

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



## ISSUE 1: Criminal Provisions

**Policy Goal 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) expressly applies to buyers of commercial sex with any minor based on the term “purchases.” It states, “A person commits the offense of trafficking a person for a commercial sex act who . . . [r]ecruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act.”<sup>2</sup> Further, following federal precedent, Tenn. Code Ann. § 39-13-309(a) could apply to buyers based on the term “obtains.”<sup>3</sup> If the victim of the offense

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

<sup>2</sup> Tenn. Code Ann. § 39-13-301(4) (Definitions) defines “commercial sex act” as follows:

(A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or

(B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

<sup>3</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to

was under 13 years of age, a violation is punishable as aggravated human trafficking under Tenn. Code Ann. § 39-13-316(a)(3)<sup>4</sup> (Aggravated human trafficking).

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

Tennessee law criminalizes both purchasing and soliciting commercial sex with a minor. Specifically, Tenn. Code Ann. § 39-13-514(a) (Patronizing prostitution) states,

A person commits an offense under this section:

- (1) Who patronizes prostitution;<sup>5</sup> or
- (2) When a person patronizes prostitution where the subject of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.

Further, Tenn. Code Ann. § 39-13-528(a)(10), (11) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- .....
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
  - (11) Patronizing prostitution, pursuant to § 39-13-514;

Lastly, Tenn. Code Ann. § 39-13-518(a)–(c)(3)<sup>6</sup> (Continuous sexual abuse of a child – Felony offense – Penalties – Notice identifying multiple acts of sexual abuse of a child) provides,

(a) As used in this section:

- (1) “Multiple acts of sexual abuse of a child” means:
  - (A)
    - (i) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014;

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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.

<sup>4</sup> The text of Tenn. Code Ann. § 39-13-316 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1378 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>5</sup> Tenn. Code Ann. § 39-13-512(3) (Prostitution – Definitions) defines “patronizing prostitution” as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.”

<sup>6</sup> The text of Tenn. Code Ann. § 39-13-518 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1792 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

- (ii) Engaging in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; or
- (iii) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; and
- (B) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (a)(1)(B) include, but are not limited to:
  - (i) The victims are related to the defendant by blood or marriage;
  - (ii) The victims reside with the defendant; or
  - (iii) The defendant was an authority figure, as defined in § 39-13-527(a)(3), to the victims and the victims knew each other; and
- (2) “Sexual abuse of a child” means to commit an act upon a minor child that is a violation of:
  - .....
  - (I) Trafficking for a commercial sex act pursuant to § 39-13-309, if the victim is a minor; or
  - (J) Promoting prostitution pursuant to § 39-13-515, if the victim is a minor.
- (b) A person commits continuous sexual abuse of a child who:
  - (1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(i) or (a)(1)(A)(ii); or
  - (2) Over a period of less than ninety days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(iii).

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

Tennessee’s CSEC laws address an array of trafficker conduct. Pursuant to Tenn. Code Ann. § 39-13-515(a) (Promoting prostitution),

A person commits an offense under this section:

- (1) Who promotes prostitution;<sup>7</sup> or

<sup>7</sup> Tenn. Code Ann. § 39-13-512(4), (5) (Prostitution –Definitions) defines “promoting prostitution” and “promoting prostitution of a minor” as follows:

- (4)
  - (A) “Promoting prostitution” means:
    - (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
    - (ii) Procuring an inmate for a house of prostitution;
    - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
    - (iv) Soliciting a person to patronize a prostitute;
    - (v) Procuring a prostitute for a patron; or

(2) Who promotes prostitution where the subject of the offense is a law enforcement officer or is a law enforcement officer eighteen (18) years of age or older posing as a minor.

Further, Tenn. Code Ann. § 39-13-528(a)(10), (12) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- ....
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- ....
- (12) Promoting prostitution, pursuant to § 39-13-515; or

Lastly, Tenn. Code Ann. § 39-13-518(a)–(c)(3)<sup>8</sup> (Continuous sexual abuse of a child – Felony offense – Penalties – Notice identifying multiple acts of sexual abuse of a child) provides,

(a) As used in this section:

(1) “Multiple acts of sexual abuse of a child” means:

(A)

(i) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014;

(ii) Engaging in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; or

(iii) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; and

(B) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern

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(vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)–(v); and

(B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:

(i) The person promoting the prostitute and the prostitute being promoted are the same person; and

(ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion;

(5) “Promoting prostitution of a minor” means engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age . . . .

<sup>8</sup> See *supra* note 6.

of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (a)(1)(B) include, but are not limited to:

- (i) The victims are related to the defendant by blood or marriage;
- (ii) The victims reside with the defendant; or
- (iii) The defendant was an authority figure, as defined in § 39-13-527(a)(3), to the victims and the victims knew each other; and

(2) “Sexual abuse of a child” means to commit an act upon a minor child that is a violation of:

.....

- (I) Trafficking for a commercial sex act pursuant to § 39-13-309, if the victim is a minor; or
- (J) Promoting prostitution pursuant to § 39-13-515, if the victim is a minor.

(b) A person commits continuous sexual abuse of a child who:

- (1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(i) or (a)(1)(A)(ii); or
- (2) Over a period of less than ninety days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(iii).

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

Tennessee law expressly prohibits a mistake of age defense in prosecutions of child sex trafficking and CSEC . Pursuant to Tenn. Code Ann. § 39-11-502(c)<sup>9</sup> (Ignorance or mistake of fact), “It is not a defense to prosecution for a violation of § 39-13-309 [Trafficking for commercial sex act], § 39-13-514 [Patronizing prostitution], or § 39-13-529(a), (b)(1), (b)(2) [Solicitation of minor to observe sexual conduct] that the person charged was ignorant or mistaken as to the age of a minor.”

Tenn. Code Ann. § 39-13-309(d)<sup>10</sup> (Trafficking for commercial sex act) reiterates prohibition of the defense in sex trafficking cases, stating, “It is not a defense to a violation of this section that . . . [t]he person charged was ignorant or mistaken as to the age of the minor.”

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

Tennessee’s child sex trafficking law expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) states,

A person commits the offense of trafficking a person for a commercial sex act who:

- (1) Knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person's provision of a commercial sex act;
- (2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act; or
- (3) Commits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.

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<sup>9</sup> The text of Tenn. Code Ann. § 39-11-502 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>10</sup> The text of Tenn. Code Ann. § 39-13-309 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 1378 and 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

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

Tennessee’s trafficking chapter expressly allows for business entity liability but does not provide for a business-specific penalty scheme. Pursuant to Tenn. Code Ann. § 39-13-311 (Violations by corporations),

A corporation may be prosecuted for a violation of §§ 39-13-308 [Trafficking for forced labor or services] and 39-13-309 [Trafficking for commercial sex act] for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent’s employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

Despite allowing for business entity liability, Tenn. Code Ann. § 39-13-311 does not establish penalties specific to those entities, meaning businesses are subject to penalties that are most pertinent to individuals.

- 1.6.1 Recommendation: Amend Tenn. Code Ann. § 39-13-311 (Violations by corporations) to provide for a business-specific penalty scheme.

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

A portion of the proceeds from a sex trafficking or CSEC offender’s forfeited assets will be directed into a victim services fund. Tenn. Code Ann. § 39-11-703(c)<sup>11</sup> (Criminal proceeds subject to forfeiture) provides for forfeiture in trafficking cases, stating,

- (1) The items enumerated in (c)(2) are subject to judicial forfeiture as provided in this part for a violation of the following offenses:
  - (A) For an offense committed on or after July 1, 2022:
    - .....
    - (ix) Aggravated human trafficking, as defined in § 39-13-316;
  - (B) For an offense committed on or after July 1, 2011:
    - (i) Involuntary labor servitude, as defined in § 39-13-307;
    - (ii) Trafficking for forced labor or services, as defined in § 39-13-308; and
    - (iii) Trafficking for commercial sex acts, as defined in § 39-13-309; and
    - .....
- (2) The items to which subdivision (c)(1) applies are:
  - (A) When used or intended to be used in connection with such violation:
    - (i) Conveyances, including aircraft, motor vehicles, and other vessels;
    - (ii) Books, records, telecommunication equipment, or computers;
    - (iii) Money or weapons; and
    - (iv) Real property;
  - (B) Everything of value furnished, or intended to be furnished, in exchange for an act in violation of such statutes, including all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate the violation;

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<sup>11</sup> The text of Tenn. Code Ann. § 39-11-703 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 1378 and 2682 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

- (C) Any property, real or personal, directly or indirectly acquired by or received in violation of such statutes, or as an inducement to violate such statutes, or any property traceable to the proceeds from the violation; and
- (D) Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of such violation.

Disposition of the proceeds from forfeitures made under Tenn. Code Ann. § 39-11-713(c) is governed by Tenn. Code Ann. § 39-13-312 (Manner in which proceeds from forfeitures are distributed and used), which states,

- (b) Notwithstanding § 39-11-713 [Disposition of forfeited property], the proceeds from all forfeitures made pursuant to § 39-11-703(c) shall first be applied to the reasonable expenses of the forfeiture proceeding, including the expenses of the district attorney general, and the costs of seizing and maintaining custody of the forfeited property . . . .
- (c) The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:
  - (1) Twenty percent (20%) to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of the human trafficking laws; and
  - (2) Twenty percent (20%) to the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.
- (d) The clerk of the court where the forfeiture occurs shall retain five percent (5%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c).
- (e) The clerk shall transmit the remainder of the proceeds to the state general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the anti-human trafficking fund. The fund shall be managed by the treasurer and moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.
- (f)
  - (1) The general assembly shall appropriate, through the general appropriations act, moneys from the anti-human trafficking fund to the department of finance and administration for the department to provide grants to agencies or groups that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code (26 U.S.C. § 501), and that have provided services to victims of human trafficking for at least six (6) months prior to the application for funds under this subsection (f). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it.
  - (2) The grants shall be for the purpose of:
    - (A) Providing direct services to victims of human trafficking;
    - (B) Conducting programs for the prevention of human trafficking; or
    - (C) Conducting education, training, or public outreach programs about human trafficking.

Resultantly, a percentage of a sex trafficking offender's forfeited assets will be directed to the anti-human trafficking fund, which shall be used, in part, to fund services for survivors.

Regarding forfeiture in CSEC cases, Tenn. Code Ann. § 39-13-530(a)(1) (Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors) provides for forfeiture of “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual offenses],” including violations of Tenn. Code Ann. § 39-13-514 (Patronizing prostitution), Tenn. Code Ann. § 39-13-515 (Promoting prostitution), Tenn. Code Ann. § 39-13-518 (Continuous sexual abuse of a child – Felony offense – Penalties –

Notice – Identifying multiple acts of sexual abuse of a child), and Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor), which is committed “against a person under eighteen (18) years of age and was committed on or after July 1, 2006.”

Disposition of property forfeited under Tenn. Code Ann. § 39-13-530(a)(1) is governed by Tenn. Code Ann. § 39-13-530(b), which states, “The proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.”

Pursuant to Tenn. Code Ann. § 39-13-530(c)–(i), proceeds deposited into the Child Abuse Fund shall be used for the following purposes:

- (c) The general assembly shall appropriate, through the general appropriations act, fifty percent (50%) of the moneys from the child abuse fund to the department of finance and administration for the child advocacy center fund to be used for child advocacy centers. The appropriations shall be specifically earmarked for the purposes set out in subsection (d).
- (d) All moneys appropriated from the child advocacy center fund shall be used exclusively by the department to provide grants to child advocacy centers . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel in child advocacy centers.
- (e) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the court appointed special advocate (CASA) fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (f).
- (f) All moneys appropriated from the CASA fund shall be used exclusively by the department to provide grants to CASA programs . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel and volunteers in CASA programs.
- (g) The general assembly shall appropriate, through the general appropriations act, twenty-five percent (25%) of the moneys from the child abuse fund to the department of finance and administration for the child abuse prevention fund. The appropriations shall be specifically earmarked for the purposes set out in subsection (h).
- (h) All moneys appropriated from the child abuse prevention fund shall be used exclusively by the department to provide a grant to Prevent Child Abuse Tennessee . . . . The grants shall be for the purpose of providing funding for the continuation of existing programs and services, the creation of new programs and services and the training of personnel to plan and carry out a comprehensive statewide child abuse prevention program that includes emphasis on primary and secondary prevention strategies and includes evaluation strategies to assess the effectiveness of prevention activities.
- (i) All recipients of funding from the child abuse fund and its subsidiary funds, the child advocacy centers fund, the CASA fund and the child abuse prevention fund, shall collaborate with each other and also with the department of children's services, the department of children's services' child abuse prevention advisory committee, the child sexual abuse task force established by § 37-1-603(b)(1), the commission on children and youth, the governor's office of children's care coordination, and other appropriate state and local service providers in the planning and implementation of multi-disciplinary, multi-agency approaches to address child abuse, including primary, secondary and tertiary child abuse prevention, investigation and intervention in child abuse cases, and needed treatment and timely permanency for victims of child abuse.

Further, Tenn. Code Ann. § 40-33-101(a) (Conveyances subject to forfeiture) provides for discretionary forfeiture of any “conveyance, including vehicles, aircraft or vessels . . . used in the commission of . . . [a]ny offense under title 39, chapter 13, part 5 [Sexual offenses].” Disposition of property forfeited under Tenn. Code Ann. § 40-33-101(a) is governed by Tenn. Code Ann. § 40-33-110 (Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance), which states that forfeited assets “shall inure to the benefit of the county in which the goods were seized . . . ; provided, that the forfeited conveyance or the funds derived from the confiscated goods shall go to the



law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes . . . . In all other cases, the proceeds shall be transmitted to the state treasurer and deposited in the state treasury.” Notably, however, Tenn. Code Ann. § 40-33-110 does not direct a percentage of these forfeited assets into a victim services fund.

Lastly, Tenn. Code Ann. § 39-11-703(b) provides,

(b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:

. . . .

(2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.

Disposition of property forfeited under Tenn. Code Ann. § 39-11-703(b) is governed by Tenn. Code Ann. § 39-11-713,<sup>12</sup> which provides first for the sale of the property and then use of sale proceeds to pay victim restitution and expenses incurred. Tenn. Code Ann. § 39-11-713(a). The court shall award the remainder of the funds to the state general fund if a state agency seized the property. Tenn. Code Ann. § 39-11-713(b)(1). If the state was not the seizing entity, the proceeds will be dispersed to the state treasurer or a local government. Tenn. Code Ann. § 39-11-713(b)(2), (b)(3). However, a percentage of these forfeited assets is not directed into a victim services fund.

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<sup>12</sup> The text of Tenn. Code Ann. § 39-11-713 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2682 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).



## ISSUE 2: Identification of & Response to Victims

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

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) expressly applies to buyers of commercial sex with a minor based on the term “purchases,”<sup>13</sup> meaning a buyer can be charged regardless of whether a trafficker is involved or identified. As such, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

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

Tennessee law requires the Department of Children’s Services to develop policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims. Specifically, Tenn. Code Ann. § 37-5-407(a)<sup>14</sup> (Policy to assist foreign national children suspected of being victims of human trafficking – Development of assessment tools) states, “The department shall develop a policy to assist foreign national children suspected of being victims of human trafficking.”

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

Tennessee law requires the Department of Children’s Services to conduct CSEC screening of system-involved children who are at risk of sex trafficking. Specifically, Tenn. Code Ann. § 37-5-407(b)<sup>15</sup> (Policy to assist foreign national children suspected of being victims of human trafficking – Development of assessment tools) states in part, “The department must develop and maintain assessment tools to screen system-involved children at risk of human 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.

Tennessee law requires juvenile justice agencies to conduct CSEC screening of children who are at risk of sex trafficking. Specifically, Tenn. Code Ann. § 37-5-407(b)<sup>16</sup> (Policy to assist foreign national children suspected of being victims of human trafficking – Development of assessment tools) states,

The [Department of Children’s Services] must develop and maintain assessment tools to screen system-involved children at risk of human trafficking for experiences of commercial sexual exploitation. The

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<sup>13</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Tenn. Code Ann. § 39-13-309.

<sup>14</sup> The text of Tenn. Code Ann. § 37-5-407 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>15</sup> See *supra* note 14.

<sup>16</sup> See *supra* note 14.

assessment tools must also be distributed to juvenile justice agencies for use in screening children identified to be at risk for being a victim of human trafficking.

**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.

Tennessee law prohibits the criminalization of minors for prostitution offenses and establishes a protocol requiring law enforcement to refer impacted children to a child-serving agency in lieu of arrest. Pursuant to Tenn. Code Ann. § 39-13-513 (Prostitution – Defenses),

(a) A person commits an offense under this section who engages in prostitution.

....

(d) Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person is immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline, notify the department of children's services, and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

Tenn. Code Ann. § 39-13-309(e)<sup>17</sup> (Trafficking for a commercial sex act) reinforces this protection, stating,

Notwithstanding this section to the contrary, if it is determined after a reasonable detention for investigative purposes that a victim of trafficking for a commercial sex act under this section is under eighteen (18) years of age, then that person is immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody as a suspected victim under this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline, notify the department of children's services, and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or guardian.

Notably, however, Tenn. Code Ann. § 39-13-513(d) and Tenn. Code Ann. § 39-13-309(e) use potentially conflicting language to describe taking a minor into custody. While Tenn. Code Ann. § 39-13-513(d) refers to taking a minor “into custody for a suspected violation,” Tenn. Code Ann. § 39-13-309(e) refers to taking a minor “into custody as a suspected victim.” Consequently, Tenn. Code Ann. § 39-13-309(e) contemplates a more protective encounter while Tenn. Code Ann. § 39-13-513(d) seemingly allows for a more punitive initial response.

**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.

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<sup>17</sup> See *supra* note 10.

Tennessee law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization. However, trafficking victimization may be considered as a mitigating factor during sentencing. Tenn. Code Ann. § 40-35-113(12)<sup>18</sup> (Mitigating factors) states,

If appropriate for the offense, mitigating factors may include, but are not limited to:

.....  
(12) The defendant acted under duress or under the domination of another person, even though the duress or the domination of another person is not sufficient to constitute a defense to the crime, including a misdemeanor or non-violent felony committed while the defendant was a victim of human trafficking or a commercial sex act;

Consequently, while the court has discretion to impose a lesser sentence on a child sex trafficking victim who “acted under duress or under the domination of another person,” criminal liability has not been removed.

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

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

Although Tennessee law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses committed as a result of their trafficking victimization, an affirmative defense may be available to trafficking charges. Pursuant to Tenn. Code Ann. § 39-13-309(f)<sup>19</sup> (Trafficking for a commercial sex act),

It is a defense to prosecution under this section, including as an accomplice or co-conspirator, that a minor charged with a violation of this section was so charged for conduct that occurred because the minor is also a victim of an act committed in violation of this section or § 39-13-307 [Involuntary labor servitude], or because the minor is also a victim as defined by the federal Trafficking Victims Protection Act (22 U.S.C. § 7102).

Because the protection outlined above is offense specific, however, victims charged with a commercial sexual exploitation offense would not likewise be protected.

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

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

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<sup>18</sup> The text of Tenn. Code Ann. § 40-35-113 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>19</sup> See *supra* note 10.

Tennessee law allows child sex trafficking victims to assert self-defense, providing an exception to requirements that the person not be engaged in conduct that would constitute a felony or Class A misdemeanor or other specified behavior at the time they used force against another. Pursuant to Tenn. Code Ann. § 39-11-611(b)–(d)(3) (Self-defense),

- (b)
  - (1) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.
  - (2) Notwithstanding § 39-17-1322, a person who is not engaged in conduct that would constitute a felony or Class A misdemeanor and is in a place where the person has a right to be has no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury, if:
    - (A) The person has a reasonable belief that there is an imminent danger of death, serious bodily injury, or grave sexual abuse;
    - (B) The danger creating the belief of imminent death, serious bodily injury, or grave sexual abuse is real, or honestly believed to be real at the time; and
    - (C) The belief of danger is founded upon reasonable grounds.
  - (3) For purposes of this subsection (b), a person is not engaged in conduct that would constitute a felony or Class A misdemeanor or in a place where the person does not have a right to be if the person is engaged in the activity or in the place due to the person's status as a victim of human trafficking. The person must prove the person's status as a victim of human trafficking by clear and convincing evidence. The person may provide clear and convincing evidence of the person's status as a victim of human trafficking through testimony.
- (c) Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest, when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, business, dwelling or vehicle, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.
- (d) The presumption established in subsection (c) shall not apply, if:
  - • • •
  - (3)
    - (A) Notwithstanding § 39-17-1322, the person using force is engaged in conduct that would constitute a felony or Class A misdemeanor or is using the dwelling, business, residence, or occupied vehicle to further an unlawful activity;
    - (B) For purposes of subdivision (d)(3)(A), a person is not engaged in conduct that would constitute a felony or Class A misdemeanor or using a dwelling, business, residence, or occupied vehicle to further unlawful activity if the person is engaged in the activity or using the dwelling, business, residence, or occupied vehicle due to the person's status as a victim of human trafficking. The person must prove the person's status as a victim of human trafficking by clear and convincing evidence. The person may provide clear and convincing evidence of the person's status as a victim of human trafficking through testimony; or

However, because Tenn. Code Ann. § 39-11-611 does not broadly provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their victimization, victims who commit an offense outside of these circumstances would not benefit from this protection.

- 2.8.1 Recommendation: Strengthen existing law to provide child sex trafficking victims with an affirmative defense to all violent felonies committed as a result of their trafficking victimization.

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

Tennessee law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Tennessee law extends juvenile court jurisdiction to all minors under 18 years of age and requires courts to consider the impact of trauma or past victimization in making discretionary transfer determinations, governing state statute does not establish a minimum age for jurisdictional purposes and requires direct file for minors previously transferred to and convicted or who pled guilty in criminal court.

	Minimum Age of Juvenile Court Jurisdiction	Maximum Age for Charging Youth in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
<b>Summary</b>	None “Child” is defined as “a person under eighteen (18) years of age . . . .”	17	Yes. Minors previously transferred to and adjudicated in criminal court in a prior matter.	Yes. Minors: (1) under 14 years of age charged with 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder or attempted murder; (2) 14-16 years of age charged with 1 <sup>st</sup> or 2 <sup>nd</sup> degree murder, rape or aggravated rape, rape of a child or aggravated rape of a child, aggravated robbery or burglary, kidnapping or aggravated kidnapping, terrorism, carjacking, or the attempt of any; (3) 16+ years of age charged with robbery or attempted robbery; or (4) 17 years of age.	Yes. The court shall consider “[w]hether the child has a history of trauma or abuse, including, but not limited to, the child being a victim of a human trafficking offense as defined in § 39-13-314 [Offense of human trafficking].”
<b>Relevant Statute(s)</b>	Tenn. Code Ann § 37-1-102(b)(5) (Chapter and part definitions)	Tenn. Code Ann § 37-1-102(b)(5) (Chapter and part definitions)	Tenn. Code Ann. § 37-1-134(c) (Transfer from juvenile court)	Tenn. Code Ann. § 37-1-134(a)(1)(A) (Transfer from juvenile court)	Tenn. Code Ann. § 37-1-134(b) <sup>20</sup> (Transfer from juvenile court)

<sup>20</sup> The text of Tenn. Code Ann. § 37-1-134 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

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; and (2) allow some juvenile cases to be subject to direct file.

- 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.

Tennessee’s child protection statutes define child abuse to include child sex trafficking and commercial sexual exploitation of children. Specifically, Tenn. Code Ann. § 37-1-102(b)(27)(C)<sup>21</sup> (Chapter and part definitions) defines “severe child abuse,” in part, as follows:

The commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act] . . . § 39-13-515 [Promoting prostitution] . . . or the knowing failure to protect the child from the commission of such an act toward the child;

Further, Tenn. Code Ann. § 37-1-602(a)(3)(C)(vi), (vii) (Part definitions – Harm to child’s health or welfare) defines “child sexual abuse,” in part, as follows:

- (vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
  - (a) Solicit for or engage in prostitution; or
  - (b) Engage in an act prohibited by § 39-17-1003; and
- (vii) The commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act] . . . .

**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 Tennessee allows for a child welfare response to non-familial child sex trafficking cases regardless of caregiver fault based on the expanded definition of “caregiver,” state law does not provide for a specialized investigation in those cases.

While the definition of “dependent and neglected child” under Tenn. Code Ann. § 37-1-102(b)(13) (Chapter and part definitions) is limited to the acts of “a parent, relative, guardian or caretaker,”<sup>22</sup> the definition of caretaker expressly includes traffickers. Pursuant to Tenn. Code Ann. § 37-1-102(b)(4),

“Caregiver” may also include a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor or trafficking a minor for a commercial sex act, including, but not limited to, as a trafficker. For purposes of this chapter, “caregiver” and “caretaker” shall have the same meaning . . . .

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<sup>21</sup> The text of Tenn. Code Ann. § 37-1-302 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2070 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>22</sup> Pursuant to Tenn. Code Ann. § 37-1-102(b)(1), “‘Abuse’ exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker.”

Resultantly, child sex trafficking victims may access child welfare services regardless of their relationship to the perpetrator of the harm. As noted above, however, a specialized investigation is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

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





## ISSUE 3: Continuum of Care

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**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.

Tennessee 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.

Tennessee law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases. Pursuant to Tenn. Code Ann. § 37-1-607<sup>23</sup> (Child protective teams – Investigations – Services),

- (a)
  - (1)
    - (A) The [Department of Children’s Services] shall coordinate the services of child protective teams. At least one (1) child protective team shall be organized in each county . . . .
    - . . . .
    - (2) Each team must be composed of one (1) person from the department, one (1) representative from the office of the district attorney general, one (1) juvenile court officer or investigator from a court of competent jurisdiction, and one (1) properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or where the alleged offense occurred. The team may also include a representative from one (1) of the mental health disciplines, a representative trained in child abuse from one (1) of the medical disciplines, and, for cases involving an allegation that a child is a victim of a human trafficking offense, a representative from one (1) non-governmental agency specialized in combatting the commercial sexual exploitation of minors. It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all four (4) required disciplines are represented. An initial investigation may, however, be commenced if at least two (2) of the required team members are present at the initial investigation. In those geographical areas in which a child advocacy center meets the requirements of § 9-4-213(a) or (b) [State appropriations to child advocacy centers], child advocacy center directors, or their designees, must be members of the teams under this part and part 4 of this chapter for the purposes of provision of services and functions established by § 9-4-213 or delegated pursuant to that section . . . .
    - (3) It is the intent of the general assembly that the child protective investigations be conducted by the team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be appropriately conducted and that further investigations, as appropriate, be properly conducted and coordinated.
- (b)

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<sup>23</sup> The text of Tenn. Code Ann. § 37-1-607 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

(1) The department shall convene the appropriate team when a report of child sexual abuse has been received . . . . The role of the teams shall be to conduct child protective investigations of reported child sexual abuse and to support and provide services to sexually abused children upon referral as deemed by the teams to be necessary and appropriate for such children.

(2)

(A) For each child sexual abuse report it receives, the department shall immediately notify the child protection investigation team, which shall commence an on-site child protective investigation. The team shall:

....

(v) Determine the specialized, non-punitive services necessary to support the child in cases where there is an allegation that the child may be a victim of a human trafficking offense.

....

....

(c)

(1) The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team shall be capable of providing, to the extent funds are specifically appropriated therefor, or by referral shall be capable of obtaining for the protection of the child, include, but are not limited to, the following:

(A) Telephone consultation services in emergencies and in other situations;

(B) Medical evaluation related to the sexual abuse;

(C) Such psychological and psychiatric diagnosis and evaluation services for the child, siblings, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child sexual abuse case, as a child protection team may determine to be needed;

(D) Short-term psychological treatment. It is the intent of the general assembly that the department provide or refer a child whose case has been validated by the department, and the child's family, for short-term psychological treatment before the department may close its case. Such short-term treatment shall be limited to no more than six (6) months' duration after treatment is initiated, except that the commissioner may authorize such treatment for individual children beyond this limitation if the commissioner deems it appropriate;

(E) Expert medical, psychological and related professional testimony in court cases;

(F) Case staffings to develop, implement and monitor treatment plans for a child whose case has been validated by the department. In all such case staffings, consultations, or staff activities involving a child, at least one (1) member of the team involved in the initial investigation shall continue to monitor the progress and status of the child whenever possible and within the same geographic area; and

(G) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(2) In all instances where a child protection team is providing or has obtained by referral certain services to sexually abused children, other offices and units of the department shall avoid duplicating the provision of those services.

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

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

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

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

Tennessee 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.

Tennessee law extends foster care services to youth under 24 years of age. This meets the standard set by federal law, which provides that these services should be extended to youth under 23 years of age.<sup>24</sup>

Pursuant to Tenn. Code Ann. § 37-1-102(G) (Chapter and part definitions) and Tenn. Code Ann. § 37-2-417 (Tennessee’s transitioning youth empowerment act of 2010), “A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417,” which provides,

(b)The department of children's services is authorized to develop a program to provide services to youth who are transitioning to adulthood from state custody. Services may be provided on a voluntary basis to any person who is at least eighteen (18) years of age but less than twenty-one (21) years of age, who was in the custody of the department at the time of the person's eighteenth birthday . . . .

. . . .

(c) Services may also be made available to any person who meets the requirements of subsection (b) but refused such services at the time of the person's eighteenth birthday if at any time the person seeks to regain services prior to the person's twenty-first birthday.

Tenn. Code Ann. § 37-2-603 (Establishment of resource centers to provide or facilitate assistance) extends foster care services to persons from 16 to 24 years of age, stating,

(a) The private, nonprofit community is urged to establish a network to provide information, assistance, services and supports to persons from sixteen (16) to twenty-four (24) years of age who were in foster care on the person's eighteenth birthday and persons from sixteen (16) to twenty-four (24) years of age who have been in foster care at any time after the person's fourteenth birthday.

(b) The resource centers shall provide or facilitate the assistance necessary to:

- (1) Deal with the challenges and barriers associated with the transition into adulthood and early adult years;
- (2) Support post-secondary education, vocational training and job skills development for such person;
- (3) Find and retain employment, housing, transportation, parenting and family support, health care and mental health care; and
- (4) Navigate systems and procedures that impact the person's education, employment, health and mental welfare and basic needs.

(c) These services shall be available at any time until the person reaches twenty-four (24) years of age regardless of whether the youth elects to remain in a voluntary extension of foster care arrangement with the department or the youth chooses to terminate any relationship with the state.

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<sup>24</sup> For more information, see Shared Hope Int’l, *Issue Brief 3.5: Continuum of Care*, <https://reportcards.sharedhope.org/wp-content/uploads/2022/10/2022-Issue-Briefs-3.5.pdf> (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

Lastly, Tenn. Code Ann. § 37-10-502<sup>25</sup> (Recommendations on resources and services for persons 18 to 24 years of age who have been victims of child sex trafficking) requires child welfare to provide recommendations specific to serving youth survivors of child sex trafficking victims, stating,

- (a) The department of children’s services and the department of human services shall collaborate to provide recommendations to the general assembly on resources and services specific to persons who are eighteen (18) to twenty-four (24) years of age and who have been victims of child sex trafficking. The recommendations must identify existing services and supports, and must identify and address potential benefit gaps to persons who are victims of child sex trafficking.
- (b) The departments may consult with private and nonprofit community partners that have knowledge of the specified population, and the partners may assist in the recommendations.
- (c) Recommendations must be submitted to the judiciary committee of the senate and civil justice committee of the house of representatives by March 1, 2023.

**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 Tennessee state legislature made several appropriations during the 2021-2022 session to support the development and provision of specialized, community-based services for child and youth survivors of sex trafficking.

2022 Legislative Session				
Bill	Recipient	Amount	Intended Purpose	Term
SB 2897	End Slavery Tennessee	\$1,000,000	<i>Unstated</i>	FY 2022-2023 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 2897	Her Song/Tim Tebow Foundation	\$1,200,000	<i>Unstated</i>	FY 2022-2023 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 2897	Thistle Farms	\$250,000	<i>Unstated</i>	FY 2022-2023 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 2897	Community Coalition Against Human	\$500,000	<i>Unstated</i>	FY 2022-2023 (Non-recurring)

<sup>25</sup> The text of Tenn. Code Ann. § 37-10-502 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2739 during the 2021-2022 Regular Session of the Tennessee state legislature (effective May 3, 2022).

	Trafficking – Grow Free Tennessee Survivor Care Center			July 1 <sup>st</sup> -June 30 <sup>th</sup>
2021-2022 Regular Session				
SB 2897	Nashville Anti-Human Trafficking Coalition	\$1,200,000	<i>Unstated</i>	FY 2022-2023 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>

2021 Legislative Session				
Bill	Recipient	Amount	Intended Purpose	Term
SB 912	End Slavery Tennessee	\$3,500,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 912	Her Song/Tim Tebow Foundation	\$1,200,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 912	Tennessee Anti-Slavery Alliance	\$600,000	To provide grants to two single point of contact agencies in Tennessee recognized by the Tennessee Bureau of Investigation and the Department of Children's Services to facilitate the provision of comprehensive wraparound services to victims of human trafficking recovered in Tennessee. The services funded in this item shall include, but not be limited to, safe housing, medical care, mental health and substance abuse care, transportation, job training, and other basic human needs. The grants shall be distributed in equal amounts to the following agencies: (a) Grow Free Tennessee in Knoxville, and (b) Restore Corps in Memphis.	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>
SB 912	Thistle Farms	\$100,000	<i>Unstated</i>	FY 2021-2022 (Non-recurring)
2021-2022 Regular Session				July 1 <sup>st</sup> -June 30 <sup>th</sup>

## EXTRA CREDIT

18+

The Tennessee Legislature appropriated funds for FY 2021 and 2022 to support the development and provision of specialized, community-based services for child and youth survivors of sex trafficking.

CLT

The Tennessee Legislature appropriated funds for FY 2021 and 2022 to support the development and provision of specialized, community-based services for survivors of sex and labor 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.

Tennessee law allows trafficking victims to seek ex parte civil orders of protection against their exploiters. Pursuant to Tenn. Code Ann. § 36-3-602(a)<sup>26</sup> (Petition – Venue), “Any . . . sexual exploitation of a minor . . . or a human trafficking offense victim who has been subjected to, threatened with, or placed in fear of, . . . sexual exploitation of a minor . . . or a human trafficking offense, may seek relief under this part by filing a sworn petition alleging . . . sexual exploitation of a minor . . . or a human trafficking offense.” Further, Tenn. Code Ann. § 36-3-605(a), (b)<sup>27</sup> (Ex parte protection order – Hearing – Extension) states,

(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection.<sup>28</sup> An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing must be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of . . . sexual exploitation of a minor . . . or a human trafficking offense by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection must be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, then the ex parte order must continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609 [Effectiveness of order of protection – Service]. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of . . . sexual exploitation of a minor . . . or a human trafficking offense by a preponderance of the evidence, then the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

#### EXTRA CREDIT



Tenn. Code Ann. § 36-3-605 allows child labor trafficking victims to seek ex parte civil orders of protection against their exploiters since the protection applies broadly to victims of “a human trafficking offense.”

<sup>26</sup> The text of Tenn. Code Ann. § 36-3-602 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>27</sup> The text of Tenn. Code Ann. § 36-3-605 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>28</sup> For more information on the scope of the ex parte civil order of protection, *see* Tenn. Code Ann. § 36-3-606 (Scope of protection order).

**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 Tennessee’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, Tenn. Code Ann. § 29-13-102(13) (Definitions) defines a victim” as “a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in § 29-13-104.” Tenn. Code Ann. § 29-13-104(1) (Offenses to which compensation applies) includes “[a]n act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime under state or federal law,” with the exception of certain vehicular 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 Tenn. Code Ann. § 29-13-108(a) (Claims for compensation – Procedure),

A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime<sup>29</sup> upon which the claim is based . . . ; provided, that upon good cause shown,<sup>30</sup> the time period for filing such claim may be extended either before or after the expiration of the filing period. No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, or a member of the victim’s family, to the proper authorities; and in no case may an award be made where the law enforcement records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless, for good cause shown,<sup>31</sup> it is found that the delay was justified . . . .

Further, Tenn. Code Ann. § 29-13-103(a)(4) (Burden of proof – Documentation) requires the victim to prove they “fully cooperated with the police and the district attorney general in the investigation and prosecution of the offender.”

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

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<sup>29</sup> Tenn. Code Ann. § 29-13-108(a) does provide an exception to this filing deadline for victims of certain sexual offenses; however, victims of child sex trafficking and CSEC are not included.

<sup>30</sup> Tenn. Code Ann. § 29-13-108 does not explain what constitutes “good cause” for purposes of extending filing deadlines.

<sup>31</sup> Tenn. Code Ann. § 29-13-108(a) clarifies what constitutes “good cause” for purposes of the reporting requirement, stating,

Failure of the victim to report a crime because:

- (1) The victim is physically unable;
  - (2) The victim is a victim of sexual assault; or
  - (3) The victim is a victim of domestic abuse;
- may all constitute good cause.



**Policy Goal 4.3**

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

Although Tennessee law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Specifically, Tenn. Code Ann. § 40-32-105<sup>32</sup> (Expungement of person’s public records involving offenses related to status as victim of human trafficking) allows trafficking victims to petition for expungement, and expungement results in vacatur. Pursuant to Tenn. Code Ann. § 40-32-105(a)–(i)(4),

- (a) Notwithstanding § 40-32-101 [Destruction or release of records], a person may file a petition for expunction of that person's public records involving offenses related to the person's status as a victim of human trafficking.
- (b) In order to be eligible for expunction pursuant to this section, the petitioner must meet the following requirements:
  - (1) At the time of the filing of the petition for expunction at least one (1) year has elapsed since the completion of the sentence imposed for the petitioner's most recent criminal offense;
  - (2) The petitioner has fulfilled the following requirements of the sentence imposed by any court in which the individual was convicted of an offense:
    - (A) Completion of any term of imprisonment or probation;
    - (B) Meeting all conditions of supervised or unsupervised release; and
    - (C) If so required by the conditions of any of the sentences imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year;
  - (3) The petitioner has not been convicted of any criminal offense during the one (1) year prior to filing the petition and is not subject to any pending criminal charges;
  - ....
  - (5) The petitioner has not had public records previously expunged pursuant to this section;
  - (6) The convictions to be expunged:
    - (A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;
    - (B) Did not involve the use or possession of a deadly weapon; and
    - (C) Are individually eligible for expunction under § 40-32-101(g) [Destruction or release of records]; and
  - (7) Each of the convictions to be expunged resulted from the petitioner's status as a victim of human trafficking, under § 39-13-314 [Offense of human trafficking]. The petitioner may provide evidence of this requirement by testimony or affidavit. This subdivision (b)(7) does not require a conviction for an offense of which the petitioner was the victim. Any offense to be expunged must have occurred on or after the date on which the petitioner became a victim of human trafficking, as determined by the court.
  - ....
- (e) If the court determines that the petitioner meets the requirements of subsection (b) and that the expunction is in the best interests of justice and public safety, the court shall order the person's records involving convictions resulting from the person's status as a victim of human trafficking expunged.
- ....
- (i)

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<sup>32</sup> The text of Tenn. Code Ann. § 40-32-105 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 2303 and 2400 during the 2021–2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

- (1) Notwithstanding any other law to the contrary, an order of expunction granted pursuant to this section entitles the petitioner to have all public records of the expunged convictions destroyed in the manner set forth in this section.
- (2) An expunction granted pursuant to this section has the legal effect of restoring the petitioner, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial, and conviction for the expunged offenses. Once the expunction order is granted, no direct or indirect collateral consequences that are generally or specifically attendant to the petitioner's conviction by any law shall be imposed or continued.
- .....
- (4) As used in this section, expunction means, in contemplation of law, the conviction for the expunged offenses never occurred and the person shall not suffer any adverse effects or direct disabilities, including the payment of fines and fees owed to the court, by virtue of the criminal offenses that were expunged.

However, Tenn. Code Ann. § 40-32-105 applies to specifically to “convictions,” and Tenn. Code Ann. § 37-1-133 (Order of adjudication – Noncriminal) states, “An order of disposition or other adjudication in a proceeding under this part [Juvenile Courts and Proceedings – General Provisions] is not a conviction of crime . . . .” Accordingly, relief under Tenn. Code Ann. § 40-32-105 would be unavailable for delinquency adjudications.

Further, Tenn. Code Ann. § 40-32-105(b)(6) limits the types of crimes that are eligible for vacatur, which fails to recognize the array and type 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.

Tennessee law requires offenders convicted of child sex trafficking and certain CSEC offenses to pay restitution. Pursuant to Tenn. Code Ann. § 39-11-118(b) (Restitution to victims of crime),

In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection (b) that the defendant be sentenced by the court to pay restitution to the victim or victims of §§ 39-13-309 [Trafficking for commercial sex], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Especially aggravated sexual exploitation], 39-13-528(a) [Solicitation of person under 18 years of age], and 39-13-529(a) [Solicitation of minor to observe sexual conduct] in accordance with §§ 40-35-104(c)(2) [Alternative sentences] and 40-35-304 [Restitution; amount; definitions; waiver; procedure].

Further, Tenn. Code Ann. § 39-13-314(a), (c)<sup>33</sup> (Offense of human trafficking) enumerates various costs and losses that can be covered by a restitution order if the case involved a “human trafficking offense.” It states,

- (a) As used in this part, unless the context otherwise indicates:
  - (1) “Human trafficking offense” means the commission of any act that constitutes the criminal offense of:

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<sup>33</sup> The text of Tenn. Code Ann. § 39-13-314 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1378 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

- (A) Involuntary labor servitude, under § 39-13-307;
  - (B) Trafficking persons for forced labor or services, under § 39-13-308;
  - (C) Trafficking for commercial sex act, under § 39-13-309; or
  - (D) Patronizing prostitution, under § 39-13-514(b)(3)(A); or
  - (E) Promoting prostitution, under § 39-13-515(c); and
- (2) “Trafficked person” means a victim of a human trafficking offense.

.....  
(c) Restitution under this section shall include items covered by the criminal injuries compensation fund under § 40-24-107 and any of the following, if not already covered by the court's restitution order:

- (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
- (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;
- (3) Attorney's fees and other court-related costs such as victim advocate fees;
- (4) The greater of:
  - (A) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) (compiled in 29 U.S.C. § 201 et seq.), or state equivalent; or
  - (B) The gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation;
- (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
- (6) Compensation for emotional distress, pain, and suffering;
- (7)
  - (A) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items;
  - (B) Expenses incurred pursuant to subdivision (c)(7)(A) shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- (8) Repatriation of the victim to the victim's home country, if applicable; and
- (9) Any and all other losses suffered by the victim as a result of human trafficking offenses.

Restitution is available more generally to victims of other crimes pursuant to Tenn. Code Ann. § 39-11-118(a); however, restitution under Tenn. Code Ann. § 39-11-118(a) is discretionary. It states,

In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with §§ 40-35-104(c)(2) [Sentencing alternatives] and 40-35-304 [Restitution as condition for probation – Petition to modify – Civil judgment for non-payment – Procedure].

## EXTRA CREDIT



Tennessee law expressly mandates restitution for victims of child labor trafficking under Tenn. Code Ann. § 39-13-314(a), (c).

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

Tennessee law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Tenn. Code Ann. § 39-13-314(a), (b)<sup>34</sup> (Offense of human trafficking) states,

- (a) As used in this part, unless the context otherwise indicates:
  - (1) “Human trafficking offense” means the commission of any act that constitutes the criminal offense of:
    - (A) Involuntary labor servitude, under § 39-13-307;
    - (B) Trafficking persons for forced labor or services, under § 39-13-308;
    - (C) Trafficking for commercial sex act, under § 39-13-309; or
    - (D) Patronizing prostitution, under § 39-13-514(b)(3)(A); or
    - (E) Promoting prostitution, under § 39-13-515(c); and
  - (2) “Trafficked person” means a victim of a human trafficking offense.
- (b)
  - (1) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.
  - (2) A prevailing plaintiff is entitled to an award of attorney's fees and costs.

**EXTRA CREDIT**



Tennessee law provides sex trafficked youth with a trafficking-specific civil remedy under Tenn. Code Ann. § 39-13-314(b) based on the definition of “human trafficking offense,” which includes sex trafficking regardless of the victim’s age.



Tennessee law provides child labor trafficking victims with a trafficking-specific civil remedy under Tenn. Code Ann. § 39-13-314(b) based on the definition of “human trafficking offense,” which includes 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.

Child sex trafficking prosecutions may commence at any time; however, prosecutions for Tennessee’s CSEC offenses may be subject to a statute of limitation as are civil actions. Pursuant to Tenn. Code Ann. § 40-2-101(r) (Felonies), “Notwithstanding subsections (k) and (q), a person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2021, that constitutes the offense of trafficking for commercial

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<sup>34</sup> See *supra* note 33.

sex act under § 39-13-309, at any time after the offense is committed.” Further, Tenn. Code Ann. § 40-2-101(k), (q) lengthens, and in some cases eliminates, the criminal statutes of limitation for Tennessee’s CSEC offenses, stating,

(k)

(1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 [Trafficking for commercial sex act] . . . no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 [Patronizing prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(3)

(A) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 [Promoting prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(B) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

.....

(q)

(1) Notwithstanding subsections (b), (g), (h), (i), (j), (k), or (m), prosecution for the following offenses, when committed against a minor under eighteen (18) years of age shall commence as provided by this subsection (q):

(A) Trafficking for a commercial sex act, as prohibited by § 39-13-309;

.....

(J) Patronizing prostitution, as prohibited by § 39-13-514;

(K) Promotion of prostitution, as prohibited by § 39-13-515;

.....

(O) Solicitation of a minor, as prohibited by § 39-13-528, when the offense is classified as a felony offense;

.....

(2) A person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:

(A) The victim was under thirteen (13) years of age at the time of the offense; or

(B)

(i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and

(ii) The victim reported the offense to another person prior to the victim attaining twenty-three (23) years of age.

(3)

(A) Except as provided in subdivision (q)(3)(B), a person may be prosecuted, tried, and punished for an offense listed in subdivision (q)(1) at any time after the commission of an offense if:

(i) The victim was at least thirteen (13) years of age but no more than seventeen (17) years of age at the time of the offense; and

(ii) The victim did not meet the reporting requirements of subdivision (q)(2)(B)(ii).

(B) In order to commence prosecution for an offense listed in subdivision (q)(1) under the circumstances described in subdivision (q)(3)(A), at a date that is more than twenty-five (25) years from the date the victim becomes eighteen (18) years of age, the prosecution is required to offer admissible and credible evidence corroborating the allegations or similar acts by the defendant.

(4) This subsection (q) applies to offenses:

(A) Committed on or after July 1, 2019; or

(B) Committed prior to July 1, 2019, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2019.

In contrast, Tenn. Code Ann. § 40-2-101(b) establishes the following general statutes of limitation for felony prosecutions:

Prosecution for a felony offense shall begin within:

- (1) Fifteen (15) years for a Class A felony;
- (2) Eight (8) years for a Class B felony;
- (3) Four (4) years for a Class C or Class D felony; and
- (4) Two (2) years for a Class E felony.

Regarding civil actions, Tenn. Code Ann. § 39-13-314 (Offense of human trafficking) does not specify a statute of limitation for filing a claim. Generally, personal tort actions must be commenced within the time periods prescribed by Tenn. Code Ann. § 28-3-104(a)(1)(A), (2) (Personal tort actions; actions against certain professionals), which states,

(1) Except as provided in subdivision (a)(2), the following actions shall be commenced within one (1) year after the cause of action accrued:

(A) Actions for . . . injuries to the person . . . ;

. . . .

(2) A cause of action listed in subdivision (a)(1) shall be commenced within two (2) years after the cause of action accrued, if:

(A) Criminal charges are brought against any person alleged to have caused or contributed to the injury;

(B) The conduct, transaction, or occurrence that gives rise to the cause of action for civil damages is the subject of a criminal prosecution commenced within one (1) year by:

- (i) A law enforcement officer;
- (ii) A district attorney general; or
- (iii) A grand jury; and

(C) The cause of action is brought by the person injured by the criminal conduct against the party prosecuted for such conduct.

4.6.1 Recommendation: Strengthen existing law to allow prosecutions for 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.

Tennessee law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

- 5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

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

Tennessee law allows child sex trafficking victims to testify by an alternative method. Specifically, Tenn. Code Ann. § 24-7-120<sup>35</sup> (Child's testimony – Closed circuit television) states,

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was under eighteen (18) years of age at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as "CCTV." Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

- (1) The particular child involved would be traumatized;
- (2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and
- (3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

....  
(d) This section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was under eighteen (18) years of age at the time the offense which gave rise to the criminal case was committed; provided, there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which this section applies are:

- (1) Aggravated sexual battery, as defined in § 39-13-504;
- (2) Rape of a child, as defined in § 39-13-522;
- (3) Incest, as defined in § 39-15-302;
- (4) Aggravated child abuse, as defined in § 39-15-402;
- (5) Kidnapping, as defined in § 39-13-303;
- (6) Aggravated kidnapping, as defined in § 39-13-304;
- (7) Especially aggravated kidnapping, as defined in § 39-13-305;
- (8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this subsection (e);
- (9) Trafficking for commercial sex act as defined in § 39-13-309; and
- (10) Patronizing prostitution as defined in § 39-13-514.

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<sup>35</sup> The text of Tenn. Code Ann. § 24-7-120 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

**Policy Goal 5.3**

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

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims’ identifying information is protected from disclosure in court records</b>
<b>Summary</b>	Any victim of crime may have a crime victim advocate from a crime assistance program or a victim-witness coordinator present at any defense interviews with the victim. The role of the crime victim advocate or victim-witness coordinator is to provide emotional support to the victim. The position of victim-witness coordinator is established in each judicial district.	Not statutorily required.	State law provides child crime victims, including child sex trafficking, protections from the inclusion of certain identifying information in public court records, including: (1) home, work and email addresses; (2) phone numbers; (3) social security number; (4) photos or videos of the child; and (5) the child’s familial relationship, if any, to the defendant.
<b>Relevant Statute(s)</b>	Tenn. Code Ann. § 40-38-115 (Crime victim advocate); Tenn. Code Ann. § 8-7-206 (Victim-witness coordinator)	None.	Tenn. Code Ann. § 10-7-504(t)(1) (Confidential records – Exceptions)

- 5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims are provided courtroom supports when they are testifying against their exploiter.

**Policy Goal 5.4**

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

Tennessee 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.





## ISSUE 6: Prevention & Training

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

Tennessee law mandates statewide, trafficking-specific training for child welfare agencies. Pursuant to Tenn. Code Ann. § 71-1-127<sup>36</sup> (Annual training about human trafficking),

The [Department of Human Services] shall work with a nonprofit charitable organization that focuses on human trafficking advocacy and education to provide mandatory annual training to appropriate department personnel in the identification, intervention, prevention, and treatment of human trafficking victims, and in the proper action that should be taken when dealing with a known or suspected victim of human trafficking. The training must also inform department personnel of the resources and agencies available to provide help and services for victims of human trafficking. The training selected by the department must be submitted to, and approved by, the Tennessee bureau of investigation's human trafficking advisory council.

Further, Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking) provides,

- (e)
- (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
- .....
- (B) Department of children's services;
- .....
- (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

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<sup>36</sup> The text of Tenn. Code Ann. § 71-1-127 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2113 during the 2021-2022 Regular Session of the Tennessee state legislature (effective January 1, 2023).

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

Tennessee law requires statewide, trafficking-specific training for juvenile justice agencies.<sup>37</sup> Pursuant to Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking),

- (e)
  - (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
    - (A) Council of juvenile and family court judges, including juvenile court administrators, juvenile court youth services officers, and juvenile court probation officers;
    - (B) Department of children’s services;
    - ....
  - (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

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

Tennessee law mandates a one-time training on human trafficking for law enforcement officers;<sup>38</sup> however, officers are not required to receive ongoing in-service training on human trafficking. Pursuant to Tenn. Code Ann. § 38-6-114(a)–(c) (Course of instruction concerning human trafficking),

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<sup>37</sup> Further, incarcerated youth trafficking victims may benefit from training requirements when detained by the Department of Corrections. Specifically, Tenn. Code Ann. § 41-1-128 (Annual training about human trafficking) requires correction personnel to receive trafficking-specific training through the department, stating,

The department of correction shall work with a nonprofit charitable organization that focuses on human trafficking advocacy and education to provide mandatory annual training to appropriate correction personnel in the identification, intervention, prevention, and treatment of human trafficking victims, and in the proper action that should be taken when dealing with a known or suspected victim of human trafficking. The training must inform correction personnel of the signs and signals of human trafficking in correctional facilities as well resources and agencies available to provide help and services for victims of human trafficking. The training selected by the department must be submitted to, and approved by, the Tennessee bureau of investigation's human trafficking advisory council.

The text of Tenn. Code Ann. § 41-1-128 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2113 during the 2021-2022 Regular Session of the Tennessee state legislature (effective January 1, 2023).

<sup>38</sup> Funding for trafficking-specific training is provided for under Tenn. Code Ann. § 39-13-312(c)(1) (Manner in which proceeds from forfeitures are distributed and used), which states,

- (a) The Tennessee bureau of investigation shall, by January 1, 2016:
  - (1) Implement a course or courses of instruction, composed of live instruction, telecommunication, video or other medium, or any combination of methods, for the training of law enforcement officers and other government officials who are directly involved with human trafficking, including the investigation of and the intake of human trafficking complaints; and
  - (2) Develop recommended best practice uniform protocols and procedures for law enforcement response to human trafficking.
- (b)
  - (1) The course or courses of instruction and the guidelines shall emphasize:
    - (A) The dynamics and manifestations of human trafficking;
    - (B) Identifying and communicating with victims;
    - (C) Providing documentation that satisfies the peace officers standards and training (POST) commission requirements;
    - (D) Collaboration with federal law enforcement officials;
    - (E) Appropriate investigative techniques for the particular victim or victim type;
    - (F) The availability of civil and immigration remedies and community resources; and
    - (G) Protection of the victim.
  - (2) Where appropriate, the trainers shall include presentations by human trafficking experts with experience in the delivery of direct services to victims of human trafficking.
  - (3) Completion of the course may be satisfied by telecommunication, video recording, or other instruction presentation method where an instructor on site is not required.
- (c)
  - (1) A law enforcement officer who is assigned field or investigative duties shall complete a minimum of two (2) hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subsection (b).
  - (2) An officer must complete the training hours required by subdivision (c)(1) by July 1, 2017, or within six (6) months from the officer's date of employment as a full-time law enforcement officer, whichever is later.

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.

Tennessee law mandates trafficking-specific training for prosecutors.<sup>39</sup> Pursuant to Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking),

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The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

- (1) Twenty percent (20%) to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of the human trafficking laws . . . .

<sup>39</sup> Funding for trafficking-specific training is provided for under Tenn. Code Ann. § 39-13-312(c)(2) (Manner in which proceeds from forfeitures are distributed and used), which states,

- (e)
- (1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:
    - ....
    - (I) District attorneys general conference;
    - ....
    - (K) Office of the attorney general and reporter;
    - ....
  - (2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.
- (f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

Additional training may be available under Tenn. Code Ann. § 37-1-407 (Guidelines for child safety training programs), which states,

By January 1, 2019, the [Department of Children’s Services] shall develop instructional guidelines for child safety training programs for members of professions that frequently deal with children who may be at risk of abuse, which programs include the common signs of child abuse, human trafficking when a child is the victim, and child sexual abuse; how to identify children at risk of abuse, human trafficking, or sexual abuse; and the reporting requirements of this part. The department shall work with each licensing board to ensure that any child safety training program created by a licensing board fully and accurately reflects the best practices for identifying and reporting child abuse, human trafficking when a child is the victim, and child sexual abuse as appropriate for each profession.

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

Tennessee law mandates trafficking-specific training for school personnel. Pursuant to Tenn. Code Ann. § 37-1-408<sup>40</sup> (Development of guidelines for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking of children – Annual child abuse training program for teachers),

- (a) By January 1, 2019, the department of children’s services shall develop guidelines on the best practices for identifying and reporting signs of child abuse, child sexual abuse, and human trafficking in which the victim is a child. The department of education shall use the guidelines to identify child abuse training programs appropriate for teachers. The programs identified by the department of education must train teachers on the common signs of child abuse, child sexual abuse, and human trafficking in which the victim

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The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

- ....
- (2) Twenty percent (20%) to the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.

<sup>40</sup> The text of Tenn. Code Ann. § 37-1-408 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2021 during the 2021-2022 Regular Session of the Tennessee state legislature (effective April 20, 2022).

is a child; how to identify children at risk of abuse, sexual abuse, or human trafficking; maintenance of professional and appropriate relationships with students; and the requirements for reporting suspected child abuse and sexual misconduct.

(b) Each LEA<sup>41</sup> and each public charter school shall ensure that employees working directly with students of the respective LEA or public charter school complete a child abuse training program identified by the department of education pursuant to subsection (a), or a training program that meets the guidelines established by the department of children's services pursuant to subsection (a), as part of the employee's annual in-service training. Each LEA and each public charter school shall annually report its compliance with this section to the department of education.

Tenn. Code Ann. § 49-6-3004(c)(1)(B)<sup>42</sup> (School term) further provides,

Each local board of education shall require that each employee of the LEA who works directly with students in the LEA receive, once every three (3) years, in-service training on the detection, intervention, prevention, and treatment of human trafficking in which the victim is a child, which must be accomplished through the viewing of a video recording approved by the LEA . . . .

Lastly, individuals employed by the Department of Education may receive training under Tenn. Code Ann. § 38-6-114(e), (f) (Course of instruction concerning human trafficking), which states,

(e)

(1) In addition to the course of instruction provided to law enforcement officers pursuant to subsection (a), the Tennessee bureau of investigation shall develop and deliver a course of instruction designed for various agencies and departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services. Departments, agencies, or associations included in this course of instruction are:

. . . .

(C) Department of education;

. . . .

(2) In developing the course of instruction pursuant to this subsection (e), the Tennessee bureau of investigation shall consult with the human trafficking task force or individual members of the task force.

(f) Furnishing personnel and appropriations for the training course is the sole responsibility of the Tennessee bureau of investigation. Departments, agencies, or associations included under subsection (e) shall be provided the training at no cost to the department, agency, or association.

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

Tennessee law mandates child sex trafficking prevention education in schools. Pursuant to Tenn. Code Ann. § 49-6-1304(a)(13)(B) (Family life instruction),

A family life curriculum shall, to the extent that the topic and the manner of communication is age-appropriate:<sup>43</sup>

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<sup>41</sup> Tenn. Code Ann. § 49-1-103(2) (Definitions) defines LEA (or “local education agency”) as “any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.”

<sup>42</sup> The text of Tenn. Code Ann. § 49-6-3004 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1670 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>43</sup> Tenn. Code Ann. § 49-6-1301(4) (Part definitions) defines “age-appropriate” as “designed to teach concepts, information and skills based on the social, cognitive, emotional and experience level of most students as at particular age level.”

....

(13) Provide instruction on the detection, intervention, prevention, and treatment of:

....

(B) Human trafficking in which the victim is a child. The instruction provided under this subdivision (a)(13)(B) must be accomplished through the viewing of a video recording approved by the LEA . . . .

Implementation of family life education is mandated under Tenn. Code Ann. § 49-6-1302(a), (b)<sup>44</sup> (Curriculum for family life education – Curriculum on sex education or human sexuality in accordance with curriculum guidelines for family life education), which states,

(a)

(1) Beginning with the 2021-2022 school year, each LEA shall locally devise, adopt, and implement a program of family life education in conformance with the curriculum guidelines established for such programs by this part [Family life curriculum].

(2) Each LEA shall locally develop and adopt a family life curriculum in compliance with the requirements of this part.

(b) Family life standards adopted by the state board of education must be in conformance with the curriculum guidelines established for such programs by this part.

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<sup>44</sup> The text of Tenn. Code Ann. § 49-6-1302 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 918 during the 2021-2022 Regular Session of the Tennessee state legislature (effective May 27, 2022).

## State Laws Addressing Child Sex Trafficking

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1. Tenn. Code Ann. § 39-13-309(a), (c)(2)<sup>45</sup> (Trafficking for commercial sex act) states,
  - (a) A person commits the offense of trafficking a person for a commercial sex act who:
    - (1) Knowingly subjects, attempts to subject, benefits from, or attempts to benefit from another person's provision of a commercial sex act;<sup>46</sup>
    - (2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any other means, another person for the purpose of providing a commercial sex act; or
    - (3) Commits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.
  - .....
  - (c)
    - .....
    - (2) A violation of subsection (a) is a Class A felony if the victim of the offense is a child more than twelve (12) years of age but less than eighteen (18) years of age.<sup>47</sup>

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine up to \$50,000. Tenn. Code Ann. § 40-35-111(b)(1) (Authorized terms of imprisonment and fines for felonies and misdemeanor).

2. Tenn. Code Ann. § 39-13-316(a)–(b)(2)<sup>48</sup> (Aggravated human trafficking) states,
  - (a) Aggravated human trafficking is the commission of an act that constitutes any of the following criminal offenses, if the victim of the criminal offense is under thirteen (13) years of age:
    - .....
    - (3) Trafficking for commercial sex act, under § 39-13-309;
    - (4) Patronizing prostitution, under § 39-13-514; or
    - (5) Promoting prostitution, under § 39-13-515.
  - (b)
    - (1) Aggravated human trafficking is a Class A felony.
    - (2) Notwithstanding title 40, chapter 35, a person convicted of a violation of this section shall be punished as a Range II offender; however, the sentence imposed upon the person may, if appropriate, be within Range III but in no case shall it be lower than Range II.

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<sup>45</sup> See *supra* note 10.

<sup>46</sup> Tenn. Code Ann. § 39-13-301(4) (Definitions) defines “commercial sex act” as

- (A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or
- (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age;

<sup>47</sup> If the victim of the offense is under 13 years of age, a violation of Tenn. Code Ann. § 39-13-309 is punishable as aggravated human trafficking under Tenn. Code Ann. § 39-13-316 (Aggravated human trafficking).

<sup>48</sup> See *supra* note 4.

A Range II offender for a Class A felony is subject to imprisonment for 25–40 years. Tenn. Code Ann. § 40-35-112(b)(1) (Sentence ranges). A Range III offender for a Class A felony is subject to imprisonment for 40–60 years. Tenn. Code Ann. § 40-35-112(c)(1).

3. Tenn. Code Ann. § 39-13-311 (Violations by corporations) states,

A corporation may be prosecuted for a violation of . . . 39-13-309 [Trafficking for commercial sex act] for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent's employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.



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

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1. Tenn. Code Ann. § 39-13-514(a), (b)<sup>49</sup> (Patronizing prostitution) states,
  - (a) A person commits an offense under this section:
    - (1) Who patronizes prostitution;<sup>50</sup> or
    - (2) When a person patronizes prostitution where the subject of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.
  - (b) . . . .
    - (3)
      - (A) Patronizing prostitution from a person who is younger than eighteen (18) years of age . . . or is a law enforcement officer posing as a minor is punishable as trafficking for commercial sex acts under § 39-13-309.
      - (B) Nothing in this subdivision (b)(3) shall be construed as prohibiting prosecution under any other applicable law.
2. Tenn. Code Ann. § 39-13-515(a), (c)(1)<sup>51</sup> (Promoting prostitution) states,
  - (a) A person commits an offense under this section:
    - (1) Who promotes prostitution;<sup>52</sup> or
    - (2) Who promotes prostitution where the subject of the offense is a law enforcement officer or is a law enforcement officer eighteen (18) years of age or older posing as a minor.

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<sup>49</sup> The text of Tenn. Code Ann. § 39-13-514 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>50</sup> Tenn. Code Ann. § 39-13-512(3) (Prostitution – Definitions) defines “patronizing prostitution” as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.”

<sup>51</sup> The text of Tenn. Code Ann. § 39-13-515 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bills 1378 and 2400 during the 2021-2022 Regular Session of the Tennessee state legislature (effective July 1, 2022).

<sup>52</sup> Tenn. Code Ann. § 39-13-512(4), (5) defines “promoting prostitution” and “promoting prostitution of a minor” as follows:

- (4)
  - (A) “Promoting prostitution” means:
    - (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
    - (ii) Procuring an inmate for a house of prostitution;
    - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
    - (iv) Soliciting a person to patronize a prostitute;
    - (v) Procuring a prostitute for a patron; or
    - (vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)-(v); and
  - (B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:
    - (i) The person promoting the prostitute and the prostitute being promoted are the same person; and
    - (ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion;
- (5) “Promoting prostitution of a minor” means engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age . . . .

....

(c) Promoting prostitution of a person more than twelve (12) years of age but less than eighteen (18) years of age . . . is a Class A felony.<sup>53</sup>

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine up to \$50,000. Tenn. Code Ann. § 40-35-111(b)(1) (Authorized terms of imprisonment and fines for felonies and misdemeanor).

3. Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor) states,

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;
- (9) Sexual activity involving a minor, pursuant to § 39-13-529;
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515; or
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

....

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

4. Tenn. Code Ann. § 39-13-518(a)–(c)(3)<sup>54</sup> (Continuous sexual abuse of a child – Felony offense – Penalties – Notice identifying multiple acts of sexual abuse of a child) states,

(a) As used in this section:

(1) “Multiple acts of sexual abuse of a child” means:

(A)

(i) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014;

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<sup>53</sup> If the victim of the offense is under 13 years of age, a violation of Tenn. Code Ann. § 39-13-515 is punishable as aggravated human trafficking under Tenn. Code Ann. § 39-13-316 (Aggravated human trafficking).

<sup>54</sup> See *supra* note 6.

- (ii) Engaging in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; or
- (iii) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; and
- (B) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (a)(1)(B) include, but are not limited to:
  - (i) The victims are related to the defendant by blood or marriage;
  - (ii) The victims reside with the defendant; or
  - (iii) The defendant was an authority figure, as defined in § 39-13-527(a)(3), to the victims and the victims knew each other; and
- (2) “Sexual abuse of a child” means to commit an act upon a minor child that is a violation of:
  - ....
  - (I) Trafficking for a commercial sex act pursuant to § 39-13-309, if the victim is a minor; or
  - (J) Promoting prostitution pursuant to § 39-13-515, if the victim is a minor.
- (b) A person commits continuous sexual abuse of a child who:
  - (1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(i) or (a)(1)(A)(ii); or
  - (2) Over a period of less than ninety days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(iii).
- (c)
  - (1) A violation of subsection (b) is a Class A felony if at least three (3) acts of the sexual abuse of a child constituted violations of any of the following:
    - ....
    - (G) Trafficking for a commercial sex act pursuant to § 39-13-309, if the victim is a minor; or
    - (H) Promoting prostitution pursuant to § 39-13-515, if the victim is a minor.
  - (2) A violation of subsection (b) is a Class B felony if two (2) of the acts of sexual abuse of a child constitute violations of offenses listed in subdivision (c)(1).
  - (3) A violation of subsection (b) is a Class C felony if one (1) of the acts of sexual abuse of a child constitutes a violation of an offense listed in subdivision (c)(1).

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine up to \$50,000. Tenn. Code Ann. § 40-35-111(b)(1) (Authorized terms of imprisonment and fines for felonies and misdemeanor). A Class B felony is punishable by imprisonment for 8–30 years and a possible fine up to \$25,000. Tenn. Code Ann. § 40-35-111(b)(2). A Class C felony is punishable by imprisonment for 3–15 years and a possible fine up to \$10,000. Tenn. Code Ann. § 40-35-111(b)(3).