

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

POLICY GOAL: State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.

Restitution is a financial penalty ordered in criminal cases in which defendants must pay their victims for the cost of their victimization.

Restitution is intended to make victims whole again.¹ Restitution also serves to “vindicate the rights of society” and as punishment to deter defendants from committing future crimes.² Restitution differs from other forms of victims’ compensation, such as a crime victims’ compensation fund or monetary awards ordered in a civil suit, because restitution is ordered as part of a criminal defendant’s sentence. Additionally, federal restitution orders may be worth more than civil judgements as federal criminal restitution orders under the anti-trafficking statute are tax-free.³ Restitution also does not require the victim to meet the plethora of criteria that is sometimes required to qualify for crime victims’ compensation.⁴

Under federal law, restitution is mandatory when a defendant is convicted under the federal human trafficking or child sexual exploitation statutes. The federal mandatory restitution statute is broad, allowing victims to recover the “full amount” of their losses, including any costs the victim incurred, or is projected to incur, as a result of his or her victimization and profits the defendant gained from the victim’s “services.”⁵ State law should follow suit and ensure that restitution is not only mandatory for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material

(CSAM) offenses, but also includes payment for medical and psychological treatment, lost income, attorney’s fees and costs, and other damages. To ensure that victims receive this important support, state law should include mechanisms for assuring accountability from the offender for paying restitution. Further, state law should guarantee that restitution is collected and paid to the victim prior to collecting money to cover other fines and fees associated with the conviction.

Restitution is critical for survivors’ attainment of justice and for providing a meaningful form of punishment for offenders. In addition to serving as a financial penalty, requiring restitution orders as a part of sex trafficking, CSEC, and CSAM sentences can support survivors’ ability to obtain comprehensive services without being left with significant out-of-pocket costs.

DRAFTING CONSIDERATIONS: *To accomplish this policy goal, state law should...*

- ▶ Require *mandatory* restitution for child sex trafficking, CSEC, and CSAM offenses.
- ▶ Include a mechanism to enforce payment of restitution.

RELATED ISSUES:

- 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
- 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.
- 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.

SUPPORTING RESOURCES:

- ▶ Protected Innocence Challenge Framework Brief (Section 5)

¹ RESTITUTION IN FEDERAL CRIMINAL CASES: A SKETCH, CONG. RSCH. SERV. (Oct. 15, 2019).

² 24 C.J.S. CRIMINAL PROCEDURE AND RIGHTS OF ACCUSED § 2484 (updated Mar. 2020).

³ Charisa Smith, *No Quick Fix: The Failure of Criminal Law and the Promise of Civil Law Remedies for Domestic Child Sex Trafficking*, 71 U. MIAMI L. REV. 1, 76 (2016).

⁴ See Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status*, 2016 UTAH L. REV. 535, 560–61 (2016) (describing the eligibility requirements for CVC and how they pose particular barriers for human trafficking survivors, including filing a timely claim, reporting the crime to law enforcement, and cooperating with law enforcement investigations).

⁵ 18 U.S.C. §§ 1953, 2248, 2259(c)(2); RESTITUTION IN FEDERAL CRIMINAL CASES, *supra* note 1, at 5.