



2023 REPORT

# NEW YORK

## Report Cards on Child & Youth Sex Trafficking

*State Action. National Change.*

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IN 2011, SHARED HOPE RELEASED THE NATION'S FIRST LEGAL FRAMEWORK THAT CHALLENGED states to enact laws that comprehensively address the crime of child sex trafficking. When we launched the Protected Innocence Challenge project—and issued the inaugural State Report Cards—the majority of states received an “F” grade, reflecting the reality that many states’ laws failed to even recognize the crime of child sex trafficking. Since then, we have been working to lay the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders in identifying gaps in the fabric of laws needed to address this heinous crime. By 2019, no state received an “F” grade, and a majority of the country received an “A” or “B.”

## PROTECTED INNOCENCE CHALLENGE

### NEW YORK

2019	SCORE	GRADE	10	16	12.5	9	13.5	10
	71	C	10	25	15	10	27.5	15
2011	SCORE	GRADE	3.5	11.5	11	8.5	18.5	8.5
	61.5	D	10	25	15	10	27.5	15

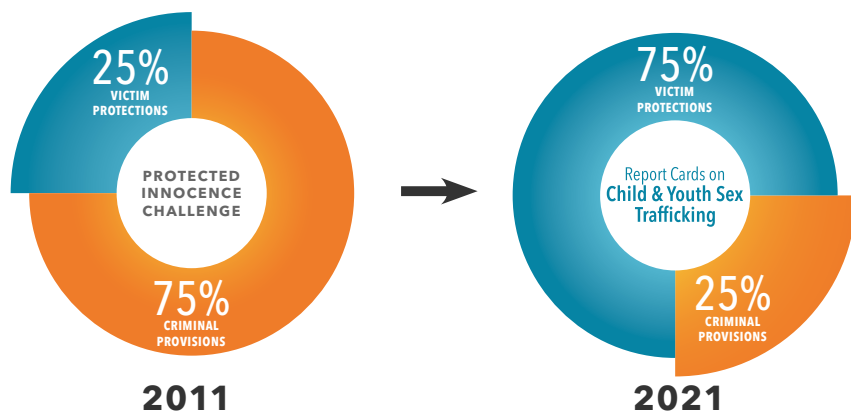
From 2011 to 2019, New York raised their grade under the Protected Innocence Challenge from a “D” to a “C,” enacting legislation aimed at holding offenders accountable and protecting survivors.

To view New York’s 2019 PIC report, visit [sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_NY.pdf](https://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_NY.pdf)

## A SHIFT IN FOCUS

THE PROTECTED INNOCENCE CHALLENGE PROJECT WAS SHARED HOPE’S VISION FOR MOBILIZING collective state action to ensure national change. Building on the progress already made under that project—while preserving its most fundamental components—we released a new, advanced legislative framework in 2020 that

focuses on new policy priorities reflective of feedback and research collected from the field. This framework is meant to challenge states to take the next step in the fight against sex trafficking by focusing on the area of law where the largest gaps remain—victim protections.



## ADVANCED LEGISLATIVE FRAMEWORK

### 6 ISSUE AREAS IDENTIFIED:

CRIMINAL PROVISIONS

IDENTIFICATION OF & RESPONSE TO VICTIMS

CONTINUUM OF CARE

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

PREVENTION & TRAINING

### 40 POLICY GOALS ANALYZED:

### 110 TOTAL POINTS AWARDED:

States earn up to 2.5 points per policy goal

Extra credit: Protections for labor and youth 18+

100 possible points

plus up to 10 points

### FINAL LETTER GRADES ASSIGNED:

**A** | 90-110 **B** | 80-89 **C** | 70-79 **D** | 60-69 **F** | <60

#### TIER RANKING

Another way the Report Cards on Child & Youth Sex Trafficking will measure progress is through a Tier system that will help states understand how they are doing compared to other states. Especially at this stage where grades are clustered at lower levels, the Tiers help to show states where they are on a spectrum. This provides another way for states to evaluate the progress they make beyond changes to their letter grade.

#### THE TIERS ARE STRUCTURED AS FOLLOWS:

- ▶ TIER 1 = TOP 10 SCORES
- ▶ TIER 2 = MIDDLE 31 SCORES
- ▶ TIER 3 = BOTTOM 10 SCORES

F



# NEW YORK

## 2023 Report Card

TIER II

**GRADES ARE BASED SOLELY ON AN ANALYSIS OF STATE STATUTES.** While we recognize the critical importance of non-legislative responses to propel progress, grading on statutory law provides a clear mechanism for evaluating policy goals across all states while ensuring that survivor-centered reforms are an enduring part of states' responses.

### STATE HIGHLIGHTS:

- Between 2021-2023, raised score by 15 points.
- Sixth most improved in 2023 (raised score by 13 points this year alone).
- Child welfare is required to provide specialized services to system-involved children and youth with experiences of sex or labor trafficking victimization.
- State funds were appropriated to support the development and provision of specialized services to trafficking survivors.
- Allows child and youth victims of sex or labor trafficking to seek accountability for their offenders through civil processes.

### SAFE HARBOR STATUS:

One of 21 states that fail to prohibit the criminalization of minors for prostitution offenses, thus allowing commercially sexually exploited minors to be held criminally accountable for their own victimization.

Issue		Grade	Score	Summary
	1. Criminal Provisions	C	$\frac{12.5}{17.5}$	Policy goals accomplished related to buyer and trafficker accountability under state CSEC laws, mistake of age defenses, decoy defenses, and business entity liability under the trafficking law. Gaps remain related to buyer accountability under the trafficking law and financial penalties.
	2. Identification of and Response to Victims	F	$\frac{8}{27.5}$	Policy goals accomplished related to foreign national victims and child abuse definitions. Gaps remain related to third party control, screening through child welfare and the juvenile justice system, non-criminalization for prostitution offenses, expanded non-criminalization, juvenile court jurisdiction, and non-caregiver trafficking cases.
	3. Continuum of Care	D	$\frac{9}{15}$	Policy goals accomplished related to services through child welfare and appropriations. Gaps remain related to community-based services, MDT responses, services through the juvenile justice system, and extended foster care services.
	4. Access to Justice for Trafficking Survivors	D	$\frac{9}{15}$	Policy goals accomplished related to restitution and civil remedies. Gaps remain related to civil orders of protection, crime victims' compensation, vacatur, and statutes of limitation.
	5. Tools for a Victim-Centered Criminal Justice Response	F	$\frac{3}{10}$	Gaps remain in all areas, including hearsay exceptions, alternatives to live, in-court testimony, victim-witness supports, and privileged communications.
	6. Prevention and Training	F	$\frac{6.5}{15}$	Policy goal accomplished related to prevention education in schools. Gaps remain related to training for child welfare, juvenile justice agencies, law enforcement, prosecutors, and school personnel.
EXTRA CREDIT	Youth		2	Protections related to appropriations and civil remedies are extended to sex trafficked youth.
	Child Labor Trafficking		4	Protections related to child abuse definitions, appropriations, restitution, and civil remedies are extended to child labor trafficking victims.

**OVERALL GRADE**  
TIER II

**F 54**

## WHAT IS SAFE HARBOR?

“Safe Harbor” refers to laws that insulate survivors from a punitive response and direct them toward funded, comprehensive, and protective services.










## WHY SAFE HARBOR?

These laws ensure survivors of child and youth sex trafficking are not involved in the juvenile or criminal justice system and receive trauma-informed care. Appropriate identification and access to services are vital to creating a just response for survivors of child and youth sex trafficking.

## SAFE HARBOR LAWS

Comprehensive Safe Harbor laws  
**SHOULD PROHIBIT  
ARRESTING, DETAINING,  
CHARGING, & PROSECUTING**  
all minors for prostitution offenses, regardless of  
whether a finding of trafficking victimization is  
made, and, instead, require law enforcement to  
direct child and youth survivors to  
**SPECIALIZED SERVICES & CARE.**

Safe Harbor laws  
**SHOULD ALSO PROHIBIT  
CRIMINALIZATION**  
of child sex trafficking survivors for other crimes  
committed as a result of their victimization.

Status	Safe Harbor Policy Goal
 Not met	The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control (see Policy Goal 2.1 for further analysis and <a href="#">Issue Brief 2.1</a> for background).
 Not met	State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking (see Policy Goal 2.3 for further analysis and <a href="#">Issue Brief 2.3</a> for background).
 Not met	State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking (see Policy Goal 2.4 for further analysis and <a href="#">Issue Brief 2.4</a> for background).
 Not met	State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest (see Policy Goal 2.5 for further analysis and <a href="#">Issue Brief 2.5</a> for background).
 Not met	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 (see Policy Goal 2.6 for further analysis and <a href="#">Issue Brief 2.6</a> for background).
 Partially met	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 (see Policy Goal 2.7 for further analysis and <a href="#">Issue Brief 2.7</a> for background).
 Not met	State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization (see Policy Goal 2.8 for further analysis and <a href="#">Issue Brief 2.8</a> for background).
 Not met	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 (see Policy Goal 3.1 for further analysis and <a href="#">Issue Brief 3.1</a> for background).
 Fully met	State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement (see Policy Goal 3.6 for further analysis and <a href="#">Issue Brief 3.6</a> for background).

## STATE SUMMARY:

New York law does not prohibit the criminalization of minors for prostitution offenses, leaving survivors vulnerable to re-traumatization caused by punitive responses. Further, despite appropriating state funds to support the development and provision of specialized, community-based services, the legislature has not mandated a process for coordinating access to such services. Lastly, state law limits the definition of child sex trafficking victim by requiring third party control, preventing commercially sexually exploited children who are unable or unwilling to identify a trafficker, as well as those who are not under the control of a trafficker, from accessing protections and relief that are specifically designed for sex trafficked children.

**SAFE HARBOR RESOURCES:** For additional information, visit [reportcards.sharedhope.org/safeharbor/](https://reportcards.sharedhope.org/safeharbor/).

**SAFE HARBOR MAP:** To see our map of state Safe Harbor law development, visit [reportcards.sharedhope.org/wp-content/uploads/2022/11/SafeHarborMapDec2022.pdf](https://reportcards.sharedhope.org/wp-content/uploads/2022/11/SafeHarborMapDec2022.pdf).



This report provides a thorough analysis of New York’s statutes related to offender accountability and victim protections while providing recommendations for addressing gaps in those statutes.<sup>1</sup> This report does not analyze case law, agency rules, or regulations, nor does it analyze practices or initiatives that exist outside of statutory law. However, stakeholders were invited to share non-statutory responses to paint a fuller picture of the state’s anti-child sex trafficking response; where such responses were submitted, they are included as “Insights from the Field” under the respective policy goal but are not factored into the state’s grade.

For more information on how to use this Analysis Report, click [here](#).



## 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.

○ *NOT MET*

N.Y. Penal Law § 230.34-A (Sex trafficking of a child) does not apply to buyers of commercial sex with minors. Pursuant N.Y. Penal Law § 230.34-A(1), “A person is guilty of sex trafficking of a child when he or she, being twenty-one years old or more, intentionally advances or profits from prostitution of another person and such person is a child less than eighteen years old . . . .” The definition of “advances prostitution” under N.Y. Penal Law § 230.34A(2) specifically excludes “patrons.” Specifically, N.Y. Penal Law § 230.34-A(2)(a) defines “advances prostitution” as “when, acting other than as a person in prostitution or as a patron thereof, and with intent to cause prostitution, he or she directly engages in conduct that facilitates an act or enterprise of prostitution.”

- 1.1.1 Recommendation: Amend N.Y. Penal Law § 230.34-A (Sex trafficking of a child) to make the statute applicable to the actions of buyers of commercial sex with minors. (See [Issue Brief 1.1](#).)

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<sup>1</sup> Evaluations of state laws are based on legislation enacted as of July 1, 2023.

## Policy Goal 1.2

Commercial sexual exploitation of children (CSEC) laws<sup>2</sup> specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

### ● FULLY MET

New York law criminalizes purchasing sex with a minor under several CSEC laws that vary in degree based on the age of the child and the nature of the offense; however, these laws either do not protect all minors under 18 years of age or are limited to offenses committed in a school zone.

Pursuant to N.Y. Penal Law § 230.06 (Patronizing a person for prostitution in the first degree),

A person is guilty of patronizing a person for prostitution in the first degree when:

1. He or she patronizes a person for prostitution<sup>3</sup> and the person patronized is less than eleven years old; or
2. Being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old.

Under N.Y. Penal Law § 230.05 (Patronizing a person for prostitution in the second degree),

A person is guilty of patronizing a person for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than fifteen years old . . . .

Further, N.Y. Penal Law § 230.13 (Aggravated patronizing a minor for prostitution in the first degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the first degree when he or she patronizes a person for prostitution and the person patronized is less than eleven years old, or being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old, and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . . .

N.Y. Penal Law § 230.12 (Aggravated patronizing a minor for prostitution in the second degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less

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<sup>2</sup> The phrase “commercial sexual exploitation of children” (or “CSEC”) encompasses a variety of criminal offenses committed against a child in which the child engages, or agrees to engage, in a sex act in exchange for something of value either directly or through a third party. Appropriately crafted CSEC laws can be important, additional tools available in a prosecution of child sex trafficking conduct by supplementing available penalties under the trafficking law and providing additional options for plea negotiations without requiring prosecutors to rely on unrelated or low-level offenses in that context. For this reason, we analyze trafficking laws separately from CSEC laws—even though both involve commercial sexual exploitation. For a complete list of New York’s CSEC laws, *see* the appendix located at the end of this report.

<sup>3</sup> N.Y. Penal Law § 230.02(1) (Patronizing a person for prostitution; definitions) states,

A person patronizes a person for prostitution when:

- (a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or
- (b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him or her; or
- (c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

than fifteen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . .

N.Y. Penal Law § 230.11 (Aggravated patronizing a minor for prostitution in the third degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the third degree when, being twenty-one years old or more, he or she patronizes a person for prostitution and the person patronized is less than seventeen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized . . .

Notably, N.Y. Penal Law § 230.08(1) (Patronizing a person for prostitution in a school zone) does protect all minors under 18 years of age, but the offense is limited to offenses committed in a school zone; it states,

A person is guilty of patronizing a person for prostitution in a school zone when, being twenty-one years old or more, he or she patronizes a person for prostitution and the person patronized is less than eighteen years old at a place that he or she knows, or reasonably should know, is in a school zone . . .

**Policy Goal 1.3** Commercial sexual exploitation of children (CSEC) laws<sup>4</sup> apply to traffickers and protect all minors under 18.

● FULLY MET

New York's CSEC laws address an array of trafficking conduct. Pursuant to N.Y. Penal Law § 230.32 (Promoting prostitution in the first degree),

A person is guilty of promoting prostitution in the first degree when he or she:

1. knowingly advances<sup>5</sup> or profits from prostitution<sup>6</sup> of a person less than thirteen years old; or
2. being twenty-one years old or more, he or she knowingly advances or profits from prostitution of a person less than fifteen years old.

Under N.Y. Penal Law § 230.30(2) (Promoting prostitution in the second degree), "A person is guilty of promoting prostitution in the second degree when he or she knowingly . . . [a]dvances or profits from prostitution of a person less than eighteen years old."

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<sup>4</sup> See *supra* note 2 for a full discussion on the purpose of analyzing trafficking laws separately from CSEC laws throughout this report.

<sup>5</sup> N.Y. Penal Law § 230.15(1) (Promoting prostitution; definitions of terms) defines "advance prostitution" as follows:

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

<sup>6</sup> N.Y. Penal Law § 230.15(2) defines "profit from prostitution" as follows:

when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.



In addition, N.Y. Penal Law § 230.25 (Promoting prostitution in the third degree) states,

A person is guilty of promoting prostitution in the third degree when he or she knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or
2. Advances or profits from prostitution of a person less than nineteen years old.

Under N.Y. Penal Law § 230.33 (Compelling prostitution),

A person is guilty of compelling prostitution when, being eighteen years old or more, he or she knowingly advances prostitution by compelling a person less than eighteen years old, by force or intimidation, to engage in prostitution . . . .

Lastly, N.Y. Penal Law § 120.70(1) (Luring a child) states,

A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 [Sentence of imprisonment for a violent felony offense] of this chapter; . . . an offense as defined in sections 230.30 [Promoting prostitution in the second degree], 230.33 [Compelling prostitution], . . . or 230.34-a [Sex trafficking of a child] of this chapter; . . . or an offense as defined in sections 263.05 [Use of a child in a sexual performance], 263.10 [Promoting an obscene sexual performance], or 263.15 [Promoting a sexual performance by a child] of this chapter. For purposes of this subdivision “child” means a person less than seventeen years of age . . . .

**Policy Goal 1.4** Mistake of age is not an available defense in child sex trafficking prosecutions.

● FULLY MET

New York law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking.<sup>7</sup> Pursuant to N.Y. Penal Law § 230.34-A(1) (Sex trafficking of a child), “Knowledge by the defendant of the age of such child is not an element of this offense and it is not a defense to prosecution therefor that the defendant did not know the age of the child or believed such age to be eighteen or over.”

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

● FULLY MET

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, New York’s criminal attempt statute, N.Y. Penal Law § 110.10 (Attempt to commit a crime; no defense), could provide prosecutors with an alternative avenue to prosecute those cases. N.Y. Penal Law § 110.10 states,

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<sup>7</sup> Conversely, N.Y. Penal Law § 230.07 (Patronizing a person for prostitution; defense) expressly permits the defense in cases involving patronizing a person for prostitution, stating, “In any prosecution for patronizing a person for prostitution in the first or second degrees or patronizing a person for prostitution in a school zone, it is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age specified.” New York’s other CSEC offenses are silent regarding the permissibility of a mistake of age defense.

If the conduct in which a person engages otherwise constitutes an attempt to commit a crime pursuant to section 110.00 [Attempt to commit a crime],<sup>8</sup> it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant circumstances been as such person believed them to be.

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

**Policy Goal 1.6** Business entities can be held criminally liable for conduct that violates the trafficking law.

● **FULLY MET**

New York law allows business entities to be held criminally liable for conduct that violates the trafficking law. N.Y. Penal Law § 230.34-A (Sex trafficking of a child) states, in part, “A person is guilty of sex trafficking of a child when he or she, being twenty-one years old or more, intentionally advances or profits from prostitution of another person and such person is a child less than eighteen years old.” Importantly, N.Y. Penal Law § 10.00(7) (Definition of terms of general use in this chapter) defines “person” as “a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.” Accordingly, business entities can be held liable for a trafficking violation.

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

○ **NOT MET**

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>9</sup>

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<sup>8</sup> Pursuant to N.Y. Penal Law § 110.00, “A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.”

<sup>9</sup> Regarding asset forfeiture, N.Y. C.P.L.R. § 1311(1) (Forfeiture actions) states in part,

A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property<sup>9</sup> which constitutes the proceeds of a crime,<sup>9</sup> the substituted proceeds of a crime,<sup>9</sup> an instrumentality of a crime<sup>9</sup> or the real property instrumentality of a crime.<sup>9</sup> A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose . . .

Disposal of forfeited property is governed by N.Y. C.P.L.R. § 1349 (Disposal of property), which states,

1. Any judgment or order of forfeiture issued pursuant to this article shall include provisions for the disposal of the property found to have been forfeited.

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund. (See [Issue Brief 1.7](#).)

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2. . . . [T]he judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article shall be deposited to an asset forfeiture escrow fund . . . and shall be apportioned and paid in the following descending order of priority:

- (a) Amounts ordered to be paid by the court in satisfaction of any lien or claim against property forfeited . . . ;
- (b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the crime . . . ;
- (c) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of any crime committed by the defendant even though such crime did not constitute the basis for forfeiture under this article, to the extent that such amounts remain unpaid;
- (d) Amounts actually expended by a claiming authority or claiming agent . . . ;
- (e) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, fifteen percent of all moneys realized through forfeiture to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action . . . ;
- (f) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, five percent of all moneys realized through forfeiture to the claiming agent in satisfaction of actual costs incurred for protecting, maintaining and forfeiting the property . . . ;
- (g) Forty percent of all moneys realized through forfeiture which are remaining after distributions pursuant to paragraphs (a) through (f) of this subdivision, to the chemical dependence service fund . . . ;
- (h) All moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:
  - (i) seventy-five percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses or law enforcement assisted diversion;
  - (ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

. . . .

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



## ISSUE 2: Identification of & Response to Victims

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

○ NOT MET

The definition of child sex trafficking victim does not include all commercially sexually exploited children. N.Y. Penal Law § 230.34-A (Sex trafficking of a child) specifically excludes buyers from criminal liability.<sup>10</sup> Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

2.1.1      Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>11</sup> (See *Issue Brief 2.1*.)

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

● FULLY MET

New York law provides policy guidance that broadly facilitates appropriate responses to foreign national child sex trafficking victims. Pursuant to N.Y. Soc. Serv. Law § 483-bb(b) (Services for victims of human trafficking),

The office of temporary and disability assistance shall enter into contracts with non-government organizations for providing services to victims of human trafficking as defined in subdivision (a) of section four hundred eighty-three-aa of this article. Such services shall be culturally competent, to the extent practicable, and shall include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Such services shall also include appropriate voluntary placement in a short-term and/or long-term safe house, as such terms are defined under subdivision (c) or (d) of section four hundred eighty-three-aa of this article . . . . Nothing in this article shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter [Aliens] with any benefits or services for which they otherwise may be eligible.

Further, N.Y. Soc. Serv. Law § 122(2) (Noncitizens) clarifies,

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<sup>10</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.Y. Penal Law § 230.34-A.

<sup>11</sup> See generally Shared Hope Int'l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

Any noncitizen, including a noncitizen who is not a qualified alien as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, is eligible for adult protective services and services and assistance relating to child protection to the extent that such person is otherwise eligible pursuant to this chapter and the regulations of the department.

#### INSIGHTS FROM THE FIELD

“The New York State Office of Children and Family Services (OCFS) issued policy 23-OCFS-ADM-06. This policy reminds local departments of social services (LDSSs) and voluntary authorized agencies (VAs) of the services and supports available to undocumented children and to children lawfully present in the United States with undocumented parents. The policy further reminds providers that they may not inquire about an individual’s immigration status unless necessary to determine eligibility for a program, benefit or service, or otherwise required by law. The guidance contained in this policy is based on New York law, Executive Orders, and regulations, which are cited in the policy as applicable.

Additionally, OCFS policy 8-OCFS-ADM-15 speaks to T and U visa processes.”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*

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

○ NOT MET

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

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.3](#).)

#### INSIGHTS FROM THE FIELD

“OCFS has established policy requiring regular and ongoing CSEC screening for young people served by each of these entities over which we have jurisdiction (internal policy available upon request).”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*

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

○ NOT MET

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



- 2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.4.](#))

#### INSIGHTS FROM THE FIELD

“OCFS has established policy requiring regular and ongoing CSEC screening for young people served by each of these entities over which we have jurisdiction (internal policy available upon request) . . . . The New York State Division of Criminal Justice Services’ Office of Probation and Community Alternatives requires probation departments to utilize the OCFS rapid screening tool for juvenile justice-involved youth to establish a uniform practice across youth-serving systems.”<sup>†</sup>

<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.

**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.

○ NOT MET

New York law does not prohibit the criminalization of minors for prostitution offenses; however, state law does require law enforcement to advise victims on the availability of social and legal services and to facilitate a connection to a service provider unless the victim declines. Pursuant to N.Y. Soc. Serv. Law § 483-cc (Confirmation as a victim of human trafficking),

(a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency, district attorney’s office, or an established provider of social or legal services designated by the office of temporary and disability assistance, the office for the prevention of domestic violence or the office of victim services to be a human trafficking victim, that law enforcement agency or district attorney’s office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article or, in the case of an established provider of social or legal services, shall notify the office of temporary and disability assistance and the division of criminal justice services if such victim consents to seeking services pursuant to this article.

. . . .

(c) Promptly upon an encounter with a person who reasonably appears to a law enforcement agency or district attorney’s office to be a human trafficking victim, or a person who identifies himself or herself as a human trafficking victim, such law enforcement agency or district attorney’s office shall advise such person of the availability of the services of specific, established providers of social and legal services to human trafficking victims . . . . Unless, after receiving such advice, the apparent victim expresses that he or she does not wish the presence of a representative of such an established provider of social or legal services, the law enforcement agency or district attorney’s office shall offer to contact the appropriate provider or providers and connect such provider or providers with the apparent victim. Nothing in this subdivision shall affect any obligation such law enforcement agency or district attorney’s office may have to provide any information or assistance to such person.

Additionally, commercially sexually exploited minors may be subject to alternative juvenile justice responses. Under N.Y. Fam. Ct. Act § 311.4(3) (Substitution for petition or finding),

In any proceeding under this article [Juvenile delinquency] based upon an arrest for an act of prostitution, there is a presumption that the respondent meets the criteria as a victim of a severe form of trafficking as

defined in section 7105 of title 22 of the United State Code [Trafficking Victims Protection Act of 2000]. Upon motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition. If, however, the respondent has been previously adjudicated as a juvenile delinquent under this article for an act which would be a crime pursuant to article two hundred thirty of the penal law [Prostitution offenses], if the respondent was an adult, or expresses a current unwillingness to cooperate with specialized services for sexually exploited youth, continuing with the delinquency proceeding shall be within the court's discretion.

Further, N.Y. Crim. Proc. Law § 170.80 (Proceedings regarding certain prostitution charges; certain persons aged sixteen or seventeen) provides,

1. Notwithstanding any other provision of law, at any time at or after arraignment on a charge of prostitution pursuant to section 230.00 of the penal law, after consultation with counsel, a knowing and voluntary plea of guilty has been entered to such charged, any judge or justice hearing any stage of such case may, upon consent of the defendant after consultation with counsel:
  - (a) conditionally convert such charge in accordance with subdivision three of this section and retain it as a person in need of supervision proceeding for all purposes, and shall make such proceeding fully subject to the provisions and grant any relief available under article seven of the family court act [Proceedings concerning whether a person is in need of supervision]; and/or
  - (b) order the provisions of any of the specialized services enumerated in title eight-A of article six of the social services law [Safe Harbour for Exploited Children Act], as may be reasonably available.
2. In the event of a conviction by plea or verdict to such charge or charges of prostitution or loitering for the purposes of prostitution as described in subdivision one of this section, the court must find that the person is a youthful offender for the purpose of such charge and proceed in accordance with article seven hundred twenty of this chapter [Youthful offender procedure] . . . .
3.
  - (a) When a charge of prostitution or loitering for the purposes of prostitution has been conditionally converted to a person in need of supervision proceeding pursuant to subdivision one of this section, the defendant shall be deemed a “sexually exploited child” as defined in subdivision one of section four hundred forty-seven-a of the social services law [Definitions] and therefore shall not be considered an adult for purposes related to the charges in the person in need of supervision proceeding. Sections seven hundred eighty-one, seven hundred eighty-two, seven hundred eighty-two-a, seven hundred eighty-three and seven hundred eighty-four of the family court act shall apply to any proceeding conditionally converted under this petition.
  - (b) The court after hearing from the parties shall state condition or conditions of such conversion, which may include the individual's participation in specialized services provided pursuant to title eight-A of article six of the social services law and other appropriate services available to persons in need of supervision in accordance with article seven of the family court act.

In addition, N.Y. Crim. Proc. Law § 170.30(4) (Motion to dismiss information, simplified information, prosecutor's information or misdemeanor complaint) allows a case to be dismissed as follows:

After arraignment upon an information, a simplified information, a prosecutor's information or misdemeanor complaint on a charge of prostitution pursuant to section 230.00 of the penal law the local criminal court may dismiss such charged in its discretion in the interest of justice on the ground that the defendant participated in services provided to him or her.

Lastly, for minors who are not subject to the aforementioned alternative responses and, consequently, prosecuted for prostitution, N.Y. Penal Code § 230.01 (Prostitution; affirmative defense) provides an affirmative defense to minors identified as child sex trafficking victims, stating,

In any prosecution under section 230.00 [Prostitution], section 230.03 [Prostitution in a school zone], section 230.19 [Promoting prostitution in a school zone], section 230.20 [Promoting prostitution in the

fourth degree], subdivision 2 of section 230.25 [Promoting prostitution in the third degree], subdivision 2 of section 230.30 [Promoting prostitution in the second degree], or section 230.34-a [Sex trafficking of a child] of this article, it is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33 of this article, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

Resultantly, while some commercially sexually exploited children may be directed away from traditional juvenile or criminal justice responses, New York law permits arresting, detaining, charging, and prosecuting minors for prostitution and prostitution-related offenses.

- 2.5.1 Recommendation: Amend state law to prohibit the criminalization of all minors for prostitution offenses. (See [Issue Brief 2.5](#).)

**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.

○ **NOT MET**

New York law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization. (See [Issue Brief 2.6](#).)

#### INSIGHTS FROM THE FIELD

“Chapter 55 of the laws of 2020 made substantive legislative reforms related to status offenses, which ended the use of detention and eliminated state funding for out of home placement for status offenders, including youth who have been trafficked or exploited. It also limited the reasons and timeframes allowed for out of home placements of youth related to a status offense. This state legislation, in combination with the implementation of the Family First Prevention Services Act and [the Office of Children and Family Services’] policy requiring screening, assessment, and specialized services and opportunities for youth that have been trafficked or exploited, make it extremely rare for survivors of trafficking or exploitation to be criminalized for status offenses.”\*

*\*This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.*

### 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.

① **PARTIALLY MET**

Although New York 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. Specifically, N.Y. Penal Law § 230.01 (Prostitution; affirmative defense) provides,

In any prosecution under section 230.00 [Prostitution], section 230.03 [Prostitution in a school zone], section 230.19 [Promoting prostitution in a school zone], section 230.20 [Promoting prostitution in the fourth degree], subdivision 2 of section 230.25 [Promoting prostitution in the third degree], subdivision 2 of section 230.30 [Promoting prostitution in the second degree], or section 230.34-a [Sex trafficking of a child] of this article, it is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33 of this article, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

Further, under N.Y. Penal Law § 230.35 (Promoting or compelling prostitution; accomplice), "In a prosecution for promoting prostitution or compelling prostitution, a person less than eighteen years old from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice." Similarly, N.Y. Penal Law § 230.36 (Sex trafficking; accomplice) provides, "In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice."

- 2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization. (See [Issue Brief 2.7](#).)

### 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.

○ **NOT MET**

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

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. (See [Issue Brief 2.8](#).)

### Policy Goal 2.9

Juvenile court jurisdiction provides for a developmentally appropriate response.

① **PARTIALLY MET**

New York law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While New York law establishes a minimum age of twelve years—seven years for specified crimes—for purposes of juvenile court jurisdiction and extends juvenile court jurisdiction to all minors

under 18 years of age, state law requires direct file in the Youth Part<sup>12</sup> of the Superior Court in cases involving minors 13 years of age or older who are charged with certain felony offenses.

	Minimum Age of Juvenile Court Jurisdiction	Maximum Age for Charging Youth in Juvenile Court	Automatic Transfers or Permits Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	12 generally; 7 for specified crimes. <sup>13</sup>	17.	Yes. Minors: (1) 13+ years of age charged with certain felony offenses and prosecuted as a “juvenile offender”; and (2) 17 years of age charged with a felony and	No.	N/A

<sup>12</sup> N.Y. Crim. Proc. Law § 722.10 (Youth part of the superior court established) establishes the Youth Part of the Superior Court, stating, “The chief administrator of the courts is hereby directed to establish, in a superior court in each county of the state, a part of the court to be known as the youth part of the superior court for the county in which such court presides. Judges presiding in the youth part shall be family court judges . . . [t]o aid in their work, such judges shall receive training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct of youths . . . . The youth part shall have exclusive jurisdiction in all proceedings in relation to youthful offenders and adolescent offenders, except as provided for in this article or article [725] of this chapter.”

<sup>13</sup> N.Y. Fam. Ct. Act § 301.2(1) defines “juvenile delinquent” as follows:

- (a)
  - (i) a person at least twelve and less than eighteen years of age, having committed an act that would constitute a crime if committed by an adult; or
  - (ii) a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, having committed an act that would constitute a violation as defined by subdivision three of section 10.00 of the penal law if committed by an adult, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act; or
  - (iii) a person over the age of seven and less than twelve years of age having committed an act that would constitute one of the following crimes, if committed by an adult: (A) aggravated criminally negligent homicide as defined in section 125.11 of the penal law; (B) vehicular manslaughter in the second degree as defined in section 125.12 of the penal law; (C) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law; (D) aggravated vehicular homicide as defined in section 125.14 of the penal law; (E) manslaughter in the second degree as defined in section 125.15 of the penal law; (F) manslaughter in the first degree as defined in section 125.20 of the penal law; (G) aggravated manslaughter in the second degree as defined in section 125.21 of the penal law; (H) aggravated manslaughter in the first degree as defined in section 125.22 of the penal law; (I) murder in the second degree as defined in section 125.25 of the penal law; (J) aggravated murder as defined in section 125.26 of the penal law; and (K) murder in the first degree as defined in section 125.27 of the penal law; and
- (b) who is:
  - (i) not criminally responsible for such conduct by reason of infancy; or
  - (ii) the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.



			prosecuted as a “adolescent offender.” However, state law provides opportunities for such cases to be transferred to Family Court to be tried as juvenile delinquency cases.		
<b>Relevant Statute(s)</b>	N.Y. Fam. Ct. Act § 301.2(1) (Definitions)	N.Y. Fam. Ct. Act § 301.2(1) (Definitions)	N.Y. Crim. Proc. Law § 1.20(42), (44) (Definitions of terms of general use in this chapter); N.Y. Crim. Proc. Law § 722.20 (Proceedings upon felony complaint; juvenile offender); N.Y. Crim. Proc. Law 722.21 (Proceedings upon felony complaint; adolescent offender)	N/A	N/A

Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) requires some juvenile cases to be subject to direct file and (2) do not require the Youth Part of the Superior Court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct. (See [Issue Brief 2.9](#).)

**Policy Goal 2.10** State law defines child abuse to include child sex trafficking to ensure access to child welfare services.

● **FULLY MET**

New York’s Family Court Act defines “abused child” to include child sex trafficking. Pursuant to N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions),

“Abused child” means a child less than eighteen years of age whose parent or other person legally responsible for his care

.....

(iii)

.....

(B) allows, permits or encourages such child to engage in any act described in sections 230.25 (Promoting prostitution in the third degree), 230.30 (Promoting prostitution in the second degree), 230.32 (Promoting prostitution in the first degree) and 230.34-a (Sex trafficking of a child) of the penal law;

....

(E) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute;

(F) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

## EXTRA CREDIT



Child labor trafficking is included in the definition of “abused child” under N.Y. Fam. Ct. Act § 1012(e)(iii), which expressly includes victims of “severe forms of trafficking.” 22 U.S.C. §7102 defines “severe forms of trafficking” to include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

**Policy Goal 2.11** State law allows for child welfare involvement in sex trafficking cases that do not involve caregiver fault and provides for an alternative, specialized response in those cases.

○ NOT MET

New York’s Family Court Act does not expressly allow for a child welfare response in non-caregiver child sex trafficking cases. Specifically, the definition of “abused child” under N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions) limits the definition to acts committed by the child’s “parent or other person legally responsible for his care.” Further, a specialized response is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-caregiver trafficker.

2.11.1 Recommendation: Statutorily allow for child welfare involvement in child sex trafficking cases regardless of parent or caregiver fault and provide for a specialized response in those cases. (See [Issue Brief 2.11.](#))

### INSIGHTS FROM THE FIELD

“New York developed the Safe Harbour: NY Program, which is a robust statewide response available to all youth survivors of sex trafficking. This response involves partnership between the LDSS, service providers, law enforcement, and others to support the safety and healing of all young people. It is important to note that there is no funding available to states with which to develop a specialized response to exploited youth and, without caregiver fault, there are no federal dollars available to support the youth’s complex care and needs.”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*



## ISSUE 3: Continuum of Care

### Policy Goal 3.1

State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

○ NOT MET

New York 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. (See [Issue Brief 3.1](#).)

### INSIGHTS FROM THE FIELD

“Although New York does not have a statute specific to this policy goal, New York was the first state in the nation to recognize the importance of services for survivors as demonstrated through the enactment of the Safe Harbour for Exploited Youth Act. The commitment of New York has not wavered, and the Safe Harbour: NY program has served as a model for many other state responses. However, as with the majority of New York State’s work in this area, rather than being codified in state law, it is demonstrated in programming, training, policy, and technical assistance efforts, all funded by the State of New York. More information about these initiatives can be found on the [Office of Children and Family Services] website at <https://ocfs.ny.gov/programs/human-trafficking/>. Of special interest are the Responding to Commercially Sexually Exploited and Trafficked Youth: A Handbook for Child Serving Professionals (Handbook) and the Responding to Commercially Sexually Exploited and Trafficked Youth: A Blueprint for systems of care in New York State (Blueprint). The Handbook is intended to guide direct-care professionals through many of the common issues that arise when working with a youth who is vulnerable, trafficked, or sexually exploited, while the Blueprint is intended to serve as a road map for [local departments of social services] to respond to the needs of trafficked and sexually exploited youth and non-offending family members in their localities.”<sup>†</sup>

<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.

### Policy Goal 3.2

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

● PARTIALLY MET

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse MDT, New York law does not require an MDT response to child sex trafficking cases. Pursuant to N.Y. Soc. Serv. Law § 423-a(1)–(3) (Child advocacy centers established),

1. The office of children and family services shall to the greatest extent practicable facilitate the establishment of child advocacy centers in every region of the state so that child victims of sexual abuse or

serious physical abuse have reasonable access to such a center and so that their cases are handled in an expert and timely manner, by a coordinated and cooperative effort that minimizes trauma to the children and their non-offending family members. Child advocacy centers shall be established by either a governmental entity or a private, nonprofit incorporated agency and shall meet the state office of children and family services program standards for child advocacy centers approval and strive to co-locate members of the local multi-disciplinary team at the child advocacy center.

2. Child advocacy centers may assist in the investigation of child abuse and maltreatment cases and shall provide at a minimum for the following:

- (a) a comfortable, private setting that is both physically and psychologically safe for children;
- (b) sound program, fiscal and administrative practices;
- (c) policies, practices and procedures that are culturally competent; for the purpose of this paragraph “culturally competent” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community;
- (d) a multidisciplinary investigative team established pursuant to subdivision six of section four hundred twenty-three of this article;
- (e) a written set of interagency protocols for an interdisciplinary and coordinated approach to the investigation of child abuse;
- (f) forensic interviews to be conducted in a manner which is neutral and fact-finding and coordinated to avoid duplicative interviewing;
- (g) specialized medical evaluation and treatment as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (h) specialized mental health services as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (i) victim support and advocacy as part of the multidisciplinary team investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;
- (j) a routine interdisciplinary case review process for purposes of decision making, problem solving, systems coordination and information sharing concerning case status and services needed by the child and family;

....

3. Child advocacy centers may also provide space for medical evaluation, therapeutic intervention, support services for child abuse victims and their families, community education about child abuse, and any other services the center deems critical to the provision of service to child victims and their families and the multidisciplinary investigation of abuse allegations.

Similarly, N.Y. Soc. Serv. Law § 423(6) (Child protective service responsibilities) expands discussion on the role of the social service districts in utilizing multi-disciplinary teams in collaboration with child advocacy centers to provide services to child abuse victims; it states,

A social services district may establish a multidisciplinary investigative team or teams and may establish or work as part of a child advocacy center established pursuant to section four hundred twenty-three-a of this title, at a local or regional level, for the purpose of investigating reports of suspected child abuse or maltreatment. The social services district shall have discretion with regard to the category or categories of suspected child abuse or maltreatment such team or teams may investigate, . . . . Members of multidisciplinary teams shall include but not be limited to representatives from the following agencies: child protective services, law enforcement, district attorney’s office, physician or medical provider trained in forensic pediatrics, mental health professionals, victim advocacy personnel and, if one exists, a child advocacy center. . . . Such other members shall provide victim advocacy, emotional support, and access to medical and mental health care, where applicable. All members, consistent with their respective agency missions, shall facilitate efficient delivery of services to victims and appropriate disposition of cases through the criminal justice system and/or the family court system in a collaborative manner, however, non-investigative team members shall note their specific role in the team for reports covered under this title.



Notwithstanding any other provision of law to the contrary, members of a multidisciplinary investigative team or a child advocacy center may share with other team members client-identifiable information concerning the child or the child's family to facilitate the investigation of suspected child abuse or maltreatment. Nothing in this subdivision shall preclude the creation of multidisciplinary teams or child advocacy centers which include more than one social services district. Each team shall develop a written protocol for investigation of child abuse and maltreatment cases and for interviewing child abuse and maltreatment victims. The social services district is encouraged to train each team member in risk assessment, indicators of child abuse and maltreatment, and appropriate interview techniques.

- 3.2.1 Recommendation: Statutorily require a multi-disciplinary team response specific to child sex trafficking victims. (See [Issue Brief 3.2](#).)

#### INSIGHTS FROM THE FIELD

“In New York State, Multi-Disciplinary Teams (MDT) are authorized under section 423(6) of the SSL to include Child Protective Services (CPS); law enforcement; the district attorney's office; a physician or medical provider trained in forensic pediatrics; mental health professionals; victim advocacy personnel; and, if one exists, a Child Advocacy Center (CAC) established pursuant to SSL § 423-a. New York State SSL provides through the MDT and CAC victim advocacy, emotional support, and access to medical and mental health care services to child victims of abuse and their non-offending family members.

Section 424(5-a) of the SSL addresses the categories of cases that must be investigated by an approved MDT/CAC. Those categories include cases that involve abuse as defined in paragraph (i) of subdivision (e) of section 1012 of the FCA. This pertains to all sex abuse cases, including alleged child sex trafficking, as indicated in paragraph (iii) of subdivision (e) of section 1012 of the FCA.”<sup>†</sup>

*†This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.*

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

#### ● FULLY MET

New York law requires child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims. Specifically, the “Safe Harbour for Exploited Children Act”<sup>14</sup> establishes specialized services

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<sup>14</sup> N.Y. Soc. Serv. Law §§ 447-a to -b.

for exploited children,<sup>15</sup> including those reported as abused;<sup>16</sup> these services include placing child victims in safe houses with specialized advocates trained to work with sexually exploited children and providing necessary services such as “housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services” and “[w]here appropriate . . . counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community.” N.Y. Soc. Serv. Law §§ 447-a(4), 447-b(1). N.Y. Soc. Serv. Law § 447-b (Services for exploited children) states,

1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district’s multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or

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<sup>15</sup> N.Y. Soc. Serv. Law § 447-a(1) defines “sexually exploited child” as follows:

[A]ny person under the age of eighteen who has been subject to sexual exploitation because he or she:

- (a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law or the crime of sex trafficking of a child as defined in section 230.34-A of the penal law;
- (b) engages in any act as defined in section 230.00 [Prostitution] of the penal law;
- (c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;
- (d) engages in acts or conduct described in article two hundred sixty-three [Sexual performance by a child] of the penal law.

<sup>16</sup> N.Y. Fam. Ct. Act § 1012(e)(iii) (Definitions) defines “abused child” as follows:

[A] child less than eighteen years of age whose parent or other person legally responsible for his care

....

(iii)

- (a) commits, or allows to be committed an offense against such child defined in article one hundred thirty [Sexual offenses] of the penal law;
- (b) allows, permits or encourages such child to engage in any act described in sections 230.25 [Promoting prostitution in the third degree], 230.30 [Promoting prostitution in the second degree], 230.32 [Promoting prostitution in the first degree] and 230.34-A [Sex trafficking of a child] of the penal law;
- ....
- (d) allows such child to engage in acts or conduct described in article two hundred sixty-three [Sexual performance by a child] of the penal law; or
- (e) permits or encourages such child to engage in any act or commits or allows to be committed against such child any offense that would render such child either a victim of sex trafficking or a victim of severe forms of trafficking in persons pursuant to 22 U.S.C. 7102 as enacted by public law 106-386 or any successor federal statute;
- (f) provided, however, that (1) the corroboration requirements contained in the penal law and (2) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.

3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made in two thousand ten and every five years thereafter in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies, public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.

4. In determining the need for and capacity of the services created under this section, each local social services district shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where a local social services district determines that the need exists, to the extent that funds are available, appropriate programming shall be made available.

5. To the extent funds are specifically appropriated therefor, the office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one long-term safe house in a geographically appropriate area of the state which shall provide safe and secure long term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one long-term safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within the state. Nothing herein shall be construed to preclude an agency from applying for and accepting grants, gifts and bequests of funds from private individuals, foundations and the federal government for the purpose of creating or carrying out the duties of a long-term safe house.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

### INSIGHTS FROM THE FIELD

“Pursuant to the Safe Harbour for Exploited Children Act, LDSSs must address the child welfare services needs of sexually exploited children and provide services as appropriate.

New York developed the Safe Harbour: NY Program, which is a robust statewide response available to all youth survivors of sex trafficking. This response involves partnership between the LDSS, service providers, law enforcement, and others to support the safety and healing of all young people. It is important to note that there is no funding available to states with which to develop a specialized response to exploited youth and, without caregiver fault, there are no federal dollars available to support the youth’s complex care and needs.”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*

#### Policy Goal 3.4

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

##### ● PARTIALLY MET

New York law does not provide access to specialized services for all identified sex trafficked children and youth in the juvenile justice system. A child sex trafficking victim who is arrested for prostitution may be identified as a person in need of supervision (PINS) and, resultantly, receive specialized services following the filing of a petition and the court’s approval; however, a child seeking diversion from a delinquency process into a PINS process could face numerous barriers and processes that are inherently punitive.<sup>17</sup>

- 3.4.1 Recommendation: Strengthen existing law to mandate access to specialized services for all identified sex trafficked children and youth in the juvenile justice system. (See [Issue Brief 3.4.](#))

### INSIGHTS FROM THE FIELD

“In 2020, New York State made substantive legislative reforms related to status offenses, which included requiring each lead agency for diversionary services for status offenses to screen and assess for sexual exploitation of youth and offer appropriate interventions and supports for youth identified as being sexually exploited (FCA § 735(b)(iv)). New York State’s juvenile justice system, by statute, policy, and practice, focuses heavily on diversionary efforts prior to any court intervention, even when an initial petition has been filed (FCA §§ 308.1, 309.1, and 320.6). The overall goal of the system is not punitive but rehabilitative—to provide youth and families with the supports and opportunities they need to be safe and thrive.”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*

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<sup>17</sup> For more information, see N.Y. Fam. Ct. Act §§ 732, 735, 311.4, 739, 754, 756; N.Y. Crim. Proc. Law § 170.80.

① PARTIALLY MET

New York law extends foster care services to youth under 21 years of age through a voluntary extended foster care agreement. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>18</sup> Specifically, N.Y. Fam. Ct. Act § 1055(e)(i) (Placement) provides,

No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth,<sup>19</sup> as defined in section one thousand ninety-one of this act, may make a motion pursuant to such section to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with paragraph three of subdivision (d) of section one thousand ninety-one of this act.

In turn, N.Y. Fam. Ct. Act § 1091(b), (f) (Motion to return to foster care placement) states,

(b) A motion to return a former foster care youth to the custody of the social services district from which the youth was most recently discharged, or, in the case of a youth previously placed with the office of children and family services, to be placed in the custody of the social services district of the child's residence, or, in the case of a child freed for adoption, the social services district or authorized agency into whose custody and guardianship such child has been placed, may be made by such former foster care youth, or by the applicable official of the local social services district, authorized agency or the office of children and family services upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care.

....

(f)

(1) If at any time during the pendency of a proceeding brought pursuant to this article, the court finds a compelling reason that it is in the best interests of the former foster care youth to be returned immediately to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, pending a final decision on

<sup>18</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.5: Continuum of Care*, <https://reportcards.sharedhope.org/issue-briefs/#IB3.5> (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

<sup>19</sup> N.Y. Fam. Ct. Act § 1091(a)(1) defines "former foster care youth" as follows:

[A] youth:

(i) who has attained the age of eighteen but is under the age of twenty-one and who had been discharged from a foster care setting on or after:

(A) attaining the age of eighteen due to a failure to consent to continuation in foster care; or

(B) attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(ii)

(A) placed in foster care with a local social services district or authorized agency, as applicable, pursuant to article three, seven, ten, ten-A or ten-C of this act or section three hundred fifty-eight-a of the social services law; or

(B) freed for adoption in accordance with section six hundred thirty-one of this act or section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law but has not yet been adopted; or

(C) placed with the office of children and family services as a juvenile delinquent for a non-secure level of care pursuant to article three of this act.



the motion, the court may issue a temporary order returning the youth to the custody of such local commissioner of social services or other official.

(2) Where the applicable official of the local social services district, authorized agency or the office of children and family services has refused to consent to the re-entry of a former foster care youth, the court shall grant a motion made pursuant to subdivision (e) of this section if the court finds and states in writing that the refusal is unreasonable. For purposes of this article, a court shall find that a refusal to allow a former foster care youth to re-enter care is unreasonable if:

- (i) the youth has no reasonable alternative to foster care;
- (ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and
- (iii) re-entry into foster care is in the best interests of the former foster care youth.

(3) Upon making a determination on a motion filed pursuant to this article, where a motion has previously been granted pursuant to this article, in addition to the applicable findings required by this article, the court shall grant the motion to return a former foster care youth to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, only:

- (i) upon a finding that there is a compelling reason for such former foster care youth to return to care;
- (ii) if the court has not previously granted a subsequent motion for such former foster care youth to return to care pursuant to this paragraph; and
- (iii) upon consideration of the former foster care youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program, if applicable.

3.5.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age. (See [Issue Brief 3.5](#).)

#### INSIGHTS FROM THE FIELD

“Since 2010, New York has expanded foster care services to eligible young people until they turn 21 years old<sup>1</sup>. Additionally, New York extended its Chafee funding to support young adults leaving care through age 23 through its Annual Program Services Review plan to the Administration for Children and Families.”<sup>2</sup>

<sup>1</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.

**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.

● FULLY MET

The New York state legislature made appropriations for FY 2023-2024 to support the development and provision of community-based specialized services for survivors of human trafficking, including child and youth survivors of

sex trafficking.<sup>20</sup> Further, appropriations were made for FY 2023-2024 to fund the development and provision of specialized services through state child serving agencies.

2023-2024 Appropriations				
Bill	Recipient	Amount	Intended Purpose	Term
A 3003/ S 4003	Department of Family Assistance, Office of Temporary and Disability Assistance	\$2,397,000	For services related to the human trafficking program as established pursuant to art.10-D of social services law. <sup>21</sup> Among other tasks, the human trafficking program provides grants to community-based organizations, including those providing services to child and youth survivors of sex trafficking.	FY 2023-2024
2023-2024 Legislative Session				April 1 <sup>st</sup> to March 31 <sup>st</sup>
A 3003/ S 4003	Department of Family Assistance, Office of Children and Family Services	\$1,000,000	For services and expenses associated with sexually exploited children and youth up to age 21.	FY 2023-2024
2023-2024 Legislative Session				April 1 <sup>st</sup> to March 31 <sup>st</sup>

## EXTRA CREDIT



The New York legislature appropriated funds for FY 2023-2024 to support the human trafficking program, which, in turn, provides grants to community-based organizations that serve survivors of human trafficking, including older youth and adult survivors of sex trafficking.



The New York legislature appropriated funds for FY 2023-2024 to support the human trafficking program which, in turn, provides grants to community-based organizations that service survivors of human trafficking, including child survivors of labor trafficking.

<sup>20</sup> Undispersed and/or unexpended balances of previous years' appropriations were also reappropriated from the same funds and made available for the same purposes as the previous years' appropriations.

<sup>21</sup> For purposes of accessing services under the Victims of Human Trafficking Program, N.Y. Soc. Serv. Law § 483-AA(a) (Definitions) defines "human trafficking victim" as "a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law." However, child sex trafficking is criminalized under N.Y. Penal Law § 230.34-a.

### INSIGHTS FROM THE FIELD

“New York State’s enacted budget has provided an annual appropriation for the Safe Harbour: NY program each year since 2011. This program supports specialized services and a continuum of care for trafficked, exploited, and at-risk youth regardless of their system involvement.”<sup>†</sup>

*†This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*



## ISSUE 4: Access to Justice for Trafficking Survivors

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

○ NOT MET

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

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters. (See [Issue Brief 4.1.](#))

### 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.

① PARTIALLY MET

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

For purposes of accessing crime victims' compensation, N.Y. Exec. Law § 621(5), (11) (Definitions) defines "victim" and "child victim" as follows:

5. "Victim" shall mean (a) a person who suffers personal physical injury as a direct result of a crime;<sup>22</sup> (b) a person who is the victim of either the crime of . . . (12) labor trafficking as defined in section 135.35 of the penal law, (13) sex trafficking as defined in section 230.34 of the penal law; or (14) sex trafficking of a child as defined in section 230.34-a of the penal law . . .

. . . .

11. For purposes of this article "child victim" shall mean a person less than eighteen years of age who suffers physical, mental or emotional injury, or loss or damage, as a direct result of a crime . . .

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to N.Y. Exec. Law § 624(2) (Eligibility), "A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive an award with respect to such claim." Further, N.Y. Exec. Law § 631(5), (17) (Awards) provides,

5.

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<sup>22</sup> N.Y. Exec. Law § 621(3) defines "crime" to include the following:

- (a) an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by law; or
- (b) an act committed outside the state of New York against a resident of the state of New York which would be compensable had it occurred within the state of New York and which occurred in a state which does not have an eligible crime victim compensation program as such term is defined in the federal victims of crime act of 1984; or
- (c) an act of terrorism, as defined in section 2331 of title 18, United States Code, committed outside of the United States against a resident of New York state.

(a) In determining the amount of an award, the office shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the office shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

....

....

17. Notwithstanding the provisions of subdivision one of this section, where a child victim has not been physically injured as a direct result of a crime . . . , the claimant shall only be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property of the child victim that has been lost, damaged or destroyed as a direct result of a crime . . . , transportation expenses incurred by the claimant for necessary court appearances of the child victim in connection with the prosecution of such crimes, and, if counseling is commenced within one year from the date of the incident or its discovery, (1) the unreimbursed cost of counseling provided to the child victim on account of mental or emotional stress resulting from the incident in which the crime . . . , and/or (2) the unreimbursed cost of counseling provided to the claimant eligible under paragraph (h) of subdivision one of section six hundred twenty-four of this article and resulting from the incident in which the crime . . . occurred.

Notably, New York law carves out an exception to reporting requirements. Because the exception is offense-specific, however, only victims of trafficking, not CSEC, will be protected. Under N.Y. Exec. Law § 631(1),

No award shall be made unless the office finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency<sup>23</sup> records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the office, for good cause shown, finds the delay to have been justified. Notwithstanding the foregoing provisions of this subdivision, in cases involving . . . labor trafficking as defined in section 135.35 of the penal law or sex trafficking as defined in sections 230.34 and 230.34-a of the penal law . . . , the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation . . . .

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

4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation. (*See [Issue Brief 4.2](#).*)

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<sup>23</sup> N.Y. Exec. Law § 631(1) defines "criminal justice agency" to include the following:

[A] police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense or family offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to title six of article six of the social services law and/or title one of article nine-B of the social services law, and any medical facility established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault.



## INSIGHTS FROM THE FIELD

“Regulation 525.12(m) supplements Executive Law §631(5). This regulation specifies mitigating factors to consider when determining a reduction for conduct contributing.”<sup>24</sup>

(3) However, when considering conduct contributing the office shall examine the following mitigating factors: the victim was a minor, a victim of human trafficking, a sex worker, or a victim of sexual assault. If any such mitigating factors are found in the investigation of the claim pursuant to subdivision (b) of section 525.5 of this Part, the office may make an award without reduction for conduct contributing.

*<sup>24</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.*

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

#### **● PARTIALLY MET**

Although New York law allows trafficking victims to vacate criminal convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization.<sup>24</sup> Pursuant to N.Y. Crim. Proc. Law § 440.10(1)(i), (6) (Motion to vacate judgment),

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

....

(i) The judgment is a conviction where the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law, sex trafficking of a child under section 230.34-a of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) official documentation of the defendant's status as a victim of sex trafficking, labor trafficking, aggravated labor trafficking, compelling prostitution, or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking, labor trafficking, aggravated labor trafficking, compelling prostitution or trafficking in persons, but shall not be required for granting a motion under this paragraph;

(ii) a motion under this paragraph, and all pertinent papers and documents, shall be confidential and may not be made available to any person or public or private entity except where specifically authorized by the court; and

(iii) when a motion is filed under this paragraph, the court may, upon the consent of the petitioner and all of the state and local prosecutorial agencies that prosecuted each matter, consolidate into one proceeding a motion to vacate judgments imposed by distinct or multiple criminal courts; or

....

6. If the court grants a motion under paragraph (i) . . . of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in

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<sup>24</sup> Notably, other forms of post-conviction relief may be available, including record expungement. N.Y. Fam. Ct. Act § 375.3 (Expungement of court records).

the circumstances. In the case of a motion granted under paragraph (i) of subdivision one of this section, the court must vacate the judgment on the merits because the defendant's participation in the offense was a result of having been a victim of trafficking.

Because N.Y. Crim. Proc. Law § 440.10(1)(i) applies specifically to "convictions," however, this protection does not clearly extend to delinquency adjudications.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children to vacate delinquency adjudications for any offense arising from trafficking victimization. (See [Issue Brief 4.3](#).)

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

● FULLY MET

Restitution is mandatory in child sex trafficking and CSEC cases. Pursuant to N.Y. Penal Law § 60.27(1) (Restitution and reparation),

In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby . . . . The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss . . . . In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

**EXTRA CREDIT**



New York law mandates restitution for victims of child labor trafficking under N.Y. Penal Law § 60.27, which applies broadly to any offense.

#### Policy Goal 4.5

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

● FULLY MET

New York law allows victims of child sex trafficking to pursue civil remedies against their exploiters. N.Y. Soc. Serv. Law § 483-bb(c)(i) (Services for victims of human trafficking) states,

An individual who is a victim of the conduct prohibited by section 230.33 [Compelling prostitution], 230.34 [Sex trafficking], 230.34-a [Sex trafficking of a child], 135.35 [Labor trafficking] or 135.37 [Aggravated labor trafficking] of the penal law may bring a civil action against the perpetrator or whoever knowingly advances or profits from, or whoever should have known he or she was advancing or profiting from, an act in violation of section 230.33, 230.34, 230.34-a, 135.35 or 135.37 of the penal law to recover actual, compensatory and punitive damages, injunctive relief, any combination of those or any other appropriate relief, as well as reasonable attorney's fees.

#### EXTRA CREDIT



New York law provides sex trafficked youth with a trafficking-specific civil remedy under N.Y. Soc. Serv. Law § 483-bb(c)(i), which expressly includes victims of sex trafficking under N.Y. Penal Law § 230.34 (Sex trafficking).



New York law provides child labor trafficking victims with a trafficking-specific civil remedy under N.Y. Soc. Serv. Law § 483-bb(c)(i), which expressly includes victims of labor trafficking under N.Y. Penal Law § 135.35 (Labor trafficking) and N.Y. Penal Law § 135.37 (Aggravated 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.

● PARTIALLY MET

New York law lengthens, but does not eliminate, the statute of limitation for filing trafficking-specific civil actions; however, the criminal statutes of limitation for trafficking and CSEC offenses are not lengthened or eliminated. Regarding civil actions, N.Y. Soc. Serv. Law § 483-bb(c)(ii)–(iv) (Services for victims of human trafficking) provides,

(ii) An action brought pursuant to this subdivision shall be commenced within fifteen years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within fifteen years after the date the victim attains the age of majority.

(iii) If a person entitled to sue is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action under this subdivision, the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitations for this action.

- (A) Disability includes being a minor, lacking legal capacity to make decisions, imprisonment, or other incapacity or incompetence.
- (B) The statute of limitations shall not run against a victim who is a minor or who lacks the legal competence to make decisions simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a victim's action within the applicable limitation period will not prejudice the victim's right to do so after his or her disability ceases.
- (C) The perpetrator is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to conduct by such perpetrator inducing the victim to delay the filing of the action, or due to threats made by the perpetrator causing duress upon the victim.
- (D) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.
- (E) The running of the statute of limitations is postponed during the pendency of criminal proceedings against the victim.
- (iv) The running of the statute of limitations may be suspended if a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

N.Y. Civ. Prac. Law § 212(e) (Actions to be commenced within ten or fifteen years) echoes this extension, stating,

An action by a victim of sex trafficking, compelling prostitution, labor trafficking or aggravated labor trafficking, brought pursuant to subdivision (c) of section four hundred eighty-three-bb of the social services law, may be commenced within fifteen years after such victimization occurs provided, however, that such fifteen year period shall not begin to run and shall be tolled during any period in which the victim is or remains subject to such conduct.

Regarding criminal actions, N.Y. Crim. Proc. Law § 30.10(2)(b), (c) establishes a 5-year statute of limitation for most felony prosecutions, and a 2-year statute of limitation for misdemeanors.

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for child sex trafficking and CSEC offenses to commence at any time and eliminate the statute of limitation for filing trafficking-specific civil actions. (See [\*Issue Brief 4.6.\*](#))



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

### Policy Goal 5.1

Non-testimonial evidence may be admitted through a child sex trafficking-specific hearsay exception to reduce reliance of victim testimony.

○ NOT MET

New York 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. (*See [Issue Brief 5.1](#).*)

### Policy Goal 5.2

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

○ NOT MET

New York law does not provide child sex trafficking victims with an alternative to live, in-court testimony. Although N.Y. Crim. Proc. Law § 65.10 (Closed-circuit television; general rule; declaration of vulnerability)<sup>25</sup> permits the court to authorize the testimony of a child under 15 years of age be taken by closed circuit television (CCTV) during the prosecution of a specified offense, this protection does not extend to victims of sex trafficking or CSEC. Specifically, N.Y. Crim. Proc. Law § 65.10 states,

1. A child witness shall be declared vulnerable when the court, in accordance with the provisions of section 65.20 [Closed-circuit television; procedure for application and grounds for determination], determines by clear and convincing evidence that it is likely that such child witness will suffer serious mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of, such harm.
2. When the court declares a child witness to be vulnerable, it shall, except as provided in subdivision four of section 65.30 [Closed-circuit television; special testimonial procedures], authorize the taking of the testimony of the vulnerable child witness from the testimonial room by means of live, two-way closed-circuit television. Under no circumstances shall the provisions of this article be construed to authorize a closed-circuit television system by which events in the courtroom are not transmitted to the testimonial room during the testimony of the vulnerable child witness.

N.Y. Crim. Proc. Law § 65.00 (Definitions) defines “child witness” as “a person fourteen years old or less who is or will be called to testify in a criminal proceeding, other than a grand jury proceeding,<sup>26</sup> concerning an offense defined in article one hundred thirty [Sexual offenses] of the penal law or section 255.25 [Incest in the third degree], 255.26

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<sup>25</sup> The provisions set forth in Article 65 (Use of closed-circuit television for certain child witnesses), including N.Y. Crim. Proc. Law § 65.10, will expire on September 1, 2023.

<sup>26</sup> Notably, N.Y. Crim. Proc. Law § 190.32 (Videotaped examination; definitions, application, order and procedure) allows a victim of a sexual offense or incest to “give evidence in a grand jury proceeding” by video tape “[i]n lieu of requiring [the child] to appear in person.”



[Incest in the second degree], or 255.27 [Incest in the first degree] of such law which is the subject of such criminal proceeding.”

Accordingly, the protection provided for under N.Y. Crim. Proc. Law § 65.10 is unavailable to victims of commercial sexual exploitation. Further, child victims who are 15 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged. (See [Issue Brief 5.2.](#))

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

● **PARTIALLY MET**

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims’ identifying information is protected from disclosure in court records
<b>Summary</b>	Not statutorily required.	New York law requires that a person supportive of the child witness be permitted to be always present and accessible to a child witness during testimony and requires the judge to be attentive to the psychological and emotional stress a child witness may undergo during testimony.	Not statutorily required.
<b>Relevant Statute(s)</b>	None.	N.Y. Exec. Law § 642-a(6), (7) (Fair treatment of child victims as witnesses)	None.

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims have the right to a victim advocate and their identifying information is protected from disclosure in court records. (See [Issue Brief 5.3.](#))

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

● **PARTIALLY MET**

New York law does not provide for privileged communications between caseworkers and child sex trafficking victims specifically. However, child sex trafficking victims may benefit from privileged communications protections provided to certain behavioral and mental health professionals and clients if the victim received care or services from such professionals.

Statute	Profession	Relevant Limitations
N.Y. Civ. Prac. Law § 4508 (Social worker)	Social worker	Privilege does not apply to information obtained involving a

		minor under 16 years of age who is the victim or subject of a crime.
N.Y. Civ. Prac. Law § 4507 (Psychologist)	Psychologist	None.

- 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. (See [Issue Brief 5.4.](#))



## ISSUE 6: Prevention & Training

### Policy Goal 6.1

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

● PARTIALLY MET

New York law authorizes trafficking-specific training for social service providers. Pursuant to N.Y. Soc. Serv. Law § 483-ee(b) (Establishment of interagency task force on human trafficking),

The [interagency task force on human trafficking] shall: . . . (6) evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel, criminal defense attorneys, social service providers and non-governmental organizations, and make recommendations for improving the quality and effectiveness of such programs . . . and (8) convene any subcommittee necessary . . . to consider specific issues, including, but not limited to . . . juveniles and human trafficking; [and] the importance of training and who should receive such training . . . .

Further, N.Y. Soc. Serv. Law § 447-b(1) (Services for exploited children) requires staff members utilizing existing respite or crisis intervention services to receive training on sexually exploited children, stating,

Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children . . . .

Resultingly, resources and training regarding child sex trafficking may be, or become, available. However, New York law does not statutorily require individuals employed by child welfare to receive such training.

- 6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking. (*See [Issue Brief 6.1.](#)*)

### INSIGHTS FROM THE FIELD

“New York has been successful in achieving the underlying intention through policy and practice. For example, all new child welfare case workers are required to complete an [Office of Children and Family Services (OCFS)]-developed training on CSEC. Additionally, OCFS makes many other trainings on CSEC available to workers at no cost on a regular and on-going basis, such as the OCFS CSEC train-the-trainer program and the annual OCFS anti-trafficking summit, which had more than 400 participants in October 2022.”<sup>†</sup>

<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.

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

○ NOT MET

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

- 6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking. (See [Issue Brief 6.2](#).)

### INSIGHTS FROM THE FIELD

“[Office of Children and Family Services (OCFS)] policy requires all new OCFS juvenile justice staff to complete an OCFS-developed training on CSEC (this internal policy is available to review by request). Additionally, OCFS’ many free trainings . . . are offered and available to all juvenile justice professionals.”<sup>†</sup>

<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.

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

● PARTIALLY MET

New York law authorizes trafficking-specific training for law enforcement. Pursuant to N.Y. Exec. Law § 214-d (Human trafficking awareness),

The superintendent, in consultation with the office of temporary and disability assistance and the division of criminal justice services, shall: (1) develop, maintain and disseminate to all members of the state police, including new and veteran officers, written policies, procedures and educational materials relating to human trafficking victims, including services available for victims of human trafficking, as referenced in section four hundred eighty-three-bb of the social services law; and (2) establish and implement written procedures and policies in the event a member of the division of state police encounters an individual believed to be a

victim of human trafficking, which shall include, but not be limited to, the provision of information and/or referral to an appropriate provider of social and legal services to human trafficking victims, in accordance with such section four hundred eighty-three-bb.

Further, N.Y. Soc. Serv. Law § 447-b(6) (Services for exploited children) provides,

The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

Lastly, N.Y. Soc. Serv. Law § 483-ee(6) (Establishment of interagency task force on human trafficking) requires the interagency task force on human trafficking to “evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel . . . and [to] make recommendations for improving the quality and effectiveness of such programs . . . .”

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

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement. (See [Issue Brief 6.3](#).)

#### INSIGHTS FROM THE FIELD

“In New York State, the Municipal Police Training Council (MPTC) recommends basic training requirements for police officers and peace officers. In 2008, the MPTC approved the inclusion of a human trafficking course as part of the Basic Course for Police Officers. All police officers appointed to serve in “any county, city, town, village or police district” are required to complete this course (General Municipal Law § 209-q). The course covers considerations when interviewing victims of human trafficking and the importance of working closely with service providers. As these are minimum training standards, law enforcement agencies and academies are welcome to exceed such standards. Additionally, in 2021, the MPTC published the Human Trafficking Model Policy, which serves as a guide for law enforcement agencies throughout the state.”<sup>f</sup>

<sup>f</sup>*This information was gathered through our Insights from the Field process and was anonymized at the contributor's request.*

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

○ NOT MET

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



- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors. (See [Issue Brief 6.4.](#))

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

● **PARTIALLY MET**

Although not statutorily mandated, training for school personnel on the sexual exploitation of children is contemplated under N.Y. CLS Educ. Law § 803-b (Courses of study in prevention of child sexual exploitation and child sexual abuse), which states,

1. All pupils in grades K-8 in all public schools in the state shall receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program shall be defined by the commissioner in regulations after consultation with the department of health and be designed to educate students, parents and school personnel about the prevention of child sexual exploitation and child sexual abuse in grades kindergarten through eight. Such program shall include, but not be limited to students and parents. Nothing in this section shall prevent the department from making model curriculum and resource materials available on the department's website.
2. The commissioner may provide technical assistance to assist in the development of curricula for such courses of study which shall be age appropriate and developed according to the needs and abilities of pupils at successive grade levels in order to provide awareness, skills, information, self-confidence and support to aid in the prevention of child sexual exploitation and child sexual abuse.

Resultingly, education regarding child sex trafficking may be, or become, available for use by school personnel. However, state law does not statutorily require school personnel to receive such training.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel. (See [Issue Brief 6.5.](#))

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

● **FULLY MET**

New York law mandates child sexual exploitation prevention education for students in grades K-8. Pursuant to N.Y. CLS Educ. Law § 803-b (Courses of study in prevention of child sexual exploitation and child sexual abuse),

1. All pupils in grades K-8 in all public schools in the state shall receive instruction designed to prevent child sexual exploitation and child sexual abuse. Such program shall be defined by the commissioner in regulations after consultation with the department of health and be designed to educate students, parents and school personnel about the prevention of child sexual exploitation and child sexual abuse in grades kindergarten through eight. Such program shall include, but not be limited to students and parents. Nothing in this section shall prevent the department from making model curriculum and resource materials available on the department's website.
2. The commissioner may provide technical assistance to assist in the development of curricula for such courses of study which shall be age appropriate and developed according to the needs and abilities of pupils at successive grade levels in order to provide awareness, skills, information, self-confidence and support to aid in the prevention of child sexual exploitation and child sexual abuse.

## ADDITIONAL INFORMATION FROM STATE PARTNERS

“Legislation is an important component of a state’s response to child trafficking, but it cannot be the only benchmark against which a state’s responses are measured. Including policy in the analysis is critical to understanding how state systems function.

New York State works to prevent child trafficking through regulation, policy, and programming. These efforts reflect New York’s robust, formal, and binding response to child sex trafficking. OCFS has internal policies that must be followed by staff who work with youth in the juvenile justice system; these policies are available upon request.”<sup>†</sup>

*<sup>†</sup>This information was gathered through our Insights from the Field process and was anonymized at the contributor’s request.*

## State Laws Addressing Child Sex Trafficking

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1. N.Y. Penal Law § 230.34-A(1) (Sex trafficking of a child) states,

A person is guilty of sex trafficking of a child when he or she, being twenty-one years old or more, intentionally advances<sup>27</sup> or profits from prostitution<sup>28</sup> of another person and such person is a child less than eighteen years old. Knowledge by the defendant of the age of such child is not an element of this offense and it is not a defense to a prosecution therefor that the defendant did not know the age of the child or believed such age to be eighteen or over.

....

Sex trafficking of a child is a class B felony.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

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<sup>27</sup> N.Y. Penal Law § 230.34-A(2)(a) defines “advances prostitution” as “when, acting other than as a person in prostitution or as a patron thereof, and with intent to cause prostitution, he or she directly engages in conduct that facilitates an act or enterprise of prostitution.”

<sup>28</sup> N.Y. Penal Law § 230.34-A(2)(b) defines “profits from prostitution” as “when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, and with intent to facilitate prostitution, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates in the proceeds of prostitution activity.”

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

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1. N.Y. Penal Law § 230.06 (Patronizing a person for prostitution in the first degree) states,

A person is guilty of patronizing a person for prostitution in the first degree when:

1. He or she patronizes a person for prostitution<sup>29</sup> and the person patronized is less than eleven years old; or
2. Being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old.

Patronizing a person for prostitution in the first degree is a class D felony.

A class D felony sex offense<sup>30</sup> is punishable by imprisonment for 2–7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iii), 80.00(1).

2. N.Y. Penal Law § 230.05 (Patronizing a person for prostitution in the second degree) states,

A person is guilty of patronizing a person for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution<sup>31</sup> and the person patronized is less than fifteen years old.

Patronizing a person for prostitution in the second degree is a class E felony.

A class E felony sex offense<sup>32</sup> is punishable by imprisonment for 1 ½–4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iv), 80.00(1).

3. N.Y. Penal Law § 230.08(1) (Patronizing a person for prostitution in a school zone) states,

A person is guilty of patronizing a person for prostitution in a school zone when, being twenty-one years old or more, he or she patronizes a person for prostitution<sup>33</sup> and the person patronized is less than eighteen years old at a place that he or she knows, or reasonably should know, is in a school zone.

....

Patronizing a person for prostitution in a school zone is a class E felony.

A class E felony is punishable by imprisonment for up to 4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(e), (3)(b), (4), 80.00(1).

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<sup>29</sup> N.Y. Penal Law § 230.02(1) (Patronizing a person for prostitution; definitions) states,

A person patronizes a person for prostitution when:

- (a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or
- (b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him or her; or
- (c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

<sup>30</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.06.

<sup>31</sup> See *supra* note 29 for the definition of “patronizes a person for prostitution.”

<sup>32</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.05.

<sup>33</sup> See *supra* note 29 for the definition of “patronizes a person for prostitution.”

4. N.Y. Penal Law § 230.13 (Aggravated patronizing a minor for prostitution in the first degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the first degree when he or she patronizes a person for prostitution<sup>34</sup> and the person patronized is less than eleven years old, or being eighteen years old or more, he or she patronizes a person for prostitution and the person patronized is less than thirteen years old, and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the first degree is a class B felony.

A class B felony sex offense<sup>35</sup> is punishable by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(i), 80.00(1).

5. N.Y. Penal Law § 230.12 (Aggravated patronizing a minor for prostitution in the second degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the second degree when, being eighteen years old or more, he or she patronizes a person for prostitution<sup>36</sup> and the person patronized is less than fifteen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the second degree is a class D felony.

A class D felony sex offense<sup>37</sup> is punishable by imprisonment for 2–7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iii), 80.00(1).

6. N.Y. Penal Law § 230.11 (Aggravated patronizing a minor for prostitution in the third degree) states,

A person is guilty of aggravated patronizing a minor for prostitution in the third degree when, being twenty-one years old or more, he or she patronizes a person for prostitution<sup>38</sup> and the person patronized is less than seventeen years old and the person guilty of patronizing engages in sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual conduct as those terms are defined in section 130.00 of this part [Sex offenses; definitions of terms], with the person patronized.

Aggravated patronizing a minor for prostitution in the third degree is a class E felony.

A class E felony sex offense<sup>39</sup> is punishable by imprisonment for 1 ½–4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.80(1)(a), (4)(a)(iv), 80.00(1).

7. N.Y. Penal Law § 230.32 (Promoting prostitution in the first degree) states,

A person is guilty of promoting prostitution in the first degree when he or she:

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<sup>34</sup> See *supra* note 29 for the definition of “patronizes a person for prostitution.”

<sup>35</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.13.

<sup>36</sup> See *supra* note 29 for the definition of “patronizes a person for prostitution.”

<sup>37</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.12.

<sup>38</sup> See *supra* note 29 for the definition of “patronizes a person for prostitution.”

<sup>39</sup> N.Y. Penal Law § 70.80(1)(a) defines “felony sex offense” to include a conviction of N.Y. Penal Law § 230.05.



1. knowingly advances<sup>40</sup> or profits from prostitution<sup>41</sup> of a person less than thirteen years old; or
2. being twenty-one years old or more, he or she knowingly advances or profits from prostitution of a person less than fifteen years old.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

8. N.Y. Penal Law § 230.30(2) (Promoting prostitution in the second degree) states,

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

....

2. Advances<sup>42</sup> or profits from prostitution<sup>43</sup> of a person less than eighteen years old.

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

A class C felony is punishable by imprisonment for 1–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(c), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class C felony sex offense by imprisonment for 3 ½–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(ii), 80.00(1).

9. N.Y. Penal Law § 230.25 (Promoting prostitution in the third degree) states,

A person is guilty of promoting prostitution in the third degree when he or she knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or

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<sup>40</sup> N.Y. Penal Law § 230.15(1) (Promoting prostitution; definitions of terms) defines “advance prostitution” as follows:

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

<sup>41</sup> N.Y. Penal Law § 230.15(2) defines “profit from prostitution” as follows:

when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.

<sup>42</sup> See *supra* note 40 for the definition of “advance prostitution.”

<sup>43</sup> See *supra* note 41 for the definition of “profit from prostitution.”

2. Advances<sup>44</sup> or profits from prostitution<sup>45</sup> of a person less than nineteen years old.  
Promoting prostitution in the third degree is a class D felony.

A class D felony is punishable by imprisonment for up to 7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(d), (3)(b), (4), 80.00(1).

10. N.Y. Penal Law § 230.33 (Compelling prostitution) states,

A person is guilty of compelling prostitution when, being eighteen years old or more, he or she knowingly advances prostitution by compelling a person less than eighteen years old, by force or intimidation, to engage in prostitution.  
Compelling prostitution is a class B felony.

A class B felony is punishable by imprisonment for 1–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(b), (3)(b), 80.00(1). If the offender commits this crime “for the purpose, in whole or substantial part, of his or her own direct sexual gratification,” then the offense is a sexually motivated felony punishable as a class B felony sex offense by imprisonment for 5–25 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 130.91(1), 70.80(1)(a), (4)(a)(i), 80.00(1).

11. N.Y. Penal Law § 120.70 (Luring a child) states,

1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 [Sentence of imprisonment for a violent felony offense] of this chapter; . . . an offense as defined in sections 230.30 [Promoting prostitution in the second degree], 230.33 [Compelling prostitution], . . . or 230.34-a [Sex trafficking of a child] of this chapter; . . . or an offense as defined in sections 263.05 [Use of a child in a sexual performance], 263.10 [Promoting an obscene sexual performance], or 263.15 [Promoting a sexual performance by a child] of this chapter. For purposes of this subdivision “child” means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.

2. Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense of luring a child in violation of this section shall be deemed respectively, a class C felony or class D felony.

A class E felony is punishable by imprisonment for up to 4 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(e), (3)(b), (4), 80.00(1). A class D felony is punishable by imprisonment for up to 7 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law §§ 70.00(2)(d), (3)(b), (4), 80.00(1). A class C felony is punishable by imprisonment for 1–15 years and a possible fine up to the greater of \$5,000 or “double the amount of the defendant’s gain from the commission of the crime.” N.Y. Penal Law § 70.00(2)(c), (3)(b), 80.00(1).

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<sup>44</sup> See *supra* note 40 for the definition of “advance prostitution.”

<sup>45</sup> See *supra* note 41 for the definition of “profit from prostitution.”

## RESOURCES

**REPORT CARDS PROJECT:** For more information on the Report Cards Project, visit [reportcards.sharedhope.org](https://reportcards.sharedhope.org).

**TOOLKIT:** To see how your state compares, visit [reportcards.sharedhope.org/toolkit](https://reportcards.sharedhope.org/toolkit).

**ISSUE BRIEFS:** To better understand a policy goal, visit [reportcards.sharedhope.org/issue-briefs](https://reportcards.sharedhope.org/issue-briefs).

**SURVEY CHARTS:** To see where the nation stands as a whole on a particular issue, visit [reportcards.sharedhope.org/state-survey-charts](https://reportcards.sharedhope.org/state-survey-charts).

## HIGHLIGHTED RESOURCES

### Community-Based Services White Paper



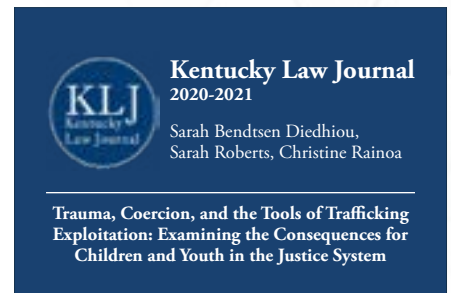
This white paper discusses the importance of providing comprehensive, trauma-informed services to all child sex trafficking victims, regardless of system involvement, and provides examples of state statutory responses.

### Victim-Offender Intersectionality Report



This report examines the phenomenon of sex trafficking survivors entering the criminal justice system for allegedly engaging in sex trafficking conduct and provides tools for criminal justice stakeholders to assist in identifying and responding to these cases in a trauma-informed manner.

### Trauma, Coercion, and the Tools of Trafficking Exploitation



This law journal article examines the harms of relying on a juvenile justice-based response for serving child sex trafficking victims, the importance of enacting strong non-criminalization laws, the intertwined nature of sex trafficking victimization and criminalized conduct, and the importance of using a trauma-informed lens in response.

## TECHNICAL ASSISTANCE

For legislators and policy advocates assisting elected officials in creating legislation, request a consultation with our Policy Team online at [sharedhope.org/legislative-technical-assistance](https://sharedhope.org/legislative-technical-assistance). We will set up a meeting to discuss your legislative goals and create a customized plan for ongoing technical assistance, bill drafting services, and legislative support.

## ADVOCACY ACTION CENTER

The Advocacy Action Center is an online resource that allows individuals to join the fight against child sex trafficking either through legislator engagement or by signing a petition. For more information, visit [act.sharedhope.org/actioncenter](https://act.sharedhope.org/actioncenter).



Contact your legislators, letting them know you want greater protections for child sex trafficking victims and increased accountability for their exploiters.



Sign a petition to show your support for issues that advance justice for child sex trafficking survivors.



Help end the criminalization of child sex trafficking survivors! Several states can still criminalize child sex trafficking victims for prostitution. Sign the petition to show your support for changing these laws.