

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 Delaware’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.

Del. Code Ann. tit. 11, § 787(b)(4) (Trafficking an individual, forced labor and sexual servitude) expressly applies to buyers of commercial sex but requires the buyer to know “the other person is a victim of sexual servitude.”² Specifically, Del. Code Ann. tit. 11, § 787(b)(4) states,

Patronizing a victim of sexual servitude. – A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude

Notably, Del. Code Ann. tit. 11, § 787(b)(1) also contains buyer-applicable language: “solicits” and, following federal precedent, “obtains.”³ It states,

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

² Pursuant to Del. Code Ann. tit. 11, § 787(b)(3)(a)(1),

Sexual servitude. –

a. A person commits the offense of sexual servitude if the person knowingly:

1. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity . . .

³ 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

Trafficking an individual. – A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains,⁴ advertises, solicits, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a class C felony unless the individual is a minor, in which case it is a class B felony.

Because the minor must be solicited or obtained in furtherance of sexual servitude, however, Del. Code Ann. tit. 11, § 787(b)(1) 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.

Delaware’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.

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

Delaware criminalizes trafficker conduct under its CSEC laws. Specifically, Del. Code Ann. tit. 11, § 1352 (Promoting prostitution in the second degree) states,

- A person is guilty of promoting prostitution in the second degree when the person knowingly:
- (1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes; or

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 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.

⁴ Del. Code Ann. tit. 11, § 787(a)(9) defines “maintain” as “in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.” The definition of “labor or services” specifically includes commercial sexual activity.” Del. Code Ann. tit. 11, § 787(a)(8).

(2) Advances⁵ or profits from prostitution⁶ of a person less than 18 years old.

....

Further, Del. Code Ann. tit. 11, § 1353(1), (2) (Promoting prostitution in the first degree) addresses similar conduct but increases the severity of the offense when the victim is under 16 years of age; it states,

A person is guilty of promoting prostitution in the first degree when the person knowingly:

- (1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution or profits from such coercive conduct by another; or
- (2) Advances⁷ or profits from prostitution⁸ of a person less than 16 years old.

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

Delaware law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to Del. Code Ann. tit. 11, § 787(b)(3)(c) (Trafficking an individual, forced labor and sexual servitude), “It is not a defense in a prosecution under paragraph (b)(3)a.1 of this section [involving sexual servitude of a minor] that . . . the defendant believed the minor was an adult.” Similarly, Del. Code Ann. tit. 11, § 787(b)(4) prohibits the defense for cases involving patronizing a victim of sexual servitude, stating, “It is not a defense in a prosecution when the victim of sexual servitude is a minor that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.” Lastly, Del. Code Ann. tit. 11, § 454 (Knowledge of victim’s age) prohibits a mistake of age defense in cases involving CSEC; it states,

Notwithstanding any provision of law to the contrary, it is no defense for an offense or sentencing provision defined in this title [Crimes and criminal procedure] . . . which has as an element of such offense

⁵ Del. Code Ann. tit. 11, § 1365(1) (Definitions relating to prostitution) defines “advances prostitution” as follows:

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

⁶ Del. Code Ann. tit. 11, § 1356 defines “profits from prostitution” as follows:

[W]hen, 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 whereby the person participates or is to participate in the proceeds of prostitution activity.

⁷ Del. Code Ann. tit. 11, § 1365(1) defines “advances prostitution” as follows:

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

⁸ Del. Code Ann. tit. 11, § 1356 defines “profits from prostitution” as follows:

[W]hen, 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 whereby the person participates or is to participate in the proceeds of prostitution activity.

or sentencing provision the age of the victim that the accused did not know the age of the victim or reasonably believed the person to be of an age which would not meet the element of such offense or sentencing provision unless the statute defining such offense or sentencing provision or a statute directly related thereto expressly provides that knowledge of the victim's age is an element of the offense or that lack of such knowledge is a defense.

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, Delaware's criminal attempt statute, Del. Code Ann. tit. 11, § 531 (Attempt to commit a crime), could provide prosecutors with an alternative avenue to prosecute those cases. Del. Code Ann. tit. 11, § 531 states,

A person is guilty of an attempt to commit a crime if the person:

- (1) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or
- (2) Intentionally does or omits to do anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.

Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.

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

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

Delaware's trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, Del. Code Ann. tit. 11, § 787(c) (Trafficking an individual, forced labor and sexual servitude) provides,

Organizational liability. –

- (1) An organization may be prosecuted for an offense under this section pursuant to § 281⁹ of this title (Criminal liability of organizations).

⁹ Pursuant to Del. Code Ann. tit. 11, § 281 (Criminal liability of organization),

An organization is guilty of an offense when:

- (1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law; or
- (2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and in behalf of the organization; or
- (3) The conduct constituting the offense is engaged in by an agent of the organization while acting within the scope of employment and in behalf of the organization and:
 - a. The offense is a misdemeanor or a violation; or
 - b. The offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on an organization.

- (2) The court may consider the severity of an organization’s offense under this section and order penalties in addition to those otherwise provided for the offense, including:
- a. A fine of not more than \$25,000 per offense;
 - b. Disgorgement of profit from illegal activity in violation of this section; and
 - c. Debarment from state and 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.¹⁰

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

¹⁰ Regarding asset forfeiture, Del. Code Ann. tit. 11, § 787(e) (Trafficking an individual, forced labor and sexual servitude) states,

Forfeiture. –

(1) On motion, the court shall order a person convicted of an offense under paragraphs (b)(1)-(3) of this section to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or that constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of the offense.

....

(3) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

However, a percentage of those forfeited assets is not directed into a victim services fund. Further, forfeiture is not authorized upon conviction of Del. Code Ann. tit. 11, § 787(b)(4), which applies to buyers who patronize a victim of sexual servitude, or Delaware’s CSEC offenses.



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.

While the definition of trafficking victim within the criminal code only includes victims who have been exploited by a trafficker, Delaware law makes any child who has engaged in commercial sex eligible for services. Specifically, Del. Code Ann. tit. 11, § 787(m)(2) (Trafficking an individual, forced labor and sexual servitude) states, “A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, regardless of immigration status.”

As noted, however, this conflicts with the definition of “victim” under Del. Code Ann. tit. 11, § 787(a)(16), which states,

“Victim” means a person who is subjected to the practices set forth in subsection (b) of this section or to conduct that would have constituted a violation of subsection (b) of this section had 79 Del. Laws, c. 276 been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

Although subsection (b) includes patronizing a victim of sexual servitude, the buyer must know “the other person is a victim of sexual servitude.”¹¹ Del. Code Ann. tit. 11, § 787(b)(4). Further, Delaware’s core sex trafficking provision, Del. Code Ann. tit. 11, § 787(b)(1), is inapplicable to buyers. Accordingly, third party control is required to establish the crime of child sex trafficking under subsection (b), thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the criminal code’s definition of child sex trafficking victim.

- 2.1.1 Recommendation: Amend state law to remove third party control requirements that narrow the definition of child sex trafficking victim within the criminal code.¹²

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

Delaware law provides policy guidance that facilitates access to services and assistance for trafficked foreign national children. Specifically, Del. Code Ann. tit. 11, § 787(m)(1), (2) (Trafficking an individual, forced labor and sexual servitude) affords child sex trafficking victims access to state-provided services and benefits regardless of immigration status, stating,

Eligibility for services. –

¹¹ Pursuant to Del. Code Ann. tit. 11, § 787(b)(3)(a)(1), “A person commits the offense of sexual servitude if the person knowingly . . . [m]aintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity.”

¹² 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 (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).

- (1) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a, of this section, including compensation under § 9009 [Administrative provisions; compensation] of this title, regardless of immigration status.
- (2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a, of this section, regardless of immigration status.

Accordingly, trafficked foreign national children may access services developed pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(a), which requires the Human Trafficking Interagency Coordinating Council to “[d]evelop a comprehensive plan to victims of human trafficking with services.”

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

Delaware 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.

Delaware 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.

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.

Delaware law fails to fully prohibit the criminalization of minors for prostitution offenses; while minors are afforded immunity protections under the core prostitution law and law enforcement are required to refer all suspected cases of commercial sexual exploitation to child welfare for services and support, contradictory state law permits the criminalization of minors for prostitution and prostitution loitering offenses.

Del. Code Ann. tit. 11, § 1342 (Prostitution; class B misdemeanor) expressly excludes children, stating,

- (a)
 - (1) A person, 18 years of age or older, is guilty of prostitution when the person engages in or agrees or offers to engage in sexual conduct with another person in return for a fee.

....

- (c) A minor who, if 18 years of age or older, could be charged with prostitution as defined in subsection (a) of this section, is presumed to be a neglected or abused child under § 901 of Title 10. Whenever a law enforcement officer has probable cause to believe that the minor has engaged in prostitution, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 903 of Title 16.

Del. Code Ann. tit. 11, § 787(g)(1) reinforces this protection, affirming,

A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under § 901 et seq. of Title 10. Whenever a law enforcement officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 901 et seq. of Title 16.

However, Del. Code Ann. tit. 11, § 787(g)(2) (Trafficking an individual, forced labor and sexual servitude) preserves criminal responses to minors engaged in commercial sex; its states,

A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court-appointed special advocate appointed in a proceeding under § 901 et seq. of Title 10, may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth, and Their Families and/or the Family Court may identify and order specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

Consequently, while minors are afforded some protections against criminalization under Del. Code Ann. tit. 11, § 1342 and Del. Code Ann. tit. 11, § 787(g)(1), such protections are undermined by the clear provisions permitting criminalization for prostitution and loitering under Del. Code Ann. tit. 11, § 787(g)(2).

- 2.5.1 Recommendation: Amend state law to expressly prohibit the criminalization of any person under 18 years of age.

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.

Delaware 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: 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.

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

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

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

Delaware 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.

Delaware 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, Delaware law establishes a minimum age of 10 years for jurisdictional purposes, 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	None. “Child” is defined as “a person who has not reached his or her eighteenth birthday.” Adjudication of a minor younger than 10 years of age requires a motion to determine competency.	17	Yes. Minors: (1) charged with certain offenses; (2) who have a previous felony adjudication or conviction; or (3) were previously deemed “unamendable to the rehabilitative process.”	Yes. Minors deemed “unamendable to the rehabilitative process.”	No.
Relevant Statute(s)	Del. Code Ann. tit. 10, § 901(4), (7) (Definitions); Del. Code Ann. tit. 10 § 1002 (Delinquent child not criminal; prosecution limited)	Del. Code Ann. tit. 10, § 901(4), (7) (Definitions)	Del. Code Ann. tit. 10, § 1010(a), (c)(3) (Proceeding against child as an adult; amenability proceeding; referral to another court); Del. Code Ann. tit. 10, § 1011(e) (Transfer of cases	Del. Code Ann. tit. 10, § 1010(a)(2) (Proceeding against child as an adult; amenability proceeding; referral to another court)	Del. Code Ann. tit. 10, § 1010(c)(1) (Proceeding against child as an adult; amenability proceeding; referral to another court)

			from superior court to family court)		
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Consequently, Delaware law fails to provide age-appropriate juvenile court responses to all minors, including child sex trafficking victims, as governing state statute: (1) does not establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allows minors to be subject to automatic transfers; and (3) does 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.

Delaware law defines “abuse” and “abused child” to include child sex trafficking. Specifically, Del. Code Ann. tit. 10, § 901 (Definitions) provides,

For the purpose of this chapter, unless the context indicates differently:

- (1) “Abuse” or “abused child” means that a person:
 - a. Causes or inflicts sexual abuse on a child; or
 -
 - ...
- (21) “Sexual abuse” means any act against a child that is described as a sex offense in § 761(i) of Title 11 (Definitions generally applicable to sexual offenses)

Del. Code Ann. tit. 11, § 761(i) (Definitions generally applicable to sexual offenses) defines “sexual offense” as “any offense defined by §§ . . . 787(b)(3) [Sexual servitude], 787(b)(4) [Patronizing a victim of sexual servitude], . . . 1352(2) [Promoting prostitution in the second degree], and 1353(2) [Promoting prostitution in the first degree]”

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.

The Department of Services for Children and Their Families is only required to investigate allegations of intrafamilial or institutional abuse, dependency, or neglect despite the definitions of “abuse” and “abused child” not being limited to acts committed by a parent or caregiver.¹³ Non-familial allegations of abuse, dependency, or neglect, including allegations of non-familial child sex trafficking, may be investigated by the Department but only at its discretion. Del. Code Ann. tit. 10, § 901(3) (Definitions) states in part,

For the purpose of investigation of child abuse, dependency or neglect, the Department of Services for Children and Their Families (DSCYF) may investigate any allegation of child abuse, dependency or neglect committed by persons identified herein, but shall only be responsible for the investigation of intrafamilial and institutional child abuse, dependency or neglect. Where the DSCYF is not responsible for the

¹³ See *supra* Policy Goal 2.10 for the definitions of “abuse” and “abused child.”

investigation of such child abuse or neglect, it shall immediately refer such report to the appropriate police authorities or child protective services agencies within or without the State.

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.

Delaware 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 providing appropriate services to child victims. Specifically, Del. Code Ann. tit. 11, § 787(k)(2)(a) (Trafficking an individual, forced labor and sexual servitude) states that the Human Trafficking Interagency Coordinating Council shall “develop a comprehensive plan to provide victims of human trafficking with services.” Further, Del. Code Ann. tit. 11, § 787(m) states,

- (1) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, including compensation under § 9009 [Eligibility for early repayment] of this title, regardless of immigration status.
- (2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, regardless of immigration status.
- (3) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph (k)(2)a. of this section, that individual may be eligible for a benefit or service under this section.

- 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.

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child sexual abuse MDT; Delaware law does not require an MDT response specific to child sex trafficking cases. Specifically, Del. Code Ann. tit. 16, § 906(b)(4)¹⁴ (State response to reports of abuse or neglect) generally requires a

¹⁴ The text of Del. Code tit. 16, § 906 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 153 during the 2021-2022 Regular Session of the Delaware state legislature (effective September 30, 2021).

comprehensive, multidisciplinary team¹⁵ response for all multidisciplinary cases,¹⁶ and subsection (d)(6) clarifies law enforcement’s role, stating,

In implementing law-enforcement’s role in the child protection system, the law-enforcement agency investigating a report of child abuse or neglect shall do all of the following:

.....

(6) Coordinate with the multidisciplinary team to secure forensic interviews and medical examinations, where applicable, and to conduct interviews while considering the criminal investigation together with the Department’s statutory duties to promptly assess child safety. Absent good cause, children ages 3 through 12, and all suspected child victims of human trafficking, must be interviewed in a children’s advocacy center.

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

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

Delaware law does not require child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims.¹⁷

3.3.1 Recommendation: Statutorily require child welfare to provide access to specialized services for child sex trafficking victims.

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

Delaware law does not provide access to specialized services for all identified sex trafficked children and youth in the juvenile justice system; however, services may be available to the limited extent that a minor was diverted on a

¹⁵ Del. Code tit. 16, § 902(23) (Definitions) defines “multidisciplinary team” as follows:

[A] combination of the following entities as required by law to investigate or monitor multidisciplinary cases: the Division [of Family Services of the Department for Children, Youth and Their Families], the Department’s Institutional Abuse Investigation Unit, the appropriate law enforcement agency, the Department of Justice, and the Investigation Coordinator. ‘Multidisciplinary team’ may also include others deemed necessary for an effective multidisciplinary response, such as medical personnel, the Division of Forensic Science, a children’s advocacy center, the Division of Prevention and Behavioral Health Services, mental health experts, and the child’s attorney.

The text of Del. Code tit. 16, § 902 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 153 during the 2021-2022 Regular Session of the Delaware state legislature (effective September 30, 2021).

¹⁶ Del. Code tit. 16, § 902(22) defines “multidisciplinary case” as follows:

[A] comprehensive investigation by the multidisciplinary team for any child abuse or neglect report involving death, serious physical injury, physical injury, human trafficking of a child, torture or sexual abuse, which if true, would constitute a criminal violation against a child, or an attempt to commit any such crime, even if no crime is ever charged.

¹⁷ Although not specific child welfare, Del. Code Ann. tit. 11, § 787(k)(2)(a), (m) (Trafficking an individual, forced labor and sexual servitude) requires the development of a state plan for providing appropriate services to child victims, which, when established, could facilitate access to specialized services through child welfare. *See supra* Policy Goal 3.1 for the substantive provisions of Del. Code Ann. tit. 11, § 787(k)(2)(a), (m).

prostitution or loitering charge. Pursuant to Del. Code Ann. tit. 11, § 787(g)(2) (Trafficking an individual, forced labor and sexual servitude),

A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court-appointed special advocate appointed in a proceeding under § 901 et seq. of Title 10, may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

Consequently, a minor must be charged with a prostitution or loitering offense to qualify for diversion and to have the option of receiving specialized services through 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.

Delaware law extends foster care services to youth under 23 years of age as permitted under federal law.¹⁸ Specifically, Del. Code tit. 29, § 9001¹⁹ (Intent and purpose) states in part that “the purpose of this chapter [Department of Services for Children, Youth and Their Families] and policy of the State is . . . to create and maintain a developmentally appropriate, comprehensive program that fully integrates transitional and independent living services from ages 14 to 23 and that will assist youth with their successful transition into adulthood.”

In line with that objective, Del. Code tit. 29, § 9003(a)(14)²⁰ (Powers, duties and functions) provides,

The Department of Services for Children, Youth and Their Families shall have the following powers, duties and functions:

.....

(14) To develop, administer, implement, and provide or contract a developmentally appropriate, comprehensive program that fully integrates transitional and independent living services such as financial stability, housing supports, medical, employment and training, education, and connection to resources and individuals, until age 23 and that will assist youth with their successful transition to adulthood, subject to appropriation.

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).

¹⁹ The text of Del. Code tit. 29, § 9001 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 271 during the 2021-2022 Regular Session of the Delaware state legislature (effective May 3, 2022).

²⁰ The text of Del. Code tit. 29, § 9003 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 271 during the 2021-2022 Regular Session of the Delaware state legislature (effective May 3, 2022).

Del. Code Ann. tit. 29 § 9015(f)²¹ (Budgeting and financing) authorizes the provision of funding, stating,

The Department is authorized to provide funding for youth who have attained the age of 18 but are less than 23 years of age, by payment of foster care supports specifically related to housing, by direct youth stipends and/or to other public or private agencies to provide transitional and independent living services to youth. The Department shall establish policies for eligibility for direct youth stipends that shall require youth accountability, financial literacy, and attainment of self-sufficiency benchmarks. Funds appropriated for the purpose of supporting youth who are eligible for independent living services shall be used to support those youth.

²¹ The text of Del. Code tit. 29, § 9015 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 271 during the 2021-2022 Regular Session of the Delaware state legislature (effective May 3, 2022).

Additionally, Del. Code tit. 13, § 2522(a)(12)²² (Rights of children in DSCYF custody) provides, “All dependent, neglected and abused children in DSCYF custody under this chapter [DSCYF Custody] shall have the following rights in accordance with their ages and developmental levels, unless prohibited by court order: . . . To receive transitional and independent living services and supports beginning at age 16 if eligible and if resources are available.”

Lastly, Del. Code tit. 13, § 2521(5)²³ (Powers and duties of the DSCYF as custodian of the child) states, “Upon the Court granting custody to DSCYF, DSCYF shall be vested with the following powers and duties: . . . from ages 18 through 23, to assist the youth who was previously in DSCYF’s custody and continues to receive transitional and independent living services through a DSCYF-contracted provider in reviewing and repairing the youth’s credit.”

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 Delaware state legislature made a one-time appropriation to support the Human Trafficking Interagency Coordinating Council, a legislatively created body assigned with designing a plan to create access to comprehensive services for trafficking victims, including commercially sexually exploited children and youth. Del. Code Ann. tit 11, § 787(k)(2) (Trafficking an individual, forced labor and sexual servitude) states, “The [Human Trafficking Interagency Coordinating Council] shall: (a) Develop a comprehensive plan to provide victims of human trafficking with services; (b) Effectuate coordination between agencies, departments and the courts with victims of human trafficking” However, while the appropriation provides funding to create a service delivery plan, the appropriation does not actually fund services for child and youth survivors.

2021-2022 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
HB 251	Human Trafficking Coordinating Council	\$95,000	Del. Code Ann. tit. 11, § 787(k)(2)(a) requires the Council to “develop a comprehensive plan to provide victims of human trafficking with services.”	FY 2021-2022 (Non-recurring) ²⁴
2021 Legislative Session				July 1-June 30

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.

²² The text of Del. Code tit. 13, § 2522 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 271 during the 2021-2022 Regular Session of the Delaware state legislature (effective May 3, 2022).

²³ The text of Del. Code tit. 13, § 2521 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 271 during the 2021-2022 Regular Session of the Delaware state legislature (effective May 3, 2022).

²⁴ Notably, Enacted Senate Bill 250, § 33 states that “any sum in the [account] shall remain as [a] continuing appropriation[] and shall not be subject to reversion until June 30, 2023,” but if the account has a zero balance on June 30, 2022, it will not continue. Enacted Senate Bill 250, § 33 cited here and elsewhere in this report was enacted during the 2021-2022 Regular Session of the Delaware state legislature.



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

- 4.1.1 Recommendation: Amend state law to expressly allow 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 Delaware'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, Del. Code Ann. tit. 11, § 9002(14)²⁵ (Definitions) defines "victim" as "a person who sustains a personal injury or is killed by the act of any other person during the commission of a crime."²⁶ Further, Del. Code Ann. tit. 11, § 787(m)(1), (2) (Trafficking an individual, forced labor and sexual servitude) expressly makes victims of human trafficking eligible for crime victims' compensation, stating,

²⁵ The text of Del. Code tit. 11, § 9002 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 182 during the 2021-2022 Regular Session of the Delaware state legislature (effective October 20, 2021).

²⁶ Del Code Ann. tit. 11, § 9002(6) defines "crime" as follows:

- a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, unlawful use of firearms, stalking, or endangering the welfare of a child.
- b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.
- c. Any specific offense occurring in another state, possession, or territory of the United States or in violation of the United States Criminal Code, in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, or unlawful use of firearms as set forth in Chapter 5 of this title.
- d. Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.
- ...
- g. Any act that contains the characteristics of domestic violence or abuse.
- h. Any act that contains the characteristics of human trafficking as defined in § 787 of this title.

(1) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, including compensation under § 9009 of this title, regardless of immigration status.

(2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, regardless of immigration status.

However, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Del. Code Ann. tit. 11, § 9010(a)(2)–(5), (d)²⁷ (Denial of claim; reduction) provides in part,

(a) The Agency shall deny payment of a claim for any of the following reasons:

.....

(2) Where the victim incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.

(3) Where the victim refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim is based, unless an extension is granted by the Agency or the Agency, in its discretion, determines that the circumstances render this requirement unreasonable.

(5) Where the victim has failed to report the crime to a law-enforcement agency within 72 hours of its occurrence. This requirement is waived in any of the following circumstances:

a. The crime has been reported to an appropriate governmental agency, such as child or adult protective services or the Family Court.

b. The victim can provide a protection from abuse order.

c. The victim has cooperated with law enforcement or an appropriate government agency in cases of crimes involving domestic violence, sexual assault or abuse.

d. Where the Agency, in its discretion, determines that the circumstances of the crime or the victim render this requirement unreasonable.

.....

.....

(d) In no event may the Agency deny any claim solely because the victim was a child victim of sexual assault or abuse, and the victim either delayed reporting the abuse or assault to authorities or the victim delayed an application for services to mitigate the effects of the impact of sexual assault or abuse.

Although Del. Code Ann. tit. 11, § 9010(a)(5), (d) provides exceptions to victims of sexual assault or abuse, victims of child sex trafficking and CSEC are not expressly exempt. Further, commercially sexually exploited children may be prevented from accessing crime victims' compensation due to additional ineligibility factors provided for under Del. Code Ann. tit. 11, § 9010(b), (c), which states,

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Agency may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Agency shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

²⁷ The text of Del. Code tit. 11, § 9010 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 182 during the 2021-2022 Regular Session of the Delaware state legislature (effective October 20, 2021).

- 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.

Delaware law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offenses arising from trafficking victimization. Pursuant to Del. Code Ann. tit. 11, § 787(j)(2), (3)²⁸ (Trafficking an individual, forced labor and sexual servitude),

(2) A person convicted or adjudicated delinquent of any crime, except those deemed to be violent felonies pursuant to § 4201 [Transition provisions] of this title, committed as a direct result of being a victim of human trafficking may file a motion in the court in which the adjudication of delinquency or conviction was obtained to vacate the adjudication or judgment of conviction Official documentation of the person's status as a victim of this section, "trafficking in persons," or "a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the person's participation in any crime, except those deemed to be violent felonies pursuant to § 4201 of this title, committed was a direct result of having been a victim of human trafficking, but shall not be required for the court to grant a petition under this paragraph. If the petitioner can show to the satisfaction of the court that he or she is entitled to relief in a proceeding under this paragraph, the court shall grant the motion and, pursuant to this paragraph, enter an order vacating the adjudication of delinquency or judgment of conviction and dismissing the accusatory pleading, and may take such additional action as is appropriate in the circumstances or as justice requires.

(3) Notwithstanding any provision of Chapter 43 of this title [Sentencing, Probation, Parole and Pardons], Chapter 9 of Title 10 [The Family Court of the State of Delaware], or any other law to the contrary, any person filing a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion expungement of the criminal or juvenile record related to such conviction. If the court grants the motion to vacate the adjudication or delinquency or conviction under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction or adjudication of delinquency

As noted above however, Del. Code Ann. tit. 11, § 787(j) limits vacatur to nonviolent offenses, which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 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 mandatory in cases involving child sex trafficking but not CSEC. Under Del. Code Ann. tit. 11, § 787(d) (Trafficking an individual, forced labor and sexual servitude),

Restitution is mandatory under this section. –

²⁸ The text of Del. Code tit. 11, § 787 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 295 during the 2021-2022 Regular Session of the Delaware state legislature (effective February 16, 2022).

- (1) In addition to any other amount of loss identified, the court shall order restitution, including the greater of:
 - a. The gross income or value to the defendant of the victim's labor or services; or
 - b. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 et seq.) or of Title 19, whichever is greater.
- (2) The court shall order restitution under this subsection (d) even if the victim is unavailable to accept payment of restitution.
- (3) If the victim is unavailable for 5 years from the date of the restitution order, the restitution ordered under this subsection (d) must be paid to the Victim Compensation Fund established under § 9016 of this title.

However, restitution is not mandated in CSEC cases, leaving survivors without a critical tool for accessing justice and relieving offenders of a meaningful form of punishment.

4.4.1 Recommendation: Statutorily mandate restitution in CSEC cases.

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

Delaware law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Del. Code Ann. tit. 11, § 787(i) (Trafficking an individual, forced labor and sexual servitude) states,

Civil action. –

- (1) A victim may bring a civil action against a person that commits an offense under subsection (b) of this section [Prohibited activities] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.
- (2) In an action under this subsection, the court shall award a prevailing victim reasonable attorneys' fees and costs, including reasonable fees for expert witnesses.
-
- (4) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim pursuant to subsection (d) of this section for the same item.
- (5) This subsection does not preclude any other remedy available to the victim under federal law or law of this State other than this section.

EXTRA CREDIT



Delaware law provides sex trafficked youth with a trafficking-specific civil remedy under Del. Code Ann. tit. 11, § 787(i), which applies broadly to all cases involving sex trafficking regardless of the victim's age.



Delaware law provides child labor trafficking victims with a trafficking-specific civil remedy under Del. Code Ann. tit. 11, § 787(i), which applies broadly to cases involving trafficking, including both sex and labor trafficking.

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

Prosecutions for trafficking and CSEC offenses may commence at any time; in contrast, the statute of limitation for filing a trafficking-related civil action is only lengthened, not eliminated. Pursuant to Del. Code Ann. tit. 11, § 205(e) (Time limitations),

Notwithstanding the period prescribed by subsection (b) of this section, a prosecution for any crime that is delineated in § 787 [Trafficking an individual, forced labor and sexual servitude] of this title and in which the victim is a minor, subpart D [Sexual offenses] of subchapter II of Chapter 5 of this title, or is otherwise defined as a “sexual offense”²⁹ by § 761 [Definitions generally applicable to sexual offenses] of this title . . . , or any attempt to commit said crimes, may be commenced at any time

Otherwise, Del. Code Ann. tit. 11, § 205(a), (b)(1) provides,

(a) A prosecution for murder or any class A felony, or any attempt to commit said crimes, may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(1) A prosecution for any felony except murder or any class A felony, or any attempt to commit said crimes, must be commenced within 5 years after it is committed;

Regarding civil actions, Del. Code Ann. tit. 11, § 787(i) (Trafficking an individual, forced labor and sexual servitude) states,

²⁹ Del. Code Ann. tit. 11, § 761 (Definitions generally applicable to sexual offenses) defines “sexual offense” to include “any offense defined by §§ . . . 787(b)(3) [involving sexual servitude], 787(b)(4) [involving patronizing a victim of sexual servitude], . . . 1352(2) [involving advancing or profiting from prostitution of a person less than 16 years of age], and 1353(2) [involving advancing or profiting from prostitution of a person less than 16 years of age] . . . of this title.”

Civil action. –

....

(3) An action under this subsection must be commenced not later than 5 years after the later of the date on which the victim:

- a. Was freed from the human trafficking situation; or
- b. Attained 18 years of age.

4.6.1 Recommendation: Strengthen existing law to eliminate the statute of limitation for filing a trafficking-specific civil action.



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.

Delaware law allows out-of-court statements made by a commercially sexually exploited child under 11 years of age to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony. Specifically, Del. Code Ann. tit. 11, § 3513(a), (b) (Hearsay exception for child victim's or witness's out-of-court statement of abuse) states,

(a) An out-of-court statement made by a child victim or witness who is under 11 years of age at the time of the proceeding concerning an act that is a material element of the offense relating to sexual abuse, physical injury, serious physical injury, death, abuse or neglect as described in any felony delineated in subpart A [Assaults and related offenses], B [Acts causing death] or D [Sexual offenses] of subchapter II of Chapter 5 of this title, or in any of the felonies delineated in . . . § 787 [Trafficking an individual, forced labor and sexual servitude], . . . § 1353(2) [Promoting prostitution in the first degree], . . . of this title or in any attempt to commit any felony delineated in this paragraph that is not otherwise admissible in evidence is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

(b) An out-of-court statement may be admitted as provided in subsection (a) of this section if:

(1) The child is present and the child's testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under § 3507 [Use of prior statements as affirmative evidence] of this title; or

(2)

a. The child is found by the court to be unavailable to testify on any of these grounds:

1. The child's death;

2. The child's absence from the jurisdiction;

3. The child's total failure of memory;

4. The child's persistent refusal to testify despite judicial requests to do so;

5. The child's physical or mental disability;

6. The existence of a privilege involving the child;

7. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or

8. Substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

b. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.³⁰

³⁰ Pursuant to Del. Code Ann. tit. 11, § 3513(e),

In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (b)(2) of this section, the court may consider, but is not limited to, the following factors:

(1) The child's personal knowledge of the event;

(2) The age and maturity of the child;

Notably, child victims who are 11 years of age or older are not protected by this hearsay exception, thereby increasing their risk of re-traumatization from testifying.

- 5.1.1 Recommendation: Amend) state law to extend existing the hearsay exception to any case involving the commercial sexual exploitation of children under 18 years of age.

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

Delaware law provides commercially sexually exploited children with alternatives to live, in-court testimony. Specifically, Del. Code Ann. tit. 11, § 3514(a)(1) (Testimony of victim or witness in child abuse, and victim of domestic violence, sexual assault or stalking cases by means of secured video connection) allows for testimony by closed circuit television (CCTV), stating,

In any prosecution involving any offense set forth in § 3513(a) [Hearsay exception for child victim’s or witness’s out-of-court statement of abuse] of this title, domestic violence as defined in § 1041 [Definitions] of Title 10, and §§ 768 thru 778 [Sexual offenses] and 1312 [Stalking] of this title a court may order that the testimony of a witness less than 11 years of age or any victim of the offenses described herein be taken outside the courtroom and shown in the courtroom by means of secured video connection if:

- a. The testimony is taken during the proceeding; and
- b. The judge determines that testimony by the witness less than 11 years of age or any victim of the offenses described herein in the courtroom will result in the witness less than 11 years of age or any victim of the offenses described herein suffering serious emotional distress such that the witness less than 11 years of age or any victim of the offenses described herein cannot reasonably communicate.

This protection is expressly available to victims of trafficking and CSEC based on the inclusion of offenses delineated in Del. Code Ann. tit. 11, § 3513(a), which states,

[O]ffense[s] relating to sexual abuse, physical injury, serious physical injury, death, abuse or neglect as described in any felony delineated in subpart A [Assaults and related offenses], B [Acts causing death] or D [Sexual offenses] of subchapter II of Chapter 5 of this title, or in any of the felonies delineated in . . . § 787 [Trafficking an individual, forced labor and sexual servitude], . . . § 1353(2) [Promoting prostitution in the first degree], . . . of this title or in any attempt to commit any felony delineated in this paragraph . . .

-
- (3) Certainty that the statement was made, including the credibility of the person testifying about the statement;
 - (4) Any apparent motive the child may have to falsify or distort the event, including bias, corruption or coercion;
 - (5) The timing of the child’s statement;
 - (6) Whether more than 1 person heard the statement;
 - (7) Whether the child was suffering pain or distress when making the statement;
 - (8) The nature and duration of any alleged abuse;
 - (9) Whether the child’s young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child’s knowledge and experience;
 - (10) Whether the statement has a “ring of verity,” has internal consistency or coherence and uses terminology appropriate to the child’s age;
 - (11) Whether the statement is spontaneous or directly responsive to questions;
 - (12) Whether the statement is suggestive due to improperly leading questions;
 - (13) Whether extrinsic evidence exists to show the defendant’s opportunity to commit the act complained of in the child’s statement.

Alternatively, in any criminal case, Del. Code Ann. tit. 11, § 3511(a), (b) (Videotaped deposition and procedures for child witnesses) allows “the court [to] order all questioning of any witnesses under the age of 12 years to be videotaped in a location designated by the court” in which case “the witness may not be compelled to testify in court at the trial or upon any hearing for which the testimony was taken.” Instead, Del. Code Ann. tit. 11, § 3511(b) states that “a part or all of the videotaped deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence”

EXTRA CREDIT



Del. Code Ann. tit. 11, § 3514(a)(1) permits the court to order the testimony of “any victim of the offenses described herein” to be taken by CCTV if testifying within the courtroom “will result in . . . any victim of the offenses described herein suffering serious emotional distress such that . . . any victim of the offenses described herein cannot reasonably communicate.” The phrase “any victim” removes the age limitation (otherwise under 11 years of age). Because Del. Code Ann. tit. 11, § 787 (Trafficking an individual, forced labor and sexual servitude) criminalizes trafficking of both minor and adult victims, the protection provided for under Del. Code Ann. tit. 11, § 3514 extends to youth who testify at the trials of their exploiters.



Del. Code Ann. tit. 11, § 3514(a)(1) permits victims of child labor trafficking to testify by CCTV based on the inclusion of Del. Code Ann. tit. 11, § 787 (Trafficking an individual, forced labor and sexual servitude), which criminalizes both sex trafficking and labor trafficking, as an eligible offense. Further, Delaware law allows for videotaped depositions.

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	Not statutorily required.	Victim witnesses can identify a support person to be present during court proceedings.	All personal information of crime victims is protected from disclosure in court records.
Relevant Statute(s)	None.	Del. Code Ann. tit. 11 § 9407(a) (Presence at court proceedings)	Del. Code Ann. tit. 11 § 9403(a); (c) (Nondisclosure of information about victim)

5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate and are provided courtroom supports when testifying against their exploiter.

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

Delaware 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.

Delaware law authorizes statewide training for child welfare agencies on prevention and response to child sex trafficking. Pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(f) (Trafficking an individual, forced labor and sexual servitude), the Human Trafficking Interagency Coordinating Council shall “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.” Resultingly, training regarding child sex trafficking may be, or become, available to child welfare. However, Delaware law does not statutorily require individuals employed by child welfare to receive such training.

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

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

Delaware law authorizes statewide training for juvenile justice agencies on prevention and response to child sex trafficking. Pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(f) (Trafficking an individual, forced labor and sexual servitude), the Human Trafficking Interagency Coordinating Council shall “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.” Resultingly, training regarding child sex trafficking may be, or become, available to juvenile justice agencies. However, Delaware 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.

Delaware law authorizes trafficking-specific training for law enforcement. Pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(f) (Trafficking an individual, forced labor and sexual servitude), the Human Trafficking Interagency Coordinating Council shall “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.” Further, Del. Code Ann. tit. 11, § 8404(a)(19) (Powers and Duties) permits, but does not require, the Council on Police Training to “[m]andate training for all persons seeking permanent or seasonal appointment as a police officer in the detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence” 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.

Delaware law authorizes trafficking-specific training for state and local employees, which would include prosecutors. Pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(f) (Trafficking an individual, forced labor and sexual servitude), the Human Trafficking Interagency Coordinating Council shall “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.” Resultingly, training regarding child sex trafficking may be, or become, available to prosecutors. However, prosecutors are not statutorily mandated to receive such training.

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

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

Delaware law authorizes trafficking-specific training for state and local employees, which would include school personnel. Pursuant to Del. Code Ann. tit. 11, § 787(k)(2)(f) (Trafficking an individual, forced labor and sexual servitude), the Human Trafficking Interagency Coordinating Council shall “[c]oordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.” Resultingly, training regarding child sex trafficking may be, or become, available to school personnel. However, school personnel are not statutorily mandated to receive such training.

- 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.

Delaware 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

1. Del. Code Ann. tit. 11, § 787(b), (c) (Trafficking an individual, forced labor and sexual servitude) states,
 - (b) Prohibited activities. –
 - (1) Trafficking an individual. – A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains,³¹ advertises, solicits, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a class C felony unless the individual is a minor, in which case it is a class B felony.
. . . .³²
 - (3) Sexual servitude. –
 - a. A person commits the offense of sexual servitude if the person knowingly:
 1. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity;³³ or
 2. Uses coercion or deception to compel an adult to engage in commercial sexual activity.
 - b. Sexual servitude is a class C felony unless the individual is a minor, in which case it is a class B felony.
. . . .
 - (4) Patronizing a victim of sexual servitude. – A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude. Patronizing a victim of sexual servitude is a class D felony unless the victim of sexual servitude is a minor, in which case it is a class C felony
. . . .
 - (c) Organizational liability. –
 - (1) An organization may be prosecuted for an offense under this section pursuant to § 281 of this title (Criminal liability of organizations).
 - (2) The court may consider the severity of an organization’s offense under this section and order penalties in addition to those otherwise provided for the offense, including:
 - a. A fine of not more than \$25,000 per offense;
 - b. Disgorgement of profit from illegal activity in violation of this section; and
 - c. Debarment from state and local government contracts.

³¹ Del. Code Ann. tit. 11, § 787(a)(9) defines “maintain” as “in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.” The definition of “labor or services” specifically includes commercial sexual activity.” Del. Code Ann. tit. 11, § 787(a)(8).

³² Since the definition of “labor or services” includes commercial sexual activity, a trafficker could also be convicted under Del. Code Ann. tit. 11, § 787(b)(2) for forced labor, but the offense must involve coerced commercial sexual activity even when the victim is a minor.

³³ Del. Code Ann. tit. 11, § 787(a)(3) defines “commercial sexual activity” as “any sexual activity for which anything of value is given, promised to, or received by any person.”

A class B felony is punishable by imprisonment for 2–25 years.³⁴ Del. Code Ann. tit. 11, § 4205(b)(2) (Sentence for felonies). A class C felony is punishable by imprisonment for up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3).

³⁴ Further, Del. Code Ann. tit. 11, § 4205(k) states, “In addition to the penalties set forth above, the court may impose such fines and penalties as it deems appropriate.” Accordingly, in all instances where penalties for a felony conviction are mentioned throughout this document, it should be inferred that an additional indeterminate fine may be imposed at the judge’s discretion.

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Del. Code Ann. tit. 11, § 1353 (Promoting prostitution in the first degree) states,

A person is guilty of promoting prostitution in the first degree when the person knowingly:

- (1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution or profits from such coercive conduct by another; or
- (2) Advances³⁵ or profits from prostitution³⁶ of a person less than 16 years old.

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

A class C felony is punishable by imprisonment for up to 15 years. Del. Code Ann. tit. 11, § 4205(b)(3) (Sentence for felonies).

2. Del. Code Ann. tit. 11, § 1352 (Promoting prostitution in the second degree) states,

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

- (1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes; or
- (2) Advances³⁷ or profits from prostitution³⁸ of a person less than 18 years old.

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

A class E felony is punishable by imprisonment for up to 5 years. Del. Code Ann. tit. 11, § 4205(b)(5) (Sentence for felonies).

³⁵ Del. Code Ann. tit. 11, § 1365(1) (Definitions relating to prostitution) defines “advances prostitution” as follows:

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

³⁶ Del. Code Ann. tit. 11, § 1356 defines “profits from prostitution” as follows:

[W]hen, 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 whereby the person participates or is to participate in the proceeds of prostitution activity.

³⁷ Del. Code Ann. tit. 11, § 1365(1) defines “advances prostitution” as follows:

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

³⁸ Del. Code Ann. tit. 11, § 1356 defines “profits from prostitution” as follows:

[W]hen, 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 whereby the person participates or is to participate in the proceeds of prostitution activity.