

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 South Carolina’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.

South Carolina’s trafficking law expressly applies to buyers of commercial sex with minors but requires the buyer to know the minor is a victim of trafficking in persons. S.C. Code Ann. § 16-3-2020(A) (Trafficking in persons; penalties; defenses) states,

A person is guilty of trafficking in persons if he:

(1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking² . . . through any

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

² S.C. Code Ann. § 16-3-2010(7) (Definitions) defines “sex trafficking” as follows:

[T]he recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

- (a) criminal sexual conduct pursuant to Section 16-3-651;
- (b) criminal sexual conduct in the first degree pursuant to Section 16-3-652;
- (c) criminal sexual conduct in the second degree pursuant to Section 16-3-653;
- (d) criminal sexual conduct in the third degree pursuant to Section 16-3-654;
- (e) criminal sexual conduct with a minor pursuant to Section 16-3-655;
- (f) engaging a child for sexual performance pursuant to Section 16-3-810;
- (g) producing, directing, or promoting sexual performance by a child pursuant to Section 16-3-820;
- (h) sexual battery pursuant to Section 16-3-651;
- (i) sexual conduct pursuant to Section 16-3-800; or
- (j) sexual performance pursuant to Section 16-3-800.

means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;

.....

(3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

Further, S.C. Code Ann. § 16-3-2020(A) can also apply to buyers based on the terms “solicits” and, following federal precedent, “obtains.”³

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

South Carolina law criminalizes both purchasing and soliciting commercial sex with a minor. Specifically, S.C. Code Ann. § 16-15-425(A) (Participating in prostitution of a minor defined; defenses; penalties) states,

An individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, “patronizing a minor prostitute” means:

- (1) soliciting or requesting a minor to participate in prostitution;
- (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or
- (3) paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.

Further, S.C. Code Ann. § 16-15-342(A) (Criminal solicitation of a minor; defense; penalties) provides,

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a

³ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal 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.

sexual activity⁴ as defined in Section 16-15-375(5) [Definitions applicable to Sections 16-15-385 through 16-15-425] or a violent crime⁵ as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

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

S.C. Code Ann. § 16-15-415(A) (Promoting prostitution of a minor defined; defenses; penalties) addresses an array of trafficker conduct, stating,

- An individual commits the offense of promoting prostitution of a minor if he knowingly:
- (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or
 - (2) supervises, supports, advises, or promotes the prostitution of or by a minor.

Further, S.C. Code Ann. § 16-15-342(A) (Criminal solicitation of a minor; defense; penalties) provides,

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity⁶ as defined in Section 16-15-375(5) [Definitions applicable to Sections 16-15-385 through 16-15-425] or a violent crime⁷ as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

⁴ S.C. Code Ann. § 16-15-375(5) (Definitions applicable to sections 16-15-385 through 16-15-425) defines “sexual activity” to include the following:

- (a) masturbation, whether done alone or with another human or animal;
- (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
- (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;
- (e) excretory functions;
- (f) the insertion of any part of a person’s body, other than the male sexual organ, or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure.

⁵ S.C. Code Ann. § 16-1-60 (Violent crimes defined) defines “violent crime” to include “trafficking in persons (Section 16-3-2020); . . . promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425); . . . and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.”

⁶ See *supra* note 4 for the definition of “sexual activity.”

⁷ See *supra* note 5 for the definition of “violent crime.”

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

South Carolina law prohibits a mistake of age defense in prosecutions for child sex trafficking and CSEC. Pursuant to S.C. Code Ann. § 16-3-2020(I)(5) (Trafficking in persons; penalties; defenses), “Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article [Trafficking in persons], nor does the evidence preclude a finding of a violation: . . . mistake as to the victim’s age, even if the mistake is reasonable.” Further, both S.C. Code Ann. § 16-15-425(B) (Participating in prostitution of a minor defined; defenses; penalties) and S.C. Code Ann. § 16-15-415(B) (Promoting prostitution of a minor defined; defenses; penalties) state, “Mistake of age is not a defense to a prosecution under this section.”

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

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, South Carolina’s criminal attempt statute, S.C. Code Ann. § 16-1-80 (Offense of attempt punished as principal offense), could provide prosecutors with an alternative avenue to prosecute those cases by holding an offender accountable for attempting to commit a child sex trafficking offense even if the offender was prevented from completing the offense since the intended victim was a law enforcement decoy rather than an actual minor. Pursuant to S.C. Code Ann. § 16-1-80, “A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense.”

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

South Carolina’s trafficking chapter expressly allows for business entity liability and establishes a business-specific penalty scheme. Specifically, S.C. Code Ann. § 16-3-2030 (Criminal liability of principal owners of business; loss of profits and government contracts; penalties) provides,

- (A) The principal owners of a business,⁸ a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article [Trafficking in persons] is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both. In addition, the court may consider disgorgement of profit from activity in violation of this article and disbarment from state and local government contracts.
- (B) If the principal owners of a business entity are convicted of violating a section of this article, the court or Secretary of State, when appropriate, may:
 - (1) order its dissolution or reorganization;
 - (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or
 - (3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law.

Further, for purposes of Article 19 (Trafficking in persons), S.C. Code Ann. § 16-3-2010(6) (Definitions) defines “person” as “an individual, corporation, partnership, charitable organization, or another legal entity.” Accordingly, a business entity could be held liable under S.C. Code Ann. § 16-3-2020(A)–(D) (Trafficking in persons; penalties; defenses), which states,

⁸ S.C. Code Ann. § 16-3-2010(1) (Definitions) defines “business” as “a corporation, partnership, proprietorship, firm, enterprise, franchise, organization, or self-employed individual.”

- (A) A person is guilty of trafficking in persons if he:
- (1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;
 - (2) aids, abets, or conspires with another person to violate the criminal provisions of this section; or
 - (3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.
- (B) A person convicted of a violation of subsection (A) is guilty of a felony and, upon conviction:
- (1) for a first offense, must be imprisoned not more than fifteen years;
 - (2) for a second offense, must be imprisoned not more than thirty years;
 - (3) for a third or subsequent offense, must be imprisoned not more than forty-five years.
- (C) If the victim of an offense contained in this section is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years. For a second or subsequent offense, if the victim is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than forty-five years.
- (D) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

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.⁹

⁹ Regarding asset forfeiture, S.C. Code Ann. § 16-3-2090(A)(1) (Forfeiture) provides for forfeiture of the following property in trafficking cases:

The following are subject to forfeiture:

- (a) all monies used, or intended for use, in violation of Section 16-3-2020 [Trafficking in persons; penalties; defenses];
- (b) all property constituting the proceeds obtained directly or indirectly, for a violation of Section 16-3-2020;
- (c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of Section 16-3-2020;
- (d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of Section 16-3-2020;
- (e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of Section 16-3-2020;
- (f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of Section 16-3-2020. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 16-3-2020;
- (g) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any kind of services under Section 16-3-2020, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange under Section 16-3-2020; and

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

(h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

Disposition of property forfeited under S.C. Code Ann. § 16-3-2090(A)(1) is governed by S.C. Code Ann. § 16-3-2090(B)(7), which states,

Disposition of forfeited property under this section must be accomplished as follows:

- (a) Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.
- (b) The victim and the South Carolina Victim Compensation Fund shall each receive one-fourth, and law enforcement shall receive one-half of the value of the forfeited property.
- (c) If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victim Compensation Fund and law enforcement to be divided equally.
- (d) If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this section, if they request or pursue any of the forfeiture . . .

However, state asset forfeiture laws do not direct a percentage of a sex trafficking offender's forfeited assets into a victim services fund nor do those laws apply to CSEC offenders.



ISSUE 2: Identification of & Response to Victims

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

The definition of child sex trafficking victim does not include all commercially sexually exploited children. S.C. Code Ann. § 16-3-2010(9) (Definitions) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons.” Although S.C. Code Ann. § 16-3-2020(A)(3) (Trafficking in persons; penalties; defenses) expressly applies to buyers of sex with minors, the buyer must “know that the other person is a victim of trafficking in persons.”¹⁰

Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.¹¹

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

South Carolina law provides policy guidance that facilitates access to services and benefits for trafficked foreign national children. Specifically, S.C. Code Ann. § 16-3-2050(A), (D)(4) (Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants) establishes an interagency task force, which is required to develop a state plan that includes “policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking in persons and provide assistance to . . . foreign national victims”

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

South Carolina law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth to identify those who are at risk of or who have experienced sex trafficking. However, pursuant to S.C. Code Ann. § 63-11-2400 (Multidisciplinary team investigation of suspected crime against a child must follow Child Abuse Response Protocol; effects of failure to comply), all multidisciplinary team members established by the Child Abuse Response Protocol,¹² including child welfare, are required to adhere to the Protocol in all known or

¹⁰ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under S.C. Code Ann. § 16-3-2020.

¹¹ 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).

¹² South Carolina Child Abuse Response Protocol: *A protocol the multidisciplinary team investigation & prosecution of child abuse, neglect & sexual exploitation* (2021), <https://indd.adobe.com/view/8f89c8d7-cac3-425a-9c4d-e3734fe5dced>.

suspected cases of child sex trafficking. Such requirements include an assessment of the child’s safety and service needs; however, the assessment is only conducted once trafficking victimization is known or suspected. Further, child welfare is required to develop a plan to “ensure appropriate services are being delivered [to trafficked children],” including “[i]dentifying children who need services.”¹³ It is not clear, however, if the identification process includes a mechanism for screening children for experiences of child sex trafficking or exploitation.

- 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.

South Carolina 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.

South Carolina law prohibits the criminalization of some, but not all, minors for prostitution offenses. While the core prostitution offense is age neutral, applying equally to children and adults, minors identified as a child sex trafficking victim are insulated from prosecution for prostitution.

Pursuant to S.C. Code Ann. § 16-15-90 (Prostitution; lewdness, assignation and prostitution generally), “It shall be unlawful to: (1) Engage in prostitution; . . . (3) Procure or solicit for the purpose of prostitution; (4) Expose indecently the private person for the purpose of prostitution or other indecency” While S.C. Code Ann. § 16-15-90 applies to minors, S.C. Code Ann. § 16-3-2020(G) (Trafficking in persons; penalties; defenses) provides,

If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court pursuant to this article or a prostitution offense, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.

Further, S.C. Code Ann. § 63-11-2400 (Multidisciplinary team investigation of suspected crime against a child must follow Child Abuse Response Protocol; effects of failure to comply) requires adherence to the South Carolina Child Abuse Response Protocol¹⁴ in all cases involving a known or suspected crime committed against a child, including child sex trafficking. Pursuant to the Protocol,¹⁵ law enforcement must refer impacted children to a CAC or child-serving agency for services and support. Further, the Protocol¹⁶ requires the Department of Social Services to:

Coordinate with law enforcement to determine if the child needs to be taken into emergency protective custody (pursuant to S.C. Code Ann. § 63-7-260). The officer must have probable cause to believe by reason of abuse or neglect the child’s life, health, or physical safety is in substantial and imminent danger.

¹³ South Carolina Child Abuse Response Protocol, *supra* note 12, at 39.

¹⁴ South Carolina Child Abuse Response Protocol, *supra* note 12.

¹⁵ South Carolina Child Abuse Response Protocol, *supra* note 12, at 16, 19–20.

¹⁶ South Carolina Child Abuse Response Protocol, *supra* note 12, at 19.

While South Carolina law protects identified child sex trafficking victims from prosecution for prostitution offenses and requires law enforcement to take a minor into protective custody and make a services-referral, such protections hinge on the identification of sex trafficking victimization. Consequently, 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.

Although South Carolina 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 S.C. Code Ann. § 16-3-2020(F) (Trafficking in persons; penalties; defenses),

In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking

- 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.

South Carolina law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses committed as a result of their trafficking victimization. Specifically, S.C. Code Ann. § 16-3-2020(G) (Trafficking in persons; penalties; defenses) provides,

If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court pursuant to this article [Trafficking in persons] or a prostitution offense,¹⁷ if it is

¹⁷ S.C. Code Ann. § 16-15-90 (Prostitution; lewdness, assignation and prostitution generally) includes conduct commonly engaged in by sex trafficking victim-offenders, stating,

It shall be unlawful to:

- (1) Engage in prostitution;
- (2) Aid or abet prostitution knowingly;
- (3) Procure or solicit for the purpose of prostitution;
- (4) Expose indecently the private person for the purpose of prostitution or other indecency;
- (5) Reside in, enter or remain in any place, structure, building, vehicle, trailer or conveyance for the purpose of lewdness, assignation or prostitution;
- (6) Keep or set up a house of ill fame, brothel or bawdyhouse;

determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.

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.

South Carolina law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. Pursuant to S.C. Code Ann. § 16-3-2020(F) (Trafficking in persons; penalties; defenses),

In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking

EXTRA CREDIT



The affirmative defense provided for under S.C. Code Ann. § 16-3-2020(F) is available to sex trafficked youth. S.C. Code Ann. § 16-3-2010(9) (Definitions) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons.” Because S.C. Code Ann. § 16-3-2020 criminalizes trafficking of both minor and adult victims, the affirmative defense provided for under S.C. Code Ann. § 16-3-2020(F) extends to youth.



The affirmative defense provided for under S.C. Code Ann. § 16-3-2020(F) is available to victims of child labor trafficking. S.C. Code Ann. § 16-3-2010(9) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons.” Because S.C. Code Ann. § 16-3-2020 criminalizes both sex trafficking and labor trafficking, the affirmative defense provided for under S.C. Code Ann. § 16-3-2020(F) extends to child labor trafficking.

-
- (7) Receive any person for purposes of lewdness, assignation or prostitution into any vehicle, conveyance, trailer, place, structure or building;
 - (8) Permit any person to remain for the purpose of lewdness, assignation or prostitution in any vehicle, conveyance, trailer, place, structure or building;
 - (9) Direct, take or transport, offer or agree to take or transport or aid or assist in transporting any person to any vehicle, conveyance, trailer, place, structure or building or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;
 - (10) Lease or rent or contract to lease or rent any vehicle, conveyance, trailer, place, structure or building or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes herein prohibited; or
 - (11) Aid, abet, or participate knowingly in the doing of any of the acts herein prohibited.

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

South Carolina law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While South Carolina law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for jurisdictional purposes, permits direct file for minors 17 years of age charged with certain felony offenses, and fails to require courts to consider the impact of trauma or past victimization in making discretionary transfer determinations.

| | Minimum Age of Juvenile Court Jurisdiction | Maximum Age for Charging Youth in Juvenile Court | Automatic Transfers or Direct File | Discretionary Transfers | Requirement for Court to Consider Trauma or Past Victimization |
|----------------|------------------------------------------------------------------------------------|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Summary | None. “Child” and “juvenile” are defined as, “a person under the age of eighteen.” | 17 | Yes. Minors 17 years of age charged with a Class A, B, C, or D felony or a felony carrying a term of imprisonment that is 15+ years. | Yes. Minors: (1) 17+ years of age charged with a misdemeanor, Class E or F felony, or a felony carrying a term of imprisonment that is less than 11 years; (2) 14-16 years of age charged with a Class A, B, C, or D felony or a felony carrying a term of imprisonment that is 15+ years; (3) charged with murder or criminal sexual conduct; (4) 14+ years of age charged with certain weapon or drug offenses; and (5) 14+ years of age charged with an offense carrying a term of imprisonment that is 10+ years and the minor was previously adjudicated or convicted for two prior offenses carrying the same length of imprisonment. | No. |

| | | | | | |
|----------------------------|--------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|
| Relevant Statute(s) | S.C. Code Ann. § 63-19-20(1) (Definitions) | S.C. Code Ann. § 63-1-20(1) (Definitions) | S.C. Code Ann. § 63-1-20(1) (Definitions) | S.C. Code Ann. § 63-19-1210(4)–(6), (9)–(10) (Transfer of jurisdiction) | S.C. Code Ann. § 63-19-1210 (Transfer of jurisdiction) |
|----------------------------|--------------------------------------------|-------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allow some juvenile cases to be subject to direct file; 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.

South Carolina clearly defines “child abuse or neglect” or “harm” to include child sex trafficking. Pursuant to S.C. Code Ann. § 63-7-20(6)(b) (Definitions),

“Child abuse or neglect” or “harm” occurs when . . . a child is a victim of trafficking in persons as defined in Section 16-3-2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian, or other person responsible for the child’s welfare. Identifying a child as a victim of trafficking in persons does not create a presumption that the parent, guardian, or other individual responsible for the child’s welfare abused, neglected, or harmed the child.

EXTRA CREDIT



Child labor trafficking is included in the definition of “child abuse or neglect” or “harm” under S.C. Code Ann. § 63-7-20(6)(b), which expressly includes victims of “trafficking in persons.” S.C. Code Ann. § 16-3-2010(9) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons,” and S.C. Code Ann. § 16-3-2020 (Trafficking in persons; penalties; defenses) criminalizes both sex trafficking and labor trafficking.

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.

South Carolina law allows for a child welfare response to non-familial child sex trafficking cases without requiring parent or caregiver fault and provides for a specialized investigation in those cases.

S.C. Code Ann. § 63-7-20(6)(b) (Definitions) clarifies that child welfare can respond to child sex trafficking victims exploited by a non-caregiver, stating,

“Child abuse or neglect” or “harm” occurs when . . . a child is a victim of trafficking in persons as defined in Section 16-3-2010, including sex trafficking, regardless of whether the perpetrator is a parent, guardian,

or other person responsible for the child’s welfare. Identifying a child as a victim of trafficking in persons does not create a presumption that the parent, guardian, or other individual responsible for the child’s welfare abused, neglected, or harmed the child.

Further, S.C. Code Ann. § 63-11-2400 (Multidisciplinary team investigation of suspected crime against a child must follow Child Abuse Response Protocol; effects of failure to comply) requires child welfare to adhere to the Child Abuse Response Protocol,¹⁸ which provides for a specialized investigation in all child sex trafficking cases, regardless of caregiver involvement. The Protocol requires that all cases of known or suspected child sex trafficking be jointly investigated by child welfare and law enforcement and, ultimately, referred to the respective child advocacy center for specialized assessments, support, and coordination of services.¹⁹ It states,

All [DSS] caseworkers should investigate the circumstances of the human trafficking of the child and the child’s mental state carefully during the assessment phase of the case and well before making reunification plans with the parents and/or guardians. Once there is sufficient information gained that the parents are not part of any trafficking of the child, the case worker should then work closely with the parent and/or guardians in providing the appropriate resources to the child and family throughout the case.

EXTRA CREDIT



South Carolina law allows for a child welfare involvement in non-familial child labor trafficking cases without hinging involvement on caregiver fault and provides for an alternative, specialized investigation in those cases as the protections provided for under S.C. Code Ann. § 63-7-20(6)(b) and the Protocol apply broadly to child trafficking victims. S.C. Code Ann. § 16-3-2010(9) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons,” and S.C. Code Ann. § 16-3-2020 (Trafficking in persons; penalties; defenses) criminalizes both sex trafficking and labor trafficking.

¹⁸ South Carolina Child Abuse Response Protocol, *supra* note 12, at 39.

¹⁹ *See supra* at 11, page 19.



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.

South Carolina law provides child sex trafficking victims with access to specialized, community-based services and establishes a clear process for connecting victims with those services. Pursuant to S.C. Code Ann. § 16-3-2020(H) (Trafficking in persons; penalties; defenses), a minor victim may receive specialized services through “certified specialized service providers” and the Human Trafficking Acute Crisis Care and Resource Centers under the auspices of the Office of the Attorney General. S.C. Code Ann. § 16-3-2020(H) states,

The human trafficking specialized service providers must be certified by the Attorney General through criteria established by the Human Trafficking Task Force. The Attorney General, through the task force, must also establish necessary criteria for Human Trafficking Acute Crisis Care and Resource Centers to be established in the communities in South Carolina. Once the service providers are certified and the assessment centers are open, the information must be disseminated to the family court bench and bar as well as law enforcement to be utilized in carrying out the mandates of this statute. The court must determine the most appropriate way to provide specialized services to the juveniles to address the concerns relating to human trafficking.

EXTRA CREDIT



South Carolina law mandates adherence to the Child Abuse Response Protocol under S.C. Code Ann. § 63-11-2400, which requires the provision of specialized services in cases of child labor trafficking.

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

State law requires the use of a multi-disciplinary team (MDT) response in all cases of child sex trafficking. S.C. Code Ann. § 63-11-2400 (Multidisciplinary team investigation of suspected crime against a child must follow Child Abuse Response Protocol; effects of failure to comply) formalizes the MDT response in all cases of child abuse, neglect, and child trafficking, and requires all MDT members created by the Child Abuse Response Protocol²⁰ to adhere to the Protocol.

Additionally, child victims of sex trafficking could receive a multi-disciplinary team (MDT) response through an existing child abuse MDT. Pursuant to S.C. Code Ann. § 63-11-310 (Children’s services agencies), Child Advocacy

²⁰ South Carolina Child Abuse Response Protocol, *supra* note 12.

Centers are responsible to coordinate a multi-disciplinary service response for child abuse and neglect cases. S.C. Code Ann. § 63-11-310(A), (B),

(A) “Children’s Advocacy Centers” mean centers which must coordinate a multi-agency response to child maltreatment and assist in the investigation and assessment of child abuse. These centers must provide:

- (1) a neutral, child-friendly facility for forensic interviews;
- (2) the coordination of services for children reported to have been abused;
- (3) services including, but not limited to, forensic interviews, forensic medical examinations, and case reviews by multidisciplinary teams to best determine whether maltreatment has occurred; and
- (4) therapeutic counseling services, support services for the child and nonoffending family members, court advocacy, consultation, and training for professionals who work in the area of child abuse and neglect, to reduce negative impact to the child and break the cycle of abuse.

(B)

- (1) Children’s Advocacy Centers must establish memoranda of agreement with governmental entities charged with the investigation and prosecution of child abuse
- (2) Children’s Advocacy Centers must establish written policies and procedures for standards of care including, but not limited to, the timely intervention of services between initial contact with the child and the event which led to the child’s being referred to the center
- (3) Children’s Advocacy Center records must be released to the Department of Social Services for purposes of investigation, assessment of allegations of child abuse or neglect, and provision of treatment services to the children or their families

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

Child sex trafficking victim may have access to specialized services through both the South Carolina Child Abuse Response Protocol and the family court system, generally. Pursuant to S.C. Code Ann. § 63-11-2400 (Multidisciplinary team investigation of suspected crime against a child must follow Child Abuse Response Protocol; effects of failure to comply), all multidisciplinary team members created by the Child Abuse Response Protocol, including child welfare, are required to adhere to the Protocol in all known or suspected cases of child sex trafficking, which includes providing access to specialized services. The Child Abuse Response Protocol, page 39, states,

It is considered best practice for [the Department of Social Services], in consultation with law enforcement officials and the MDT, to develop a plan for the delivery of services to sexually exploited children, victims of trafficking for labor servitude, and such children and persons who are at risk of becoming victims of such offenses. In developing such plan, DSS should work with state and federal agencies, public and private entities, and other stakeholders as it deems appropriate and should periodically review such plans to ensure appropriate services are being delivered. Plans should include:

- Identifying children who need services;
- Providing assistance with applications for federal and state benefits, compensation, and services;
- Coordinating the delivery of physical and mental health, housing, education, job training, child care, legal and other services;
-
- Developing and maintaining community-based services;
- Providing assistance with family reunification or repatriation to at country of origin; and
- Providing law enforcement official assistance in identifying children in need of services.

According to the Child Abuse Response Protocol,²¹ children may access such services through a law enforcement or child welfare referral to the respective child advocacy center.

EXTRA CREDIT



South Carolina law requires child welfare to adhere to the Child Abuse Response Protocol under S.C. Code Ann. § 63-11-2400, which requires the provision of specialized services in cases of child labor trafficking.

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

South Carolina 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.

South Carolina 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.²² Specifically, S.C. Code Ann. § 63-7-2720²³ (Extended foster care program) provides,

There is created within the Department of Social Services an extended foster care program for eligible children, as the term ‘child’²⁴ is defined in Section 63-7-2710 [Definitions]. An eligible child is under the

²¹ South Carolina Child Abuse Response Protocol, *supra* note 12, at 19–20.

²² 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).

²³ The text of S.C. Code Ann. § 63-7-2720 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 3509 during the 2021-2022 Regular Session of the South Carolina state legislature (effective April 25, 2022).

²⁴ S.C. Code Ann. § 63-7-2710(2) (Definitions) defines “child” as follows:

[A] person who is or was in the legal custody of the department on the person’s eighteenth birthday, who has not attained age twenty-one, and who meets at least one of the following requirements:

- (a) is completing secondary education or a program leading to an equivalent credential;
- (b) is enrolled in an institution which provides post-secondary or vocational education;
- (c) is participating in a program or activity designed to promote or remove barriers to employment;
- (d) is employed for at least eighty hours a month; or

placement and care responsibility of the department while participating in the program. The department must provide placement in a licensed foster family home, childcare institution, or in an approved or licensed supervised independent living setting. The department shall adopt rules and promulgate regulations as necessary to implement the extended foster care program.

Under S.C. Code Ann. § 63-7-2730²⁵ (Continuation of court's jurisdiction over child between eighteen and twenty-one years of age),

(A) Before a child's eighteenth birthday, the child may provide written authorization to remain under the placement and care responsibility of the department after the child attains age eighteen and the court may conclude that it is in the child's best interests to remain under the placement and care responsibility of the department after the child's eighteenth birthday. In such cases, the court's jurisdiction shall continue until the court issues an order terminating its jurisdiction. In no case may the court's jurisdiction pursuant to this article continue beyond the child's twenty-first birthday.

(B) Subject to eligibility criteria established by the department, after attaining age eighteen, a child may enter into a voluntary placement agreement with the department to remain under or return to the placement and care responsibility of the department. The department must develop a transition plan for a child who remains in or returns to the placement and care responsibility of the department.

(C) A voluntary placement agreement terminates within one hundred eighty days after it is executed, unless the court determines that it is in the child's best interests to remain under the placement and care responsibility of the department.

Further, S.C. Code Regs. 114-595(A)(1) (Standards for Supervised Independent Living) provides for a continuum of services through an independent living program, stating,

The goal of an independent living program is to prepare youths, ages sixteen to twenty-one, for successful adult living through the provision of services related to daily living, problem-solving, and other skills that maximize the youth's potential to be a self-supporting, productive adult. A continuum of services shall be available and provided in accordance with the developmental readiness of youths served, in addition to their chronological age.

- 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 South Carolina 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.

(e) is incapable of doing any of the above-described activities due to a physical, intellectual, emotional, or psychiatric condition that limits participation, and the presence of the condition is supported by regularly updated information in the transition plan.

The text of S.C. Code Ann. § 63-7-2710 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 3509 during the 2021-2022 Regular Session of the South Carolina state legislature (effective April 25, 2022).

²⁵ The text of S.C. Code Ann. § 63-7-2730 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 3509 during the 2021-2022 Regular Session of the South Carolina state legislature (effective April 25, 2022).



ISSUE 4: Access to Justice for Trafficking Survivors

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

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

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

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

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

For purposes of accessing crime victims' compensation, S.C. Code Ann. § 16-3-1110(A)(8) (Definitions) defines "victim" as "a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime." "Crime" is defined under S.C. Code Ann. § 16-3-1110(A)(6) as "an act which is defined as a crime by state, federal, or common law" with the exception of some vehicular crimes. Further, S.C. Code Ann. § 16-3-2070(A) (Compensation for victims of trafficking; identity of victim and victim's family confidential) states that trafficking victims "are entitled to all appropriate forms of compensation available pursuant to the State Crime Victim's Compensation Fund."

Accordingly, child sex trafficking and CSEC victims should have access to crime victims' compensation. However, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to S.C. Code Ann. § 16-3-1170(A) (Basis for award),

No award may be made unless:

- (1) a crime was committed;
- (2) the crime directly resulted in physical or psychic trauma to the victim;
- (3) the crime was promptly reported to the proper authority and recorded in police records; and
- (4) the claimant or other award recipient has fully cooperated with all law enforcement agencies and with the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation.

Under S.C. Code Ann. § 16-3-1170(B), barring the "showing of special circumstances or causes which justify the delay," crimes reported after 48 hours are not considered "promptly reported." Nothing in S.C. Code Ann. § 16-3-1170, however, explains what constitutes "special circumstances or causes" for purposes of this section.

Further, S.C. Code Ann. § 16-3-1200 (Conduct of victim or intervener contributing to infliction of injury) allows an award to be reduced or denied based on a determination that "because of his conduct the victim . . . of such crime contributed to the infliction of his injury . . ." Similarly, under S.C. Code Ann. § 16-3-1220(1) (Persons ineligible for award), a person is ineligible if he or she "committed or aided in the commission of the crime upon which the claim is based or engaged in other unlawful activity which contributed to or aggravated the resulting injury."

Lastly, S.C. Code Ann. § 16-3-1230(B) (Claim filed on behalf of minor or incompetent; time limitations) requires a claim to be filed within the following time period:

[O]ne hundred eighty days after the latest of the following events:

- (1) the occurrence of the crime upon which the claim is based;
- (2) the death of the victim;
- (3) the discovery by the law enforcement agency that the occurrence was the result of crime; or
- (4) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor.

S.C. Code Ann. § 16-3-1230(C) provides for an extension to the filing deadline upon a showing of “good cause.” However, “good cause” is narrowly said to include “reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim Compensation Fund but does not mean simply ignorance of the law.”

- 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 South Carolina law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to S.C. Code Ann. § 16-3-2020(F) (Trafficking in persons; penalties; defenses),

A victim of trafficking in persons convicted of a violation of this article [Trafficking in persons] or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person’s participation in the offense was a direct result of being a victim.

However, S.C. Code Ann. § 16-3-2020(F) applies specifically to “convictions,” and S.C. Code Ann. § 63-19-1410 (C) (Adjudication) states, “No adjudication by the court of the status of a child is a conviction” Accordingly, a child sex trafficking victim cannot vacate a delinquency adjudication under S.C. Code Ann. § 16-3-2020(F). Further, vacatur is limited to a prostitution and trafficking offenses, which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: 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.

South Carolina law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to S.C. Code Ann. § 16-3-2040(A)–(D) (Restitution for victims of trafficking),

- (A) An offender convicted of a violation of this article [Trafficking in persons] must be ordered to pay mandatory restitution to the victim as provided in this section.
- (B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim’s issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the

victim's estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) If a person is unable to pay restitution at the time of sentencing, or at any other time, the court may set restitution pursuant to Section 16-3-1270 [Restitution by offender; lien against offender; filing of lien].

(D) Restitution for this section, pursuant to Section 16-3-1270, means payment for all injuries, specific losses, and expenses, including, but not limited to, attorney's fees, sustained by a crime victim resulting from an offender's criminal conduct pursuant to Section 16-3-1110(12)(a). In addition, the court may order an amount representing the value of the victim's labor or services.

Restitution is available more generally to victims of other crimes pursuant to S.C. Code Ann. § 17-25-322(A) (Restitution to crime victim by person convicted of crime; hearing; determination of method, manner, and amount; entry of order), which provides,

When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts. The restitution hearings must be held unless the defendant in open court agrees to the amount due, and in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the victim's legal representative as well as the Attorney General and the solicitor have the right to be present and be heard upon the issue of restitution at any of these hearings.

EXTRA CREDIT



South Carolina law mandates restitution for victims of child labor trafficking under S.C. Code Ann. § 16-3-2040, which requires offenders convicted of any violation of Article 19 (Trafficking in persons) to pay victim restitution.

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

South Carolina law allows victims of child sex trafficking to pursue civil remedies against their exploiters. S.C. Code Ann. § 16-3-2060(A) (Civil action for victim of trafficking; statute of limitations) states,

A person who is a victim of trafficking in persons may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney's fees and costs. Treble damages must be awarded on proof of actual damages when the defendant's acts were willful and malicious.

EXTRA CREDIT



South Carolina law provides sex trafficked youth with a trafficking-specific civil remedy under S.C. Code Ann. § 16-3-2060(A), which allows a victim of trafficking in persons to file a civil action. S.C. Code Ann. § 16-3-2010(9) (Definitions) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons.” S.C. Code Ann. § 16-3-2020 (Trafficking in persons; penalties; defenses) criminalizes sex trafficking of both minor and adult victims.



South Carolina law provides child labor trafficking victims with a trafficking-specific civil remedy under S.C. Code Ann. § 16-3-2060(A), which allows a victim of trafficking in persons to file a civil action. S.C. Code Ann. § 16-3-2010(9) defines “victim of trafficking in persons” as “a person who has been subjected to the crime of trafficking in persons.” S.C. Code Ann. § 16-3-2020 (Trafficking in persons; penalties; defenses) criminalizes both sex trafficking and labor trafficking.

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

Prosecutions for child sex trafficking and CSEC offenses may commence at any time; however, the statute of limitation for filing trafficking-specific civil actions is only lengthened, not eliminated. Regarding criminal actions, “South Carolina does not have a general statute of limitations for criminal actions; however, in a few very rare instances, a period of limitations is incorporated in specific criminal statutes.”²⁶ Regarding civil actions, S.C. Code Ann. § 16-3-2060(B)–(F) (Civil action for victim of trafficking; statute of limitations) provides,

(B) Pursuant to Section 16-3-1110, the applicable statute of limitations for a crime victim who has a cause of action against an incarcerated offender is tolled and does not expire until three years after the offender’s sentence is completed, including probation and parole, or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the victim.

(C) The statute of limitations for the filing of a civil suit does not begin to run until a minor victim has reached the age of majority.

(D) If a victim entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

²⁶ *Summary Court Judges Bench Book—Substantive and Procedural Law*, SOUTH CAROLINA JUDICIAL DEPARTMENT <https://www.sccourts.org/summarycourtbenchbook/pdf/criminal.pdf> (last visited September 24, 2021).

(E) The running of the statute of limitations may be suspended when a victim could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(F) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the victim to delay the filing of the action or placing the victim under duress.

4.6.1 Recommendation: Eliminate the civil statute of limitation for filing trafficking-specific claims.



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.

South Carolina law allows out-of-court statements made by a commercially sexually exploited child under 12 years of age to be admitted into evidence. Specifically, S.C. Code Ann. § 17-23-175(A) (Admissibility of out-of-court statement of child under twelve; determination of trustworthiness; notice to adverse party) states,

In a general sessions court proceeding or a delinquency proceeding in family court, an out-of-court statement of a child is admissible if:

- (1) the statement was given in response to questioning conducted during an investigative interview²⁷ of the child;
- (2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);²⁸
- (3) the child testifies at the proceeding and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement; and
- (4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.²⁹

S.C. Code Ann. § 17-23-175(C) defines “child” to include the following:

²⁷ S.C. Code Ann. § 17-23-175(D) defines “investigative interview” as “the questioning of a child by a law enforcement officer, a Department of Social Services case worker, or other professional interviewing the child on behalf of one of these agencies, or in response to a suspected case of child abuse.”

²⁸ Pursuant to S.C. Code Ann. § 17-23-175(F),

Out-of-court statements made by a child in response to questioning during an investigative interview that is visually and auditorily recorded will always be given preference. If, however, an electronically unrecorded statement is made to a professional in his professional capacity by a child victim or witness regarding an act of sexual assault or physical abuse, the court may consider the statement in a hearing outside the presence of the jury to determine:

- (1) the necessary visual and audio recording equipment was unavailable;
- (2) the circumstances surrounding the making of the statement;
- (3) the relationship of the professional and the child; and
- (4) if the statement possesses particularized guarantees of trustworthiness.

After considering these factors and additional factors the court deems important, the court will make a determination as to whether the statement is admissible pursuant to the provisions of this section.

²⁹ Pursuant to S.C. Code Ann. § 17-23-175(B),

In determining whether a statement possesses particularized guarantees of trustworthiness, the court may consider, but is not limited to, the following factors:

- (1) whether the statement was elicited by leading questions;
- (2) whether the interviewer has been trained in conducting investigative interviews of children;
- (3) whether the statement represents a detailed account of the alleged offense;
- (4) whether the statement has internal coherence; and
- (5) sworn testimony of any participant which may be determined as necessary by the court.

- (1) a person who is under the age of twelve years at the time of the making of the statement or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of making the statement; and
- (2) a person who is the alleged victim of, or witness to, a criminal act for which the defendant, upon conviction, would be required to register pursuant to the provisions of Article 7, Chapter 3, Title 23 [Sex offender registry].

Because trafficking in persons is a registerable offense under S.C. Code Ann. § 23-3-430(C)(17) (Sex offender registry; convictions and not guilty by reason of insanity findings requiring registration), child sex trafficking would fall within the definition of “child” for purposes of protection under the hearsay exception provided for under S.C. Code Ann. § 17-23-175. However, child victims who are 12 years of age or older are not protected by the hearsay exception, thereby increasing their risk of re-traumatization from testifying.

- 5.1.1 Recommendation: Amend S.C. Code Ann. § 17-23-175 (Admissibility of out-of-court statement of child under twelve; determination of trustworthiness; notice to adverse party) 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.

Special considerations, including closed or taped testimony, may be provided to witnesses who are very young or have special needs. Pursuant to S.C. Code Ann. § 16-3-1550(E) (Restriction on employers of victims and witnesses; protection of rights of victims and witnesses), “The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate. The prosecuting agency or defense attorney must notify the court when a victim or witness deserves special consideration.”

- 5.2.1 Recommendation: Strengthen existing law to provide all commercially sexually exploited children with an alternative to live, in-court testimony regardless of the child’s age and the offense charged.

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

| | Child sex trafficking victims have the right to a victim advocate | Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom | Child sex trafficking victims’ identifying information is protected from disclosure in court records |
|----------------------------|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Summary | Not statutorily required. | Support person or facility dog allowed to accompany and support child during testimony. | The identity of a trafficking victim and the victim’s family must be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant. |
| Relevant Statute(s) | None. | S.C. Code Ann. § 63-11-2400 (South Carolina Child Abuse Response Protocol) requires adherence to the Protocol, | S.C. Code Ann. § 16-3-2070(B) (Compensation for victims of trafficking; identity |

| | | | |
|--|--|--------------------------------------------------------------------|---------------------------------------------|
| | | which permits use of support person or facility dog. ³⁰ | of victim and victim's family confidential) |
|--|--|--------------------------------------------------------------------|---------------------------------------------|

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate when testifying against their exploiter.

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

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

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

³⁰ South Carolina Child Abuse Response Protocol (2021), page 11.



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.

South Carolina 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.

South Carolina 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.

South Carolina law authorizes trafficking-specific training for law enforcement. Pursuant to S.C. Code Ann. § 16-3-2050(E)(7) (Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants),

The task force shall consider carrying out the following activities either directly or through one or more of its constituent agencies:

....

(7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;

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

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

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

South Carolina law authorizes trafficking-specific training for prosecutors. Pursuant to S.C. Code Ann. § 16-3-2050(E)(7) (Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants),

The task force shall consider carrying out the following activities either directly or through one or more of its constituent agencies:

.....

(7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;

Resultingly, training regarding child sex trafficking may be, or become, available to prosecutors. However, prosecutors are not statutorily mandated to receive such training.

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

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

South Carolina 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.

South Carolina 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. S.C. Code Ann. § 16-3-2020(A)–(D) (Trafficking in persons; penalties; defenses) states,

(A) A person is guilty of trafficking in persons if he:

- (1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking³¹ . . . through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;
- (2) aids, abets, or conspires with another person to violate the criminal provisions of this section; or
- (3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

.....

(C) If the victim of an offense contained in this section is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years

.....

(D) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

³¹ S.C. Code Ann. § 16-3-2010(7) (Definitions) defines “sex trafficking” as

the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

- (a) criminal sexual conduct pursuant to Section 16-3-651;
- (b) criminal sexual conduct in the first degree pursuant to Section 16-3-652;
- (c) criminal sexual conduct in the second degree pursuant to Section 16-3-653;
- (d) criminal sexual conduct in the third degree pursuant to Section 16-3-654;
- (e) criminal sexual conduct with a minor pursuant to Section 16-3-655;
- (f) engaging a child for sexual performance pursuant to Section 16-3-810;
- (g) producing, directing, or promoting sexual performance by a child pursuant to Section 16-3-820;
- (h) sexual battery pursuant to Section 16-3-651;
- (i) sexual conduct pursuant to Section 16-3-800; or
- (j) sexual performance pursuant to Section 16-3-800.

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. S.C. Code Ann. § 16-15-415 (Promoting prostitution of a minor defined; defenses; penalties) states,

- (A) An individual commits the offense of promoting prostitution of a minor if he knowingly:
- (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or
 - (2) supervises, supports, advises, or promotes the prostitution of or by a minor.

.....

(C) An individual who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not less than three years nor more than twenty years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence

2. S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined; defenses; penalties) states,

(A) An individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, “patronizing a minor prostitute” means:

- (1) soliciting or requesting a minor to participate in prostitution;
- (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or
- (3) paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.

.....

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term

3. S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor; defense; penalties) states,

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity³² as defined in Section 16-15-375(5) [Definitions applicable to Sections 16-15-385 through 16-15-425] or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in

³² S.C. Code Ann. § 16-15-375(5) (Definitions applicable to sections 16-15-385 through 16-15-425) defines “sexual activity” to include the following:

- (a) masturbation, whether done alone or with another human or animal;
- (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
- (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;
- (e) excretory functions;
- (f) the insertion of any part of a person’s body, other than the male sexual organ, or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure.

the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

....

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

S.C. Code Ann. § 16-1-60 (Violent crimes defined) defines “violent crime” to include “trafficking in persons (Section 16-3-2020); . . . promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425); . . . and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.”