

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 Oregon’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.<sup>1</sup>



## 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.

Following federal precedent, Oregon’s trafficking law could apply to buyers of commercial sex with minors based on the term “obtains.”<sup>2</sup> Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) states,

A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

....

<sup>1</sup> Evaluations of state laws are based on legislation enacted as of August 1, 2022.

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

(c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.<sup>3</sup>

However, to ensure buyers are held accountable as sex trafficking offenders, the trafficking law should be amended to expressly apply to persons who “patronize” a minor for commercial sex.

- 1.1.1 Recommendation: Amend Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) to clarify that buyer conduct is included as a violation of Or. Rev. Stat. § 163.266.

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

Oregon law criminalizes both purchasing and soliciting commercial sex with minors. Specifically, Or. Rev. Stat. § 163.413(1) (Purchasing sex with a minor) states,

A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.

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

Trafficker conduct is addressed under Or. Rev. Stat. § 167.017(1) (Compelling prostitution), which states,

A person commits the crime of compelling prostitution if the person knowingly:

....

- (b) Induces or causes a person under 18 years of age to engage in prostitution;
- (c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
- (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

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

Oregon law expressly prohibits a mistake of age defense in prosecutions for CSEC but not child sex trafficking. Specifically, Or. Rev. Stat. Ann. § 167.017(3) (Compelling prostitution) prohibits a mistake of age defense in a prosecution for compelling prostitution regardless of the minor victim’s age, stating,

In a prosecution under subsection (1)(b) or (c)<sup>4</sup> of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not

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<sup>3</sup> Or. Rev. Stat. § 163.266 (3) defines “commercial sex act” as “sexual conduct or sexual contact, as those terms are defined in ORS 167.002 [Definitions], performed in return for a fee or anything of value.”

<sup>4</sup> Pursuant to Or. Rev. Stat. Ann. § 167.017(1)(b), (c),

know the person's age or that the defendant reasonably believed the person to be older than 18 years of age.

In contrast, a mistake of age defense will only be prohibited for a violation of Or. Rev. Stat. Ann. § 163.413 (Purchasing sex with a minor) if the minor is under 16 years of age or for subsequent offenses. Or. Rev. Stat. Ann. §§ 163.413(2)(a), 163.325(1), (2). Or. Rev. Stat. Ann. § 163.413(2)(a) provides,

If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325 [Ignorance or mistake as a defense] only if the minor or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant was at least 16 years of age.

Under Or. Rev. Stat. Ann. § 163.325(1), (2) (Ignorance or mistake as a defense),

(1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

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

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

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, Or. Rev. Stat. Ann. § 161.425 (Impossibility not a defense) could provide prosecutors with an alternative avenue to prosecute those cases. Or. Rev. Stat. Ann. § 161.425 states,

In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be.

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.

Oregon's trafficking laws do not expressly allow for business entity liability.

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A person commits the crime of compelling prostitution if the person knowingly:

....

(b) Induces or causes a person under 18 years of age to engage in prostitution;

(c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age .

...

- 1.6.1 Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

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

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>5</sup>

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<sup>5</sup> Regarding asset forfeiture, Or. Rev. Stat. § 131.558(4)–(10) (Property subject to forfeiture) provides for forfeiture of the following:

- (4) . . . [A]ll conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . . .
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;
- . . . .
- (10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

Or. Rev. Stat. § 131.550(12) (Definitions for ORS 131.550 to 131.600) defines “prohibited conduct” as “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602 (Prohibited conduct for purposes of instrumentalities of crime) includes the following crimes:

- . . . .
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- (92) Promoting prostitution, as defined in ORS 167.012.
- (93) Compelling prostitution, as defined in ORS 167.017.
- . . . .
- (144) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (145) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (146) Trafficking in persons, as defined in ORS 163.266.
- . . . .
- (150) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (149) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

Disposition of forfeited property is governed by Or. Rev. Stat. § 131.597(1) (Disposition and distribution of forfeited property when seizing agency is the state), which states,

- (a) The seizing agency shall pay costs first from the property or its proceeds . . . .
- (b) After costs have been paid, the seizing agency shall distribute to the victim any amount the seizing agency was ordered to distribute . . . .
- (c) Of the property remaining after costs have been paid under paragraph (a) of this subsection and distributions have been made under paragraph (b) of this subsection, the seizing agency shall distribute:

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

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- (A) Three percent to the Asset Forfeiture Oversight Account established in ORS 131A.460;
  - (B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 . . . ;
  - (C) Ten percent to the state General Fund;
  - (D) Subject to subsection (5) of this section, 40 percent to the Department of State Police or the Department of Justice for official law enforcement use; and
  - (E) Forty percent to the Drug Prevention and Education Fund established in ORS 430.422.

However, state asset forfeiture laws do not direct a percentage of a sex trafficking or CSEC offender's forfeited assets into a victim services fund.



## ISSUE 2: Identification of & Response to Victims

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

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Following federal precedent, Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) can apply directly to buyers of commercial sex with minors based on the term “obtains,”<sup>6</sup> meaning a buyer can be charged regardless of whether a trafficker is involved or identified. Accordingly, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

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

Oregon law does not provide policy guidance that facilitates appropriate responses to foreign national child sex trafficking victims.

- 2.2.1 Recommendation: Statutorily provide policy guidance that facilitates access to services and assistance for trafficked foreign national children.

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

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

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

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

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

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

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<sup>6</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Or. Rev. Stat. § 163.266.

**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.

Oregon law does not prohibit the criminalization of minors for prostitution, nor does it establish a protocol requiring law enforcement to refer impacted children to a direct services organization or child-serving agency in lieu of arrest. Although the core prostitution offense, Or. Rev. Stat. § 167.007 (Prostitution) acknowledges trafficking victimization as a mitigating factor, the statute applies equally to minors and adults, stating,

- (1) A person commits the crime of prostitution if the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee.
- (2) Prostitution is a Class A misdemeanor.
- (3) It is an affirmative defense to prosecution under this section that the defendant, at the time of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266(1)(b) or (c).

2.5.1 Recommendation: Enact legislation to prohibit the criminalization of all minors for prostitution offenses 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 Oregon 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 Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270 [Duress], if the person is prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide.

Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264) defines “services” as “activities performed by one person under the supervision or for the benefit of another person.” Because “services” is defined so broadly, the affirmative defense provided for under Or. Rev. Stat. § 163.269 could encompass misdemeanor and non-violent felony acts.

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 Oregon 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, an affirmative defense may be available. Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270

[Duress], if the person is prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide.

Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264) defines “services” as “activities performed by one person under the supervision or for the benefit of another person.” Because “services” is defined so broadly, the affirmative defense provided for under Or. Rev. Stat. § 163.269 could encompass sex trafficking and commercial sexual exploitation offenses.

- 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.

Oregon law likely provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270 [Duress], if the person is prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide.

Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264) defines “services” as “activities performed by one person under the supervision or for the benefit of another person.” Because “services” is defined so broadly, the affirmative defense provided for under Or. Rev. Stat. § 163.269 could encompass violent felony acts.

**EXTRA CREDIT**



Because Or. Rev. Stat. § 163.266 criminalizes sex trafficking of both minor and adult victims, the affirmative defense provided for under Or. Rev. Stat. § 163.269 extends to youth who are charged with an offense as a result of their trafficking victimization.



Because Or. Rev. Stat. § 163.269 applies to victims of both Or. Rev. Stat. § 163.263 and Or. Rev. Stat. § 163.264, Oregon’s labor trafficking laws, child labor trafficking victims may assert an affirmative defense to charges arising from their trafficking victimization.



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

Oregon law provides several age-appropriate juvenile court responses for minors accused of engaging in juvenile or criminal conduct. State statute extends juvenile court jurisdiction to all minors under 18 years of age and prohibits automatic transfers and direct file of juvenile cases in criminal court. However, governing state law does not establish a minimum age for juvenile court jurisdiction and fails to require courts to consider the impact of trauma or past victimization in make 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
<b>Summary</b>	None. “Youth” is defined as “a person under 18 years of age who is alleged to have committed an act that is a violation . . . of a law . . . .”	17	No.	Yes. Minors: (1) 15+ years of age charged with aggravated murder or certain other felony offenses <sup>7</sup> ; (2) 15+ years of age charged with a Class A or B felony, or several Class C felony offenses; (3) any minor charged with aggravated murder, 1 <sup>st</sup> degree rape, 1 <sup>st</sup> degree sodomy, or 1 <sup>st</sup> degree unlawful penetration; and (4) 16+ years who were previously waived to adult court.	No.
<b>Relevant Statute(s)</b>	Or. Rev. Stat. § 419A.004(41) <sup>8</sup> (Definitions)	Or. Rev. Stat. § 419A.004(41) (Definitions); Or. Rev. Stat. § 419C.005(1) (Jurisdiction)	N/A	Or. Rev. Stat. § 419C.349(1) (Grounds for waiving youth to adult court); Or. Rev. Stat. § 419C.352(1) <sup>9</sup> (Grounds for waiving youth under 15 years of age); Or.	Or. Rev. Stat. § 419C.349(2) (Grounds for waiving youth to adult court)

<sup>7</sup> Or. Rev. Stat. § 137.707(4) (Mandatory minimum sentences for certain juvenile offenders waived to adult court ; lesser included offenses; return to juvenile court) outlines the offenses qualifying for a waiver hearing.

<sup>8</sup> The text of Or. Rev. Stat. § 419A.004 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 436 during the 2021 Regular Session of the Oregon state legislature (effective January 1, 2022).

<sup>9</sup> The text of Or. Rev. Stat. § 419C.352 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 133 during the 2021 Regular Session of the Oregon state legislature (effective January 1, 2022).

				Rev. Stat. § 419C.364 (Waiver of future cases)	
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Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; and (2) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

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

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

Oregon law clearly defines “abuse” to include child sex trafficking and commercial sexual exploitation of children. Or. Rev. Stat. § 419B.005(1)(a)(E)(ii) (Definitions) provides,

As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

- (1)
  - (a) “Abuse” means:
    - .....
    - (E) Sexual exploitation, including but not limited to:
      - .....
      - (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 [Prostitution] or a commercial sex act as defined in ORS 163.266 [Trafficking in persons], to purchase sex with a minor as described in ORS 163.413 [Purchasing sex with a minor] or to engage in commercial sexual solicitation as described in ORS 167.008 [Commercial sexual solicitation].

**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.

Oregon’s definition of abuse is silent regarding the child’s relationship to the perpetrator in order to deem the child as abused as the result of being subject to sexual exploitation, and it does not expressly clarify that a child welfare response to child sex trafficking victims need not hinge on caregiver liability. 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.

Oregon law does not mandate a process for coordinating access to specialized, community-based services for child sex trafficking victims that does not require involvement in a child-serving system.

3.1.1 Recommendation: Statutorily 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 abuse MDT, Oregon law does not require an MDT response specific to child sex trafficking cases. Under Or. Rev. Stat. Ann. § 418.783(1)(a), (b) (Child abuse multidisciplinary intervention program),

The Child Abuse Multidisciplinary Intervention Program is established in the Department of Justice. The purpose of the program is to:

- (a) Establish and maintain a coordinated multidisciplinary community-based system for responding to allegations of child abuse that is sensitive to the needs of children;
- (b) Ensure the safety and health of children who are victims of child abuse to the greatest extent possible; and

Further, pursuant to Or. Rev. Stat. Ann. § 418.784 (Advisory council on child abuse assessment; membership; officers; meetings; quorum), the advisory council is made up of cross-discipline representatives to support the needs of the multi-disciplinary team. Or. Rev. Stat. Ann. § 418.784(1), (2) states,

- (1) There is created the Advisory Council on Child Abuse Assessment, consisting of at least nine members appointed by the Attorney General. The Attorney General shall serve as an ex officio member of the council. The Council shall direct the administrator of the Child Abuse Multidisciplinary Intervention Program on the administration of funds to establish and maintain children's advocacy centers or regional children's advocacy centers under ORS 418.746 [Child abuse multidisciplinary intervention account] to 418.796 [Authority of council to solicit and accept contributions]
- (2) Of the members appointed to the council:
  - (a) One member shall be an employee of the Department of Human Services with duties related to child protective services;
  - (b) One member shall be a physician licensed to practice medicine in Oregon who specializes in children and families;
  - (c) One member shall be a person having experience dealing with child abuse;
  - (d) One member shall be a district attorney or the designee of a district attorney;
  - (e) One member shall be an employee of a law enforcement agency, in addition to the member who is a district attorney or the designee of a district attorney;
  - (f) One member shall be from an operating regional children's advocacy center; and
  - (g) At least three members shall be citizens with appropriate interest in advocating for the medical interest of abused children.

- 3.2.1 Recommendation: Statutorily require a multi-disciplinary team response specific to child sex trafficking victims.

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

Oregon law does not require child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims.<sup>10</sup>

- 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.

Oregon 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.

Oregon law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>11</sup>

Or. Rev. Stat. § 418.001 (Definition for ORS 418.005 to 418.030) defines “child” or “juvenile” as “an individual under 21 years of age.” Further, Or. Rev. Stat. § 418.205(1) (Definitions for ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to 418.998) defines “child” as “an unmarried person under 21 years of age who resides in or receives care or services from a child-caring agency.” Lastly, under Or. Rev. Stat. § 418.257(3) (Definitions for ORS 418.257 to 418.259), “child in care” is defined as follows:

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<sup>10</sup> Notably, however, Or. Rev. Stat. Ann. § 418.322 (Placement in congregate care residential setting; limitations) alludes to specialized services being provided by some child-caring agencies. Or. Rev. Stat. Ann. § 418.322(2), (3)(c) states,

- (2) The Department of Human Services may place a child or ward in a congregate care residential setting only if the setting is:
  - (a) A child-caring agency, as defined in ORS 418.205, a hospital, as defined in ORS 442.015, or a rural hospital, as defined in ORS 442.470; and
  - (b) A qualified residential treatment program described in ORS 418.323.
- (3) Notwithstanding subsection (2) of this section, the department may place a child or ward in a child-caring agency that is not a qualified residential treatment program if:
  - .....
  - (c) The child or ward is, or is at risk of becoming, a victim of sex trafficking and the child-caring agency is providing high-quality residential care and supportive services to the child or ward.

<sup>11</sup> 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).

- (a) . . . a person under 21 years of age who is residing in or receiving care or services from:
  - (A) A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970;
  - (B) A certified foster home; or
  - (C) A developmental disabilities residential facility.
- (b) “Child in care” does not include a person under 21 years of age who is residing in any of the entities listed in paragraph (a) of this subsection when the care provided is in the home of the child by the child’s parent.

Additionally, Or. Rev. Stat. § 418.475(1)(a)<sup>12</sup> (Independent residence facilities; extent and nature of agreement between person and department) provides,

Within the limit of moneys appropriated therefor, the Department of Human Services may establish, license, certify or authorize independent residence facilities for unmarried persons who:

- (a)
  - (A) Are at least 16 years of age and not older than 20 years of age;<sup>13</sup>
  - (B) Have been placed in at least one substitute care resource;
  - (C) Have been determined by the department to possess the skills and level of responsibility required for the transition to adulthood;
  - (D) Have received permission from the appropriate juvenile court, if they are wards of the court; and
  - (E) Have been determined by the department to be suitable for an independent living program; or

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

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

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

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<sup>12</sup> The text of Or. Rev. Stat. § 418.475 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 2108 and 4013 during the 2021 and 2022 Regular Sessions of the Oregon state legislature (effective January 1, 2022 and June 3, 2022, respectively).

<sup>13</sup> Notably, Or. Rev. Stat. § 418.475(1)(b) extends this age limitation to include youth under 24 years of age, but only in cases where the youth experienced homelessness. Or. Rev. Stat. § 418.475(1)(b) states,

Within the limit of moneys appropriated therefor, the Department of Human Services may establish, license, certify or authorize independent residence facilities for unmarried persons who:

- . . . .
- (b)
  - (A) Are at least 16 years of age and not older than 24 years of age;
  - (B) At any time after attaining 14 years of age experienced homelessness for an aggregate of six months;
  - (C) While experiencing homelessness as described in subparagraph (B) of this paragraph, received services from an organization contracted by the department to provide services to homeless persons or from a host home, as defined by the department by rule; and
  - (D) Last received the services described in subparagraph (C) of this paragraph after attaining 16 years of age.

- 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.

Oregon law allows a child sex trafficking victim to seek a restraining order against their exploiter. Pursuant to Or. Rev. Stat. § 163.763 (Petition to circuit court for relief; burden of proof),

- (1) A person who has been subjected to sexual abuse and who reasonably fears for the person's physical safety may petition the circuit court for a restraining order if:
  - (a) The person and the respondent are not family or household members;
  - (b) The respondent is at least 18 years of age; and
  - (c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining order as defined in ORS 24.190 [Foreign restraining order], an order issued under ORS 30.866 [Action for issuance or violation of stalking protective order; attorney fees], 124.015 [Hearing upon request of respondent; relief; settlement; effect of proceedings], 124.020 [Ex parte hearing; required findings; judicial relief; forms; request by respondent for hearing], 163.738 [Effect of citation; contents; hearing; court's order; use of statements made at hearing] or 419B.845 [Restraining order when child abuse alleged] or an order entered in a criminal action.
- (2)
  - (a) A petition seeking relief under ORS 163.760 to 163.777 must be filed in the circuit court for the county in which the petitioner or the respondent resides. The petition may be filed, without the appointment of a guardian ad litem, by a person who is at least 12 years of age or by a parent or lawful guardian of a person who is under 18 years of age.
  - (b) The petition must allege that:
    - (A) The petitioner reasonably fears for the petitioner's physical safety with respect to the respondent; and
    - (B) The respondent subjected the petitioner to sexual abuse.
  - (c) The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury.
  - (d) The petitioner has the burden of proving a claim under ORS 163.760 to 163.777 by a preponderance of the evidence.

Importantly, Or. Rev. Stat. § 163.760(2)(b) (Definitions for ORS 163.760 to 163.777) broadly defines "sexual abuse" to include any sexual contact<sup>14</sup> with "[a] person who is considered incapable of consenting to a sexual act under ORS 163.315 [Incapacity to consent; effect of lack of resistance], unless the sexual contact would be lawful under ORS 163.325 [Ignorance or mistake as a defense] or 163.345 [Age as a defense in certain cases]." Because Or. Rev. Stat. § 163.315(1)(a) expressly makes any person under 18 years of age incapable of consenting to a sexual act, victims of child sex trafficking and CSEC would be included in the definition of "sexual abuse" for purposes of protection under Or. Rev. Stat. § 163.763.

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<sup>14</sup> Or. Rev. Stat. § 163.760(3) defines "sexual contact" to have the same meaning as defined under Or. Rev. Stat. 163.305(5) (Definitions), which states,

"Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

Further, Or. Rev. Stat. § 163.765 (Restraining order; service of order; request for hearing; duration of order) allows a restraining order to be obtained on an ex parte basis and provides for the duration of the order, stating,

(1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is not entered and that the respondent has subjected the petitioner to sexual abuse, the circuit court:

(a) Shall enter an order restraining the respondent from contacting the petitioner and from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner.

(b) If the petitioner requests, may order:

(A) That the respondent be restrained from contacting the petitioner's children or family or household members;

(B) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's residence;

(C) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children or family or household members of the petitioner, or attempting to intimidate, molest, interfere with or menace any children or family or household members of the petitioner;

(D) That the respondent be restrained from entering, or attempting to enter, any premises and a reasonable area surrounding the premises when necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or the petitioner's children or family or household members; and

(E) Other relief necessary to provide for the safety and welfare of the petitioner or the petitioner's children or family or household members.

(6)

(a) Within 30 days after a restraining order is served under this section, the respondent may request a circuit court hearing upon any relief granted.

.....

(7) If the respondent fails to request a hearing within 30 days after a restraining order is served, the restraining order is confirmed by operation of law.

(8)

(a) A restraining order entered under this section is effective for a period of five years or, if the petitioner is under 18 years of age at the time of entry, until January 1 of the year following the petitioner's 18th birthday, whichever occurs later, except as otherwise provided in paragraph (b) or (c) of this subsection or unless the restraining order is renewed, modified or terminated in accordance with ORS 163.760 to 163.777.

(b) The circuit court shall enter a permanent restraining order if, at the time of the petition or renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to 163.445 committed against the petitioner.

(c) The circuit court may enter a permanent restraining order if the court finds that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety and that the passage of time or a change in circumstances would not dissipate that fear. In making the finding, the court shall consider any information offered by the petitioner to support the request for a permanent restraining order, including but not limited to:

(A) Information that the respondent has a history of engaging in sexual abuse or domestic violence as defined in ORS 135.230 [Definitions for ORS 135.230 to 135.290];

(B) If the petitioner is a minor, the fact that the respondent is related to the petitioner by blood or marriage; or

(C) Any vulnerability of the petitioner that is not likely to change over time.



**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.

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

For purposes of accessing crime victims' compensation, Or. Rev. Stat. § 147.015 (1)(a) (Eligibility for compensation; generally) states,

A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

- (a) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime<sup>15</sup> that has resulted in or may result in a compensable loss;

Or. Rev. Stat. § 147.005(16)(a) (Definitions) defines "victim" as follows:

A person:

- (A) Killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person;
- ....
- (D) Killed or injured in another state as a result of a criminal episode that began in this state;
- (E) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated or attempted against the person in a state, within the United States, without a reciprocal crime victims' compensation program . . . .

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Or. Rev. Stat. § 147.015(1)(e)–(g),

A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

- ....
- (e) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;
- (f) The death or injury to the victim was not substantially attributable to the wrongful act of the victim; and
- (g) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the department:
  - (A) Within one year of the date of the injury to the victim; or
  - (B) Within such further extension of time as the department, for good cause shown, allows.

Notably, Oregon law carves out exceptions to other ineligibility factors for victims of "sexual exploitation," which is defined under Or. Rev. Stat. § 419B.005(1)(a)(E)(ii) (Definitions) to include children who were victimized by a violation of Or. Rev. Stat. § 167.007 (Prostitution), Or. Rev. Stat. § 163.266 (Trafficking in persons), Or. Rev. Stat. § 163.413 (Purchasing sex with a minor), or Or. Rev. Stat. § 167.008 (Commercial sexual solicitation).<sup>16</sup> Specifically, Or. Rev. Stat. § 147.015(1), (2) states,

- (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:
  - ....

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<sup>15</sup> Or. Rev. Stat. § 147.005(4) defines "compensable crime" to include "an intentional, knowing, reckless or criminally negligent act that results in injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state."

<sup>16</sup> See *supra* Policy Goal 2.10 for the full definition of "sexual exploitation."

- (b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim, unless the Department of Justice finds good cause exists for the failure of notification;
- (c) The notification described in paragraph (b) of this subsection occurred within 72 hours after the perpetration of the crime, unless the Department of Justice finds good cause exists for the failure of notification within 72 hours;
- (d) The applicant cooperated with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant's failure to cooperate was for good cause;
- ....
- (2)
  - (a) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005 . . . is prima facie evidence of good cause for the victim's failure to notify law enforcement in a timely manner under subsection (1)(c) of this section, or for failure to cooperate with law enforcement under subsection (1)(d) of this section.
  - (b) The requirement under subsection (1)(b) of this section to notify the appropriate law enforcement officials of the perpetration of the crime is satisfied if, as a result of the compensable crime for which the victim or applicant is applying for compensation, the victim or applicant obtained:
    - (A) A temporary or permanent stalking protective order under ORS 30.866 or 163.730 to 163.750;
    - (B) A sexual abuse restraining order under ORS 163.760 to 163.777;
    - (C) An abuse prevention order under ORS 107.700 to 107.735 or 124.005 to 124.040; or
    - (D) A medical assessment, as defined in ORS 147.395, for sexual assault.

Because child sex trafficking and CSEC victims are not expressly exempt from all the ineligibility factors noted above, however, some commercially sexually exploited children may not have access to an award. Further, the exceptions are offense-specific, leaving victims of Oregon's other CSEC offenses unprotected.

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

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

Although Oregon law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to Or. Rev. Stat. § 137.221(1)–(5) (Vacation of judgment of conviction for prostitution),

- (1) A court may vacate a judgment of conviction for the crime of prostitution under ORS 167.007 [Prostitution] as described in this section.
- (2)
  - (a) A person may request vacation of a judgment of conviction for prostitution by filing a motion in the county of conviction. The motion may be filed at least 21 days after the judgment of conviction is entered.
  - (b) A copy of the motion shall be served on the district attorney.
  - (c) The motion must contain an explanation of facts supporting a claim that the person was the victim of sex trafficking<sup>17</sup> at or around the time of the conduct giving rise to the prostitution conviction. The motion must further contain an explanation of why those facts were not presented to the trial court.

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<sup>17</sup> Or. Rev. Stat. § 137.221(7) defines “sex trafficking” as “the use of force, intimidation, fraud or coercion to cause a person to engage, or attempt to engage, in a commercial sex act.”

(3) Upon receiving the motion described in subsection (2) of this section, the court shall hold a hearing. At the hearing, the person has the burden of proof and may present evidence that, at or around the time of the conduct giving rise to the prostitution conviction, the person was the victim of sex trafficking. The court shall consider any evidence the court deems of sufficient credibility and probative value in determining whether the person was a victim of sex trafficking . . . .

(5) If the court grants a motion under this section, the court shall vacate the judgment of conviction for prostitution and may make other orders as the court considers appropriate.

Because Or. Rev. Stat. § 137.221 applies specifically to “convictions,” however, this protection does not clearly extend to delinquency adjudications. Further, Or. Rev. Stat. § 137.221(1) limits applicability to prostitution offenses, which fails to recognize the array of crimes trafficking victims are charged with and leaves many survivors without any avenue for relief.

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

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

Oregon law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Or. Rev. Stat. § 137.106(1), (2)<sup>18</sup> (Restitution to victims),

- (1)
  - (a) When a person is convicted of a crime, or a violation as described in ORS 153.008 [Violations described], that has resulted in economic damages, the district attorney shall investigate and present to the court, at the time of sentencing or as provided in paragraph (b) of this subsection, evidence of the nature and amount of the damages.
  - . . . .
- (2)
  - (a) If the court finds from the evidence presented that a victim<sup>19</sup> suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim’s economic damages as determined by the court . . . .
  - (b) Notwithstanding paragraph (a) of this subsection, a court may order that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim’s economic damages only if:

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<sup>18</sup> The text of Or. Rev. Stat. § 137.106 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 4075 during the 2022 Regular Session of the Oregon state legislature (effective January 1, 2023).

<sup>19</sup> Or. Rev. Stat. § 137.103(4)(a), (b) defines “victim” as follows:

- (a) The person or decedent against whom the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a result of the offense.
- (b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant’s criminal activities.

Or. Rev. Stat. § 137.103(1) defines “criminal activities” as “any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.”

- (A) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents to the lesser amount, if the conviction is not for a person felony; or
- (B) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents in writing to the lesser amount, if the conviction is for a person felony.
- (c) As used in this subsection, “person felony” has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

If the case involved a violation of Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree), Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree), or Or. Rev. Stat. § 163.266 (Trafficking in persons), Or. Rev. Stat. § 137.103(2)(b) (Definitions for ORS 137.101 to 137.109) expands the definition of “economic damages” to include the greater of the following:

- (A) The value to the defendant of the victim’s services as defined in ORS 163.261 [Definitions for ORS 163.263 and 163.264]; or
- (B) The value of the victim’s services, as defined in ORS 163.261, computed using the minimum wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

However, Or. Rev. Stat. § 137.103(5) excludes “any coparticipant in the defendant’s criminal activities” from the definition of “victim,” which could prevent trafficking victims from obtaining restitution if the court finds that they aided their trafficker.

#### EXTRA CREDIT



Oregon law mandates restitution for victims of child labor trafficking under Or. Rev. Stat. § 137.106(1), (2), which applies broadly to any offense.

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

Oregon law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Or. Rev. Stat. § 30.867(1)–(3) (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) states,

- (1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons] may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.
- (2) Upon prevailing in an action under this section, the plaintiff may recover:
  - (a) Both special and general damages, including damages for emotional distress; and
  - (b) Punitive damages.
- (3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a circuit court.

## EXTRA CREDIT



Oregon law provides sex trafficked youth with a trafficking-specific civil remedy under Or. Rev. Stat. § 30.867(1), which provides a victim of Or. Rev. Stat. § 163.266 (Trafficking in persons) with a civil cause of action against their exploiter regardless of the victim's age.



Oregon law provides child labor trafficking victims with a trafficking-specific civil under Or. Rev. Stat. § 30.867(1), which provides a victim of Or. Rev. Stat. § 163.266 (Trafficking in persons), Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree), or Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree) with a civil cause of action against their exploiter.

**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 Oregon law does not eliminate statutes of limitation for criminal and civil actions involving child sex trafficking, it does lengthen the statutes of limitation for criminal actions related to CSEC and civil actions related to child sex trafficking. Pursuant to Or. Rev. Stat. § 131.125(3)(L), (m) (Time limitations),

A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 
- (L) Promoting prostitution under ORS 167.012.
- (m) Compelling prostitution under ORS 167.017.

Prosecutions for child sex trafficking and Oregon's other CSEC offenses must commence within 3 years; Or. Rev. Stat. § 131.125(8) states,

Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

- (a) For any other felony, three years.
- (b) For any misdemeanor, two years.
- (c) For a violation, six months.

Regarding civil actions, Or. Rev. Stat. § 30.867 (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) provides,

(1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons] may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.

.....

(4) An action under this section must be commenced within six years of the conduct giving rise to the claim.

In contrast, Or. Rev. Stat § 12.110 (Actions for certain injuries to person not arising on contract; action for overtime or premium pay; action for professional malpractice; effect of fraud or deceit; action for injuries to person arising from nuclear incident) establishes a 2-year statute of limitation for personal injury actions.

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for child sex trafficking and CSEC offenses 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.

Although Oregon law does not expressly allow non-testimonial, out-of-court statements made by child sex trafficking victims to be admitted into evidence, there is a broad hearsay exception that could apply in trafficking cases; however, protection is only available to victims who testify or to younger minors. Pursuant to Or. Rev. Stat. § 40.460(18a)(a)–(c) (Hearsay exceptions; availability of declarant immaterial),

The following are not excluded by ORS 40.455 [Hearsay rule], even though the declarant is available as a witness:

.....

(18a)

(a) A complaint of sexual misconduct [or] complaint of abuse as defined in ORS 107.705 or 419B.005 . . . made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

(b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or 419B.005 . . . is not excluded by ORS 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is unavailable as a witness but was chronologically or mentally under 12 years of age when the statement was made . . . . However, if a declarant is unavailable, the statement may be admitted in evidence only if the proponent establishes that the time, content and circumstances of the statement provide indicia of reliability,<sup>20</sup> and in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged perpetrator’s opportunity to

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<sup>20</sup> Pursuant to Or. Rev. Stat. § 40.460(18a)(b),

In determining whether a statement possesses indicia of reliability under this paragraph, the court may consider, but is not limited to, the following factors:

- (A) The personal knowledge of the declarant of the event;
- (B) The age and maturity of the declarant or extent of disability if the declarant is a person with a developmental disability;
- (C) Certainty that the statement was made, including the credibility of the person testifying about the statement and any motive the person may have to falsify or distort the statement;
- (D) Any apparent motive the declarant may have to falsify or distort the event, including bias, corruption or coercion;
- (E) The timing of the statement of the declarant;
- (F) Whether more than one person heard the statement;
- (G) Whether the declarant was suffering pain or distress when making the statement;
- (H) Whether the declarant’s young age or disability makes it unlikely that the declarant fabricated a statement that represents a graphic, detailed account beyond the knowledge and experience of the declarant;
- (I) Whether the statement has internal consistency or coherence and uses terminology appropriate to the declarant’s age or to the extent of the declarant’s disability if the declarant is a person with a developmental disability;
- (J) Whether the statement is spontaneous or directly responsive to questions; and
- (K) Whether the statement was elicited by leading questions.

participate in the conduct and that the statement possesses indicia of reliability as is constitutionally required to be admitted . . . For purposes of this paragraph, in addition to those situations described in ORS 40.465 (1), the declarant shall be considered “unavailable” if the declarant has a substantial lack of memory of the subject matter of the statement, is presently incompetent to testify, is unable to communicate about the abuse or sexual conduct because of fear or other similar reason or is substantially likely, as established by expert testimony, to suffer lasting severe emotional trauma from testifying . . . If the declarant is found to be unavailable, the court shall then determine the admissibility of the evidence . . .

(c) This subsection applies to all civil, criminal and juvenile proceedings.

Notably, child victims who are 12 years of age or older are not protected by this hearsay exception unless they testify at trial.

- 5.1.1 Recommendation: Strengthen existing statutory hearsay protections to expressly apply in child sex trafficking and CSEC cases, regardless of whether the victim is available or unavailable to testify.

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

Oregon law allows child sex trafficking victims who are under 12 years of age to testify by an alternative method concerning an act of abuse, including trafficking of persons and CSEC. Specifically, Or. Rev. Stat. § 40.460(24), Rule 803, (Hearsay exceptions; availability of declarant immaterial) states,

[I]n any proceeding in which a child under 12 years of age at the time of trial . . . may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005 [Definitions], or sexual conduct performed with or on the child . . . , the testimony of the child . . . taken by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child . . . will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a party, the child, . . . or the court in a civil proceeding, or on motion of the district attorney [or] the child . . . in a criminal or juvenile proceeding, may order that the testimony of the child . . . be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child . . . may be present during the testimony of the child . . . .

Or. Rev. Stat. § 419B.005(1)(a)(E) (Definitions) defines “abuse” to include the following:

Sexual exploitation, including but not limited to:

. . . .

- (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 [Prostitution] or a commercial sex act as defined in ORS 163.266 [Trafficking of persons], to purchase sex with a minor as described in ORS 163.413 [Purchasing sex with a minor] or to engage in commercial sexual solicitation as described in ORS 167.008 [Commercial sexual solicitation].

Based on this definition, the protections provided for under Or. Rev. Stat. § 40.460(24), Rule 803, are available to commercially sexually exploited children under 12 years of age. However, child victims who are 12 years of age or older are not permitted to testify by an alternative, thereby increasing their risk of re-traumatization from testifying.

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



**Policy Goal 5.3**

Child sex trafficking victims have access to victim protections in the criminal justice system.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims' identifying information is protected from disclosure in court records</b>
<b>Summary</b>	Oregon law allows victims who are 15 years of age or older to “select a person who is at least 18 years of age as the victim’s personal representative . . . . Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.”	Not statutorily required.	Not statutorily required.
<b>Relevant Statute(s)</b>	Or. Rev. Stat. § 147.425(2), (3) (Personal representative)	None.	None.

5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate, courtroom supports are provided when they are testifying against their exploiter, and their identifying information is kept confidential in court records.

**Policy Goal 5.4**

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

Oregon law does not expressly provide for privileged communications between caseworkers and child sex trafficking victims.<sup>21</sup>

<sup>21</sup> Although not expressly available in cases related to child sex trafficking, Oregon law provides protections in cases involving domestic violence, sexual assault, or stalking. Under Or. Rev. Stat. § 147.600(2), (3) (Confidentiality of certain victim communications and records; exception),

(2) Except as provided in ORS 40.252 [Communications revealing intent to commit certain crimes] and 40.264 [Certified advocate-victim privilege], without the written, informed consent of the victim that is reasonably limited in duration, a certified advocate or a qualified victim services program may not disclose:

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

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- (a) Confidential communications between a victim and the certified advocate or qualified victim services program made in course of safety planning, counseling, support or advocacy services.
  - (b) Records that are created or maintained in the course of providing services regarding the victim.
  - (3) Notwithstanding subsection (2) of this section, a certified advocate or a qualified victim services program may disclose confidential communications or records without the victim's consent only:
    - (a) To the extent necessary for defense in any civil, criminal or administrative action that is brought against the certified advocate, or against the qualified victim services program, by or on behalf of the victim; and
    - (b) As otherwise required by law.

Further, Or. Rev. Stat. § 40.264(1), (2) (Certified advocate-victim privilege) states,

- (1) As used in this section:
  - (a) "Certified advocate" means a person who:
    - (A) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault or stalking, approved by the Attorney General by rule; and
    - (B) Is an employee or a volunteer of a qualified victim services program.
  - (b) "Confidential communication" means a written or oral communication that is not intended for further disclosure, except to:
    - (A) Persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support or advocacy services;
    - (B) Persons reasonably necessary for the transmission of the communication; or
    - (C) Other persons, in the context of group counseling.
  - (c) "Qualified victim services program" means:
    - (A) A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice, or a program administered by a tribal government, that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or
    - (B) A sexual assault center, victim advocacy office, women's center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two- or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.
  - (d) "Victim" means a person seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a qualified victim services program.
- (2) Except as provided in subsection (3) of this section, a victim has a privilege to refuse to disclose and to prevent any other person from disclosing:
  - (a) Confidential communications made by the victim to a certified advocate in the course of safety planning, counseling, support or advocacy services.
  - (b) Records that are created or maintained in the course of providing services regarding the victim.



## ISSUE 6: Prevention & Training

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

Oregon 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.

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

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

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

Oregon law authorizes trafficking-specific training for law enforcement.<sup>22</sup> Pursuant to Or. Rev. Stat. § 181A.480 (Training in human trafficking),

The Board on Public Safety Standards and Training may require that all police officers and certified reserve officers are trained to recognize, investigate and report cases involving labor trafficking and sex trafficking of children and adults at any advanced training program operated or authorized by the Department of Public Safety Standards and Training.

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.

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<sup>22</sup> Funding for trafficking-specific training is provided for under Or. Rev. Stat. § 147.480(2)(d) (Fund established; allocation of moneys; application; advisory committee; rules), which states,

The Department of Justice, with the advice of the advisory committee appointed under subsection (5) of this section, shall allocate moneys from the Fund to End Commercial Sexual Exploitation of Children to provide financial assistance to fund one or more of the following:

.....

(d) Training of investigators, service providers and others regarding the identification and treatment of children who have experienced commercial sexual exploitation;

- 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.

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

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

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

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

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

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

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

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

## State Laws Addressing Child Sex Trafficking

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1. Or. Rev. Stat. § 163.266 (Trafficking in persons) states,

(1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(a) The person knows that the other person will be subjected to involuntary servitude as described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree] or 163.264 [Subjecting another person to involuntary servitude in the first degree];

....

(c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.<sup>23</sup>

(2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

....

(4) Violation of subsection (1)(a) or (2) of this section is a Class B felony.

(5) Violation of subsection (1)(b) or (c) of this section is a Class A felony.

A Class B felony is punishable by imprisonment for up to 10 years and a possible fine up to \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c). A Class A felony is punishable by imprisonment for up to 20 years and a possible fine up to \$375,000. Or. Rev. Stat. §§ 161.605(1), 161.625(1)(b). Notably, Or. Rev. Stat. § 161.625(3)(a) (Fines for felonies) states, “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

2. Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree) states,

(1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services<sup>24</sup> by:

(a) Causing or threatening to cause the death of or serious physical injury to a person; or

(b) Physically restraining or threatening to physically restrain a person.

(2) Subjecting another person to involuntary servitude in the first degree is a Class B felony.

A Class B felony is punishable by imprisonment for up to 10 years and a possible fine up to \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c). Notably, Or. Rev. Stat. § 161.625(3)(a) (Fines for felonies) states, “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the

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<sup>23</sup> Or. Rev. Stat. § 163.266 (3) defines “commercial sex act” as “sexual conduct or sexual contact, as those terms are defined in ORS 167.002 [Definitions], performed in return for a fee or anything of value.”

<sup>24</sup> Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264) defines “services” as “activities performed by one person under the supervision or for the benefit of another person.”

defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime."

3. Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree) states,
  - (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services<sup>25</sup> by:
    - (a) Abusing or threatening to abuse the law or legal process;
    - (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
    - (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
    - (d) Threatening to collect an unlawful debt; or
    - (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.
  - (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

A Class C felony is punishable by imprisonment for up to 5 years and a possible fine up to \$125,000. Or. Rev. Stat. §§ 161.605(3), 161.625(1)(d). Notably, Or. Rev. Stat. § 161.625(3)(a) (Fines for felonies) states, "If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime."

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<sup>25</sup> See *supra* note 24 for the definition of "services."

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

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1. Or. Rev. Stat. § 167.017(1), (2) (Compelling prostitution) states,

- (1) A person commits the crime of compelling prostitution if the person knowingly:
  - (a) Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;
  - (b) Induces or causes a person under 18 years of age to engage in prostitution;
  - (c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
  - (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.
- (2) Compelling prostitution is a Class B felony.

A Class B felony is punishable by imprisonment for up to 10 years and a possible fine up to \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c). Notably, Or. Rev. Stat. § 161.625(3)(a) (Fines for felonies) states, “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

2. Or. Rev. Stat. § 163.413(1)–(3)(b)(A) (Purchasing sex with a minor) states,

- (1) A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.
- (2)
  - (a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325 [Knowledge of the victims’ age] only if the minor or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant was at least 16 years of age.
  - ....
- (3)
  - (a) When a person is convicted under this section, in addition to any other sentence that may be imposed, the court shall impose and may not suspend the sentence described in paragraph (b) of this subsection.
  - (b) The mandatory minimum sentences that apply to paragraph (a) of this subsection are as follows:
    - (A) For a person’s first conviction, a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program.

Otherwise, a Class C felony is punishable by imprisonment for up to 5 years and a possible fine up to \$125,000. Or. Rev. Stat. §§ 161.605(3), 161.625(1)(d).