

ISSUE BRIEF

COMPONENT 4.2

Area of Law	Criminal Provisions for Facilitators
The Policy Goal	Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.
The Reason	Facilitators benefit economically from a multibillion dollar human trafficking industry in the United States but are rarely held financially liable for the consequences of the crime. Financial penalties, including asset forfeiture for the money and property used in connection with or derived from the facilitation of commercial sexual exploitation of children, can serve as a deterrent to assisting in or benefitting from this crime. To ensure that minor victims have assets to fund their recovery, financial penalties should be directed first to pay victim restitution, after which assets could be used to fund sex trafficking investigations, law enforcement training, and specialized services. Asset forfeiture and financial penalties are frequently available through racketeering and money laundering laws, but ensuring these are also available directly through criminal statutes on sex trafficking is important to reach all facilitators.

Examples of Legislative Solutions

The following laws impose financial penalties on facilitators of domestic minor sex trafficking.

Alabama

Ala. Code § 13A-6-153(b) (Human trafficking in the second degree) makes a conviction of the crime of human trafficking under Ala. Code § 13A-6-153(a) a Class B felony punishable by a possible fine up to \$30,000. Ala. Code §§ 13A-6-153(b), 13A-5-11(a)(2). Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property) states, “[a] person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that he or she has acquired or maintained [or] that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. . . .” Pursuant to Ala. Code § 13A-6-155(a) (Mandatory restitution), facilitators 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.”

Colorado

Facilitators convicted of Colo. Rev. Stat. Ann. § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-403.5 (Procurement of a child), or § 18-7-404(1) (Keeping a place of child prostitution), all Class 3 felonies, may be required to pay a fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403.5, 18-7-404(2), 18-1.3-401(1)(a)(III)(A). Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders), “Every order of conviction of a felony [or] misdemeanor . . . shall include consideration of restitution.” Colo. Rev. Stat. Ann. § 16-13-303(1)(a) (Class 1 public nuisance) states that “every building . . . shall be deemed a class 1 public nuisance when . . . [u]sed as a public or private place of prostitution” Colo. Rev. Stat. Ann. § 16-13-311(3)(a) states in part, “Property forfeited pursuant to this section or proceeds therefrom shall be distributed or applied in the following order: (I) To payment of the balances due on any liens . . . the order of their priority; (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property; (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture”

Oregon

Facilitators convicted under Or. Rev. Stat. § 163.266(1)(a) or (2) (Trafficking in persons), or § 167.017(1)(c) (Compelling prostitution) face Class B felonies punishable by a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.625(1)(c). A conviction under Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) is punishable as a Class A felony by a possible fine not to exceed \$375,000. Or. Rev. Stat. § 161.625(1)(b). Under Oregon's discretionary, criminal forfeiture provisions, Or. Rev. Stat. § 131.553(1)(c), (e) (Legislative findings; effect on local laws; remedy not exclusive) finds that "[p]erpetrators of crimes should not be allowed to keep the proceeds and instrumentalities of their crimes" and that "[t]here is a need to provide for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600,108 to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct." Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597, which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. Facilitators 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 before sentencing evidence of economic damages suffered as a result of the crime. The court is authorized to order restitution as part of a criminal case when the crime "has resulted in economic damages." Or. Rev. Stat. § 137.106(1). In addition to these provisions, Oregon's racketeering provisions provide for civil asset forfeiture. Or. Rev. Stat. §§ 166.715-.735.

Washington

Facilitators convicted under Wash. Rev. Code Ann. § 9A.40.100(1)(a), (3)(a) (Trafficking) or § 9.68A.101 (Promoting commercial sexual abuse of a minor) may be required to pay possible fines up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), (3)(b), 9.68A.101(2), 9.94A.550. Furthermore, pursuant to Wash. Rev. Code Ann. § 9.68A.106, an adult offender who is convicted of an offense under Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor—Penalty) or § 9.68A.102 (Promoting travel for commercial sexual abuse of a minor—Penalty) will receive an additional fine of \$5,000 "per offense when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime." Facilitators also face asset forfeiture under several statutes since Wash. Rev. Code Ann. §

10.105.010 (Seizure and forfeiture) applies to most felonies, including Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.102 (Promoting travel for commercial sexual abuse). Facilitators may forfeit vehicles for suspected violations of promoting commercial sexual abuse of a minor or promoting travel for commercial sexual abuse of a minor. Wash. Rev. Code Ann. § 9A.88.140(2) (Vehicle impoundment—fees and fines). Personal property "used as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony," is also subject to forfeiture. Wash. Rev. Code §§ 10.105.010(1), 10.105.900. Pursuant to Wash. Rev. Code Ann. § 10.105.010(6) (Seizure and forfeiture), "When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may . . ." retain the property or "sell that which is not required to be destroyed by law and which is not harmful to the public." Wash. Rev. Code Ann. § 9.94A.753(7) (Restitution—application dates) states, ". . . the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter RCW 7.68 [Victims of crimes—compensation, assistance]."

Wyoming

Pursuant to Wyo. Stat. Ann. § 6-2-711(a)(i) (Asset Forfeiture), facilitators face forfeiture of "[a]ll assets subject to the jurisdiction of the court: . . . (B) [a]ffording a person a source of influence over a trafficked individual in violation of this article; (C) [a]cquired or maintained by a person with the intent to, and for the purpose of supporting, conducting, or concealing an act which violates this article; or (D) [d]erived from, involved in, or used or intended to be used to commit an act which violates this article." Additionally, forfeited assets may include "(iii) [a]ll conveyances including aircraft, vehicles or vessels, knowingly used or intended for use to transport victims or in any manner to knowingly facilitate transportation of victims for human trafficking in violation of this article . . . ; (iv) [a]ll buildings knowingly used or intended for use to further human trafficking in violation of this article if the owner has knowledge of or gives consent to the act of violation . . . ; (v) [a]ny property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets, or other property of any kind traceable to the exchange and any money, securities, or other negotiable instruments used to facilitate a violation of this article"