

ISSUE BRIEF

COMPONENT 3.4

Area of Law	Criminal Provisions for Traffickers
The Policy Goal	Financial penalties for traffickers, including asset forfeiture, are sufficiently high.
The Reason	Traffickers primarily exploit children for profit. Children can be sold for sex multiple times over a prolonged period of time, resulting in significant profit for the trafficker. Financial penalties, including fines and asset forfeiture, are critical to increasing criminal deterrence and disrupting criminal trafficking enterprises, as well as offsetting the cost of investigating, prosecuting, and providing services to restore victims' lives. Further, asset forfeiture is a critical means of prohibiting a criminal from keeping the proceeds or instrumentalities of the crime while ensuring that minor victims have critically needed assets to fund their recovery. This should be accomplished by directing financial penalties collected from convicted traffickers to pay victim restitution first, after which traffickers' assets can be used to fund sex trafficking investigations, law enforcement training, and specialized services.

Examples of Legislative Solutions

The following states have significant fines and allow asset forfeiture.

Alabama

Traffickers convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree), a Class A felony, may be required to pay a possible fine up to \$60,000, pay restitution and civil damages to a human trafficking victim, and forfeit property used in committing the crime. Ala. Code §§ 13A-5-11(a)(1), 13A-6-156, 13A-6-157. Pursuant to Ala. Code § 13A-6-155(a) (Penalties—Restitution to victim), traffickers convicted under any provision of the human trafficking article, Ala. Code §§ 13A-6-150 to 13A-6-160, will be required to “pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.”

Louisiana

A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is punishable by a possible fine of \$50,000, or a possible fine of \$75,000 if the victim was under 14. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). La. Rev. Stat. Ann. § 15:539.2 (Exploited children's fund) states “Any person who is convicted or pleads guilty or nolo

contendere to an offense involving trafficking of children for sexual purposes . . .” will have to pay a fine of \$2,000 in addition to other financial penalties. Pursuant to La. Rev. Stat. Ann. § 15:539.3(A) (Mandatory restitution), “A person convicted of a violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim, with the proceeds from property forfeited under R.S. 15:539.1 applied first to payment of restitution, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied.”

Pursuant to La. Rev. Stat. Ann. § 15:539.1(E) (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property), “. . . when the currency, instruments, securities, or other property is forfeited pursuant to the provisions of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1

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Michigan

A violation of Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) is a felony punishable by a fine of up to \$20,000. Mich. Comp. Laws Ann. § 750.462f(2). Mich. Comp. Laws Ann. § 780.766b (Conviction of offense described in MCL 750.462a to 750.462h; restitution) states, “When sentencing a defendant convicted of an offense described in chapter LXVIIA of the Michigan penal code [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim.”

Under Mich. Comp. Laws Ann. § 600.4702(1) (Property subject to seizure and forfeiture; exception; encumbrances; substituted proceeds of crime), the following property is subject to seizure and forfeiture: “(a) All personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime. (b) All real property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime (c) In the case of a crime that is a violation . . . Michigan penal code . . . 750.462a to 750.462h [Human trafficking]. . . all property described in subdivisions (a) and (b), and all real property or personal property that performed 1 of the following functions: (i) Contributed directly and materially to the commission of the crime. (ii) Was used to conceal the crime. (iii) Was used to escape from the scene of the crime. (iv) Was used to conceal the identity of 1 or more of the individuals who committed the crime.”

Mich. Comp. Laws Ann. § 600.3801 (Nuisance; injunction; abatement; guilt; “controlled substance” defined) states that “(1) A building, vehicle, boat, aircraft, or place is a nuisance if . . . (f) It is used for conduct prohibited by chapter LXVIIA of the Michigan Penal Code, 1931 PA 328, MCL 750.462a to 750.462h [Human trafficking]. . . .” Mich. Comp. Laws Ann. § 600.3825 (Order of abatement; execution of court order; duties of officer; use of building or place ordered closed; contempt; determination of amount due victim) states that

“[i]f the court in an action under this chapter declares property to be a nuisance under section 3801(1)(f), the officer executing the order of the court shall first pay from the proceeds any amount determined by the court to be due to the victim For purposes of determining the amount due to a victim under this subsection, the court shall consider the loss suffered by the victim as a proximate result of the conduct and may use as guidance the items of loss enumerated in . . . MCL 780.766b [Conviction of offense described in MCL 750.462a to 750.462h; restitution].”

Nebraska

Traffickers convicted under state human trafficking and CSEC statutes face property forfeiture, restitution, and fines. While convictions under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) do not include fines, traffickers may face property forfeiture under Neb. Rev. Stat. Ann. § 25-21,302(1), which states in part, “In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of . . . § 28-831 may be forfeited” Convictions under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties), which includes sex trafficking and CSEC, carry a possible fine not exceeding \$10,000 if the offense “was committed knowingly and intentionally and does not result in serious bodily injury.” Traffickers who cause “actual physical injury or property damage or loss” to their victim may be required to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when), which is determined “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281.

Oregon

A conviction under Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) is punishable as a Class A felony, which includes a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.625(1)(b). Traffickers may also be subject to discretionary, criminal asset forfeiture under Or. Rev. Stat. § 131.553(1)(e). Where the seizing agency is the state, Or. Rev. Stat. § 131.597 provides the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. A trafficker may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of human trafficking or commercial sexual exploitation of children (CSEC) offenses. The court is authorized to order restitution as part of a criminal case when the victim “suffered economic damages.” Or. Rev. Stat. § 137.106(1).