

## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

**The ability to pursue civil remedies against trafficking perpetrators is an important and practical aspect of justice, providing survivors with the means to seek services and rebuild their lives.** Civil remedies can serve as a valuable tool for trafficking survivors as the statutes surrounding victim's compensation and restitution are often limited and fail to provide comprehensive relief.<sup>1</sup> Restitution is tied to the successful prosecution of a trafficker and may rely on judicial discretion even when restitution is supposed to be mandatory.<sup>2</sup> Crime victims' compensation can also be tied to criminal proceedings by requiring victims to cooperate with law enforcement and report the crime in a timely manner, creating barriers that are particularly difficult to surmount for trafficking survivors.<sup>3</sup> Awards under both restitution and crime victims' compensation are typically limited to actual economic loss as a result of one's victimization. Under the Trafficking Victims Protection Act (TVPA) (2003) and its 2008 Reauthorization, however, survivors were given the federal right of action to recover actual damages, punitive damages, and reasonable attorney's fees.<sup>4</sup> The Uniform Law Commission published the Uniform Act on the Prevention of and Remedies for Human Trafficking (Uniform Act) in 2013 to encourage states to craft specific civil remedy

statutes within their legislation for trafficking survivors.<sup>5</sup> Federal actions of this nature allow survivors to regain ownership over their lives and provide avenues to hold traffickers accountable for their actions.<sup>6</sup>

A civil right of action allows victims to recover not only calculated economic losses but also compensation for emotional distress and punitive damages.<sup>7</sup> Civil actions require a lower standard of proof to be successful compared to criminal prosecutions and can be brought against a variety of actors, including buyers, traffickers, and facilitators.<sup>8</sup> Civil actions can, therefore, be utilized when prosecutors are unable or unwilling to bring charges against exploiters. In addition to providing another route for monetary compensation, a civil right of action is controlled by the survivor, providing the survivor with the autonomy to recover the profits of his or her victimization from the trafficker.<sup>9</sup> Reclaiming one's power in asserting their rights can be a powerful step toward healing.<sup>10</sup> To promote the economic, social, and emotional recovery of child sex trafficking and commercial sexual exploitation of children (CSEC) survivors, states should follow the standard set forth in the TVPA and provide a trafficking-specific civil right of action that supports full restoration for damages suffered.

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

- ▶ Provide for a trafficking-specific civil remedy against all trafficking offenders.
- ▶ Ensure CSEC-specific civil remedies are available for trafficking survivors.

## **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.
- 4.4** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.
- 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 \(Section 5\)](#)

<sup>1</sup> HUMAN TRAFFICKING ISSUE BRIEF: CIVIL REMEDY, POLARIS (2015).

<sup>2</sup> Alexandra F. Levy & Martina E. Vandenberg, *Breaking the Law: The Failure to Award Mandatory Criminal Restitution to Victims in Sex Trafficking Cases*, 60 ST. LOUIS U. L.J. 43, 45, 53–56 (2015) (describing the troubling finding that under the federal mandatory restitution regime, minor sex trafficking victims were less likely to receive restitution, and even when restitution was ordered, the award was significantly smaller compared to cases involving adult victims); Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status*, 2016 UTAH L. REV. 535, 557–58 (2016).

<sup>3</sup> Peters, *supra* note 2 at 559–60.

<sup>4</sup> 18 U.S.C. § 1595 (2018); 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, 73 (2016).

<sup>5</sup> NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING 3 (2013).

<sup>6</sup> *Id.*

<sup>7</sup> Smith, *supra* note iv at 74; *see, e.g.* 75 A.L.R. Fed. 2d 467 §§ 32–33 (2013, April 2020 update) (providing case law examples where trafficking victims were awarded compensatory and punitive damages under the federal civil anti-trafficking statute).

<sup>8</sup> Smith, *supra* note 4 at 73, 75.

<sup>9</sup> *Id.* at 70–71.

<sup>10</sup> *See id.*