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### Next Steps: Arkansas's Journey in the Fight Against Sex Trafficking

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**NEXT STEPS:**

**ARKANSAS'S JOURNEY IN THE FIGHT AGAINST SEX TRAFFICKING**

Maddie Bailey

Ouachita Baptist University

Honors Thesis

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## **WHAT IS HUMAN TRAFFICKING?**

Human trafficking is a heinous crime that unfortunately occurs all over the world. Trafficking involves the “force, fraud, or coercion” of people for services, whether labor or sexual services. For minors under 18, commercial sex acts are always considered instances of trafficking.<sup>1</sup> Human trafficking falls under three categories: labor trafficking, sex trafficking, and a combination of both. The legal definition of human trafficking, as defined in the Trafficking Victims Protection Act of 2000 and the following reauthorizations of the act, has two parts. The first part relates to sex trafficking with sex trafficking defined as,

The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age. (22 USC § 7102)<sup>2</sup>

The second part defines labor trafficking as,

The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subsection to involuntary servitude, peonage, debt bondage, or slavery. (22 USC § 7102)<sup>3</sup>

## **WHY DOES TRAFFICKING OCCUR?**

There are many reasons why human trafficking occurs, but the root of the issue is that trafficking occurs because of traffickers, and specifically the traffickers’ financial benefit.

Ultimately, human trafficking occurs because of the lack of belief in human dignity. In an interview with Former Ambassador-at-Large in the Office to Monitor and Combat Trafficking in

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<sup>1</sup> “What Is Human Trafficking?” The United States Department of Justice, October 13, 2020, <https://www.justice.gov/humantrafficking/what-is-human-trafficking>.

<sup>2</sup> “Federal Law,” National Human Trafficking Hotline, Polaris, July 14, 2020, <https://humantraffickinghotline.org/what-human-trafficking/federal-law>.

<sup>3</sup> National Human Trafficking Hotline, “Federal Law.”

Persons, John Cotton Richmond states, “The reason slavery is wrong is not that international declaration of human rights said it is. It’s not because democracies voted it to be wrong. It was wrong when democracies voted it to be fine. It was wrong the whole time. The only reason slavery is wrong is that everyone has inherent value.” Not seeing value in each person allows people to take control and power and force others to be repeatedly abused.

Additionally, Human trafficking, unfortunately, creates a large profit, drawing the attention of traffickers. A 2014 ILO report, *Profits and Poverty: The Economics of Forced Labour*, reported that forced labor globally generates \$150 billion, of which two-thirds (\$99 billion) is produced from sexual exploitation.<sup>4</sup> Another heart-breaking reason that human trafficking has attracted many traffickers is the reusability of people. When someone chooses to traffic drugs, they are able to sell that drug only once. However, a person can sadly be sold over and over.<sup>5</sup>

## **HOW COMMON IS TRAFFICKING?**

For the graveness and commonality of the crime, human trafficking is severely under-documented. The United States Department of State estimates there are 24.9 million victims of human trafficking around the world at any given time.<sup>6</sup> To put this number in perspective, there are more people being victimized by trafficking today than during the transatlantic slave trade to the Americas, which lasted from the 16th to 19th century and victimized 10 to 12 million people

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<sup>4</sup> “ILO Says Forced Labour Generates Annual Profits of US\$ 150 Billion,” International Labour Organization, May 20, 2014, [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm).

<sup>5</sup> Susan C. Mapp, *Domestic Minor Sex Trafficking* (New York, NY: Oxford University Press, 2016), 39.

<sup>6</sup> “About Human Trafficking,” U.S. Department of State, January 19, 2022, <https://www.state.gov/humantrafficking-about-human-trafficking/>.

total.<sup>7</sup> Worldwide, there are more instances of labor trafficking than sex trafficking. The International Labour Organization (ILO) estimated in 2016 that of the 24.9 million people being trafficked, 20.1 million were in forced labor — 16 million in the private economy while 4.1 million were being forced by state authorities. The remaining 4.8 million people are being sexually exploited by traffickers — 3.8 million adults and 1.0 million children.<sup>8</sup>

Human trafficking is commonly believed to be an issue only in foreign countries. However, this is far from the truth. In the United States, there were 10,583 cases of trafficking reported to the National Human Trafficking Hotline in the year 2020. All 50 states and the District of Columbia reported 10 or more cases in 2020. Sex Trafficking is the most common form of trafficking in the United States with 7,648 of the cases reported in 2020 being sex trafficking cases.<sup>9</sup> In the state of Arkansas, there were 99 cases of human trafficking reported in 2020. Of these, 81 were sex trafficking, 7 were labor trafficking, and 11 were not specified.<sup>10</sup>

It is difficult to know the extent of human trafficking here in the United States with limited data on occurrences on trafficking outside of reports through the National Trafficking Hotline, but it can be assumed that trafficking is happening more than just what is reported. In a

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<sup>7</sup> Lewis, Thomas. “Transatlantic Slave Trade.” Britannica. Encyclopædia Britannica, inc., September 22, 2021. <https://www.britannica.com/topic/transatlantic-slave-trade>.

<sup>8</sup> Rep. “*Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*,” Geneva: International Labour Office, 2017, [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf), 10-11.

<sup>9</sup> “Hotline Statistics,” National Human Trafficking Hotline, Polaris, <https://humantraffickinghotline.org/states>.

<sup>10</sup> “Arkansas,” National Human Trafficking Hotline, Polaris, <https://humantraffickinghotline.org/state/arkansas>.

podcast, John Cotton Richmond in discussing the occurrence of trafficking in the United States stated, “everywhere we are looking for it, we are finding it.”<sup>11</sup>

## **CURRENT ARKANSAS LAWS**

In Arkansas state law, there are two main statutes that address human trafficking: Ark. Code Ann. § 5-18-103 (Trafficking of persons) and Ark. Code Ann. § 5-18-104 (Patronizing a victim of human trafficking). These statutes were enacted in 2013, repealing Arkansas’s previous statute regarding trafficking, Ark. Code Ann. § 5-11-208 (2005). The enactment of the 2013 Act showed great improvement from the previous law. There had not been a single charge under the 2005 law since it had been established.<sup>12</sup> Thankfully Arkansas has taken steps forward since then, but there are still many areas that can be improved.

There are three other statutes that also assist in combatting trafficking in Arkansas. The first is Ark. Code Ann. § 12-19-101, which provides the Attorney General with the ability to establish a state task force to combat trafficking. The state task force would consist of representatives from various state agencies, appointed by the Attorney General. The task force would increase inter-agency workings to better combat trafficking in the state through data sharing and improved access to services for survivors. The task force would also aid in the training of people involved in the criminal justice system. However, the establishment of this task force is dependent on the Attorney General. The task force met for the first time in

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<sup>11</sup> David Iglesias, interview with John Cotton Richmond, *Three Things - A Podcast of the Wheaton Center for Faith, Politics & Economics*, Wheaton College, podcast audio, July 2, 2021, <https://podcasts.apple.com/us/podcast/fighting-the-global-plague-of-human/id1509044063?i=1000527609805>.

<sup>12</sup> Sarah D. Wire, “Human-Trafficking Law in State Called Deficient,” *Arkansas Online*, Arkansas Democrat-Gazette, Inc., June 27, 2012, <https://www.arkansasonline.com/news/2012/jun/27/human-trafficking-law-state-called-defici-20120627/>.

November 2013 and reported their findings in August 2014 with specific recommendations.<sup>13</sup> However, these recommendations were not all enacted, and the task force has not been re-established since that time.

A second statute is Ark. Code Ann. § 12-19-102. This statute requires posting of information about human trafficking in specific establishments, with information regarding the Human Trafficking Hotline. These establishments include hotels, motels, strip clubs, airports, train stations, bus stations, and more. This law is an example of how the legislature did not fully enact all of the recommendations from the 2014 Report. In the report, the task force recommended expanding the requirements to also include “rest stops, state parks, schools with grades 6-12, publically [sic] accessible campgrounds, airports, restaurants, and all hotels and motels.”<sup>14</sup> While the current law does include some motels and hotels, as well as airports, it does not specify all hotels and motels, or restaurants and schools.

A third Arkansas law that assists in the fight against trafficking is Ark. Ann Code. § 27-23-108(e). This law requires training on the prevention of human trafficking to be completed before a Class A commercial license is given. In addition, he or she must become a certified Trucker Against Trafficking.<sup>15</sup>

These Arkansas statutes are a good starting point and show important progress has been made in Arkansas’s fight against trafficking. However, if human trafficking is to be stopped in the United States, and more specifically Arkansas, a direction or *next step* must be established to

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<sup>13</sup> *Report of The Arkansas Task Force For the Prevention of Human Trafficking*, Arkansas Attorney General’s Office, Arkansas, August 2014, [https://arkansasag.gov/wp-content/uploads/humantraffickingtask\\_force\\_report\\_2014.pdf](https://arkansasag.gov/wp-content/uploads/humantraffickingtask_force_report_2014.pdf).

<sup>14</sup> Arkansas Attorney General’s Office, *Report of The Arkansas Task Force For the Prevention of Human Trafficking*.

<sup>15</sup> “Human Trafficking,” Arkansas Department of Transportation, January 27, 2022, <https://www.ardot.gov/divisions/arkansas-highway-police/human-trafficking/>.

move forward in the eradication of trafficking. Shared Hope International has set standards for states to move towards with their State Report Cards.

## **SHARED HOPE INTERNATIONAL**

Shared Hope International is a leading organization in the fight against trafficking. Shared Hope was established by former U.S. Congresswoman Linda Smith after witnessing the brutal brothel district in Mumbai, India in 1998. Shared Hope International began primarily focused on sexual exploitation overseas. Through their work in other countries, they realized trafficking also had a large market in the United States. The focus shifted to include the United States in their efforts to combat trafficking.<sup>16</sup>

Under their mission of bringing justice, they have established the Shared Hope Institute for Justice & Advocacy. The institute is a hub of information, collecting Shared Hope's data and programs on research, training, and advocacy altogether. Part of this research includes analyzing where each state stands in the fight against trafficking and where they need to improve. They provide next steps, policy development, and training to further education on trafficking across the U.S.<sup>17</sup>

Shared Hope International is a respected resource across the United States and in other countries. They created the JuST Response Council, consisting of more than 30 experts from states across the U.S. with experience in law enforcement, policy-making, advocacy, and restoration. This team collaborates to further improve legal responses to trafficking and increases

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<sup>16</sup> "Our Missions and Values," Shared Hope International | Leaders to end sex trafficking, Shared Hope International, January 27, 2016, <https://sharedhope.org/about-us/our-mission-and-values/>.

<sup>17</sup> "Shared Hope International: Institute for Justice & Advocacy," Bring Justice - Shared Hope International, Shared Hope International, January 6, 2021, <https://sharedhope.org/what-we-do/bring-justice/>.



information available.<sup>18</sup> The organization also hosts the leading conference on juvenile sex trafficking, known as the JuST Conference. Many attorneys, law enforcement agencies, and organizations from around the country attend the conference.<sup>19</sup> This past year, an Assistant U.S. Attorney General and two former U.S. Ambassadors-at-Large to Monitor and Combat Trafficking in Persons were present.

Shared Hope International is a faith-based organization, but it is a well-respected and trusted organization in the field of combatting human trafficking by faith-based and secular organizations. In 2008, Shared Hope investigated Domestic Minor Sex Trafficking in 10 U.S. cities alongside human trafficking task forces, with funding from the Department of Justice. More recently in June 2020, Shared Hope International was nominated to join the Public-Private Partnership Advisory Council to End Human Trafficking. This council works to advise the President's Interagency Task Force to Monitor and Combat Trafficking, Senior Policy Operating Group, and provides reports to the White House.<sup>20</sup>

One major aspect of Shared Hope International's fight against sex trafficking are the State Report Cards released annually. Shared Hope recognized the need to increase the work state governments were doing in order to eradicate trafficking. This began the Protected Innocence Challenge, which created a legislative framework that acted as a standard to grade states. The first report cards were released in 2011 with 4 states scoring a B, 6 states scoring a C, and the

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<sup>18</sup> "JuST Response Council," Shared Hope International, January 12, 2021, <https://sharedhope.org/what-we-do/bring-justice/just-response-council/>.

<sup>19</sup> "JuST Conference Series," JuST Conference, Shared Hope International, March 9, 2022, <https://www.justconference.org/>.

<sup>20</sup> "Our Story," Shared Hope International, October 1, 2021, <https://sharedhope.org/about-us/our-story/>.

remaining states scoring a D or F. By 2019, forty-nine states had raised their state grade with one-third of the states scoring an A.<sup>21</sup>

Because the report cards had increased greatly under the Protect Innocence Challenge, Shared Hope decided to update the framework in order to challenge states to go farther in the fight against human trafficking. In 2020, they established the Report Cards on Child & Youth Sex Trafficking with more advanced legislative framework and Policy Goals than the original report cards. The first year of the new report cards were released in 2021, giving all states a new starting point.<sup>22</sup> Here is where Arkansas currently stands:

### **ARKANSAS REPORT CARD 2021**

Arkansas received the grade of an F (44) in Shared Hope's 2021 state report cards. The 2021 grades were based on six issues areas: Criminal Provisions, Identification of and Response to Victims, Continuum of Care, Access to Justice for Trafficking Survivors, Tools for a Victim-Centered Criminal Justice Response, and Prevention and Training. Each of these policy issues were further broken down with set objectives for each state to accomplish. There were also two extra credit areas relating to sex trafficked youth and child labor trafficking victims.<sup>23</sup>

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<sup>21</sup> "Protected Innocence Challenge," State Report Cards for Sex Trafficking Laws in the United States, Shared Hope International, March 1, 2022, <https://sharedhope.org/what-we-do/bring-justice/reportcards/>.

<sup>22</sup> "Report Cards on Child & Youth Sex Trafficking," Shared Hope International: Institute for Justice & Advocacy, Shared Hope International, 2022, <https://reportcards.sharedhope.org/>.

<sup>23</sup> "Arkansas Report Card," Report Cards on Child & Youth Sex Trafficking, Shared Hope International, 2022, <https://reportcards.sharedhope.org/arkansas/>.

Arkansas ranked 31st out of 51 (the fifty states and District of Columbia). Florida was the highest ranked state, earning a C (72.5). Only two states, Florida and Texas, received a grade of C. Nine states received the grade D with the remaining receiving an F.<sup>24</sup>

In the sections below, each Policy Issue is broken down further into Policy Goals with specific standards for states to increase their fight against child sex trafficking. The third column contains Arkansas laws that relate to each Policy Goal. Bolded items are currently satisfied by Arkansas code. Non-bolded items need to be further addressed and are discussed in greater detail below the chart, as they are not currently accomplished with Arkansas law.

## **POLICY ISSUE 1: CRIMINAL PROVISIONS**

In the first issue area, Criminal Provisions, Arkansas received its highest grade with a C and a score of 13.5/17.5 (77%).<sup>25</sup> This section looked at the state’s laws and the criminalization of trafficking and commercial sex with a minor, including buyer accountability, business liability, and financial penalties. “Criminal Provisions” included 7 specific Policy Goals. Of those 7, Arkansas met the standard for five with recommendations on how to achieve the remaining two.<sup>26</sup>

<b>Policy Goal 1.1</b>	<b>The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.</b>	<b>§ 5-18-103 § 5-18-104</b>
Policy Goal 1.2	Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.	
<b>Policy Goal 1.3</b>	<b>Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.</b>	<b>§ 5-70-104 § 5-27-305</b>

<sup>24</sup> *2021 Report Cards Toolkit*, Shared Hope International, PDF File, 2021, <https://reportcards.sharedhope.org/wp-content/uploads/2021/10/2021Toolkit.pdf>, 40.

<sup>25</sup> Shared Hope International, “Arkansas Report Card.”

<sup>26</sup> *Analysis Report: Arkansas*, Shared Hope International Institute for Justice & Advocacy, PDF File, 2021, <https://reportcards.sharedhope.org/wp-content/uploads/2021/11/2021-State-Analysis-AR.pdf>, 1-4.

Policy Goal 1.4	Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.	§ 5-18-103 § 5-18-104
<b>Policy Goal 1.5</b>	<b>Use of a law enforcement decoy is not an available defense in child sex trafficking cases.</b>	<b>§ 5-3-201</b>
<b>Policy Goal 1.6</b>	<b>The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.</b>	<b>§ 5-18-105</b>
<b>Policy Goal 1.7</b>	<b>State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.</b>	<b>§ 5-70-103 § 5-4-703 § 5-5-201</b>

Policy Goal 1.2 emphasizes the need for laws that directly criminalize commercial sexual exploitation of children (CSEC), specifically prohibiting “purchasing or soliciting commercial sex with a minor.”<sup>27</sup> CSEC laws broaden the range of charges that can be brought forth with the sexual exploitation of children because it does not have additional requirements that are involved with trafficking charges. Shared Hope recommends enacting a law that includes charges for purchasing or soliciting sex with all minors.<sup>28</sup>

Policy Goal 1.4 prohibits the defense of mistaking a minor to be a person over 18 against sex trafficking and CSEC charges. Like ignorance of a law is not a defense, knowing the age of the victim should be the responsibility of the offender and, therefore, not an allowed defense.<sup>29</sup> Arkansas law does meet the standard for part of this goal but is lacking in certain areas. The crime for patronizing a human trafficking victim under Ark. Code Ann. § 5-18-104 does not prohibit the defense. It also has the condition that the offender must know the person was being victimized. Furthermore, CSEC laws in Arkansas do not prohibit mistaking age as a defense.

<sup>27</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 1.

<sup>28</sup> Shared Hope International, *2021 Report Cards Toolkit*, 15.

<sup>29</sup> Shared Hope International, *2021 Report Cards Toolkit*, 15.

Shared Hope International recommends that all Arkansas laws, regarding child sex trafficking and CSEC, expand and prohibit the mistake of age defense.<sup>30</sup>

## **POLICY ISSUE 2: IDENTIFICATION OF & RESPONSE TO VICTIMS**

The second Policy Issue is dedicated to ensuring that victims of trafficking are treated as victims and not criminals. Arkansas received an F in this issue area, earning 11/27.5 possible points (40%).<sup>31</sup> There are eleven subsections to this this Policy Issue. Arkansas is currently fulfilling two of the standards and need improvement in the remaining nine.<sup>32</sup>

<b>Policy Goal 2.1</b>	<b>The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.</b>	<b>§ 5-18-102 § 5-18-103</b>
Policy Goal 2.2	State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.	§ 12-19-101
Policy Goal 2.3	State law mandates child welfare agencies to conduct trauma- informed CSEC screening for children at risk of sex trafficking.	
Policy Goal 2.4	State law mandates juvenile justice agencies to conduct trauma- informed CSEC screening of children at risk of sex trafficking.	
Policy Goal 2.5	State law prohibits the criminalization of minors under 18 for prostitution offenses.	§ 5-70-102 § 5-2-210
Policy Goal 2.6	State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.	§ 5-2-210
Policy Goal 2.7	State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.	§ 5-2-210
Policy Goal 2.8	State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.	
Policy Goal 2.9	Juvenile court jurisdiction aligns with international human rights standards.	§ 9-27-303 § 9-27-306 § 9-27-318
<b>Policy Goal 2.10</b>	<b>State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.</b>	<b>§ 12-18-103 § 9-27-303</b>

<sup>30</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 2-3.

<sup>31</sup> Shared Hope International, “Arkansas Report Card.”

<sup>32</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 5-11.

Policy Goal 2.11	State law clearly defines child welfare’s role in responding to non- familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.	
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In line with Policy Goal 2.2, state laws should allow all victims of child sex trafficking to receive victim services, regardless of immigration status. Arkansas law allows for the Arkansas Attorney General to establish the Task Force for the Prevention of Human Trafficking under Ark. Code Ann. § 12-19-101. This task force does establish policies to work with both citizens and foreign nationals, but is only established at the discretion of the Attorney General. Shared Hope recommends amending state law to include assistance to foreign national victims, regardless of the establishment of the task force.<sup>33</sup>

Policy Goals 2.3 and 2.4 go together to help identify children that are being, or have been, trafficked through trauma-informed screening. Arkansas does not have laws mandating either of these screenings.<sup>34</sup> Children in the child welfare system are more likely to have already experienced or be at risk to experience sexual exploitation, and the development of laws requiring screening will help ensure the state is identifying and able to help children that have been victimized. Similarly, children in the juvenile justice system could be in the system for crimes related to being victims of trafficking. Required screening not only assists in identifying victims but also helps to provide the best care and services for children that have been exploited.<sup>35</sup>

Prohibiting minors under 18 to be charged with prostitution is Policy Goal 2.5. This is vital because the definition of sex trafficking includes all minors engaged in commercial sex.

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<sup>33</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 5-6.

<sup>34</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 6.

<sup>35</sup> Shared Hope International, *2021 Report Cards Toolkit*, 17-18.

Therefore, a child prostitute is not a criminal but is rather identified as a victim of sex trafficking.<sup>36</sup> Arkansas law does prevent this in some instances but not all. Additionally, the law only prohibits the charge but does not prohibit arrest or detention, allowing minors to still experience criminal processes awaiting to be identified as a victim of trafficking. While Ark. Code Ann. § 5-2-210(b), (c)(3) does provide an affirmative defense for victims of human trafficking to prostitution charges, it does not prevent arrest, detention, charges, or prosecution. Shared Hope expresses the need for Arkansas law to expand to prohibit the criminalization of all minors under 18 for prostitution charges, whether or not they are identified as a victim of trafficking.<sup>37</sup>

Policy Goals 2.6 and 2.7 expand upon 2.5 to prevent the criminalization of child sex trafficking victims for offenses committed due to their victimization. Oftentimes, victims of sex trafficking will be forced to commit crimes on behalf of their offender with the threat of violence or even death. It is important for laws to consider the complexity of trafficking and the control the offender has over the victim.<sup>38</sup> While Arkansas laws do not prohibit the criminalization of these offenses for child victims of trafficking, it does allow for an affirmative defense under Ark. Code Ann. § 5-2-210 as discussed with Policy Goal 2.5. Arkansas laws need to be expanded past just an option for affirmative defense to expressly prohibit the criminalization of these offenses when committed due to victimization.<sup>39</sup>

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<sup>36</sup> Shared Hope International, *2021 Report Cards Toolkit*, 18.

<sup>37</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 7.

<sup>38</sup> Shared Hope International, *2021 Report Cards Toolkit*, 18.

<sup>39</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 8.

Policy Goal 2.8 does call for the option of affirmative defense. Because of the severity of violent felonies, an affirmative defense rather than non-criminalization would be more appropriate.<sup>40</sup> Arkansas's criminal code needs to include affirmative defenses for child trafficking victims who commit violent felonies related to being trafficked.<sup>41</sup>

With Policy Goal 2.9, all minors should have access to the juvenile justice system, which has child and rehabilitation focused services, instead of allowing for automatic or discretionary transfers to criminal court. In Arkansas, minors 16 and older that are being charged with a felony offense, or have already been charged with a felony, are directly transferred to criminal court from juvenile court. At the ages of 14 and 15, certain offenses with discretion can be transferred to criminal court. Arkansas law needs to require age-appropriate responses of juvenile court for children accused.<sup>42</sup>

The final Policy Goal, 2.11 discusses child welfare. Child welfare should not be dependent on whether the guardians of the child are found at fault or not. All children that are victims of trafficking should have access to child welfare services, not just those who are victims of familial trafficking.<sup>43</sup> Shared Hope recommends “amend[ing] state law to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.”<sup>44</sup>

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<sup>40</sup> Shared Hope International, *2021 Report Cards Toolkit*, 18.

<sup>41</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 9.

<sup>42</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 9.

<sup>43</sup> Shared Hope International, *2021 Report Cards Toolkit*, 19.

<sup>44</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 11.



### POLICY ISSUE 3: CONTINUUM OF CARE

Arkansas's lowest score is in the third Policy Issue relating to the continued care for victims through victim services. Arkansas received only 1/15 points (6.6%) in this area, earning a letter grade F.<sup>45</sup> There is room for improvement in all areas of this Policy Issue.

Policy Goal 3.1	State law provides child sex trafficking victims with access to specialized services through a non-punitive system.	§ 9-27-323
Policy Goal 3.2	State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.	§ 20-82-209
Policy Goal 3.3	State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.	
Policy Goal 3.4	State law extends foster care services to older foster youth.	§ 9-27-306 § 9-27-363 § 9-28-114
Policy Goal 3.5	State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.	
Policy Goal 3.6	State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.	

Shared Hope's recommendation for Policy Goal 3.1 is to require through the law the access of services for child sex trafficking victims. Ark. Code Ann. § 9-27-323 does have the Department of Human Services developing specialized services for sexually exploited children. However, this is only used when the child is already a part of the juvenile justice system. It is important for a child to access these services outside of punitive measures. Going even farther than Policy Goal 3.1, Shared Hope, in Policy Goal 3.3, calls for state laws to provide child sex trafficking victims in the juvenile justice system access to specialized services.<sup>46</sup>

Policy Goal 3.2 relates to a multidisciplinary team (MDT) response concerning child sex trafficking cases. Multidisciplinary teams allow for collaboration and a holistic approach for

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<sup>45</sup> Shared Hope International, "Arkansas Report Card."

<sup>46</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 12-13.

victim-centered services.<sup>47</sup> Arkansas under Ark. Code Ann. § 20-82-209 requires a MDT response for child abuse that may include trafficking, but Shared Hope recommends establishing a MDT specifically related to child sex trafficking.<sup>48</sup>

Youth under the age of 21 are allowed access to foster care services under Arkansas law, which assists in the transition period. Federal law, however, allows for access for youth under the age of 23. Vulnerability to exploitation is high at the ages of 18-22, and extended services could not only help with transition but also assist in preventing exploitation. Shared Hope recommends an extension of state law to go farther than 21 to the age of 23 in accordance with federal law to fulfill Policy Goal 3.4.<sup>49</sup>

Policy Goals 3.5 and 3.6 looks at the funding of services for victims. Funding is essential in helping develop and grow services, that support survivors in the recovery process. State funds need to be appropriated to assist survivors of trafficking through access to community-based services, as well as child-serving agencies.<sup>50</sup>

#### **POLICY ISSUE 4: ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS**

The fourth area addresses justice remedies, both civil and criminal, that survivors of trafficking should have access to.<sup>51</sup> Arkansas received another F on the report card for this

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<sup>47</sup> Shared Hope International, *2021 Report Cards Toolkit*, 20.

<sup>48</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 12-13.

<sup>49</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 13-14.

<sup>50</sup> Shared Hope International, *2021 Report Cards Toolkit*, 21.

<sup>51</sup> Shared Hope International, *2021 Report Cards Toolkit*, 22.

section, receiving 6.5/15 points (43%).<sup>52</sup> While 5 of the Policy Goals still need to be improved, Arkansas did fulfill one Policy Goal (4.5).

Policy Goal 4.1	State law allows trafficking victims to seek emergency civil orders of protection.	
Policy Goal 4.2	Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.	§ 16-90-703 § 16-90-712
Policy Goal 4.3	Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.	
Policy Goal 4.4	State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.	§ 5-4-205
<b>Policy Goal 4.5</b>	<b>State law provides child sex trafficking victims with a trafficking- specific civil remedy.</b>	<b>§ 16-118-109</b>
Policy Goal 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.	§ 5-1-109 § 16-56-115 § 16-118-109

Policy Goal 4.1 discusses the options for trafficking and CSEC victims to obtain orders of protection from those who exploited them. Shared Hope calls for the amendment of state laws in order to explicitly allow ex parte civil orders of protection.<sup>53</sup>

Victim compensation is an important part in the process of recovery as it helps offset some costs. However, many child sex trafficking and CSEC victims could be prevented from receiving funding due to the ineligibility factors. These factors, such as accomplice of the offender, felony conviction, failure to report, or lack of cooperation with law enforcement can often be tied to the victimization and trauma of trafficking.<sup>54</sup> Therefore, to fulfill Policy Goal 4.2,

<sup>52</sup> Shared Hope International, "Arkansas Report Card."

<sup>53</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 15.

<sup>54</sup> Shared Hope International, *2021 Report Cards Toolkit*, 22.

state law should be amended to allow for the exemption of trafficking victims from ineligibility factors.<sup>55</sup>

Furthermore, as ineligibility factors can often be due to one's trafficking victimization, Policy Goal 4.3 discusses how delinquency adjudication and criminal convictions can also be a result of being trafficked. These offenses are still carried into the healing process for survivors and can limit future success.<sup>56</sup> Shared Hope recommends amending state law in order to allow for these offenses to be vacated when they are the result of trafficking victimization.<sup>57</sup>

Policy Goal 4.4 relates to restitution for victims of trafficking. Restitution is an important aspect of financial justice. Additionally, it allows the victims to begin rebuilding with a little financial assistance.<sup>58</sup> According to Ark. Code Ann. § 5-4-205, restitution may be ordered to be paid by a defendant; however, it is not a requirement by law. State law needs to be amended to require restitution for victims of trafficking and CSEC.<sup>59</sup>

The last Policy Goal (4.6) addresses the civil and criminal statute of limitations for trafficking and CSEC offenses. Arkansas law does not have a statute of limitations regarding the transportation of minors for prohibited sexual conduct [§ 5-1-109(a)(1)(J)], but it does related to other instances of child sex trafficking and CSEC. Arkansas law needs to be changed to eliminate the statute of limitations for both criminal and civil court.<sup>60</sup> Because of the complexity of trauma and victimization, it can often be a number of years before a suit is brought forth.

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<sup>55</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 15-16.

<sup>56</sup> Shared Hope International, *2021 Report Cards Toolkit*, 22.

<sup>57</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 16.

<sup>58</sup> Shared Hope International, *2021 Report Cards Toolkit*, 23.

<sup>59</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 16.

<sup>60</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 17-18.

## POLICY ISSUE 5: TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE

### RESPONSE

Under Policy Issue 5, Arkansas was graded on how well the law and the criminal justice system protects victims of trafficking.<sup>61</sup> Arkansas earned 4/10 points (40%) and an F in this issue area,<sup>62</sup> not fulfilling any of the Policy Goals set by Shared Hope.

Policy Goal 5.1	State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.	
Policy Goal 5.2	State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.	§ 16-43-1001
Policy Goal 5.3	Child sex trafficking victims have access to victim protections in the criminal justice system.	§ 16-21-107 § 16-21-106 § 16-43-1202 § 16-43-1002
Policy Goal 5.4	State law provides for privileged communications between caseworkers and child sex trafficking victims.	

Policy Goal 5.1 addresses a hearsay exception to help with a child’s testimony. Children will often confide in a trusted adult about the crimes that have occurred to them. However, with evidentiary rules, the allegation to another adult is not permitted in court to corroborate the child’s testimony.<sup>63</sup> Shared Hope recommends that state laws include a hearsay exception when cases involve commercial sexual exploitation of children under 18.<sup>64</sup>

Policy goal 5.2 further expands upon court regulations. Arkansas currently allows children under 13 with an alternative method to testify than live, in-court testimony under Ark. Code Ann § 16-43-1001(a)(1). However, state law should be expanded to include all

<sup>61</sup> Shared Hope International, *2021 Report Cards Toolkit*, 24.

<sup>62</sup> Shared Hope International, “Arkansas Report Card.”

<sup>63</sup> Shared Hope International, *2021 Report Cards Toolkit*, 24.

<sup>64</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 19.

commercially sexually exploited children under 18 the opportunity of an alternative method to testifying.<sup>65</sup>

Arkansas is fulfilling two aspects of Policy Goal 5.3: “child sex trafficking victims have the right to a victim advocate” and “child sex trafficking victims testifying against their exploiter are provided supports in the courtroom.” However, Arkansas law is lacking and needs improvement in the area of protecting identifying information of child sex trafficking victims from being disclosed in court records.<sup>66</sup>

The final Policy Goal (5.4) calls on Arkansas law to protect confidentiality between a child sex trafficking victim and their caseworker by providing privileged communications.<sup>67</sup>

## **POLICY ISSUE 6: PREVENTION AND TRAINING**

The last section looks at the prevention and training requirements in state laws. This section is extremely important as it aims to prevent instances of child trafficking from happening in the beginning and to train people who will likely be interacting with the children. Arkansas scored an F in this section, earning 5/15 points (33%)<sup>68</sup> with room for improvement in all Policy Goals.

Policy Goal 6.1	State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.	
Policy Goal 6.2	State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.	§ 12-18-1202 § 12-19-101
Policy Goal 6.3	State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.	§ 12-18-1202 § 12-19-101

<sup>65</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 19-20.

<sup>66</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 20.

<sup>67</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 20.

<sup>68</sup> Shared Hope International, “Arkansas Report Card.”

Policy Goal 6.4	State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.	§ 12-18-1202 § 12-19-101
Policy Goal 6.5	State law mandates child sex trafficking training for school personnel.	§ 6-17-710
Policy Goal 6.6	State law mandates child sex trafficking prevention education in schools.	

Policy Issue 6 is dedicated to the training and prevention of child sex trafficking. Policy Goal 6.1 relates to the training of child welfare agencies. This is vital as child welfare agencies help lead to identification of victims, and post-identification, oftentimes help with services for survivors.<sup>69</sup> Arkansas law should require child welfare agencies to receive training on identification and response.<sup>70</sup>

Policy Goals 6.2, 6.3, and 6.4 discuss training for juvenile justice agencies, law enforcement, and prosecutors. Unlike child welfare agencies, Arkansas law does authorize the training for these entities, but it is not required, as they “may provide training” under Ark. Code Ann. § 12-18-1202. Additionally, the State Task Force for the Prevention of Human Trafficking is to provide training if established. However, the establishment of the task force is discretionary to the Attorney General under § 12-19-101. Arkansas law needs to go further than just the potential of training for juvenile justice agencies, law enforcement, and prosecutors. It needs to require it.<sup>71</sup>

Policy Goals 6.5 and 6.6 relate to educational training, both for school personnel and children. With school personnel, Ark. Code Ann. § 6-17-710 authorizes school districts to provide trafficking-specific training. However, it is done as the Division of Elementary and

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<sup>69</sup> Shared Hope International, *2021 Report Cards Toolkit*, 26.

<sup>70</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 21.

<sup>71</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 21-23.

Secondary Education determines and administers. Additionally, there is no Arkansas law mandating prevention education in schools regarding sex trafficking. Shared Hope recommends mandating school personnel to receive training, as well as mandating age-appropriate training for children in school on the prevention of trafficking.<sup>72</sup>

## **NEXT STEPS**

As Shared Hope's 2021 State Report Card pointed out, there are many policy areas that Arkansas can improve upon to better fight trafficking. It will take time to improve in these policy areas, but there are specific *next steps* that can be taken.

Former Ambassador Richmond discussed how laws always have room for improvement, but a major need is the implementation of the laws that are in place, closing the gap between the ideas of the laws and actual actions.<sup>73</sup> This is seen through the Arkansas trafficking task force. The idea is there and the law allowing it to be established, but it is not being implemented to further combat trafficking in the state. Arkansas needs to utilize more permanently Ark. Code Ann. § 12-19-101 to establish an ongoing state task force. A task force designed to protect lives in our state should not only be implemented occasionally. The current law provides the potential, but Arkansas needs to take the *next step* to further the implementation. There are several Policy Goals that would be accomplished with a more full-time establishment of the task force, including Policy Goals 2.2, 6.2, 6.3, and 6.4.<sup>74</sup>

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<sup>72</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 23-24.

<sup>73</sup> David Iglesias, interview with John Cotton Richmond, *Three Things - A Podcast of the Wheaton Center for Faith, Politics & Economics*.

<sup>74</sup> Shared Hope International Institute for Justice & Advocacy, *Analysis Report: Arkansas*, 5-6, 21-23.



There are three areas that Arkansas can focus on and improve in: increase of identification, advance investigation, and expand prosecutions. Among these three areas, there are specifics that can be addressed first.

There needs to be an increase in state-wide training in identification and prevention. The reality of human trafficking is that everyone has the potential to be a victim. There is not a set demographic; it can happen to anyone.<sup>75</sup> However, there are certain factors that are more frequent among children that are victims, including involvement in the child welfare system and/or juvenile justice system. Mandated training in these programs that prepares workers to identify children that have been victimized is an important *next step* in increasing the identification rate in Arkansas.

One way to improve in this area that Arkansas can implement would be to include screening for trafficking in intake questions when children enter the child welfare and juvenile justice systems. Children are already being questioned concerning other aspects of their life, so it would not be a major step to add additional questions. Training is vital to accomplish this successfully, however. “Are you a victim of human trafficking?” is a loaded question to throw on a child who may have never even heard the word “trafficking” before or might be convinced that their abuser is just showing them “love.” Traffickers are unfortunately manipulative. Because of the grooming process that traffickers oftentimes inflict, children might not even recognize that they were trafficked for years.<sup>76</sup> It is important to develop questions that can allow one to see specific signs of trafficking to indicate if further investigation needs to be considered.

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<sup>75</sup> The United States Department of Justice, “What Is Human Trafficking?”

<sup>76</sup> Susan C. Mapp, 27.

Identifying victims is a great place to start but identification must lead to investigation if trafficking is to be stopped. It only goes so far to recognize those that have been harmed if those doing the harming are still unidentified. A major tool for law enforcement to better investigations is to work alongside survivors. However, if they are treated like criminals this will not be likely. As stated previously, crimes might have been committed because the trafficker forced them to do so. Why would a trafficker risk himself to commit a crime? This dynamic must be acknowledged. As Shared Hope pointed out in Policy Issue 2, there needs to be laws prohibiting the criminalization of crimes that were a result of victimization.<sup>77</sup> The state is failing the survivors if they are having to pay for the crimes of their traffickers.

No matter how well Arkansas improves in identification and investigation, trafficking will not end until traffickers are stopped. This requires an increase in prosecutions, arrests, and charges. Arkansas needs a lot of growth in this area. In August 2020, a news report noted that there were 86 cases reported in Arkansas in 2019, but there were less than a dozen cases filed by state prosecutors.<sup>78</sup> This is a major discrepancy that needs to be addressed.

One challenge for prosecutors is survivor's testifying.<sup>79</sup> As stated earlier, Shared Hope addressed one way to assist in this: extending alternatives to in-person testifying to all minors (Policy Goal 5.2).<sup>80</sup> Additionally, training that is specific to trafficking for prosecutors is vital (Policy Goal 6.4).<sup>81</sup> Survivors of trafficking endure a lot of trauma and working through the

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<sup>77</sup> Shared Hope International, *2021 Report Cards Toolkit*, 18.

<sup>78</sup> Marine Glisovic, "Human Trafficking Cases Increase in Arkansas, But Not Convictions," KATV, Sinclair Broadcast Group, Inc., August 28, 2020, <https://katv.com/news/local/human-trafficking-08-28-2020>.

<sup>79</sup> Marine Glisovic, "Human Trafficking Cases Increase in Arkansas, But Not Convictions."

<sup>80</sup> Shared Hope International, *2021 Report Cards Toolkit*, 24.

<sup>81</sup> Shared Hope International, *2021 Report Cards Toolkit*, 26-27.

process with prosecutors will likely be terrifying. It is important for prosecutors to know how to handle the situation well and not further traumatize victims.

These *Next Steps* all begin with recognizing the problem and deciding that Arkansas is going to work to eradicate trafficking. Human trafficking is not just another country's problem, or even a problem just for the larger cities in the United States. It is happening in Arkansas and something must be done to end it. The implementation of these *Next Steps* will help change the course of the crime and lead towards a goal of eliminating human trafficking in Arkansas.

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