
 - (6) Is incapable of doing any of the activities listed in subdivisions (a)(3)(F)(ii)(d)(1)-(5) of this section due to a medical condition, which incapability is supported by regularly updated information in the case plan of the juvenile;

Policy Goal 3.6 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

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

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



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 Arkansas law, this protection is not expressly available to victims of child sex trafficking and CSEC.

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

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

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

For purposes of accessing crime victims' compensation, Ark. Code Ann. § 16-90-703(11)(A) (Definitions.) defines "victim" as follows:

[A] person who suffers personal injury or death as a result of criminally injurious conduct²¹ committed either within the State of Arkansas or against any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible, and further includes any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States, as defined in 18 U.S.C. § 2331.

However, several ineligibility factors may prevent victims of child sex trafficking and CSEC from accessing an award. Pursuant to Ark. Code Ann. § 16-90-712(a)(1)–(6) (Conditions for reparations – Changes in awards),

Reparations shall not be awarded:

- (1) Unless the claim has been filed with the Crime Victims Reparations Board within one (1) year after the injury or death upon which the claim is based, unless the board finds good cause for the failure to file a timely claim;
- (2) To a claimant who was the offender or an accomplice of the offender;
-
- (5) To any claimant who has been convicted of a felony involving criminally injurious conduct;
- (6) Unless the criminally injurious conduct resulting in injury or death was reported to the proper authorities within seventy-two (72) hours after its occurrence, or the board finds there was good cause for the failure to report within that time;

Further, Ark. Code Ann. § 16-90-712(b)(2) states that "Reparations otherwise payable to a claimant shall be diminished to the extent . . . of the degree of responsibility for the cause of the injury or death attributable to the

²¹ Ark. Code Ann. § 16-90-703 (5)(A)(i) defines "criminally injurious conduct" as "an act which occurs or is attempted in this state that results in personal injury or death to a victim, which act is punishable by fine, imprisonment, or death."

victim, as determined by the board.” Lastly, under Ark. Code Ann. § 16-90-712(c), an award may be reduced, denied, or withdrawn if it is found that the victim did not cooperate with law enforcement.

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

- 4.2.1 Recommendation: Amend state law to 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.

Arkansas law does not allow sex trafficked children and youth to vacate delinquency adjudications or criminal convictions for offenses arising from trafficking victimization.

- 4.3.1 Recommendation: Amend state law to allow sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

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

Restitution is discretionary in child sex trafficking and CSEC cases. Pursuant to Ark. Code Ann. § 5-4-205(a)(1) (Restitution), “A defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.” Ark. Code Ann. § 5-4-205(b) further provides that restitution is based on the “actual economic loss caused to a victim²² by the offense,” and if bodily injury has occurred, the restitution order may require the defendant to pay for the following:

- (A) Pay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing;
- (B) Pay the cost of necessary physical and occupational therapy and rehabilitation;
- (C)
 - (i) Reimburse the victim for income lost by the victim as a result of the offense.
 - (ii) The maximum that a victim may recover for lost income is fifty thousand dollars (\$50,000); and
- (D) Pay an amount equal to the cost of a necessary funeral and related services in the case of an offense that resulted in bodily injury that also resulted in the death of a victim.

- 4.4.1 Recommendation: Amend state law to require restitution in child sex trafficking and CSEC cases.

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

Arkansas law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Ark. Code Ann. § 16-118-109(b)–(e) (Civil cause of action for human trafficking victims) states,

²² Ark. Code Ann. § 5-4-205(c)(1) defines “victim” as “any person, partnership, corporation, or governmental entity or agency that suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode.”

- (b) An individual who is a victim of human trafficking²³ may bring a civil action in any appropriate state court.
- (c) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.
- (d) A prevailing plaintiff shall also be awarded attorney's fees and costs.
- (e) Three (3) times actual damages shall be awarded on proof of actual damages when a defendant's acts were willful and malicious.

Civil remedies are available more generally to victims of other crimes under Ark. Code Ann. § 16-118-107(a)(1) (Civil action by crime victim), which states, “Any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.”

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Arkansas law provides sex trafficked youth with a trafficking-specific civil remedy under Ark. Code Ann. § 16-118-109(b), which allows “[a]n individual who is a victim of human trafficking [to] bring a civil action in any appropriate state court.” This protection applies to victims of Ark. Code Ann. § 5-18-103 (Trafficking of persons), including both minor and adult victims.

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Arkansas law provides child labor trafficking victims with a trafficking-specific civil remedy under Ark. Code Ann. § 16-18-109(b), which allows “[a]n individual who is a victim of human trafficking [to] bring a civil action in any appropriate state court.” This protection applies to victims of Ark. Code Ann. § 5-18-103 (Trafficking of persons), including both sex and labor trafficking victims.

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

Although Arkansas law allows prosecutions for one of its CSEC offenses to commence at any time, prosecutions for child sex trafficking and the state’s other CSEC offenses are still subject to a statute of limitation, and the statute of limitation for filing a trafficking-specific civil action is only lengthened, not eliminated. Pursuant to Ark. Code Ann. § 5-1-109(a)(1)(J) (Statute of limitations), “A prosecution for the following offenses may be commenced at any time: . . . (J) Transportation of minors for prohibited sexual conduct, § 5-27-305.” Otherwise, Ark. Code Ann. § 16-56-115 (Limitation of actions not otherwise provided for) generally requires a prosecution to commence “within five (5) years after the cause of action has accrued.”

²³ Pursuant to Ark. Code Ann. § 16-118-109(a), “victim of human trafficking” has the same meaning as set forth under Ark. Code Ann. § 5-18-102 (Definitions), which defines “victim of human trafficking” as “a person who has been subjected to trafficking of persons, § 5-18-103 [Trafficking of persons].”

Regarding civil actions, Ark. Code Ann. § 16-118-109(f) (Civil cause of action for victims of human trafficking – Definition) provides,

- (1) A statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.
- (2) If the plaintiff is a minor, the limitation period will not begin until he or she is eighteen (18) years of age.
- (3) If the plaintiff is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action, the time of the disability will not be part of the time limited for the commencement of the action.
- (4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, the time period during which the threats, intimidation, manipulation, or fraud occurred will not be part of the statute of limitations for the commencement of this action.
- (5) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute of limitations is due to conduct by the defendant that induced the plaintiff to delay the filing of the action or placed the plaintiff under duress.

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for any child sex trafficking or CSEC offense to commence at any time and eliminate the statute of limitation for filing trafficking-specific civil actions.



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.

Arkansas 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: Amend state law to provide 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.

Arkansas law allows child sex trafficking victims who are under 13 years of age to testify by an alternative method regardless of the prosecuted offense. Specifically, Ark. Code Ann. § 16-43-1001(a)(1) (Closed-circuit television) states,

In any criminal proceeding, on motion of the prosecutor after notice to the defendant or on motion of the defense attorney, the court may, upon a showing of clear and convincing evidence that testifying in open court would be harmful or detrimental to the child,²⁴ order that the testimony of a victim or witness who is a child twelve (12) years of age or under be taken outside the courtroom and the presence of the defendant and communicated to the courtroom by closed-circuit television.

²⁴ Ark. Code Ann. § 16-43-1001(b) states,

In ruling on the motion, the court shall consider the following factors:

- (1) The age and maturity of the child;
- (2) The possible effect that testimony in person may have on the child;
- (3) The extent of the trauma the child has already suffered;
- (4) The nature of the testimony to be given by the child;
- (5) The nature of the offense, including, but not limited to, the use of a firearm or any other deadly weapon during the commission of the crime or the infliction of serious bodily injury upon the victim during the commission of the crime;
- (6)
 - (A) Threats made to the child or the child's family in order to prevent or dissuade the child from attending or giving testimony at any trial or court proceeding or to prevent the child from reporting the alleged offense or from assisting in criminal prosecution.
 - (B) Threats under this subdivision (b)(6) may include, but not be limited to, threats of serious bodily injury to be inflicted on the child or a family member, threats of incarceration or deportation of the child or a family member, or threats of removal of the child from the family or dissolution of the family;
- (7) Conduct on the part of the defendant or the defendant's attorney which causes the child to be unable to continue his testimony; and
- (8) Any other matter which the court considers relevant.

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. Further, Ark. Code Ann. § 16-43-1001(f) states, “Nothing in this section creates a right of a child witness to a closed-circuit television procedure in lieu of testifying in open court and the intent of this section is that testimony by closed-circuit television be used in limited circumstances.”

- 5.2.1 Recommendation: Amend state law to 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
Summary	Crime victims and their families have access to technical assistance and support through the Victim/Witness Coordinator program. Additionally, county prosecutors’ offices must provide a range of services to crime victims and may hire victim of crimes case coordinators for this purpose.	Victim/witness coordinator can petition court to allow minors under 12 to have support items or support persons during court proceedings, and victims under 18 can have support dog during testimony.	Not statutorily required.
Relevant Statute(s)	Ark. Code Ann. § 16-21-107(b) (Victim/Witness Coordinator); Ark. Code Ann. § 16-21-106 (Assistance to victims and witnesses of crimes – Victim of crimes case coordinator)	Ark. Code Ann. § 16-43-1202(5), (6) (Safeguards for Child victims testifying in judicial and administrative proceedings); Ark. Code Ann. § 16-43-1002(d) (Certified facility dogs for children and vulnerable witnesses – Definitions)	None.

- 5.3.1 Recommendation: Amend state law to ensure that child sex trafficking victims’ 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.

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

- 5.4.1 Recommendation: Statutorily provide child sex trafficking-specific caseworker privilege to protect a child sex trafficking victim’s communications with a caseworker from being disclosed.



ISSUE 6: Prevention & Training

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

Arkansas 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.

Arkansas law authorizes statewide training for juvenile justice agencies on identification and response to child sex trafficking. Pursuant to Ark. Code Ann. § 12-18-1202 (Training regarding sexually exploited children),

The Arkansas Juvenile Officers Association, the Division of Law Enforcement Standards and Training, or the Prosecutor Coordinator may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

Further, Ark. Code Ann. § 12-19-101(a)(1), (d)(8) (State task force for the prevention of human trafficking) requires the State Task Force for the Prevention of Human Trafficking to provide trafficking-specific training for individuals “involved in the criminal justice and juvenile justice systems.” However, establishment of the task force is discretionary, making the training requirement contingent on its creation.

- (a)
 - (1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.
 -
 -
 - (d) If the task force is created by the Attorney General, the task force shall:
 -
 - (8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:
 - (A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;
 - (B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;
 - (C) Methods for prosecuting human traffickers;
 - (D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
 - (E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;
 - (F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and
 - (G) Methods for promoting the safety of victims of human trafficking; and

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by juvenile justice agencies. However, Arkansas law does not statutorily require individuals employed by juvenile justice agencies to receive such training.

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

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

Arkansas law authorizes trafficking-specific training for law enforcement. Pursuant to Ark. Code Ann. § 12-18-1202 (Training regarding sexually exploited children),

The Arkansas Juvenile Officers Association, the Division of Law Enforcement Standards and Training, or the Prosecutor Coordinator may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

Further, Ark. Code Ann. § 12-19-101(a)(1), (d)(8) (State task force for the prevention of human trafficking) requires the State Task Force for the Prevention of Human Trafficking to train law enforcement agencies. However, establishment of the task force is discretionary, making the training requirement contingent on its creation.

- (a)
 - (1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.
.....
 - (d) If the task force is created by the Attorney General, the task force shall:
.....
 - (8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:
 - (A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;
 - (B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;
 - (C) Methods for prosecuting human traffickers;
 - (D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
 - (E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;
 - (F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and
 - (G) Methods for promoting the safety of victims of human trafficking; and

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by law enforcement. However, Arkansas law does not statutorily require law enforcement officers 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.

Arkansas law authorizes trafficking-specific training for prosecutors. Pursuant to Ark. Code Ann. § 12-18-1202 (Training regarding sexually exploited children),

The Arkansas Juvenile Officers Association, the Division of Law Enforcement Standards and Training, or the Prosecutor Coordinator may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

Further, Ark. Code Ann. § 12-19-101(a)(1), (d)(8) (State task force for the prevention of human trafficking) requires the State Task Force for the Prevention of Human Trafficking to train prosecutors. However, establishment of the task force is discretionary, making the training requirement contingent on its creation.

- (a)
 - (1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.
.....
 - (d) If the task force is created by the Attorney General, the task force shall:
.....
 - (8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:
 - (A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;
 - (B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;
 - (C) Methods for prosecuting human traffickers;
 - (D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
 - (E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;
 - (F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and
 - (G) Methods for promoting the safety of victims of human trafficking; and

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by prosecutors. However, state law does not statutorily require prosecutors 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.

Arkansas law mandates trafficking-specific training for school personnel.²⁵ Pursuant to Ark. Code Ann. § 6-17-709(e)(3) (Professional development schedule),

(A) The Division of Elementary and Secondary Education shall not issue an initial teaching license until the applicant verifies that he or she has obtained the required professional development concerning:

.....

(v) Human trafficking under § 6-17-710.

(B) For a teaching license issued under the state's reciprocity provisions to an out-of-state teacher, the Division of Elementary and Secondary Education shall issue a provisional license until the licensee obtains the professional development identified in subdivision (e)(3)(A) of this section.

Under Ark. Code Ann. § 6-17-710 (Human trafficking professional development), trafficking-specific training will address issues related to identifying child victims and reporting their exploitation. Ark. Code Ann. § 6-17-710 states,

(a) Each year, a school district shall make available to licensed personnel thirty (30) minutes of professional development, or professional learning credit as determined by the Division of Elementary and Secondary Education, on:

(1) Recognizing the warning signs that a child is a victim of human trafficking; and

(2) Reporting a suspicion that a child is a victim of human trafficking.

(b) The Division of Elementary and Secondary Education or another person, firm, or corporation designated by the division shall develop and administer the professional development under subsection (a) of this section.

(c) The professional development under this section shall count toward the satisfaction of requirements for professional development in the Standards for Accreditation of Arkansas Public Schools and School Districts and for licensure requirements for licensed personnel.

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

Arkansas 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.

²⁵ Further, Ark. Code Ann. § 12-19-105 (Training and educational materials on human trafficking) provides for the distribution of training materials, stating,

(a) The Department of Education and the Department of Human Services shall collaborate on providing awareness and training materials to local school districts on human trafficking that include without limitation strategies for the prevention of the trafficking of children.

(b) The training materials required under subsection (a) of this section shall describe local, state, and national resources to which a student, a parent, a counselor, or school personnel may consult for information on human trafficking that includes without limitation strategies for the prevention of the trafficking of children.

State Laws Addressing Child Sex Trafficking

1. Ark. Code Ann. § 5-18-103 (Trafficking of persons) states,

(a) A person commits the offense of trafficking in persons if he or she knowingly:

(1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;

(2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;

(3) Subjects a person to involuntary servitude;

(4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity;²⁶

(5) Sells or offers to sell travel services that he or she knows include an activity prohibited under subdivisions (a)(1)-(4) of this section;

....

....

(c)

....

(2) Trafficking of persons is a Class Y felony if a victim was a minor at the time of the offense.

....

A Class Y felony is punishable by imprisonment for 10–40 years or life. Ark. Code Ann. § 5-4-401(a)(1) (Sentence). Further, Ark. Code Ann. § 5-4-104(c)(2)(B) states,

A defendant who was eighteen (18) years of age or older at the time of the offense and who was convicted of one (1) or more of the following Class Y felonies in which the victim was less than fourteen (14) years of age at the time of the offense shall be sentenced to life without the possibility of parole:

....

(B) Trafficking of persons, § 5-18-103;

2. Ark. Code Ann. § 5-18-104 (Patronizing a victim of human trafficking) states,

(a) A person commits the offense of patronizing a victim of human trafficking if he or she knowingly engages in commercial sexual activity with another person knowing that the other person is a victim of human trafficking.

(b)

....

(2) Patronizing a victim of human trafficking is a Class A felony if the victim was a minor at the time of the offense.

A Class A felony is punishable by imprisonment for 6–30 years and a possible fine up to \$15,000. Ark. Code Ann. §§ 5-4-401(a)(2), 5-4-201(a)(1).

²⁶ Ark. Code. Ann. § 5-18-102(1) (Definitions) defines “commercial sexual activity” as “a sexual act or sexually explicit performance for which anything of value is given, promised, or received, directly or indirectly, by a person.”

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Ark. Code Ann. § 5-70-104 (Promoting prostitution in the first degree) states,

(a) A person commits the offense of promoting prostitution in the first degree if he or she knowingly:

.....

(2) Advances prostitution²⁷ or profits from prostitution²⁸ of a person less than eighteen (18) years of age.

(b) Promoting prostitution in the first degree is a Class D felony.

A Class D felony is punishable by imprisonment for up to 6 years and a possible fine up to \$10,000. Ark. Code Ann. §§ 5-4-401(a)(5), 5-4-201(a)(2).

2. Ark. Code Ann. § 5-27-305 (Transportation of minors for prohibited sexual conduct) states,

(a) A person commits the offense of transportation of a minor for prohibited sexual conduct if the person transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and the actor:

(1) Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and

(2) Acts with the purpose that the minor will engage in:

(A) Prostitution; or

(B) Sexually explicit conduct.

(b) Transportation of a minor for prohibited sexual conduct is a Class Y felony.

A Class Y felony is punishable by imprisonment for 10–40 years or life. Ark. Code Ann. § 5-4-401(a)(1) (Sentence). Further, Ark. Code Ann. § 5-4-104(c)(2)(D) states,

A defendant who was eighteen (18) years of age or older at the time of the offense and who was convicted of one (1) or more of the following Class Y felonies in which the victim was less than fourteen (14) years of age at the time of the offense shall be sentenced to life without the possibility of parole:

.....

(D) Transportation of minors for prohibited sexual conduct, § 5-27-305;

²⁷ Pursuant to Ark. Code Ann. § 5-70-101(1) (Definitions),

‘Advances prostitution’ means a person if, acting other than as a prostitute or a patron of a prostitute, that person knowingly:

(A) Causes or aids a person to commit or engage in prostitution;

(B) Procures or solicits a patron for prostitution;

(C) Provides a person or premises for prostitution purposes;

(D) Operates or assists in the operation of a house of prostitution or a prostitution enterprise; or

(E) Engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

²⁸ Pursuant to Ark. Code Ann. § 5-70-101(3) (Definitions),

‘Profits from prostitution’ means a person if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person in which the person participates or is to participate in the proceeds of prostitution.”

3. Ark. Code Ann. § 5-18-105 (Grooming a minor for future sex trafficking) states,

(a) A person commits grooming a minor for future sex trafficking if the person knowingly grooms²⁹ a minor with a purpose to make it more likely that the minor can be enticed or induced into a future sex trafficking act with a person.

(b) Grooming a minor for future sex trafficking is a Class B felony.

A Class B felony is punishable by imprisonment for 5–20 years and a possible fine up to \$15,000. Ark. Code Ann. §§ 5-4-401(a)(3), 5-4-201(a)(1).

²⁹ Ark. Code Ann. § 5-18-102(6) (Definitions) defines “grooms” as “expos[ing] a minor to sexually explicit language or to a visual or print medium depicting sexually explicit conduct with the purpose [of] gain[ing] the trust of the minor.”