

## Tennessee State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

**Rating:** Tier One (green)

**Total Points:** 9.5

**Credited Categories:** 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; and 9 Civil Remedy.

**Categories Still Needed:** 4(a) Training for Law Enforcement and 10 Vacating Convictions.

**Category By Category Break-Down:**

### Category 1: Sex Trafficking Statute

#### § 39-13-309. Trafficking a person for sexual servitude

- (a) A person commits the offense of trafficking a person for a commercial sex act who:
  - (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person's provision of a commercial sex act; or
  - (2) Recruits, entices, harbors, transports, provides, or obtains by any other means, another person for the purpose of providing a commercial sex act.
- (b) For purposes of subdivision (a)(2), such means may include, but are not limited to:
  - (1) Causing or threatening to cause physical harm to the person;
  - (2) Physically restraining or threatening to physically restrain the person;
  - (3) Abusing or threatening to abuse the law or legal process;
  - (4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;
  - (5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person; or
  - (6) Facilitating or controlling a person's access to a controlled substance.
- (c) A violation of subsection (a) is a Class B felony, except where the victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000') of a public or private school, secondary school, preschool,



child care agency, public library, recreational center, or public park, a violation of subsection (a) is a Class A felony.

## **Category 2: Labor Trafficking Statute**

### **§ 39-13-307. Involuntary labor servitude**

(a) A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by:

- (1) Causing or threatening to cause physical harm to the person;
- (2) Physically restraining or threatening to physically restrain the person;
- (3) Abusing or threatening to abuse the law or legal process;
- (4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person; or
- (5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

- (1) The gross income or value to the defendant of the victim's labor or services; or
- (2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), compiled in 29 U.S.C. § 201 et seq., or the minimum wage required in this state, whichever is higher.

(c) Nothing in this section shall be construed as prohibiting the defendant from also being prosecuted for the theft of the victim's labor or services by involuntary servitude or for any other appropriate criminal statute violated by the defendant's conduct.

(d)(1) Involuntary servitude is a Class C felony.

(2) Involuntary servitude is a Class B felony if:

- (A) The violation resulted in the serious bodily injury or death of a victim;
- (B) The period of time during which the victim was held in servitude exceeded one (1)

year; or

- (C) The defendant held ten (10) or more victims in servitude at any time during the course of the defendant's criminal episode.

### **§ 39-13-308. Trafficking persons for forced labor or services**

(a) A person commits the offense of trafficking persons for forced labor or services who knowingly:

- (1) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to involuntary servitude; or
- (2) Benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act described in § 39-13-307.

(b) In addition to any other amount of loss identified or any other punishment imposed, the court shall order restitution to the victim or victims in an amount equal to the greater of:

- (1) The gross income or value of the benefit received by the defendant as the result of the victim's labor or services; or



- (2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), compiled in 29 U.S.C. § 201 et seq., or the minimum wage required in this state, whichever is higher.
- (c) Trafficking for forced labor or services is a Class C felony.

### **§ 39-13-311. Trafficking offenses by corporations**

A corporation may be prosecuted for a violation of §§ 39-13-308 and 39-13-309 for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent's office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent's employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

### **Category 3(a): Asset Forfeiture**

#### **§39-11-703. Criminal Proceeds Subject to Forfeiture.**

- (a) Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture.
- (b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:
  - (1) A conviction for a violation of § 39-17-417(i) or (j) or the commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a felony conviction under chapter 17, part 4 of this title; or
  - (2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.
- (c) The following items are subject to judicial forfeiture as provided in this part:
  - (1) Conveyances, including aircraft, motor vehicles, and other vessels when used or intended to be used in connection with a violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
  - (2) Books, records, telecommunication equipment, or computers when used or intended to be used in connection with a violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
  - (3) Money or weapons when used or intended to be used in connection with a violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
  - (4) Real property when used or intended to be used in connection with a violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
  - (5) Everything of value furnished, or intended to be furnished, in exchange for an act in violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate the violation;



(6) Any property, real or personal, directly or indirectly acquired by or received in violation of such violation or as an inducement to violate such statutes, or any property traceable to the proceeds from the violation; and

(7) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of §§ 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011.

(d) In any in rem forfeiture action in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or other like fungible property:

(1) It shall not be necessary for the state to identify the specific property involved in the offense that is the basis for the forfeiture action; and

(2) It shall not be a defense that the property involved in such an action has been removed and replaced by identical property.

### **Category 3(b): Investigative Tools**

#### **§ 39-12-203. Definitions**

(9) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit an act for financial gain that is a criminal offense involving controlled substances, and the amount of controlled substances involved in the offense is included under § 39-17-417(i) and (j) and its subdivisions or involving aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor under §§ 39-17-1004(b)(1)(A) and 39-17-1005(a)(1), trafficking for commercial sex acts under § 39-13-309, promoting prostitution under § 39-13-515, patronizing prostitution under § 39-13-514(b)(4)(A), solicitation of a minor under § 39-13-528(a), or soliciting sexual exploitation of a minor, exploitation of a minor by electronic means under § 39-13-529, or to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit a criminal gang offense, as defined in § 40-35-121(a)

(13) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part, because the debt was incurred or contracted in violation of:

(B) Sections 39-17-1004(b)(1)(A) and 39-17-1005(a)(1), involving especially aggravated sexual exploitation of a minor;

(C) Section 39-13-309, involving trafficking for commercial sex acts;

(D) Section 39-13-515, involving promoting prostitution;

(E) Section 39-13-514(b)(4)(A), involving patronizing prostitution;

(F) Section 39-13-528(a), involving solicitation of a minor; or

(G) Section 39-13-529, involving soliciting sexual exploitation of a minor, exploitation of a minor by electronic means.

### **Category 4(a): Training for Law Enforcement**

None.



## **Category 4(b): Human Trafficking Task Force**

### **§ 4-3-3001.**

The governor shall establish a human trafficking task force to develop and implement a state plan for the prevention of human trafficking.

### **§4-3-3002.**

The human trafficking task force shall meet at least biannually and is authorized to address all aspects of human trafficking, including, but not limited to, sex trafficking and labor trafficking of both United States citizens and foreign nationals.

### **§4-3-3003.**

(a) The human trafficking task force shall be comprised of the following members:

- (1) A human trafficking task force chairperson, to be appointed by the governor;
- (2) One (1) representative from each of the following:
  - (A) Tennessee bureau of investigation;
  - (B) Office of the attorney general and reporter;
  - (C) Department of labor and workforce development;
  - (D) Tennessee Association of Chiefs of Police;
  - (E) Tennessee Sheriffs' Association;
  - (F) Department of safety;
  - (G) District attorneys general conference;
  - (H) District public defenders conference;
  - (I) Department of health;
  - (J) Department of children's services; and
  - (K) Department of human services;
- (3) At least one (1) representative from each of the following entities, associations, or categories, to be appointed by the governor:
  - (A) Non-governmental organization specializing in human trafficking;
  - (B) Member of a community or group disproportionately affected by human trafficking;
  - (C) Agency or group specializing in child services and runaway services;
  - (D) Academic researcher specializing in human trafficking; and
  - (E) Survivor or victim of human trafficking; and
- (4) One (1) member of the house of representatives to be appointed by the speaker of the house of representatives and one (1) member of the senate to be appointed by the speaker of the senate.

(b) The governor may invite representatives of the following to be members of the human trafficking task force:

- (1) United States attorney's offices; and
- (2) Federal law enforcement agencies, including, but not limited to, the federal bureau of investigation and United States immigration and customs enforcement.

(c) The task force shall serve without compensation, and members of the task force shall not be reimbursed for necessary expenses in attending such meetings, unless otherwise required by law.

**§4-3-3004.**

The human trafficking task force, directly or through one or more of its constituent agencies, shall:

- (1) Develop the state plan for the prevention of human trafficking;
- (2) Coordinate the collection and sharing of human trafficking data regarding victims, while ensuring their privacy, among government agencies;
- (3) Coordinate the sharing of information regarding detection of criminal groups involved in human trafficking among government agencies;
- (4) Consider establishing policies regarding time limits for the issuance of law enforcement agency endorsements described in 8 CFR 214.11(f)(1);
- (5) Establish policies to improve cooperation between state government agencies and non-governmental organizations and other advocacy groups to prevent human trafficking and provide assistance to victims;
- (6) Review the effectiveness of existing services and facilities regarding victims of human trafficking;
- (7) Make recommendations regarding a system to coordinate services for victims of human trafficking, including, but not limited to, the following services:
  - (A) Health services, including mental health;
  - (B) Housing;
  - (C) Education and job training;
  - (D) English as a second language classes;
  - (E) Language interpretation services;
  - (F) Legal services; and
  - (G) Victim compensation; and
- (8) Evaluate approaches used by other state and local governments to increase public awareness for human trafficking and its victims.

**§4-3-3005.**

The human trafficking task force shall submit an annual report to the governor or the governor's designee by December 31 of each year. Such report shall include detailed information on the findings and recommendations of the human trafficking task force.

**Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors**

Yes. See § 39-13-309.

**Category 6: Posting of a Human Trafficking Hotline****§ 39-13-313. Tennessee Human Trafficking Resource Center Hotline Act**

- (a) This section shall be known and may be cited as the "Tennessee Human Trafficking Resource Center Hotline Act."
- (b) There is created the Tennessee human trafficking resource center hotline to be established and maintained by the Tennessee bureau of investigation in a manner consistent with this section.
- (c) Any governmental entity or private business or establishment that provides or offers a place of assembly or entertainment, transportation, lodging, dining, educational, medical or leisure





activities or services, or any business or establishment that is licensed by the state or any political subdivision thereof, or that is engaged in commerce in this state is strongly encouraged to post a sign indicating certain information regarding the Tennessee human trafficking resource center hotline in a location within the governmental entity or establishment where it is visible to employees and the general public. The sign shall be no smaller than eight and one-half inches by eleven inches (8 1/2 " x 11"). Unless stated otherwise in this section, it may be posted near the entrance of the establishment or prominently where notices are usually posted. The sign shall state the following:

Tennessee Human Trafficking Resource Center Hotline at (appropriate toll-free number once established).

If you or someone you know is being forced to engage in any activity and cannot leave--whether it is commercial sex, housework, farm work or any other activity--call the Tennessee Human Trafficking Hotline to access help and services.

Victims of human trafficking are protected under United States and Tennessee law.

The hotline is:

Anonymous and confidential

Available 24/7

Toll free

Available to Non-English speaking callers through assistance of Interpreters

(d) All calls made to the human trafficking resource center hotline, the content of any conversation thereon and the telephone number from which the call was made is confidential, is not an open record and not available for public inspection except by order of a court of competent jurisdiction when necessary in a pending criminal investigation.

(e)(1) Any entity or establishment posting a sign pursuant to this section may post the sign in English, Spanish and any other language mandated by the Voting Rights Act of 1965, P.L. 89-110, compiled in 42 U.S.C. § 1973 et seq., in the county where the sign will be posted.

(2) The title of the sign, the Tennessee human trafficking resource center hotline at ( ) shall be boldfaced, underlined and no smaller than twenty-eight (28) point font size.

(3) The department of labor and workforce development shall provide the sign authorized by this section on its Internet web site for entities or establishments to print as needed.

(4) The department of labor and workforce development shall periodically send an electronic notification to any business or establishment that is licensed by the state or any political subdivision thereof that encourages posting pursuant to this section.

## **Category 7: Safe Harbor**

### **§ 39-13-513. Prostitution**

(a) A person commits an offense under this section who engages in prostitution.

(b)(1) Prostitution is a Class B misdemeanor.

(2) Prostitution committed within one hundred feet (100') of a church or within one and one-half (1 1/2 ) miles of a school, such distance being that established by § 49-6-2101, for state-funded school transportation, is a Class A misdemeanor.

(3) A person convicted of prostitution within one and one-half (1 1/2 ) miles of a school shall, in addition to any other authorized punishment, be sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars (\$1,000).

(c) As used in subsection (b), "school" means all public and private schools that conduct classes in any grade from kindergarten through grade twelve (K-12).



(d) Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the national human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian.

### **Category 8: Victim Assistance**

#### **§ 71-1-135. Victims of Human Trafficking.**

(a) The Commissioner of the Department of Human Services shall establish a plan for the delivery of services to victims of human trafficking after consultation with the following departments:

- (1) Department of Children's Services;
- (2) Department of Health;
- (3) Department of Intellectual and Developmental Disabilities;
- (4) Department of Mental Health; and
- (5) Tennessee Bureau of Investigation.

(b) The plan developed under subsection (a) shall include, but not be limited to, provisions to:

- (1) Identify victims of human trafficking in this state;
- (2) Identify community-based services for victims of human trafficking;
- (3) Assist victims of human trafficking through the provision of information regarding access to benefits and services to which those victims may be entitled;
- (4) Coordinate delivery of services and information concerning health care, mental health care, legal services, housing, job training, education and victim's compensation funds;
- (5) Prepare and disseminate educational materials and provide training programs to increase awareness of human trafficking and the services available to victims; and
- (6) Assist victims of human trafficking with family reunification.

(c) In addition to the requirements of subsection (b), the plan shall include a timeline for which the department anticipates the state would be capable of implementing the plan, along with anticipated rates of assistance to victims of human trafficking, cost of implementation, an itemized rationale for both, and any other factor that the department opines will significantly contribute to or detract from the success of implementing the plan.

(d) By July 1, 2013, the Department of Human Services shall transmit a copy of the plan and issue a report to the chair of the Judiciary Committee of the Senate and the chair of the Judiciary Committee of the House of Representatives.

#### **§ 39-13-312. Use of proceeds from judicial forfeiture**

(a) Chapter 11, part 7 of this title shall govern the procedure by which property subject to forfeiture pursuant to § 39-11-703(c) is forfeited, and this section shall govern the manner in which proceeds from forfeitures are distributed and used.





(b) Notwithstanding § 39-11-713, the proceeds from all forfeitures made pursuant to § 39-11-703(c) shall first be applied to the reasonable expenses of the forfeiture proceeding, including the expenses of the district attorney general, and the costs of seizing and maintaining custody of the forfeited property. Parties seeking repayment for forfeiture-related expenses shall file a request detailing the expenses incurred in the forfeiture procedure with the judge of the court in which the forfeiture occurred. The judge shall, if such judge is satisfied that the expenses claimed were both incurred and reasonable, direct the clerk to pay such expenses from the proceeds prior to transmitting them to the state general fund.

(c) The clerk of the court where the forfeiture occurs shall transmit forty percent (40%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c) as follows:

(1) Twenty percent (20%) to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of the human trafficking laws; and

(2) Twenty percent (20%) to the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.

(d) The clerk of the court where the forfeiture occurs shall retain five percent (5%) of the proceeds from all forfeitures made pursuant to § 39-11-703(c).

(e) The clerk shall transmit the remainder of the proceeds to the state general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the anti-human trafficking fund. The fund shall be managed by the treasurer and moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.

(f) (1) The general assembly shall appropriate, through the general appropriations act, moneys from the anti-human trafficking fund to the department of finance and administration for the department to provide grants to agencies or groups that are incorporated as a not-for-profit organization, are tax-exempt under § 501 of the Internal Revenue Code, codified in 26 U.S.C. § 501, and that have provided services to victims of human trafficking for at least six (6) months prior to the application for funds under this subsection (f). The commissioner of finance and administration shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it.

(2) The grants shall be for the purpose of:

(A) Providing direct services to victims of human trafficking;

(B) Conducting programs for the prevention of human trafficking; or

(C) Conducting education, training, or public outreach programs about human trafficking.



## **Category 9: Civil Remedy**

### **§ 39-13-314. Human trafficking; victims' civil actions; damages**

(b) (1) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.

(2) A prevailing plaintiff is entitled to an award of attorney's fees and costs.

## **Category 10: Vacating Convictions**

None.

\*\*\*

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at [policy@polarisproject.org](mailto:policy@polarisproject.org).