

ISSUE BRIEF

COMPONENT 5.10

Area of Law	Protective Provisions for the Child Victims
The Policy Goal	Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.
The Reason	Sex trafficking is a multi-billion dollar industry. States must enact laws that require restitution for the victim and permit victims of domestic minor sex trafficking to pursue civil remedies for the damages they have suffered as a result of trafficking victimization. Restitution should include payment for medical and psychological treatment, lost income, attorney’s fees and costs, and other damages. Restitution and civil remedies will serve to punish those persons who commercially sexually exploit children while simultaneously providing much needed funding for victim services. The purpose of these laws is to make the victims of the crime whole again and empower them with the private right to vindicate their civil rights and hold their traffickers directly accountable for their actions.

Examples of Legislative Solutions

Alaska

Alaska Stat. § 12.55.045(a) (Restitution and compensation) states, “The court shall . . . order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise provided by law.”

California

Cal. Civ. Code § 52.5(a), (f) (Action by victim of human trafficking) expressly states that victims of Cal. Penal Code § 236.1 (Human trafficking defined; punishment) “may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney’s fees and costs,” as well as “litigation costs including, but not limited to, expert witness fees and expenses” Additionally, “the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater,” as well as “punitive damages . . . upon proof of the defendant’s malice, oppression, fraud, or duress in committing the act of human trafficking.”

Cal. Penal Code § 1202.4(q) (Restitution; amount; hearing and court order; financial disclosure) states, “Upon conviction for a violation of Section 236.1 [Human trafficking], the court shall, in

addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a case in which a victim has suffered economic loss as a result of the defendant’s conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim’s labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim’s labor as guaranteed under California law, or the actual income derived by the defendant from the victim’s labor or services or any other appropriate means to provide reparations to the victim.”

Cal. Penal Code § 1202.4(a)(3)(B) states, “The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay . . . [r]estitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.” Cal. Penal Code § 1202.4(f)(3) provides that a victim may receive restitution for the following: “(A) Full or partial payment for the value of stolen or damaged property (B) Medical expenses. (C) Mental health counseling expenses. (D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian, or guardians, while caring for the injured minor (E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution

. . . (F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288 [Lewd or lascivious acts involving children], 288.5 [Continuous sexual abuse of child], or 288.7 [Sexual acts with child under 10 years old or younger; punishment as felony]. (G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court. (H) Actual and reasonable attorney's fees and other costs . . ."

Connecticut

Conn. Gen. Stat § 52-571i (Action for damages resulting from trafficking in persons) states, "Any person aggrieved by a violation of section 53a-192a [Trafficking in persons] may bring a civil action in the superior court for the judicial district where such person resides or the judicial district of Hartford against the person or persons who committed such violation to recover actual damages, statutory damages of not more than one thousand dollars for each day such person was coerced by another person in violation of section 53a-192a and a reasonable attorney's fee."

Conn. Gen. Stat. § 53a-28(c) requires, "if (1) a person is convicted of an offense that resulted in injury to another person or damage to or loss of property, (2) the victim requests financial restitution, and (3) the court finds that the victim has suffered injury or damage to or loss of property as a result of such offense, the court shall order the offender to make financial restitution under terms that it determines are appropriate Restitution ordered by the court pursuant to this subsection shall be based on easily ascertainable damages for injury or loss of property, actual expenses incurred for treatment for injury to persons and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses, but may include the costs of counseling reasonably related to the offense"

Florida

Fla. Stat. Ann. § 847.01357 (Exploited children's civil remedy) states, "(1) Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794 [Sexual Battery], chapter 800 [Lewdness; indecent exposure], chapter 827 [Abuse of children], or chapter 847 [Obscenity], where any portion of such abuse was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person

sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000."

Fla. Stat. Ann. § 775.089(1)(a) (Restitution) states, in part, "In addition to any punishment, the court shall order the defendant to make restitution to the victim for: 1. Damage or loss caused directly or indirectly by the defendant's offense; and 2. Damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03"

North Dakota

N.D. Cent. Code § 12.1-41-09(1), (2) (Restitution) states, "The court shall order a person convicted of an offense under section § 12.1-41-02 (Trafficking an individual) . . . or 12.1-41-04 (Sexual servitude) to pay restitution to the victim of the offense for: (a) Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; (b) An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim: (1) The gross income to the defendant for, or the value to the defendant of, the victim's . . . services or sexual activity; (2) The amount the defendant contracted to pay the victim; or (3) The value of the victim's . . . services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act [29 U.S.C. 201 et seq.] or section 34-06-22, whichever is higher, even if the provisions do not apply to the victim's . . . services or sexual activity. (2) The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution."

Ohio

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements) states, "If an offender who is convicted of or pleads guilty to a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in a pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in

furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following: (i) The gross income or value to the offender of the victim's labor or services; (ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 20 U.S.C. 207, and state labor laws."

Ohio Rev. Code Ann. § 2307.51(A) states, "[a] victim of a violation of section 2905.32 of the Revised Code has and may commence a civil cause of action for compensatory and punitive damages against the trafficker for harm that resulted from the violation . . ." regardless of whether the trafficker was prosecuted or convicted. This is addition to any other cause of action. Ohio Rev. Code Ann. § 2307.51(B).

Tennessee

Tenn. Code Ann. § 39-11-118 (Restitution to victims of crime) states, "(a) It is a part of the punishment for any offense committed in this state that person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) [Sentencing alternatives] and 40-35-304 [Restitution as condition for the probation–Petition to modify–Civil judgment for non-payment–Procedure]. (b) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection that the defendant be sentenced by court to pay restitution to the victim or victims §§ 39-13-309 [Trafficking a person for a commercial sex act], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Especially aggravated sexual exploitation], 39-13-528 [Solicitation of a person under 18 years of age], and 39-13-529(a) [Solicitation of a minor to observe sexual conduct] in accordance with the provisions of §§ 40-35-104(c)(2) [Alternative sentences] and 40-35-304 [Restitution; amount; definition; waiver; procedure]."