

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 Pennsylvania’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.

18 Pa. Cons. Stat. § 3013(a) (Patronizing a victim of sexual servitude) expressly applies to buyers of commercial sex but requires the buyer to know or recklessly disregard the fact that the other person is a victim of human trafficking; it states,

Offense defined.

(1) A person commits a felony of the first degree if the person engages in any sex act or performance with another individual knowing that the act or performance is the result of the individual being a victim of human trafficking.

(2) A person commits an offense if the person engages in any sex act or performance with another individual with reckless disregard for whether the act or performance is the result of the individual being a victim of human trafficking

Pennsylvania’s core sex trafficking offense, 18 Pa. Cons. Stat. § 3011(a)(1) (Trafficking in individuals), can also apply to buyers based on the terms “solicits” and, following federal precedent, “obtains.”² It states,

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

² 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

Offense defined. — A person commits a felony:

- (1) of the first degree if the person recruits, entices, solicits, advertises, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to sexual servitude;³

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

Pennsylvania law criminalizes soliciting commercial sex with a minor. Pursuant to 18 Pa. Cons. Stat. § 6318(a)(3) (Unlawful contact with minor),

Offense defined. — A person commits an offense if he is intentionally in contact⁴ with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

- (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).

Under 18 Pa. Cons. Stat. § 5902(e) (Prostitution and related offenses),

Patronizing prostitutes. — A person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

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.

³ 18 Pa. Cons Stat. § 3001 (Definitions) defines “sexual servitude” as

Any sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual, and is induced or obtained from:

- (1) A minor.
- (2) Any other individual by any of the means set forth in section 3012(b) (relating to involuntary servitude).

⁴ 18 Pa. Cons. Stat. § 6318(c) (Unlawful contact with minor) defines “contacts” as

Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

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

Pennsylvania’s CSEC laws address an array of trafficker conduct. Under 18 Pa. Cons. Stat. § 5902(b.1) (Prostitution and related offenses),

Promoting prostitution of minor. — A person who knowingly promotes prostitution of a minor commits a felony of the third degree. The following acts shall, without limitation of the foregoing, constitute promoting prostitution of a minor:

- (1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business in which a victim is a minor;
- (2) procuring an inmate who is a minor for a house of prostitution or a place in a house of prostitution where a minor would be an inmate;
- (3) encouraging, inducing, or otherwise intentionally causing a minor to become or remain a prostitute;
- (4) soliciting a minor to patronize a prostitute;
- (5) procuring a prostitute who is a minor for a patron;
- (6) transporting a minor into or within this Commonwealth with intent to promote the engaging in prostitution by that minor, or procuring or paying for transportation with that intent;
- (7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution of a minor or the promotion of prostitution of a minor, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means; or
- (8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

Further, 18 Pa. Cons. Stat. § 6318(a) (Unlawful contact with minor) states,

Offense defined. — A person commits an offense if he is intentionally in contact⁵ with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

- (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
- (2) Open lewdness as defined in section 5901 (relating to open lewdness).
- (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
- (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
- (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
- (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

⁵ 18 Pa. Cons. Stat. § 6318(c) (Unlawful contact with minor) defines “contacts” as

Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

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

Pennsylvania law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking but not CSEC. Pursuant to 18 Pa. Cons. Stat. Ann. § 3018(c) (Evidence and defenses to human trafficking), “Except as provided in section 3102 (relating to mistake as to age), evidence of a defendant’s lack of knowledge of a person’s age, or a reasonable mistake of age, is not a defense for a violation of this chapter involving the sexual servitude of a minor.”

However, 18 Pa. Cons. Stat. Ann. § 3102 (Mistakes as to age) states,

[W]henver in this chapter the criminality of conduct depends on a child being below the age of 14 years, it is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older. When criminality depends on the child’s being below a critical age older than 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age.

Accordingly, 18 Pa. Cons. Stat. Ann. § 3102 limits the prohibition of a mistake of age defense under 18 Pa. Cons. Stat. Ann. § 3018(c) to cases involving the sexual servitude of a minor under 15 years of age.

1.4.1 Recommendation: Prohibit a mistake of age defense in cases involving 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, Pennsylvania’s criminal attempt statute, 18 Pa. Cons. Stat. Ann. § 901 (Criminal attempt), could provide prosecutors with an alternative avenue to prosecute those cases. 18 Pa. Cons. Stat. Ann. § 901(a), (b) states,

- (a) Definition of attempt. – A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.
- (b) Impossibility. – It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the crime attempted.

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.

Pennsylvania’s trafficking chapter expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, 18 Pa. Cons. Stat. Ann. § 3017 (Violation by business entities) provides,

- (a) Penalty. – Any business entity, including a corporation or unincorporated association, limited liability partnership or company or other legal entity that knowingly aids or participates in any violation of this chapter [Trafficking in persons], shall be subject to any of the following penalties:
 - (1) A fine of not more than \$ 1,000,000.
 - (2) Revocation of the business entity’s:
 - (i) charter, if it is organized under the laws of this Commonwealth; or
 - (ii) certificate of authority to do business in this Commonwealth, if the business entity is not organized under the laws of this Commonwealth.

- (3) Other relief as the court deems equitable, including forfeiture of assets or restitution as provided in this chapter.
- (b) Disposition of fines. – Fines imposed under this section shall be deposited as provided in section 3031 (relating to grants).

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.

Pennsylvania law levies financial penalties, including fines and asset forfeiture, on sex trafficking and CSEC offenders and directs those financial penalties to victim services funds. Specifically, 18 Pa. Cons. Stat. § 3064(b) (Safe harbor for sexually exploited children fund) imposes an additional \$5,000 fine on trafficking and CSEC offenders, stating,

Fines. – Notwithstanding any law to the contrary, the fines provided by this subsection shall be in addition to any fine authorized or required by law:

(1) An individual who is convicted of an offense under section 3011 (relating to trafficking in individuals), 3012 (relating to involuntary servitude), 3013 (relating to patronizing a victim of sexual servitude) or 5902(b) or (b.1) (relating to prostitution and related offenses) shall be ordered to pay a fine of \$5,000 for each offense.

.....
(3) An individual who is convicted of an offense under section 5902(e), when the individual knew or should have known the victim was under 18 years of age, shall be ordered to pay a fine of \$5,000 for each offense.

Pursuant to 18 Pa. Cons. Stat. § 3064(a)(2), (a)(4), these additional fines and any resulting interest will be deposited into the Safe Harbor for Sexually Exploited Children Fund and distributed as follows:

- (i) At least 50% of the fund may be expended by the department to provide victim services either directly by the department or through grants.
- (ii) At least 40% of the fund may be expended to increase public awareness through an anti-demand campaign.
- (iii) Not more than 10% of the fund may be expended by the department for the costs of operating and maintaining the fund.

In addition to the fine imposed under 18 Pa. Cons. Stat. § 3064(b), buyers convicted of patronizing a victim of sexual servitude face yet another fine under 18 Pa. Cons. Stat. § 3013 (Patronizing a victim of sexual servitude), a percentage of which is also directed to the Safe Harbor for Sexually Exploited Children Fund. 18 Pa. Cons. Stat. § 3013(c), (d) provides,

(c) Fine. — A person whose violation of this section results in a judicial disposition other than acquittal or dismissal shall also pay a fine in one of the following amounts to the court, to be distributed to the commission to fund the grant program established under section 3031 (relating to grants):

.....
(2) Not less than \$10,000 no more than \$50,000, if the victim of sexual servitude was a minor at the time of the offense.

(d) Distribution of fines.

(1) From all fines collected under this section, 50% shall be deposited in the Safe Harbor for Sexually Exploited Children Fund established under section 3064 (relating to Safe Harbor for Sexually Exploited Children Fund) and 50% shall be deposited in the restricted account established in paragraph (2).

(2) The Prevention of Human Trafficking Restricted Account is established in the General Fund. The money in the restricted account is appropriated on a continuing basis to the commission for the purpose of funding the grant programs under section 3031 (relating to grants).

Further, 18 Pa. Cons. Stat. § 3021(a) (Assert forfeiture) provides for forfeiture of the following property in trafficking cases:

General rule. – The following shall be subject to forfeiture to this Commonwealth, and no property right shall exist in them:

- (1) All assets, foreign or domestic:
 - (i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3011 (relating to trafficking in individuals) or 3012 (relating to involuntary servitude).
 - (ii) Affording a person a source of influence over the individual, entity or organization under subparagraph (i).
 - (iii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3011 or 3012.
 - (iv) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3011 or 3012.
- (2) All assets within this Commonwealth:
 - (i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3011 or 3012.
 - (ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates section 3011 or 3012.
 - (iii) Derived from, involved in or used or intended to be used to commit an act which violates section 3011 or 3012.

Disposition of forfeited assets is governed by 18 Pa. Cons. Stat. § 3021(m), which directs a percentage of forfeited assets into a victim services fund; it states,

Disposition of proceeds. – Subject to subsection (d), all moneys forfeited and the proceeds from the sale of all property forfeited and seized under this section shall be paid as follows:

- (1) Any law enforcement agency shall be reimbursed if it has used its own funds in the detection, investigation, apprehension and prosecution of persons for violation of sections 3011 and 3012.
- (2) Any amount remaining after reimbursement under paragraph (1) shall be distributed under the following formula:
 - (i) Thirty percent to the office of the prosecuting attorney to be used to investigate and prosecute human trafficking cases.
 - (ii) Seventy percent to the commission, one-half of which shall be deposited in the restricted account established in section 3013(d)(2) (relating to patronizing a victim of sexual servitude) to fund the grant programs established under section 3031 (relating to grants) and one-half to be used by the Office of Victims' Services within the commission to provide services to victims of human trafficking in the manner set forth in Chapter 9 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.



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.

To be identified as a trafficking victim under the criminal code, a child must be exploited by a trafficker; however, Pennsylvania law expands the definition of victim for purposes of accessing services under its safe harbor laws. 18 Pa. Cons. Stat. § 3001 (Definitions) defines “sexually exploited child” as “an individual under 18 years of age who: (1) is a victim of sexual servitude; or (2) is a victim of an offense under 18 U.S.C. § 1591 (relating to sex trafficking of children or by force, fraud, or coercion).” Inclusion of the federal trafficking law allows for a service response in cases where a child is exploited by a buyer without trafficker-involvement.

As noted, however, this conflicts with the criminal code’s definition of trafficking victim. 18 Pa. Cons. Stat. § 3001 (Definitions) defines “victim of human trafficking” as “an individual who has been subjected to human trafficking.” “Human trafficking” is defined under 18 Pa. Cons. Stat. § 3001 as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).” This definition excludes violations of Pennsylvania’s buyer-applicable offense, 18 Pa. Cons. Stat. § 3013 (Patronizing a victim of sexual servitude). Further, 18 Pa. Cons. Stat. § 3013 requires third party control because the buyer must know or recklessly disregard the fact that the other person is a victim of human trafficking, 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: Remove third party control requirements that narrow the definition of child sex trafficking victim within the criminal code.⁶

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

Pennsylvania 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.

Pennsylvania 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.

⁶ 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).

- 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.

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

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

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

Pennsylvania law prohibits the criminalization of some, but not all, minors for prostitution offenses. Pursuant to 18 Pa. Cons. Stat. § 5902(a) (Prostitution and related offenses),

Prostitution. – A person is guilty of prostitution if he or she:

- (1) is an inmate in a house of prostitution or otherwise engages in sexual activity as a business; or
- (2) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

While 18 Pa. Cons. Stat. § 5902(a) applies to equally to minors and adults, 18 Pa. Cons. Stat. § 3065 (Safe harbor for sexually exploited children) insulates minors identified as sexually exploited children from prosecution for prostitution and establishes a services-referral protocol in response to minors engaged in commercial sex, stating,

(a) Safe Harbor. – If it is determined by a law enforcement officer, after reasonable detention for investigative purposes, that an individual is under 18 years of age and is determined to be a sexually exploited child as defined in section 3001 (relating to definitions), the individual shall be immune from:

- (1) Prosecution or adjudication as a delinquent child for a violation of a sections 5007 (relating to obstructing highways or other public passages) and 5902(a) (relating to prostitution and related offenses).

.....

(c) Detainment. – An individual determined to be a sexually exploited child as defined in section 3001 (relating to definitions) shall be detained no longer than necessary and only to assist the child in securing specialized services available under section 3062 (relating to specialized services for sexually exploited children) or to refer the child to a county agency if required under 42 Pa.C.S. § 6329 (relating to dependency in lieu of delinquency).

Consequently, while Pennsylvania law protects identified sexually exploited children from prosecution for prostitution offenses and requires law enforcement to refer impacted children to a direct services organization or child-serving agency in lieu of arrest, minors not identified as victims may still be subject to criminalization, including arrest, detention, charges, and prosecution for engaging in a commercial sex act.

- 2.5.1 Recommendation: Strengthen existing law to expressly prohibit the criminalization of any person under 18 years of age, regardless of whether the minor is identified as a victim of child sex trafficking.

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.

Pennsylvania law fails to prohibit the criminalization of child sex trafficking victims for status, misdemeanor, and felony offenses. However, child sex trafficking victims may be afforded an alternative juvenile justice response for certain misdemeanors committed as a result of their trafficking victimization. Pursuant to 42 Pa. Cons. Stat. § 6328 (Dependency in lieu of delinquency.),

(a) *Referral to county agency.*—The offenses provided under subsection (b) shall be referred to a county agency under 23 Pa.C.S. §§ 6362 (relating to responsibilities of county agency for child protective services) and 6375 (relating to county agency requirements for general protective services) if the offense:

(1) Is committed by a child as a direct result of being a sexually exploited child as defined in 18 Pa.C.S. § 3001 (relating to definitions).

(2) Is directly related to having been subject to human trafficking as defined in 18 Pa.C.S. § 3001. (b)

Eligible offenses.—Eligible offenses for referral to a county agency including the following:

(1) 18 Pa.C.S. § 3503 (relating to criminal trespass).

(2) 18 Pa.C.S. § 4914 (relating to false identification to law enforcement authorities).

(3) 18 Pa.C.S. § 5503 (relating to disorderly conduct).

(4) 18 Pa.C.S. § 5506 (relating to loitering and prowling at night time).

(5) An offense for simple possession of a controlled substance under section 13(a)(16) and (31) . . .

(c) *Delinquency proceedings.*—

(1) If an offense listed under subsection (b) is referred to a county agency, delinquency proceedings under Chapter 63 (relating to juvenile matters) may not be commenced immediately.

(2) If treatment and social services are unsuccessful while the dependency petition is pending, as evidenced by the child’s behavior, and the county agency believes the juvenile justice services are necessary and warranted, the county agency shall refer the child’s case to the juvenile probation department or district attorney’s office for the commencement of delinquency proceedings.

Consequently, while Pa. Cons. Stat. § 6328 allows child sex trafficking victims to be diverted away from the juvenile justice system for certain misdemeanor charges, minors may still face delinquency proceedings if they fail to adhere to the conditions of diversion. Additionally, Pennsylvania law fails to prohibit the criminalization, including arrest, detention, and prosecution, for status, all misdemeanor, and felony offenses 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.

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

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

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

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

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

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

Pennsylvania law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Pennsylvania law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of 10 years for purposes of juvenile court jurisdiction, permits direct file for minors charged with certain offenses or previously convicted in criminal court, 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
Summary	10; “Delinquent child” is defined as, “a child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.”	17	Yes. Minors: (1) charged with murder; (2) 15+ years of age who are charged with certain violent felony offenses ⁷ if a deadly weapon was used in the commission of the offense or the minor was previously adjudicated delinquent of any of the listed violent felony offenses; (3) previously convicted in criminal court.	Yes. Minors 14+ years of age charged with a felony offense.	No.

⁷ 42 Pa. Cons. Stat. § 6302 defines “delinquent act” to exclude several violent felony offenses, including: (1) 18 Pa. Cons. Stat. § 3121 (Rape); (2) 18 Pa. Cons. Stat. § 3123 (Involuntary deviate sexual intercourse); (3) 18 Pa. Cons. Stat. § 2702(a)(1), (2) (Aggravated assault); (4) 18 Pa. Cons. Stat. § 3701(a)(1) (Robbery); (5) 18 Pa. Cons. Stat. § 3702 (Robbery of motor vehicle); (6) 18 Pa. Cons. Stat. § 3125 (Aggravated indecent assault); (7) 18 Pa. Cons. Stat. § 2901 (Kidnapping); (8) Voluntary manslaughter; (9) 18 Pa. Cons. Stat. §§ 901, 902, 903 (Attempt, conspiracy or solicitation to commit murder or any of the listed offenses).

Relevant Statute(s)	42 Pa. Cons. Stat. § 6302 (Definitions)	42 Pa. Cons. Stat. § 6302 (Definitions)	42 Pa. Cons. Stat. § 6302 (Definitions)	42 Pa. Cons. Stat. § 6355(a) (Transfer to criminal proceedings)	42 Pa. Cons. Stat. 6355(a)(4)(iii) (Transfer to criminal proceedings)
----------------------------	---	---	---	---	---

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; (2) allow some juvenile cases to be subject to direct file in criminal court; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: 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.

Pennsylvania law includes child sex trafficking and commercial sexual exploitation as a type of child abuse within the state’s child protection statutes. Pursuant to 23 Pa. Cons. Stat. § 6303(b.1) (Definitions),

The term “child abuse” shall mean intentionally, knowingly or recklessly doing any of the following:

-
- (4) Causing sexual abuse or exploitation of a child through any act or failure to act.
-
- (6) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
-
- (10) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

Further, commercial sexual exploitation of a child is included in the definition of “sexual abuse or exploitation” under 23 Pa. Cons. Stat. § 6303(a)(2), which states,

General rule. The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

-
- “Sexual abuse or exploitation.”
-
- (2) Any of the following offenses committed against a child:
 -
 - (x) Prostitution, as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses)
 -
 - (xii) Unlawful contact with a minor, as defined in 18 Pa. C.S. § 6318 (relating to unlawful contact with minor).
 -

EXTRA CREDIT



Child labor trafficking is included in the definition of “child abuse” under 23 Pa. Cons. Stat. § 6303(b.1), which expressly includes victims of “severe forms of trafficking.” 22 U.S.C. §7102 defines “severe forms of trafficking” to include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

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.

Although Pennsylvania law allows for a child welfare response to a child sex trafficking victim exploited by a non-familial trafficker without requiring that the parent or caregiver be otherwise responsible for the child’s victimization by defining “perpetrator” to include any adult who commits a human trafficking offense against the child, state law does not provide for a specialized investigation in those cases. Specifically, 23 Pa. Cons. Stat. § 6303(a) (Definitions) provides,

General rule. The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

.....

“Perpetrator.” A person who has committed child abuse as defined in this section. The following shall apply:

(1) The term includes only the following:

.....

(vii) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

2.11.1 Recommendation: Statutorily provide for a specialized investigation in non-familial child sex trafficking 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.

Pennsylvania 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, Pennsylvania law does not require an MDT response specific to child sex trafficking cases. Pursuant to 23 Pa. Cons. Stat. § 6365(b)–(c) (Services for prevention, investigation, and treatment of child abuse),

(b) Multidisciplinary review team. – The county agency shall make available among its services a multidisciplinary review team for the prevention, investigation and treatment of child abuse and shall convene the multidisciplinary review team at any time, but not less than annually:

(1) To review substantiated cases of child abuse, including responses by the county agency and other agencies providing services to the child.

(2) Where appropriate to assist in the development of a family service plan for the child.

(c) Multidisciplinary investigative team. – A multidisciplinary investigative team shall be used to coordinate child-abuse investigations between county agencies and law enforcement. The county agency and the district attorney shall develop a protocol for the convening of multidisciplinary investigative teams for any case of child abuse by a perpetrator involving crimes against children which are set forth in section 6340(a)(9) and (10) (relating to release of information in confidential reports). The county multidisciplinary investigative team protocol shall include standards and procedures to be used in receiving and referring reports and coordinating investigations of reported cases of child abuse and a system for sharing the information obtained as a result of any interview. The protocol shall include any other standards and procedures to avoid duplication of fact-finding efforts and interviews to minimize the trauma to the child. The district attorney shall convene the multidisciplinary investigative team in accordance with the protocol. The multidisciplinary investigative team shall consist of those individuals and agencies responsible for investigating the abuse or for providing services to the child and shall at a minimum include a health care provider, county caseworker and law enforcement official.

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.

Pennsylvania law requires child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims. Pursuant to 18 Pa. Cons. Stat. § 3065(c) (Safe harbor for sexually exploited children), upon

determining that a child is a “sexually exploited child,”⁸ law enforcement may detain the child “no longer than necessary and only to assist the child in securing specialized services available under section 3062 (relating to specialized services for sexually exploited children) or to refer the child to a county agency if required under 42 Pa.C.S. § 6328 (relating to dependency in lieu of delinquency).”

Pursuant to 18 Pa. Cons. Stat. § 3062 (Specialized services for sexually exploited children), sex trafficked children have access to specialized programs and services that address their unique needs:

The [Department of Human Services] shall, in conjunction with county agencies:

- (1) Develop and provide specialized programs and services for sexually exploited children that address a victim’s needs, including the following:
 - (i) Safe and stable housing.
 - (ii) Access to education.
 - (iii) Employment and life-skills training.
 - (iv) Comprehensive case management.
 - (v) Physical and behavioral health care, including trauma therapy.
 - (vi) Treatment for drug or alcohol dependency.
 - (vii) Medical and dental care.
 - (viii) Access to personal care items and adequate clothing.
 - (ix) Other needs that sexually exploited children may have as determined by the department or the county agencies.
- (2) Ensure that providers of the specialized programs and services provided under paragraph (1) receive sufficient training and understand the unique circumstances surrounding the victimization of sexually exploited children.

Further, 18 Pa. Cons. Stat. § 3061 (Statewide protocol) requires “the department [to] develop a Statewide protocol to efficiently and effectively coordinate the provision of specialized services to sexually exploited children.”

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

Pennsylvania law provides access to specialized services for identified sex trafficked children and youth in the juvenile justice system. Pursuant to 18 Pa. Cons. Stat. § 3062 (Specialized services for sexually exploited children),

The [Department of Human Services] shall, in conjunction with county agencies:⁹

⁸ 18 Pa. Cons. Stat. § 3001 (Definitions) defines “sexually exploited child” as “an individual under 18 years of age who: (1) is a victim of sexual servitude; or (2) is a victim of an offense under 18 U.S.C. § 1591 (relating to sex trafficking of children or by force, fraud, or coercion).”

⁹ 18 Pa. Cons. Stat. § 3001 (Definitions) defines “county agency” as “[a] county children and youth social service agency established under section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, and supervised by the department under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code.” Importantly, Section 405 of the act of June 24, 1937, codified under 62 Pa. Cons. Stat. § 2305 (Powers and duties of local authorities as to children), expressly includes institutions with jurisdiction over children adjudicated as delinquent; it states,

The local authorities of any institution district shall have the power, and for the purpose of protecting and promoting the welfare of children and youth, it shall be their duty to provide those child welfare services designed to keep children in their own home, prevent neglect, abuse and exploitation, help overcome problems that result in dependency, neglect or delinquency, to provide in foster family homes or child caring institutions adequate substitute care for any child in need of such care and, upon the request of the court, to provide such service and care for children and youth who have been adjudicated dependent, neglected or delinquent

- (1) Develop and provide specialized programs and services for sexually exploited children that address a victim’s needs, including the following:
 - (i) Safe and stable housing.
 - (ii) Access to education.
 - (iii) Employment and life-skills training.
 - (iv) Comprehensive case management.
 - (v) Physical and behavioral health care, including trauma therapy.
 - (vi) Treatment for drug or alcohol dependency.
 - (vii) Medical and dental care.
 - (viii) Access to personal care items and adequate clothing.
 - (ix) Other needs that sexually exploited children may have as determined by the department or the county agencies.
- (2) Ensure that providers of the specialized programs and services provided under paragraph (1) receive sufficient training and understand the unique circumstances surrounding the victimization of sexually exploited children.

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

Pennsylvania 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.¹⁰

11 Pa. Cons. Stat. § 2632 (Definitions) defines “child in foster care” as follows:

An individual who was adjudicated dependent before reaching 18 years of age and who:

- (1) has not reached 18 years of age and is in placement; or
- (2) is in placement after reaching 18 years of age and while engaged in a course of instruction or treatment requests the court to retain jurisdiction until the course of instruction or treatment is completed, but in no event shall the court maintain jurisdiction after the individual reaches 21 years of age.

Under 42 Pa. Cons. Stat. § 6302 (Definitions), “child” is defined to include the following:

An individual who:

-
- (3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains under the jurisdiction of the court as a dependent child because the court has determined that the child is:
 - (i) completing secondary education or an equivalent credential;
 - (ii) enrolled in an institution which provides postsecondary or vocational education;
 - (iii) participating in a program actively designed to promote or remove barriers to employment;
 - (iv) employed for at least 80 hours per month; or
 - (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.

¹⁰ 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).

Additionally, 11 Pa. Cons. Stat. § 2632 (Definitions) provides access to a permanency plan and transition plan for children, as defined above by 42 Pa. Cons. Stat. § 6302.

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

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



ISSUE 4: Access to Justice for Trafficking Survivors

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

Pennsylvania law expressly allows victims of CSEC, but not trafficking, to seek ex parte civil orders of protection against their exploiters. Pursuant to 42 Pa. Cons. Stat. § 62A05(a) (Commencement of proceedings),

General rule. – An adult or emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of a minor child or the guardian of the person of an adult who has been declared incapacitated under 20 Pa.C.S. Ch. 55 (relating to incapacitated persons) may seek relief on behalf of an incapacitated adult, by filing a petition with the court alleging the need for protection from the defendant with respect to sexual violence or intimidation.

42 Pa. Cons. Stat. § 62A03 (Definitions) defines “sexual violence” as follows:

Conduct constituting a crime under any of the following provisions between persons who are not family or household members:

- 18 Pa.C.S. Ch. 31 (relating to sexual offenses), except
- 18 Pa.C.S. § 3129 (relating to sexual intercourse with animal) and 3130 (relating to conduct relating to sex offenders).
- 18 Pa.C.S. § 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.
- 18 Pa.C.S. § 6301(a)(1)(ii) (relating to corruption of minors).
- 18 Pa.C.S. § 6312(b) (relating to sexual abuse of children).
- 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
- 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

Accordingly, victims of 18 Pa. Cons. Stat. § 6318 (Unlawful contact with minor), one of Pennsylvania’s CSEC offenses, may seek civil orders of protection. As noted above, however, this protection is not available to victims of child sex trafficking.

Importantly, 42 Pa. Cons. Stat. § 62A06(b) (Hearings – Protection of victims of sexual violence or intimidation) allows emergency orders of protection to be granted on an ex parte basis, stating,

Temporary Orders. – If a plaintiff seeks a temporary order for protection from an immediate and present danger, the court shall conduct an ex parte proceeding. The court may enter a temporary order as it deems necessary to protect the plaintiff or another individual, as appropriate, when it finds the plaintiff, or another individual is in immediate and present danger from the defendant. The temporary order shall remain in effect until modified or terminated by the court after notice and hearing

- 4.1.1 Recommendation: Strengthen state law to allow victims of trafficking 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 Pennsylvania’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.

Pursuant to 18 Pa. Cons. Stat. § 11.701(a)(1) (Persons eligible for compensation), “persons eligible for compensation” include “a direct victim.” 18 Pa. Cons. Stat. § 11.103 (Definitions) defines “direct victim” as “[a]n individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury, death or the loss of earnings under this act.” “Crime” is defined under 18 Pa. Cons. Stat. § 11.103(1)(ii) as “[a]n act which was committed . . . [i]n this Commonwealth by a person, including a juvenile, without regard to legal exemption or defense which would constitute a crime under . . . 18 Pa. Cons. Stat. (relating to crimes and offenses),” which houses Pennsylvania’s trafficking and CSEC offenses.

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child’s ability to seek crime victims’ compensation. Pursuant to 18 Pa. Cons. Stat. § 11.701(b), “A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person shall not be eligible to receive compensation with respect to the claim.” Further, 18 Pa. Cons. Stat. § 11.707(a), (f)(1) (Awards) provides,

(a) *Requirements.* – No award shall be made unless it is determined by a preponderance of the evidence that:

.....

(3) The crime was promptly reported to the proper authorities. In no case may an award be made if the record shows that the report was made more than 72 hours after the occurrence of the crime¹¹ unless:

- (i) the victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the victim’s parent or a person responsible for the victim’s welfare, an individual residing in the same home as the victim or a paramour of the victim’s parent; or
- (ii) the Office of Victims’ Services finds the delay to have been justified, consistent with bureau regulations.

(4) The direct victim, intervenor or claimant has fully cooperated with all law enforcement agencies and the Office of Victims’ Services unless the Office of Victims’ Services finds the noncompliance to have been justified consistent with Office of Victims’ Services regulations.

.....

¹¹ Although 18 Pa. Cons. Stat. § 11.707 does not expressly exempt victims of child sex trafficking and CSEC from this reporting requirement, some commercially sexually exploited children may be excused under 18 Pa. Cons. Stat. § 11.707(a.1), which states,

A claimant who satisfies the eligibility requirements of subsection (a)(1), (2) and (4) may satisfy the eligibility requirement under subsection (a)(3) for reporting a crime to the proper authorities by commencing an action brought in accordance with 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and as provided for in the Pennsylvania Rules of Civil Procedure. In no case may an award be made if the record shows that the petition was:

- (1) Withdrawn, unless the Office of Victim Services finds the withdrawal to have been justified, consistent with regulations of the Office of Victim Services.
- (2) Filed more than 72 hours after the occurrence of the criminal conduct leading to the commencement of the action, unless:
 - (i) the victim is under 18 years of age at the time of the occurrence of the criminal conduct and the alleged offender is the victim’s parent or a person responsible for the victim’s welfare, an individual residing in the same home as the victim or a paramour of the victim’s parent; or
 - (ii) the Office of Victim Services finds the delay to have been justified, consistent with regulations of the Office of Victim Services.

(f) *Direct victim responsibility.* –

(1) Except as set forth in paragraphs (2) and (3),¹² in determining the amount of an award, the Office of Victims’ Services shall determine whether the direct victim or intervenor, because of conduct, contributed to the infliction of the injury. The Office of Victims’ Services shall reduce the amount or deny the claim altogether in accordance with the determination.

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

- 4.2.1 Recommendation: 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 Pennsylvania law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to 18 Pa. Cons. Stat. § 3019 (Victim protection during prosecution),

(d) Motion to vacate conviction. –

(1) An individual convicted under section 3503 (relating to criminal trespass), 5503 (relating to disorderly conduct), 5506 (relating to loitering and prowling at night time), 5507 (relating to obstructing highways and other public passages) or 5902 [Prostitution and related offenses], or an offense for simple possession of a controlled substance committed as a direct result of being a victim of human trafficking may file a motion to vacate the conviction.

....

(e) Official documentation. – No official determination or documentation is required to grant a motion under this section, but official documentation from a Federal, State or local government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant’s participation in the offense was a direct result of being a victim.

(f) Grant of motion. – The court shall grant the motion if it finds that:

- (1) The moving party was convicted of an offense described in subsection (d)(1).
- (2) The conviction was obtained as a result of the moving party’s having been a victim of human trafficking.

(g) Conviction vacated. – If the motion under subsection (d) is granted, the court shall vacate the conviction, strike the adjudication of guilt and order the expungement of the record of the criminal proceedings. The court shall issue an order to expunge all records and files related to the moving party’s arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings and probation for the offense.

However, 18 Pa. Cons. Stat. § 3019(d) applies specifically to “convictions,” and 42 Pa. Cons. Stat. § 6354 (Effect of adjudication) states, “An order of disposition or other adjudication in a proceeding under this chapter [Juvenile Matters] is not a conviction of crime” Accordingly, a delinquency adjudication cannot be vacated under 18 Pa. Cons. Stat. § 3019. Further, vacatur is limited to a narrow range of 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.

¹² Exceptions under 18 Pa. Cons. Stat. § 11.707(f)(2), (3) only apply to victims of rape, sexual assault, and homicide.

- 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.

Pennsylvania law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution to the extent that the victim suffered a personal injury or property loss. Pursuant to 18 Pa. Cons. Stat. § 1106(a)–(c)(2)(i) (Restitution for injuries to person or property),

- (a) General rule. – Upon conviction for any crime wherein:
- (1) property of a victim has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime ; or
 - (2) the victim, if an individual, suffered personal injury¹³ directly resulting from the crime, the offender¹⁴ shall be sentenced to make restitution in addition to the punishment prescribed therefor.
-
- (c) Mandatory restitution. –
- (1) The court shall order full restitution:
 - (i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss
 - (2) At the time of sentencing the court shall specify the amount and method of restitution. In determining the amount and method of restitution, the court:
 - (i) Shall consider the extent of injury suffered by the victim, the victim’s request for restitution as presented to the district attorney in accordance with paragraph (4) and such other matters as it deems appropriate.

Further, restitution is provided for under 18 Pa. Cons. Stat. § 3020(2) (Restitution), which is codified under the “Trafficking of Persons” chapter of the code; however, restitution under that section is limited to cases involving involuntary servitude. It states,

In addition to the provisions of section 1106 (relating to restitution for injuries to person or property), the following shall apply:

-
- (2) The following items may be included in an order of restitution:
- (i) For the period during which the victim of human trafficking was engaged in involuntary servitude, the greater of the following:
 - (A) The value of the victim’s time during the period of involuntary servitude as guaranteed under the minimum wage and overtime provisions of the laws of this Commonwealth.
 - (B) The gross income or value to the defendant of the services of the victim.
 - (C) The amount the victim was promised or the amount an individual in the position of the victim would have reasonably expected to earn. This clause shall not apply to the amount an individual would have reasonably expected to earn in an illegal activity.
 - (ii) The return of property of the victim of human trafficking, cost of damage to the property or the replacement value of the property if taken, destroyed or damaged beyond repair as a result of human trafficking.

¹³ 18 Pa. Cons. Stat. § 1106(h) defines “personal injury” as “[a]ctual bodily harm, including pregnancy, directly resulting from the crime.”

¹⁴ 18 Pa. Cons. Stat. § 1106(h) defines “offender” as “[a]ny person who has been found guilty of any crime.”

EXTRA CREDIT



Pennsylvania law mandates restitution for victims of child labor trafficking under 18 Pa. Cons. Stat. § 1106, which requires offenders convicted of any crime to pay victim restitution. Further, 18 Pa. Cons. Stat. § 3020(2) allows the court to order restitution for the value of the victim's labor.

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

Pennsylvania law allows victims of child sex trafficking to pursue civil remedies against their exploiters. 18 Pa. Cons. Stat. § 3051(a)–(e) (Civil causes of action) states,

(a) General rule.

(1) An individual who is a victim of human trafficking may bring a civil action against any person that participated in the human trafficking of the individual in the court of common pleas of the county where the individual resides or where any of the alleged violations of this chapter occurred.

(2) An individual who is a victim of the sex trade may bring a civil action in the court of common pleas of the county where the individual resides against a person that:

(i) recruits, profits from or maintains the victim in any sex trade act;

(ii) abuses or causes bodily harm to the victim in any sex trade act; and

(iii) knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.

....

(c) Damages. – The court may award any of the following forms of relief:

(1) Actual damages.

(2) Compensatory damages.

(3) Punitive damages.

(4) Injunctive relief.

(5) Any other appropriate relief.

(d) Attorney fees and costs. – A prevailing plaintiff who is a victim of human trafficking shall be awarded reasonable attorney fees and costs.

(e) Treble damages. – Treble damages shall be awarded to a victim of human trafficking on proof of actual damages where the defendant's acts were willful and malicious.

EXTRA CREDIT

18+

Pennsylvania law provides sex trafficked youth with a trafficking-specific civil remedy under 18 Pa. Cons. Stat. § 3051, which allows “[a]n individual who is a victim of human trafficking [to] bring a civil action” 18 Pa. Cons. Stat. § 3001 (Definitions) defines “victim of human trafficking” as “an individual who has be subject to human trafficking,” which is defined as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).” 18 Pa. Cons. Stat. § 3011 criminalizes sex trafficking of both minor and adult victims.

CLT

Pennsylvania law provides child labor trafficking victims with a trafficking-specific civil remedy under 18 Pa. Cons. Stat. § 3051, which allows “[a]n individual who is a victim of human trafficking [to] bring a civil action” 18 Pa. Cons. Stat. § 3001 defines “victim of human trafficking” as “an individual who has be subject to human trafficking,” which is defined as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).” 18 Pa. Cons. Stat. § 3011 criminalizes both sexual servitude and labor servitude.

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.

Pennsylvania law lengthens, but does not eliminate, statutes of limitation for criminal and civil actions related to child sex trafficking. Pursuant to 42 Pa. Cons. Stat. § 5552(c)(3.1), (5)–(6) (Other Offenses),

If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

.....

(3.1) Any sexual offense committed against an individual who is 23 years of age or younger any time up to the later of the period of limitation provided by law after the individual has reached 24 years of age or 20 years after the date of the offense. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18 or a conspiracy or solicitation to commit an offense under any of the following provisions of Title 18 if the offense results from the conspiracy or solicitation:

Section 3011(a) as it relates to sexual servitude.

Section 3012 as it relates to sexual servitude.

.....

.....

(5) An offense under 18 Pa.C.S. § 3011 or 3012 in which the victim of human trafficking was not a minor any time up to ten years from the date of the last offense under this paragraph committed against the victim.

(6) An offense under section 3012 involving labor servitude while the victim was a minor, any time up to ten years after the victim reaches 18 years of age.

In contrast, 42 Pa. Cons. Stat. § 5552(a) establishes a general 2-year statute of limitation for other offenses.

Regarding civil actions, 18 Pa. Cons. Stat. § 3051(h), (i) (Civil causes of action) provides,

(h) Statute of limitations. –

(1) An action may be brought under this section by an individual who was the victim of human trafficking while an adult within five years of the last act against that individual that constitutes an offense under this chapter.

(2) An action may be brought under this section by an individual who was a victim of human trafficking while a minor for any offense committed against the victim while the victim was under 18 years of age until that victim reaches 30 years of age.

(i) Estoppel. – A defendant is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to intentional conduct by the defendant knowingly inducing or coercing the plaintiff to delay the filing of the action.

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.

Pennsylvania law allows out-of-court statements made by a commercially sexually exploited child under 13 years of age to be admitted into evidence in lieu of, or for the purpose of corroborating, the child’s testimony. Specifically, 42 Pa. Cons. Stat. § 5985.1(a), (a.1) (Admissibility of certain statements) states,

(a) General rule.

(1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 12 years of age or younger, describing any of the offenses enumerated in paragraph (2), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(ii) the child either:

(A) testifies at the proceeding; or

(B) is unavailable as a witness.

(2) The following offenses under 18 Pa.C.S. (relating to crimes and offenses) shall apply to paragraph (1):

....

Chapter 30 (relating to human trafficking).

....

Section 6318 (relating to unlawful contact with minor).

....

(a.1) Emotional distress. — In order to make a finding under subsection (a)(1)(ii)(B) that the child is unavailable as a witness, the court must determine, based on evidence presented to it, that testimony by the child as a witness will result in the child suffering serious emotional distress that would substantially impair the child’s ability to reasonably communicate. In making this determination, the court may do all of the following:

(1) Observe and question the child, either inside or outside the courtroom.

(2) Hear testimony of a parent or custodian or any other person, such as a person who has dealt with the child in a medical or therapeutic setting.

Notably, child victims who are 13 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 42 Pa. Cons. Stat. § 5985.1(a), (a.1) (Admissibility of certain statements) to extend the hearsay exception to any case involving the commercial sexual exploitation of children under 18 years of age.

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

Pennsylvania law allows child sex trafficking victims to testify by an alternative method. Specifically, 42 Pa. Cons. Stat. § 5985(a), (a.1) (Testimony by contemporaneous alternative method) states,

(a) Contemporaneous alternative method. – Subject to subsection (a.1), in any prosecution or adjudication involving a child¹⁵ victim or a child material witness, the court may order that the testimony of the child victim or child material witness be taken under oath or affirmation in a room other than the courtroom and transmitted by a contemporaneous alternative method.¹⁶ Only the attorneys for the defendant and for the Commonwealth, the court reporter, the judge, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child victim or child material witness, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during his testimony

(a.1) Determination. – Before the court orders the child victim or the child material witness to testify by a contemporaneous alternative method, the court must determine, based on evidence presented to it, that testifying either in an open forum in the presence and full view of the finder of fact or in the defendant’s presence will result in the child victim or child material witness suffering serious emotional distress that would substantially impair the child victim’s or child material witness’s ability to reasonably communicate

Alternatively, 42 Pa. Cons. Stat. § 5984.1(a), (b) (Recorded testimony) allows for recorded testimony, stating,

(a) Recording. — Subject to subsection (b), in any prosecution or adjudication involving a child victim or child material witness, the court may order that the child victim’s or child material witness’s testimony be recorded for presentation in court by any method that accurately captures and preserves the visual images, oral communications and other information presented during such testimony. The testimony shall be taken under oath or affirmation before the court in chambers or in a special facility designed for taking the recorded testimony of children. Only the attorneys for the defendant and for the Commonwealth, persons necessary to operate the equipment, a qualified shorthand reporter and any person whose presence would contribute to the welfare and well-being of the child victim or child material witness, including persons designated under section 5983 (relating to rights and services), may be present in the room with the child during testimony

(b) Determination. — Before the court orders the child victim or the child material witness to testify by recorded testimony, the court must determine, based on evidence presented to it, that testifying either in an open forum in the presence and full view of the finder of fact or in the defendant’s presence will result in the child victim or child material witness suffering serious emotional distress that would substantially impair the child victim’s or child material witness’s ability to reasonably communicate

¹⁵ 42 Pa. Cons. Stat. § 5982 (Definitions) defines “child” as “[a]n individual or individuals under 18 years of age.”

¹⁶ 42 Pa. Cons. Stat. § 5982 defines “contemporaneous alternative method” as follows:

Any method of capturing the visual images, oral communications and other information presented during a prosecution or adjudication involving a child victim or a child material witness and transmitting and receiving such images, communications and other information at or about the time of their creation, including, but not limited to, closed-circuit television, streaming image sent via the Internet or an intranet and any other devices or systems used to accomplish such ends.

EXTRA CREDIT



42 Pa. Cons. Stat. § 5985(a), (a.1) permits victims of child labor trafficking to testify by an alternative method since this protection broadly applies to child victims or witnesses in any prosecution or adjudication.

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	The court may designate a victim advocate for child victims and witnesses.	All victims have the right to be accompanied by an advocate to court.	Unless the court otherwise orders in a prosecution involving a victim of human trafficking, an officer or employee of the court may not disclose the identity of the victim of human trafficking to the public.
Relevant Statute(s)	42 Pa. Cons. Stat. § 5983 (Rights and services)	18 Pa. Cons. Stat. § 11.201(3) (Rights)	18 Pa. Cons. Stat. § 3019 (Victim protection during prosecution)

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

Pennsylvania law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with their caseworker from being disclosed. Under 42 Pa. Cons. Stat. § 5945.3(b) (Confidential communications with human trafficking caseworkers),

Privilege.

- (1) This subsection applies to all of the following:
 - (i) A human trafficking caseworker.
 - (ii) An interpreter.

(2) An individual designated in paragraph (1) may not disclose a confidential communication¹⁷ without the written consent of the victim of human trafficking who made the confidential communication.

42 Pa. Cons. Stat. § 5945.3(c) defines “human trafficking caseworker” to include the following:

An individual:

- (1) who is engaged by any organization whether financially compensated or not;
- (2) whose primary purpose is the rendering of advice or assistance to a victim of human trafficking,¹⁸ as defined in [18 Pa.C.S. § 3001](#) (relating to definitions); and
- (3) who:
 - (i) holds a master’s degree or higher in counseling or a related field;
 - (ii) has an undergraduate degree or equivalent in a human services profession; or
 - (iii) is supervised by an individual qualified under subparagraph (i) or (ii) and has at least 80 hours of training received under that supervision in:
 - (A) the history of human trafficking;
 - (B) civil law and criminal law as they relate to human trafficking;
 - (C) societal attitudes toward human trafficking;
 - (D) peer counseling techniques;
 - (E) housing, public assistance and other financial resources available to meet the needs of victims of human trafficking;
 - (F) referral services available to victims of human trafficking;
 - (G) privileged communications; or
 - (H) human trauma therapy counseling.

Further, 42 Pa. Cons. Stat. § 5945.3(a) states that “[a]n individual qualified as a sexual assault counselor under section 5945.1(a) (relating to confidential communications with sexual assault counselors) may serve as a human trafficking counselor under this section.”

¹⁷ 42 Pa. Cons. Stat. § 5945.3(c) defines “confidential communication” as follows:

All information, oral or written, transmitted between a victim of human trafficking and a human trafficking caseworker in the course of their relationship. The term includes advice, reports, statistical data, memoranda, working papers and records, given or made during that relationship, including matters transmitted between the human trafficking caseworker and the victim through the use of an interpreter.

¹⁸ 18 Pa. Cons. Stat. § 3001 (Definitions) defines “victim of human trafficking” or “victim” as “an individual who has be subject to human trafficking,” which is defined as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).”

EXTRA CREDIT



Pennsylvania law prevents disclosure of confidential communications made between a sex trafficked youth and their caseworker under 42 Pa. Cons. Stat. § 5945.3, which applies broadly to cases involving of human trafficking. 18 Pa. Cons. Stat. § 3001 (Definitions) defines “victim of human trafficking” as “an individual who has be subject to human trafficking,” which is defined as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).” 18 Pa. Cons. Stat. § 3011 criminalizes sex trafficking of both minor and adult victims. Accordingly, 42 Pa. Cons. Stat. § 5945.3 provides for privileged communications regardless of the victim’s age.



Pennsylvania law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under 42 Pa. Cons. Stat. § 5945.3, which applies broadly to cases involving human trafficking. 18 Pa. Cons. Stat. § 3001 defines “victim of human trafficking” as “an individual who has be subject to human trafficking,” which is defined as “[a]ny activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).” 18 Pa. Cons. Stat. § 3011 criminalizes both sexual servitude and labor servitude. Accordingly, 42 Pa. Cons. Stat. § 5945.3 provides for privileged communications in cases involving labor trafficking.



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.

Pennsylvania 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.

Pennsylvania 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.

Pennsylvania law mandates law enforcement training on the sexual exploitation of children;¹⁹ however, officers are not required to receive ongoing in-service training on child sex trafficking. Pursuant to 18 Pa. Cons. Stat. § 3063 (Law enforcement training),

The Municipal Police Officers' Education and Training Commission and the Pennsylvania State Police shall provide training to appropriate law enforcement officers. The training shall include:

- (1) Methods used to identify a sexually exploited child.
- (2) Methods used to interview and engage with a sexually exploited child.
- (3) Methods to assist victims to access specialized programs and services for a sexually exploited child.
- (4) Methods to minimize trauma in the detention of a sexually exploited child.

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

¹⁹ Funding for trafficking-specific training is provided for under 18 Pa. Cons. Stat. § 3031 (Grants), which states, "Subject to the availability of funds, the commission shall make grants to State agencies, units of local government and nongovernmental organizations to . . . [e]nsure protection of victims of human trafficking, including training of first responders.

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

Pennsylvania 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.

Pennsylvania 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.

Pennsylvania 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. 18 Pa. Cons. Stat. § 3011 (Trafficking in individuals) states,

(a) Offense defined. — A person commits a felony:

(1) of the first degree if the person recruits, entices, solicits, advertises, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to sexual servitude;²⁰

(2) of the first degree if the person knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1);

.....

(b) Trafficking in minors. — Notwithstanding section 1103 (relating to sentence of imprisonment for felony), a person shall be sentenced to a term of imprisonment fixed by the court at not more than 40 years if:

(1) the person violates subsection (a)(1) or (2); and

(2) the violation:

(i) results in a minor being subjected to sexual servitude; and

(ii) is part of a course of conduct subjecting minors to sexual servitude.

Otherwise, a felony of the first degree is punishable imprisonment for up to 20 years and a possible fine up to \$25,000. 18 Pa. Cons. Stat. §§ 1103(1), 1101(2).

2. 18 Pa. Cons. Stat. § 3013(a) (Patronizing a victim of sexual servitude) states,

Offense defined.

(1) A person commits a felony of the first degree if the person engages in any sex act or performance with another individual knowing that the act or performance is the result of the individual being a victim of human trafficking.

(2) A person commits an offense if the person engages in any sex act or performance with another individual with reckless disregard for whether the act or performance is the result of the individual being a victim of human trafficking. An offense under this paragraph constitutes:

(i) A felony of the third degree when the offense is a first offense.

.....

A felony of the first degree is punishable imprisonment for up to 20 years and a possible fine up to \$25,000. 18 Pa. Cons. Stat. §§ 1103(1), 1101(2). A felony of the third degree is punishable imprisonment for up to 7 years and a possible fine up to \$15,000. 18 Pa. Cons. Stat. §§ 1103(3), 1101(3).

²⁰ 18 Pa. Cons Stat. § 3001 (Definitions) defines “sexual servitude” as follows:

Any sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual, and is induced or obtained from:

(1) A minor.

(2) Any other individual by any of the means set forth in section 3012(b) (relating to involuntary servitude).

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. 18 Pa. Cons. Stat. § 5902(b.1) (Prostitution and related offenses) states,

Promoting prostitution of minor. — A person who knowingly promotes prostitution of a minor commits a felony of the third degree. The following acts shall, without limitation of the foregoing, constitute promoting prostitution of a minor:

- (1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business in which a victim is a minor;
- (2) procuring an inmate who is a minor for a house of prostitution or a place in a house of prostitution where a minor would be an inmate;
- (3) encouraging, inducing, or otherwise intentionally causing a minor to become or remain a prostitute;
- (4) soliciting a minor to patronize a prostitute;
- (5) procuring a prostitute who is a minor for a patron;
- (6) transporting a minor into or within this Commonwealth with intent to promote the engaging in prostitution by that minor, or procuring or paying for transportation with that intent;
- (7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution of a minor or the promotion of prostitution of a minor, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means; or
- (8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

A felony of the third degree is punishable imprisonment for up to 7 years and a possible fine up to \$15,000. 18 Pa. Cons. Stat. §§ 1103(3), 1101(3).

2. 18 Pa. Cons. Stat. § 6318 (Unlawful contact with minor) states,

(a) *Offense defined.* — A person commits an offense if he is intentionally in contact²¹ with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

- (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
- (2) Open lewdness as defined in section 5901 (relating to open lewdness).
- (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
- (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
- (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
- (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

(b) *Grading.* — A violation of subsection (a) is:

²¹ 18 Pa. Cons. Stat. § 6318(c) (Unlawful contact with minor) defines “contacts” as

Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

- (1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or
 - (2) a felony of the third degree;
- whichever is greater.