

# Restitution and Asset Forfeiture: A Focus on Human Trafficking

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## Introduction

This resource summarizes the restitution and asset forfeiture laws related to human trafficking in the 50 states, the District of Columbia, U.S. Territories, and federal jurisdictions. An analysis of the laws was conducted, and summaries of the restitution and asset forfeiture laws are included below. The full text of these statutes is included, as well as the citation for the relevant human trafficking statute(s) for each jurisdiction. AEQUITAS is in the process of researching a compilation and analysis of human trafficking laws in the same jurisdictions. Please contact [info@aequitasresource.org](mailto:info@aequitasresource.org) for more information.

## Restitution Summary

Human trafficking statutes have been signed into law to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”<sup>1</sup> The physical, emotional, and economical damages incurred by trafficking victims is unparalleled, and, as a result, legislatures have enacted statutes that attempt to counter the devastating effects of these crimes. Restitution has long been a tool used by the courts to compensate crime victims for damages and losses caused to person or property.<sup>2</sup> Some jurisdictions permit restitution under general laws, while others have drafted restitution statutes specific to trafficking victims.

The categories included in these charts are those most frequently addressed by statute; they are not exhaustive of the remedies available to victims of human trafficking through restitution. Notably, the human trafficking restitution statutes in Delaware, Illinois, New Hampshire, Pennsylvania, and Rhode Island include a “catch-all” provision for restitution, in that they cover any other loss identified. DEL. CODE ANN. tit. 11, § 787(c); 720 ILL. COMP. STAT. ANN. 5/10-9(g); N.H. REV. STAT. ANN. § 633:11 (II)(e); 18 PA. CONS. STAT. ANN. § 3003 (“any other remedy deemed appropriate”); R.I. GEN. LAWS. ANN. § 11-67-4.

Thirty-three jurisdictions <i>do not</i> have a human trafficking specific restitution statute, but <i>do</i> have a general victim restitution statute.		
Alaska	Maine	Oregon
Arkansas	Maryland	South Dakota
California	Massachusetts	Utah
Colorado	Michigan	Virginia
Connecticut	Minnesota	Washington
District of Columbia	Mississippi	West Virginia
Florida	Montana	Wisconsin
Georgia	Nebraska	American Samoa
Kansas	Nevada	Northern Mariana Islands
Kentucky	New York	Puerto Rico
Louisiana	Ohio	Virgin Islands

<sup>1</sup> Trafficking Victims Protection Act, 22 U.S.C.A. § 7101 (2000).

<sup>2</sup> See Lou Longhitano & Charlene Whitman, Assisting Human Trafficking Victims with Return of Property and Restitution, 21 STRATEGIES IN BRIEF (Feb. 2014).

**Twenty-five jurisdictions have human trafficking specific restitution statute(s).  
Each jurisdiction and the specific restitution costs covered are represented in the chart below.**

State	Medical Treatment	Psychological Treatment	Community Services <sup>3</sup>	Gross Income/ Value of Services <sup>4</sup>	Cost of Investigation, Prosecution, Attorney's Fees	Return of Property or Full Value	Relocation Expenses
Alabama	✓	✓	✓	✓	✓	✓	✓
Arizona				✓			
California	✓	✓	✓	✓	✓	✓	✓
Delaware				✓			
Hawaii				✓			
Idaho	✓	✓		✓			
Illinois				✓			
Indiana	✓	✓		✓		✓	
Iowa				✓ <sup>5</sup>			
Missouri	✓	✓		✓			
New Hampshire	✓	✓	✓	✓		✓	✓
New Jersey				✓			
New Mexico				✓			
North Carolina				✓			
North Dakota	✓	✓				✓	
Oklahoma <sup>6</sup>	✓			✓		✓	
Pennsylvania				✓			
Rhode Island				✓			
South Carolina <sup>7</sup>							
Tennessee <sup>8</sup>				✓			
Texas <sup>9</sup>	✓	✓					
Vermont	✓ <sup>10</sup>			✓	✓	✓	
Wyoming	✓			✓			
Guam	✓	✓	✓	✓		✓	✓
Federal	✓	✓	✓	✓		✓	✓

<sup>3</sup> At the court's discretion, services may include necessary transportation, temporary housing, and childcare.

<sup>4</sup> Many states dictate that gross income of the victim and the value of services will be calculated under the Fair Labor Standards Act (FLSA) or state equivalent, and the greater amount will be the amount ordered. (Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (1938).)

<sup>5</sup> The value of the victim's labor or services will be determined in accordance with the "gross income of the defendant or the value of labor or services performed by the victim to the defendant."

<sup>6</sup> Oklahoma's human trafficking restitution statute directs awards in accordance with the general victim restitution statute, discussed below.

<sup>7</sup> South Carolina mandates restitution in its human trafficking statute, but for guidance on what is covered, one must look to the general victim restitution statute, which covers payment for all injuries, specific losses, and expenses.

<sup>8</sup> Tennessee's restitution statute is specific to labor trafficking. There is no similar sex trafficking restitution statute.

<sup>9</sup> TEX. CODE CRIM. PROC. ANN. art. 42.0372 applies to restitution for child trafficking victims. There is no specific restitution statute for instances of trafficking involving adults.

<sup>10</sup> Covering uninsured medical expenses.

## Asset Forfeiture Summary

“Asset forfeiture primarily appears in one of two forms – civil or criminal. Civil asset forfeiture is *not* dependent on a conviction, and oftentimes can be pursued even where there is no criminal case pending. The standard of proof is lower in civil asset forfeiture as well, and, in a majority of states, requires proof by a preponderance of the evidence, with a few jurisdictions requiring proof by clear and convincing evidence. Criminal asset forfeiture, on the other hand, can only be obtained following a conviction, and is sought during sentencing or a separate forfeiture hearing and requires a showing that the property to be forfeited was part of the specific criminal offense.”<sup>11</sup> Forfeited assets can be used to support the additional resources needed to provide a comprehensive response to the victims of human trafficking. “The forfeited assets can include any property that constitutes the fruit of the criminal enterprise or that was used to further the enterprise. Further, the forfeiture is not limited to assets within the jurisdiction; some statutes enable the state to obtain overseas assets if certain conditions are satisfied.”<sup>12</sup> This compilation focuses primarily on criminal asset forfeiture statutes, and specifically those that are applicable in human trafficking cases. Where relevant, civil statutes may be referenced.

<b>Sixteen jurisdictions have a human trafficking specific asset forfeiture statute.</b>	
Alabama	Mississippi
California	New Hampshire
Connecticut	North Carolina
District of Columbia	Pennsylvania
Hawaii <sup>13</sup>	Rhode Island
Illinois <sup>14</sup>	South Carolina
Maryland	Guam
Massachusetts	Federal

<b>Twenty jurisdictions have a general asset forfeiture statute that covers the commission of felonies that would include human trafficking.<sup>15</sup></b>	
Florida	Nevada
Georgia	New Jersey
Indiana	New York
Iowa	Ohio
Kansas <sup>16</sup>	Oregon
Louisiana <sup>17</sup>	Tennessee
Maine <sup>18</sup>	Texas <sup>20</sup>
Michigan	Utah
Minnesota <sup>19</sup>	Washington
Missouri	American Samoa

<sup>11</sup> Charlene Whitman, Hitting them where it hurts: Strategies for seizing assets in human trafficking cases, 20 STRATEGIES IN BRIEF 1 (Sept. 2013).

<sup>12</sup> *Supra* note?; see, e.g., 18 PA. C.S. § 3004.

<sup>13</sup> Hawaii allows forfeiture in labor trafficking cases.

<sup>14</sup> Illinois’ forfeiture statute applies to involuntary servitude.

<sup>15</sup> Puerto Rico law prohibits orders of asset forfeiture except where expressly provided by law and there are no provisions within the human trafficking laws allowing forfeiture.

<sup>16</sup> Kansas lists human trafficking as an offense for which forfeiture applies while listing felonies that forfeiture applies to.

<sup>17</sup> Under Sex Offender laws, there is a provision for forfeiture of property that lists human trafficking as an offense for which forfeiture is allowed.

<sup>18</sup> Maine’s forfeiture statute declares assets used in or traceable to human trafficking offenses are subject to forfeiture.

<sup>19</sup> Minnesota allows forfeiture of property for “designated offenses,” which includes labor and sex trafficking.

<sup>20</sup> Texas allows for forfeiture of contraband, which is defined as any real property obtained during the commission of a felony.

<b>Twenty-five jurisdictions have asset forfeiture statutes that are limited to the commission of certain types of offenses (controlled substance, RICO, organized crime, gambling).</b>				
<b>State</b>	<b>Controlled Substance</b>	<b>Racketeering or RICO</b>	<b>Organized Crime</b>	<b>Other</b>
Alaska	✓			
Arizona	✓	✓		✓ 21
Arkansas	✓			
California	✓			
Colorado	✓			
Connecticut	✓		✓	
Delaware	✓			
Florida	✓			
Georgia	✓	✓		
Idaho	✓			
Kentucky	✓			
Michigan	✓			
Montana	✓			
Nebraska	✓			
New Mexico	✓			
North Dakota	✓			
Oklahoma	✓			
South Dakota	✓			
Vermont	✓			
Virginia	✓			✓ 22
West Virginia	✓			
Wisconsin	✓	✓		
Wyoming	✓			
Northern Mariana Islands	✓			
Virgin Islands	✓		✓	

<sup>21</sup> Includes terrorism.

<sup>22</sup> Includes gangs, money laundering, terrorism, computer crimes, weapons crimes, abduction of children.

# Alabama

Restitution for victims of human trafficking is mandatory in Alabama. ALA. CODE § 13A-6-155 (2010). Restitution must consist of the greater of either the salary the victim should have received based on minimum wage or the gross income or value of the services the victim provided, as well as any the amount of any property damage, the cost of victim relocation to avoid the perpetrator, and any other expenses caused by the trafficking. *Id.* At the court's discretion, it may include medical and psychological treatment, temporary housing, transportation, and childcare. *Id.* Repatriation of the victim outside of the United States does not affect the victim's right to restitution, and the proceeds from a related forfeiture action go towards restitution. *Id.* Alabama also has a human trafficking specific civil asset forfeiture statute, copied below.

## **HUMAN TRAFFICKING STATUTES:**

- Ala. Code § 13A-6-152 (2010). Human trafficking in the first degree
- Ala. Code § 13A-6-153 (2010). Human trafficking in the second degree

## **ALA. CODE § 13A-6-155 (2010). MANDATORY RESTITUTION**

(a) A person or entity convicted of any violation of this article shall be ordered to pay mandatory restitution to the victim, prosecutorial, or law enforcement entity, with the proceeds from property forfeited under Section 13A-6-156 applied first to payment of restitution. Restitution under this section shall include items covered under Article 4A, commencing with Section 15-18-65 of Chapter 18 of Title 15, and any of the following:

(1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion.

(2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion.

(3) Cost of the investigation and prosecution, attorney's fees, and other court-related costs such as victim advocate fees.

(4) The greater of a. the value of the human trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act; or b. the gross income or value to the defendant of the victim's labor servitude or sexual servitude engaged in by the victim while in the human trafficking situation.

(5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.

(6) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(7) Any and all other losses suffered by the victim as a result of any violation of this article.

(b) For purposes of this section, the return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

## **ALA. CODE § 13A-6-156 (2010). FORFEITURE OF PROFITS OR PROCEEDS AND INTEREST IN PROPERTY**

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has

acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

## Alaska

There is no specific human trafficking restitution provision in Alaska. There is, however, a general restitution statute, copied below, that provides for the court to order the defendant to pay the cost of medical or shelter services for the person injured by the offense as well as the value of labor or goods provided by volunteers to alleviate or mitigate the effects of the crime. ALASKA STAT. ANN. § 12.55.045 (WEST 2006). There is no civil asset forfeiture statute as it pertains to human trafficking offenses and the only asset forfeiture statute in place in Alaska, pertains to drug/controlled substance crimes. For violations of controlled substance laws, assets may be seized and forfeited, under the provision for forfeiture by criminal activity in the Alaska Code.

### HUMAN TRAFFICKING STATUTES:

- Alaska Stat. Ann. § 11.41.360 (West 2006). Human trafficking in the first degree
- Alaska Stat. Ann. § 11.41.365 (West 2006). Human trafficking in the second degree

### ALASKA STAT. ANN. § 12.55.045 (WEST 2006). RESTITUTION AND COMPENSATION

(a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, 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 authorized by law. The court shall, when presented with credible evidence, unless the victim expressly declines restitution, also order a defendant convicted of an offense to compensate a victim that is a nonprofit organization for the value of labor or goods provided by volunteers if the labor or goods were necessary to alleviate or mitigate the effects of the defendant's crime. In determining the amount and method of payment of restitution or compensation, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If the defendant fails to make one or more payments required under this section, the victim or the state on the victim's behalf may enforce the total amount remaining under the order of restitution as provided in (1) of this section.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120--11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss, and the order of restitution may include compensation for loss of income.

(e), (f) Repealed by SLA 2004, ch. 17, § 7.

(g) The court may not, in ordering the amount of restitution, consider the defendant's ability to pay restitution.

(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under AS 12.55.085, the order of restitution is a condition of the suspended imposition of sentence.

(j) A defendant who is convicted of an offense for which restitution may be ordered shall submit financial information as ordered by the court. The Alaska Court System shall prepare a form, in consultation with the Department of Law, for the submission of the information; the form must include a warning that submission of incomplete or inaccurate information is punishable as unsworn falsification in the second degree under AS 11.56.210. A defendant who is convicted of (1) a felony shall submit the form to the probation office within 30 days after conviction, and the probation officer shall attach the form to the presentence report, or (2) a misdemeanor shall file the form with the defendant's response or opposition to the restitution amount. The defendant shall provide a copy of the completed form to the prosecuting authority.

(k) The court, on its own motion or at the request of the prosecuting authority or probation officer, may order a defendant on probation who has been ordered to pay restitution to submit financial information to the court using the form specified in (j) of this section. The defendant shall file the completed form with the court within five days after the court's order. The defendant shall provide a copy of the completed form to the prosecuting authority and the person's probation officer, if any.

(l) An order by the court that the defendant pay restitution is a civil judgment for the amount of the restitution. An order by the court that the defendant pay restitution when the court suspends imposition of sentence under AS 12.55.085 is a civil judgment for the amount of the restitution and remains enforceable and is not discharged when a conviction is set aside under AS 12.55.085. The victim or the state on behalf of the victim may enforce the judgment through any procedure authorized by law for the enforcement of a civil judgment. If the victim enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the victim's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated. This section does not limit the authority of the court to enforce orders of restitution.

(m) Notwithstanding another provision of law, the court shall accept (1) payments of restitution from a defendant at any time, and (2) prepayments of restitution or payments in anticipation of an order of restitution. If the recipient has elected to have the Department of Law collect the judgment of restitution under AS 12.55.051(g), the court shall forward all payments of restitution to the Department of Law within five days after the court's acceptance.

(n) In this section, "conviction" means that the defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or has been found guilty or guilty but mentally ill by a court or jury.

## Arizona

Arizona does have a human trafficking specific restitution provision. Restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act over time, or the value of the victim's services to the perpetrator. All property can be forfeited in the event that the statute provides for forfeiture. ARIZ. REV. STAT. ANN. § 13-4304 (1994). The human trafficking statutes do not specifically provide for

forfeiture, but the Organized Crime, Racketeering and Terrorism statutes do. ARIZ. REV. STAT. ANN. § 13-2314 (1994).<sup>23</sup>

#### **HUMAN TRAFFICKING STATUTES:**

- Ariz. Rev. Stat. Ann. § 13-1306 (2005). Unlawfully obtaining labor or services; Classification.
- Ariz. Rev. Stat. Ann §13-1307 (2005). Sex trafficking; classification; definition.
- Ariz. Rev. Stat. Ann §13-1308 (2005). Trafficking of persons for forced labor or services; classification; definition.

#### **ARIZ. REV. STATE. ANN. § 13-1309 (2005). RESTITUTION**

The court shall order restitution for any violation of § 13-1306, 13-1307 or 13-1308, including the greater of either the gross income or value to the defendant of the victim's labor or services or the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938 (52 Stat. 1060; 29 United States Code §§ 201 through 219).

## **Arkansas**

There is no specific human trafficking restitution provision. However, there is a general restitution statute that is copied below. When restitution is ordered, it shall include: the cost of necessary medical or related professional service, the cost of necessary physical and occupational therapy and rehabilitation, and reimbursement for the victim's income lost as a result of the offense. ARK. CODE ANN. § 5-4-205 (WEST 2014). Effective August 16, 2013, Arkansas passed §5-5-201, a criminal statute which calls for the forfeiture of any conveyance, including an aircraft, motor vehicle, or vessel used in the commission of the trafficking of persons. ARK. CODE ANN. § 5-5-201 (West 2013). All relevant statutes are copied below.

#### **HUMAN TRAFFICKING STATUTES:**

- Ark. Code Ann. § 5-18-102 (West 2013). Definitions
- Ark. Code. Ann. § 5-18-103 (West 2013). Trafficking of persons
- Ark. Code. Ann. § 5-18-104 (West 2013). Patronizing a victims of human trafficking
- Ark. Code. Ann. § 5-18-105 (West 2013). Enhanced liability of an organization
- Ark. Code. Ann. § 12-19-101 (West 2013). State Task Force for the Prevention of Human Trafficking

#### **ARK. CODE ANN. § 5-4-205 (WEST 2014). RESTITUTION**

(a)(1) A defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.

(2) If the court decides not to order restitution or orders restitution of only a portion of the loss suffered by the victim, the court shall state on the record in detail the reasons for not ordering restitution or for ordering restitution of only a portion of the loss.

(b)(1) Whether a trial court or a jury, the sentencing authority shall make a determination of actual economic loss caused to a victim by the offense.

(2) When an offense has resulted in bodily injury to a victim, a restitution order entered under this section may require that the defendant:

(A) Pay the cost of a necessary medical or related professional service or device relating to physical, psychiatric,

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<sup>23</sup> Ruled unconstitutional on other grounds by *Pompa v. Superior Court In and For the Cnty. of Maricopa*, 931 P.2d 431 (Ariz. Ct. App. 1997).

and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing;

(B) Pay the cost of necessary physical and occupational therapy and rehabilitation;

(C)(i) Reimburse the victim for income lost by the victim as a result of the offense.

(ii) The maximum that a victim may recover for lost income is fifty thousand dollars (\$50,000); and

(D) Pay an amount equal to the cost of a necessary funeral and related services in the case of an offense that resulted in bodily injury that also resulted in the death of a victim.

(3) When an offense has not resulted in bodily injury to a victim, a restitution order entered under this section may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

(4)(A) The determination of the amount of loss is a factual question to be decided by the preponderance of the evidence presented to the sentencing authority during the sentencing phase of a trial.

(B) The amount of loss may be decided by agreement between a defendant and the victim represented by the prosecuting attorney.

(5) If any item listed in subdivision (b)(2) of this section has been paid by the Crime Victims Reparations Board and the court orders restitution, the restitution order shall provide that the board is to be reimbursed by the defendant.

(c)(1) As used in this section and in any provision of law relating to restitution, "victim" means any person, partnership, corporation, or governmental entity or agency that suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode.

(2) "Victim" includes a victim's estate if the victim is deceased and a victim's next of kin if the victim is deceased as a result of the offense.

(d) A record of a defendant shall not be sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq. until all court-ordered restitution has been paid.

(e)(1) Restitution shall be made immediately unless prior to the imposition of sentence the court determines that the defendant should be:

(A) Given a specified time to pay; or

(B)(i) Allowed to pay in specified installments.

(ii) If a court authorizes payment of restitution by a defendant in specified installments, a monthly installment fee of five dollars (\$5.00) shall be assessed on the defendant for making restitution payments on an installment basis in addition to the restitution and other assessments authorized.

(iii) The monthly installment fee under subdivision (e)(1)(B)(ii) of this section shall be remitted to the collecting official to be used to defray the cost of restitution collection.

(iv) A district court may order installment payments of restitution to be collected first in lieu of the procedure under § 16-10-209(5)(F).

(2) In determining the method of payment, the court shall take into account:

- (A) The financial resources of the defendant and the burden that payment of restitution will impose with regard to another obligation of the defendant;
- (B) The ability of the defendant to pay restitution on an installment basis or on another condition to be fixed by the court; and
- (C) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.
- (f)(1) If the defendant is placed on probation or any form of conditional release, any restitution ordered under this section is a condition of the suspended imposition of sentence, probation, parole, or transfer.
- (2) The court may revoke probation and any agency establishing a condition of release may revoke the conditional release if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order.
- (3) In determining whether to revoke probation or conditional release, the court or releasing authority shall consider:
- (A) The defendant's employment status;
- (B) The defendant's earning ability;
- (C) The defendant's financial resources;
- (D) The willfulness of the defendant's failure to pay; and
- (E) Any other special circumstances that may have a bearing on the defendant's ability to pay.
- (g)(1) The court shall enter a judgment against the defendant for the amount determined under subdivision (b)(4) of this section.
- (2) The judgment may be enforced by the state or a beneficiary of the judgment in the same manner as a judgment for money in a civil action.
- (3) A judgment under this section may be discharged by a settlement between the defendant and the beneficiary of the judgment.
- (4) The court shall determine priority among multiple beneficiaries on the basis of:
- (A) The seriousness of the harm each beneficiary suffered;
- (B) The other resources of the beneficiaries; and
- (C) Other equitable factors.
- (5) If more than one (1) defendant is convicted of the crime for which there is a judgment under this section, the defendants are jointly and severally liable for the judgment unless the court determines otherwise.
- (6)(A) A judgment shall require payment to the Department of Community Correction.
- (B) The department shall provide for supervision and disbursement of funds under subdivision (g)(6)(A) of this section by the department's authorized economic sanction officers.
- (h)(1) A judgment under this section does not bar a remedy available in a civil action under other law.
- (2) A payment under this section shall be credited against a money judgment obtained by the beneficiary of the payment in a civil action.
- (3) A determination under this section and the fact that payment was or was not ordered or made:

(A) Are not admissible in evidence in a civil action; and

(B) Do not affect the merits of a civil action.

**ARK. CODE ANN. § 5-5-201 (WEST 2013). FORFEITURE , CRIMINAL CONVEYANCES**

(a) Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel is subject to forfeiture under this subchapter if it is used in the commission or attempt of:

(1) A burglary;

(2) A robbery;

(3) A theft;

(4) An arson; or

(5) Trafficking of persons, § 5-18-103.

(b) However:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this subchapter unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the offense;

(2) No conveyance is subject to forfeiture under this subchapter by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the conveyance with the owner's permission; and

(3) A forfeiture of a conveyance encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the conveyance in the commission or attempt to commit the offense.

(c)(1) An all-terrain vehicle used in the commission of a second or subsequent offense for criminal trespass, § 5-39-203, that occurs within five (5) years of a prior offense of criminal trespass, § 5-39-203, is subject to seizure and forfeiture under this subchapter.

(2) As used in this subsection, "all-terrain vehicle" means the same as defined in § 27-21-102.

## **California**

Until January 1, 2013, there was no specific human trafficking restitution provision. Effective January 1, 2013, California passed Cal. Penal Code § 236.6 mandating that restitution be paid in human trafficking cases, in accordance with the general restitution statute. Restitution shall include every determined economic loss incurred as the result of the defendant's criminal conduct. CAL. PENAL CODE § 1202.4 (WEST 2012). California also passed an asset forfeiture law specifically for human trafficking. CAL. PENAL CODE § 263.6-263.12 (WEST 2013). The relevant statutes are copied below.

## **HUMAN TRAFFICKING STATUTE:**

Cal. Penal Code § 236.1 (West 2012). Human Trafficking; Punishment; Provisions Regarding Minors; Definitions; Consideration of Total Circumstances

## **CAL. PENAL CODE § 1202.4 (WEST 2012). RESTITUTION FINES; EXCEPTION; AMOUNTS; HEARING; DISCLOSURE; EXTENSION**

(a)(1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred twenty dollars (\$120) starting on January 1, 2012, one hundred forty dollars (\$140) starting on January 1, 2013, and one hundred fifty dollars (\$150) starting on January 1, 2014, and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to

the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every 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 any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victim Compensation Program pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(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. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(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. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(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 of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

(4)(A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph

(5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the

defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section

594, and that has sustained an economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.

(l) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or e-mail.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in any 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 any other 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.

(r)(1) In addition to any other penalty or fine, the court shall order any person who has been convicted of any violation of Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work to make restitution to any owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. For the purpose of calculating restitution, the value of each nonconforming article or device shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. The order of restitution shall also include reasonable costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

(2) As used in this subdivision, “audiovisual work” and “recording” shall have the same meaning as in Section 653w.

**CAL. PENAL CODE § 236.3 (WEST 2010). REAL PROPERTY USED TO FACILITATE HUMAN TRAFFICKING; PROCEDURES FOR DETERMINING WHETHER PROPERTY IS NUISANCE; REMEDIES**

Upon conviction of a violation of Section 236.1, if real property is used to facilitate the commission of the offense, the procedures for determining whether the property constitutes a nuisance and the remedies imposed therefor as provided in Article 2 (commencing with Section 11225) of Chapter 3 of Title 1 of Part 4 shall apply.

**CAL. PENAL CODE § 236.6 (WEST 2013). HUMAN TRAFFICKING; PETITION FOR PROTECTIVE RELIEF TO PRESERVE PROPERTY OR ASSETS; NOTICE; VERIFIED CLAIM OF INTEREST; PENDENTE LITE ORDERS; PROCESSING OF PETITION; LEVY OF PROPERTY OR ASSETS FOR PAYMENT OF FINES AND RESTITUTION**

(a) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging human trafficking under Section 236.1, file a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets. The filing of the petition shall start a proceeding that shall be pendent to the criminal proceeding and maintained solely to effect the remedies available for this crime, including, but not limited to, payment of restitution and payment of fines. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with human trafficking under Section 236.1 and shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section.

(b) The prosecuting agency shall, by personal service or registered mail, provide notice of the petition to every person who may have an interest in the property specified in the petition. Additionally, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by the order is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of his or her claimed interest. The notice shall set forth the time within which a claim of interest in the protected property shall be filed.

(c) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated that specifically identifies the property by legal description, the name of the owner of record, as shown on the latest equalized assessment roll, and the assessor's parcel number.

(d) If the property to be preserved consists of assets under the control of a banking or financial institution, the prosecuting agency, at the time of filing the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy.

(e) A person claiming an interest in the protected property or assets may, at any time within 30 days from the date of the first publication of the notice of the petition, or within 30 days after receipt of actual notice, whichever is later, file with the superior court of the county in which the action is pending a verified claim stating the nature and amount of his or her interest in the property or assets. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(f) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, any of the following pendente lite orders to preserve the status quo of the property or assets alleged in the petition:

- (1) An injunction to restrain any person from transferring, encumbering, hypothecating, or otherwise disposing of the property or assets.
- (2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that they may be maintained and preserved. The court may order that a receiver appointed pursuant to this section shall be compensated for all reasonable expenditures made or incurred by him or her in connection with the possession, care, management, and operation of property or assets that are subject to the provisions of this section.
- (3) Requiring a bond or other undertaking, in lieu of other orders, of a value sufficient to ensure the satisfaction of restitution and fines imposed pursuant to Section 236.1.

(g) The following procedures shall be followed in processing the petition:

- (1) No preliminary injunction shall be granted or receiver appointed without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property or assets, pending the outcome of the criminal proceedings. However, a temporary restraining order may be issued pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure. The temporary restraining order may be based upon the sworn declaration of a peace officer with personal knowledge of the criminal investigation that establishes probable cause to believe that human trafficking has taken place and that the amount of restitution and fines established pursuant to subdivision (f) exceeds or equals the worth of the property or assets subject to the temporary restraining order. The declaration may include the hearsay statements of witnesses to establish the necessary facts. The temporary restraining order may be issued without notice upon a showing of good cause to the court.
- (2) The defendant, or a person who has filed a verified claim, shall have the right to have the court conduct an order to show cause hearing within 10 days of the service of the request for a hearing upon the prosecuting agency, in order to determine whether the temporary restraining order should remain in effect, whether relief should be granted from a lis pendens recorded pursuant to subdivision (c), or whether an existing order should be modified in the interests of justice. Upon a showing of good cause, the hearing shall be held within two days of the service of the request for a hearing upon the prosecuting agency.
- (3) In determining whether to issue a preliminary injunction or temporary restraining order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the filing of an allegation pursuant to this section, the court has the discretion to consider any matter that it deems reliable and appropriate, including hearsay statements, in order to reach a just and equitable decision. The court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief. If the prosecution is likely to prevail on the merits and the risk of the dissipation of assets outweighs the potential harm to the defendants and the interested parties, the court shall grant injunctive relief. The court shall give significant weight to the following factors:
  - (A) The public interest in preserving the property or assets pendente lite.
  - (B) The difficulty of preserving the property or assets pendente lite where the underlying alleged crimes involve human trafficking.
  - (C) The fact that the requested relief is being sought by a public prosecutor on behalf of alleged victims of human trafficking.
  - (D) The likelihood that substantial public harm has occurred where the human trafficking is alleged to have been committed.
  - (E) The significant public interest involved in compensating victims of human trafficking and paying court-imposed restitution and fines.
- (4) The court, in making its orders, may consider a defendant's request for the release of a portion of the property affected by this section in order to pay reasonable legal fees in connection with the criminal proceeding, necessary and appropriate living expenses pending trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the public to retain the property against the needs of the defendant to a portion of the property. The court shall consider the factors listed in paragraph (3) prior to making an order releasing property for these purposes.

(5) The court, in making its orders, shall seek to protect the interests of innocent third parties, including an innocent spouse, who were not involved in the commission of criminal activity.

(6) The orders shall be no more extensive than necessary to effect the remedies available for the crime. In determining the amount of property to be held, the court shall ascertain the amount of fines that are assessed for a violation of this chapter and the amount of possible restitution.

(7) A petition filed pursuant to this section is part of the criminal proceedings for purposes of appointment of counsel and shall be assigned to the criminal division of the superior court of the county in which the accusatory pleading was filed.

(8) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph (2) of subdivision (f), the court may order an interlocutory sale of property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value of the property. The proceeds of the interlocutory sale shall be deposited with the court or as directed by the court pending determination of the proceeding pursuant to this section.

(9) The court may make any orders that are necessary to preserve the continuing viability of a lawful business enterprise that is affected by the issuance of a temporary restraining order or preliminary injunction issued pursuant to this section.

(10) In making its orders, the court shall seek to prevent the property or asset subject to a temporary restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise being significantly reduced in value. Where the potential for diminution in value exists, the court shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

(11) A preservation order shall not be issued against an asset of a business that is not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

(h) If the allegation of human trafficking is dismissed or found by the trier of fact to be untrue, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved. If a jury is the trier of fact, and the jury is unable to reach a unanimous verdict, the court shall have the discretion to continue or dissolve all or a portion of the preliminary injunction or temporary restraining order based upon the interests of justice. However, if the prosecuting agency elects not to retry the case, a preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved.

(i)(1)(A) If the defendant is convicted of human trafficking, the trial judge shall continue the preliminary injunction or temporary restraining order until the date of the criminal sentencing and shall make a finding at that time as to what portion, if any, of the property or assets subject to the preliminary injunction or temporary restraining order shall be levied upon to pay fines and restitution to victims of the crime. The order imposing fines and restitution may exceed the total worth of the property or assets subjected to the preliminary injunction or temporary restraining order. The court may order the immediate transfer of the property or assets to satisfy a restitution order issued pursuant to Section 1202.4 and a fine imposed pursuant to this chapter.

(B) If the execution of judgment is stayed pending an appeal of an order of the superior court pursuant to this section, the preliminary injunction or temporary restraining order shall be maintained in full force and effect during the pendency of the appellate period.

(2) The order imposing fines and restitution shall not affect the interest in real property of a third party that was acquired prior to the recording of the lis pendens, unless the property was obtained from the defendant other than as a bona fide purchaser for value. If any assets or property affected by this section are subject to a valid lien, mortgage, security interest, or interest under a conditional sales contract and the amount due to the holder of the lien, mortgage, interest, or contract is less than the appraised value of the property, that person may pay to the state or the local government that initiated the proceeding the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the interest in the property shall be deemed transferred to the state or local governmental entity and any indicia of ownership of the property shall be confirmed in the state or local governmental entity. The appraised value shall be determined as of the date judgment is entered either by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity involved or, if they cannot agree, then by a court-

appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(3) In making its final order, the court shall seek to protect the legitimately acquired interests of innocent third parties, including an innocent spouse, who were not involved in the commission of criminal activity.

(j) In all cases where property is to be levied upon pursuant to this section, a receiver appointed by the court shall be empowered to liquidate all property or assets, which shall be distributed in the following order of priority:

(1) To the receiver, or court-appointed appraiser, for all reasonable expenditures made or incurred by him or her in connection with the sale of the property or liquidation of assets, including all reasonable expenditures for necessary repairs, storage, or transportation of property levied upon under this section.

(2) To a holder of a valid lien, mortgage, or security interest, up to the amount of his or her interest in the property or proceeds.

(3) To a victim as restitution for human trafficking that was alleged in the accusatory pleading and that was proven by the prosecution.

(4) For payment of a fine imposed. The proceeds obtained in payment of a fine shall be paid in the manner set forth in subdivision (h) of Section 236.1.

**CAL. PENAL CODE § 236.7 (WEST 2013). PROPERTY USED TO FACILITATE HUMAN TRAFFICKING OF VICTIMS LESS THAN 18 YEARS OF AGE; SEIZURE AND FORFEITURE; ASSETS SUBJECT TO FORFEITURE; AGENCY PETITIONS, PROCESS; EXCEPTIONS; NOTICE AND HEARING; PATTERN OF ACTIVITY NOT REQUIRED**

(a) Any interest in a vehicle, boat, airplane, money, negotiable instruments, securities, real property, or other thing of value that was put to substantial use for the purpose of facilitating the crime of human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime, may be seized and ordered forfeited by the court upon the conviction of a person guilty of human trafficking that involves a commercial sex act where the victim is an individual under 18 years of age, pursuant to Section 236.1.

(b) In any case in which a defendant is convicted of human trafficking pursuant to Section 236.1 and an allegation is found to be true that the victim was a person under 18 years of age and the crime involved a commercial sex act, as defined in paragraph (2) of subdivision (g) of Section 236.1, the following assets shall be subject to forfeiture upon proof of the provisions of subdivision (d) of Section 236.9:

(1) Any property interest, whether tangible or intangible, acquired through human trafficking that involves a commercial sex act where the victim was less than 18 years of age at the time of the commission of the crime.

(2) All proceeds from human trafficking that involves a commercial sex act where the victim was less than 18 years of age at the time of the commission of the crime, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the act.

(c) If a prosecuting agency petitions for forfeiture of an interest under subdivision (a) or (b), the process prescribed in Sections 236.8 to 236.12, inclusive, shall apply, but no local or state prosecuting agency shall be required to petition for forfeiture in any case.

(d) Real property that is used as a family residence or for other lawful purposes, or that is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(e) An interest in a vehicle that may be lawfully driven with a class C, class M1, or class M2 license, as prescribed in Section 12804.9 of the Vehicle Code, may not be forfeited under this section if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole vehicle of this type available to the defendant's immediate family.

(f) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue a seizure order pursuant to this section if it finds that seizure is warranted or a pendente lite order pursuant to Section 236.10 if it finds that the status quo or value of the property can be preserved without seizure.

(g) For purposes of this section, no allegation or proof of a pattern of criminal profiteering activity is required.

## Colorado

There is no specific human trafficking restitution provision. The general restitution statute is copied below. The state shall include consideration of restitution. "Restitution" means any pecuniary loss suffered by a victim. COLO. REV. STAT. ANN. § 18-1.3-602 (WEST 2012). Forfeiture proceedings seem to be limited in connection to crimes committed under the Colorado Contraband Act, which in most cases are controlled substances. COLO. REV. STAT. ANN. § 16-13-501 (WEST 1984).

### HUMAN TRAFFICKING STATUTES:

- Colo. Rev. Stat. Ann. § 18-3-501 (West 2010). Trafficking in adults
- Colo. Rev. Stat. Ann. § 18-3-502 (West 2010). Trafficking in children
- Colo. Rev. Stat. Ann. § 18-3-503 (West 2010). Coercion of involuntary servitude
- Colo. Rev. Stat. Ann. § 18-6-404 (West 2010). Procurement of a child for sexual exploitation
- Colo. Rev. Stat. Ann. § 18-13-128 (West 2010). Smuggling of humans

### COLO. REV. STAT. ANN. § 18-1.3-602 (WEST 2012). DEFINITIONS

As used in this part 6, unless the context otherwise requires:

(1) "Collections investigator" means a person employed by the judicial department whose primary responsibility is to administer, enforce, and collect on court orders or judgments entered with respect to fines, fees, restitution, or any other accounts receivable of the court, judicial district, or judicial department.

(2) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court for a felony, misdemeanor, petty offense, or traffic misdemeanor offense, or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(2.3) "Money advanced by a governmental agency for a service animal" means costs incurred by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency for the veterinary treatment and disposal of a service animal that was harmed while aiding in official duties and for the training of an animal to become a service animal to replace a service animal that was harmed while aiding in official duties, as applicable.

(2.5) Repealed by Laws 2004, Ch. 255, § 27, eff. May 21, 2004.

(3)(a) "Restitution" means any pecuniary loss suffered by a victim and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be

reasonably calculated and recompensed in money. "Restitution" does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.

(b) "Restitution" may also include extraordinary direct public and all private investigative costs.

(c)(I) "Restitution" shall also include all costs incurred by a government agency or private entity to:

(A) Remove, clean up, or remediate a place used to manufacture or attempt to manufacture a controlled substance or which contains a controlled substance or which contains chemicals, supplies, or equipment used or intended to be used in the manufacturing of a controlled substance;

(B) Store, preserve, or test evidence of a controlled substance violation; or

(C) Sell and provide for the care of and provision for an animal disposed of under the animal cruelty laws in accordance with part 2 of article 9 of this title or article 42 of title 35, C.R.S.

(II) Costs under this paragraph (c) shall include, but are not limited to, overtime wages for peace officers or other government employees, the operating expenses for any equipment utilized, and the costs of any property designed for one-time use, such as protective clothing.

(3.5) "Service animal" means any animal, the services of which are used to aid the performance of official duties by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency.

(4)(a) "Victim" means any person aggrieved by the conduct of an offender and includes but is not limited to the following:

(I) Any person against whom any felony, misdemeanor, petty, or traffic misdemeanor offense has been perpetrated or attempted;

(II) Any person harmed by an offender's criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity;

(III) Any person who has suffered losses because of a contractual relationship with, including but not limited to an insurer, or because of liability under section 14-6-110, C.R.S., for a person described in subparagraph (I) or (II) of this paragraph (a);

(IV) Any victim compensation board that has paid a victim compensation claim;

(V) If any person described in subparagraph (I) or (II) of this paragraph (a) is deceased or incapacitated, the person's spouse, parent, legal guardian, natural or adopted child, child living with the victim, sibling, grandparent, significant other, as defined in section 24-4.1-302(4), C.R.S., or other lawful representative;

(VI) Any person who had to expend resources for the purposes described in subparagraph (I) of paragraph (c) of subsection (3) of this section.

(b) "Victim" shall not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as defined under the law of this state or of the United States.

(c) Any "victim" under the age of eighteen is considered incapacitated, unless that person is legally emancipated or the court orders otherwise.

(d) It is the intent of the general assembly that this definition of the term "victim" shall apply to this part 6 and shall not be applied to any other provision of the laws of the state of Colorado that refers to the term "victim".

(e) Notwithstanding any other provision of this section, "victim" includes a person less than eighteen years of age who has been trafficked by an offender, as described in section 18-3-502, or coerced into involuntary servitude, as described in section 18-3-503.

## **COLO. REV. STAT. ANN. § 18-1.3-603 (WEST 2014). ASSESSMENT OF RESTITUTION--CORRECTIVE ORDERS**

(1) Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney's office, shall include consideration of restitution. Each such order shall include one or more of the following:

(a) An order of a specific amount of restitution be paid by the defendant;

(b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;

(c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or

(d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.

(3) Any order for restitution may be:

(a) Increased if additional victims or additional losses not known to the judge or the prosecutor at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court; or

(b) Decreased:

(I) With the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed; or

(II) If the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.

(4)(a) Any order for restitution entered pursuant to this section shall be a final civil judgment in favor of the state and any victim. Notwithstanding any other civil or criminal statute or rule, any such judgment shall remain in force until the restitution is paid in full. The provisions of article 18.5 of title 16, C.R.S., apply notwithstanding the termination of a deferred judgment and sentence or a deferred adjudication.

(b) Any order for restitution made pursuant to this section shall also be deemed to order that:

(I) The defendant owes interest from the date of the entry of the order at the rate of twelve percent per annum; and

(II) The defendant owes all reasonable and necessary attorney fees and costs incurred in collecting such order due to the defendant's nonpayment.

(c) The entry of an order for restitution under this section creates a lien by operation of law against the defendant's personal property and any interest that the defendant may have in any personal property.

(d) Any order of restitution imposed shall be considered a debt for "willful and malicious" injury for purposes of exceptions to discharge in bankruptcy as provided in 11 U.S.C. sec. 523.

(5) If more than one defendant owes restitution to the same victim for the same pecuniary loss, the orders for restitution shall be joint and several obligations of the defendants.

(6) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in any federal or state civil proceeding.

(7) When a person's means of identification or financial information was used without that person's authorization in connection with a conviction for any crime in violation of part 2, 3, or 4 of article 4, part 1, 2, 3, or 7 of article 5, or article 5.5 of this title, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from any violation of such laws.

(8)(a) Notwithstanding the provisions of subsection (1) of this section, for a non-felony conviction under title 42, C.R.S., the court shall order restitution concerning only the portion of the victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self- insurance, an indemnity agreement, or a risk management fund.

(b) The court, in determining the restitution amount, shall consider whether the defendant or the vehicle driven by the defendant at the time of the offense was covered by:

(I) A complying policy of insurance or certificate of self-insurance as required by the laws of this state;

(II) Self-insurance including but not limited to insurance coverage pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or

(III) Any other insurance or indemnity agreement that would indemnify the defendant for any damages sustained by the victim.

(c)(I) Except as otherwise provided in this paragraph (c), a court may not award restitution to a victim concerning a pecuniary loss for which the victim has received or is entitled to receive benefits or reimbursement under a policy of insurance or other indemnity agreement.

(II)(A) A court may award a victim restitution for a deductible amount under his or her policy of insurance.

(B) Deleted by Laws 2004, Ch. 255, § 28, eff. May 21, 2004.

(d)(I) Deleted by Laws 2004, Ch. 255, § 28, eff. May 21, 2004.

(II) Nothing in this paragraph (d) shall prohibit a nonowner driver or passenger in the vehicle from being awarded restitution if the driver or passenger was not covered by his or her own medical payments coverage policy.

(e)(I) Notwithstanding any provision of law to the contrary, an insurance company, risk management fund, or public entity shall not be obligated to defend a defendant in a hearing concerning restitution. No court shall interpret an indemnity or insurance contract so as to obligate an insurance company, risk management fund, or public entity to defend a defendant at a restitution hearing absent a specific agreement.

(II) Notwithstanding any provision of law, indemnity contract, or insurance contract to the contrary, an insurance company, risk management fund, or public entity shall not be obligated to pay or otherwise satisfy a civil judgment entered pursuant to this part 6, or to indemnify a defendant for an amount awarded in a restitution order.

(f) Nothing in this article shall be construed to limit or abrogate the rights and immunities set forth in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(g) The provisions of this subsection (8) shall not preclude the court, pursuant to article 4.1 of title 24, C.R.S., from ordering restitution to reimburse an expenditure made by a victim compensation fund

## Connecticut

There is no specific human trafficking restitution provision. There is a general restitution statute, copied below. In any conviction of an offense that resulted in injury to another person or damage to or loss of property, or if the victim requests financial restitution, the court shall order restitution. Restitution 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. CONN. GEN. STAT. ANN. § 53a-28 (West 2012). There is a specific human trafficking forfeiture statute, copied below. CONN. GEN. STAT. ANN. § 54-36P (WEST 2013).

## **HUMAN TRAFFICKING STATUTE:**

- Conn. Gen. Stat. Ann. § 53a-192a (West 2010). Trafficking in persons: Class B felony

## **CONN. GEN. STAT. ANN. § 53A-28 (WEST 2012). AUTHORIZED SENTENCES**

(a) Except as provided in section 17a-699 and chapter 420b,<sup>1</sup> to the extent that the provisions of said section and chapter are inconsistent herewith, every person convicted of an offense shall be sentenced in accordance with this title.

(b) Except as provided in section 53a-46a, when a person is convicted of an offense, the court shall impose one of the following sentences: (1) A term of imprisonment; or (2) a sentence authorized by section 18-65a or 18-73; or (3) a fine; or (4) a term of imprisonment and a fine; or (5) a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a period of probation or a period of conditional discharge; or (6) a term of imprisonment, with the execution of such sentence of imprisonment suspended, entirely or after a period set by the court, and a fine and a period of probation or a period of conditional discharge; or (7) a fine and a sentence authorized by section 18-65a or 18-73; or (8) a sentence of unconditional discharge; or (9) a term of imprisonment and a period of special parole as provided in section 54-125e.

(c) In addition to any sentence imposed pursuant to subsection (b) of this section, 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. In determining the appropriate terms of financial restitution, the court shall consider: (A) The financial resources of the offender and the burden restitution will place on other obligations of the offender; (B) the offender's ability to pay based on installments or other conditions; (C) the rehabilitative effect on the offender of the payment of restitution and the method of payment; and (D) other circumstances, including the financial burden and impact on the victim, that the court determines make the terms of restitution appropriate. If the court determines that the current financial resources of the offender or the offender's current ability to pay based on installments or other conditions are such that no appropriate terms of restitution can be determined, the court may forego setting such terms. The court shall articulate its findings on the record with respect to each of the factors set forth in subparagraphs (A) to (D), inclusive, of this subsection. 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. Restitution ordered by the court pursuant to this subsection shall be imposed or directed by a written order of the court containing the amount of damages for injury or loss of property, actual expenses incurred for treatment for injury to persons and lost wages resulting from injury as ascertained by the court. The order of the court shall direct that a certified copy of the order be delivered by certified mail to the victim and contain an advisement to the victim that the order is enforceable as a judgment in a civil action as provided in section 53a-28a.

(d) A sentence to a period of probation or conditional discharge in accordance with sections 53a-29 to 53a-34, inclusive, shall be deemed a revocable disposition, in that such sentence shall be tentative to the extent that it may be altered or revoked in accordance with said sections but for all other purposes it shall be deemed to be a final judgment of conviction.

(e) When sentencing a person to a period of probation who has been convicted of (1) a misdemeanor that did not involve the use, attempted use or threatened use of physical force against another person or (2) a motor vehicle violation for which a sentence to a term of imprisonment may be imposed, the court shall consider, as a condition of such sentence of probation, ordering the person to perform community service in the community in which the offense or violation occurred. If the court determines that community service is appropriate, such community

service may be implemented by a community court established in accordance with section 51-181c if the offense or violation occurred within the jurisdiction of a community court established by said section.

(f) When sentencing a person to a period of probation who is or has been subject to a protective order, the court may issue a protective order that is effective during such period of probation.

**CONN. GEN. STAT. ANN. § 54-36P (WEST 2013). FORFEITURE OF MONEYS AND PROPERTY RELATED TO SEXUAL EXPLOITATION AND HUMAN TRAFFICKING. IN REM PROCEEDING. DISPOSITION**

(a) The following property shall be subject to forfeiture to the state pursuant to subsection (b) of this section:

(1) All moneys used, or intended for use, in a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-82, 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(2) All property constituting the proceeds obtained, directly or indirectly, from a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-82, 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(3) All property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-82, 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(4) All property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of subdivision (3) of subsection (a) of section 53-21 or section 53a-82, 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i.

(b) Not later than ninety days after the seizure of moneys or property subject to forfeiture pursuant to subsection (a) of this section, in connection with a lawful criminal arrest or a lawful search, the Chief State's Attorney or a deputy chief state's attorney, state's attorney or assistant or deputy assistant state's attorney may petition the court in the nature of a proceeding in rem to order forfeiture of such moneys or property. Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by clear and convincing evidence. The court shall identify the owner of such moneys or property and any other person as appears to have an interest therein, and order the state to give notice to such owner and any interested person, including any victim of the crime with respect to which such moneys or property were seized, by certified or registered mail. The court shall promptly, but not less than two weeks after such notice, hold a hearing on the petition. No testimony offered or evidence produced by such owner or interested person at such hearing and no evidence discovered as a result of or otherwise derived from such testimony or evidence may be used against such owner or interested person in any proceeding, except that no such owner or interested person shall be immune from prosecution for perjury or contempt committed while giving such testimony or producing such evidence. At such hearing, the court shall hear evidence and make findings of fact and enter conclusions of law and shall issue a final order from which the parties shall have such right of appeal as from a decree in equity.

(c) No moneys or property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission committed by another person if such owner or lienholder did not know and could not have reasonably known that such moneys or property was being used or was intended to be used in, or was derived from, criminal activity.

(d) Notwithstanding the provisions of subsection (a) of this section, no moneys or property used or intended to be used by the owner thereof to pay legitimate attorney's fees in connection with his or her defense in a criminal prosecution shall be subject to forfeiture under this section.

(e) Any property ordered forfeited pursuant to subsection (b) of this section shall be sold at public auction conducted by the Commissioner of Administrative Services or the commissioner's designee.

(f) The proceeds from any sale of property under subsection (e) of this section and any moneys forfeited under this section shall be applied: (1) To payment of the balance due on any lien preserved by the court in the forfeiture proceedings; (2) to payment of any costs incurred for the storage, maintenance, security and forfeiture of any such property; and (3) to payment of court costs. The balance, if any, shall be deposited in the Criminal Injuries Compensation Fund established in section 54-215.

## Delaware

There is a specific human trafficking restitution provision within Delaware's human trafficking statute, copied below. Restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. Civil asset forfeiture is only allowed in conjunction with drug crimes. DEL. CODE ANN. tit. 16, § 4784 (WEST 2011).

### **HUMAN TRAFFICKING STATUTE:**

- Del. Code Ann. tit. 11, § 787 (West 2007). Trafficking of persons and involuntary servitude; class F felony; class E felony; class C felony; class B felony; class A felony

### **DEL. CODE ANN. tit. 11, § 787 (WEST 2007). TRAFFICKING OF PERSONS AND INVOLUNTARY SERVITUDE; CLASS F FELONY; CLASS E FELONY; CLASS C FELONY; CLASS B FELONY; CLASS A FELONY**

(a) For the purposes of this section, the following definitions shall apply:

(1) "Blackmail" is to be given its ordinary meaning and includes but is not limited to a threat to expose any secret tending to subject any person to hatred, contempt, or ridicule;

(2) "Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) "Forced labor or services" means labor, as defined in paragraph (a)(4) of this section, or services, as defined in paragraph (a)(7) of this section, that are performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section;

(4) "Labor" means work of economic or financial value;

(5) "Maintain" means in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service;

(6) "Obtain" means in relation to labor or services, to secure performance thereof;

(7) "Services" means an ongoing relationship between a person and the person in which the person performs activities under the supervision of or for the benefit of the person. Commercial sexual activity and sexually explicit performances are forms of services under this section. Nothing in this definition should be construed to legitimize or legalize prostitution;

(8) "Sexually explicit performance" means a live public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interest of patrons; and

(9) "Trafficking victim" means a person subjected to the practices set forth in subsection (b) of this section.

(b) *Prohibited activities.* --

(1) *Involuntary servitude.* --A person is guilty of holding another person in involuntary servitude when the person knowingly subjects, or attempts to subject, the person to forced labor or services.

- a. By causing or threatening to cause physical harm to any person which is a class B felony;
- b. By physically restraining or threatening to physically restrain another person which is a class B felony;
- c. By abusing or threatening to abuse the law or legal process which is a class C felony;
- d. By 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 another person which is a class E felony; or
- e. By using blackmail, or using or threatening to cause financial harm to, or by using financial control over any person which is a class F felony.

(2) *Sexual servitude of a minor.* --A person is guilty of sexual servitude of a minor when the person knowingly:

- a. Recruits, entices, harbors, transports, provides or obtains by any means, a minor under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually explicit performance, or the production of pornography; or
- b. Causes a minor to engage in commercial sexual activity or a sexually explicit performance:
  1. Sexual servitude of a minor in which the minor was between the ages of 14 and 18 years and which did not involve overt force or threat is a class C felony;
  2. Sexual servitude of a minor in which the minor had not attained the age of 14 years and which did not involve overt force or threat is a class B felony;
  3. Sexual servitude of a minor in which overt force or threat was involved is a class A felony.

(3) *Trafficking of persons for forced labor or services.* --A person is guilty of trafficking of persons for forced labor or services when a person knowingly:

- a. Recruits, entices, harbors, transports, provides or obtains by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or
  - b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section.
- Trafficking of persons for forced labor or services is a class B felony.

(4) *Trafficking of persons for use of body parts.* --A person is guilty of trafficking of persons for use of body parts when a person knowingly:

- a. Recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale; or
- b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section.

Such person shall be guilty of a class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent.

(c) *Restitution is mandatory under this section.* --In addition to any other amount of loss identified, the court shall order restitution, including 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)<sup>1</sup> or of Title 19, whichever is greater.

(d) *Assessment of victim protection needs.* --

(1) The Attorney General, in consultation with the Department of Health and Social Services, shall, no later than July 1, 2008, issue a report outlining how existing victim/witness laws and regulations respond to the needs of trafficking victims, as defined in paragraph (a)(9) of this section, and suggesting areas of improvement and

modification.

(2) The Department of Health and Social Services, in consultation with the Attorney General, shall, no later than July 1, 2008, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims, as defined in paragraph (a)(9) of this section, the interplay of such existing programs with federally funded victim service programs, and areas needing improvement and modification. The report must include a section that states the ability of state programs and licensing bodies to recognize federal nonimmigrant status for the purposes of benefits, programs, and licenses.

## **District of Columbia**

There is no specific human trafficking restitution provision, but there is a general restitution statute. Restitution may be ordered and should take into account the number of victims and actual damage to victims. D.C Code § 16-711. (West 1983). There is a human trafficking specific asset forfeiture statute, copied below.

### **HUMAN TRAFFICKING STATUTES:**

- D.C. Code § 22-1832 (West 2010). Forced Labor
- D.C. Code § 22-1833 (West 2010). Trafficking in Labor or Commercial Sex Acts
- D.C. Code § 22-1834 (West 2010). Sex Trafficking of Children

### **D.C CODE § 16-711. (WEST 1983). RESTITUTION OR REPARATION**

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

(d) At any time during the probation period or period of restitution or reparation, the defendant may request and the court may grant a hearing on any matter related to the plan of restitution or reparation.

### **D.C. CODE § 22-1838 (WEST 2010). FORFEITURE.**

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and

(2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.

(b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:

(1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any

violation of this chapter.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

## Florida

There is no specific human trafficking restitution provision. There is a general restitution statute, copied below. Restitution is mandatory and shall be ordered for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode. Florida's human trafficking statute provides for asset forfeiture under the Florida Contraband Forfeiture Act. FLA. STAT. ANN. § 787.06(7)(WEST 2012) ("Any real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act"); FLA. STAT. ANN. § 932.703-04 (WEST 2010). The Florida Contraband Forfeiture Act requires a showing of clear and convincing showing that the property was being used in violation of the act. FLA. STAT. ANN. § 932.704(8) (WEST 2010).

### HUMAN TRAFFICKING STATUTE:

- Fla. Stat. Ann. § 787.06 (West 2012). Human Trafficking

### FLA. STAT. ANN. § 775.089 (WEST 2012). RESTITUTION

(1)(a) 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. An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived in accordance with subparagraph (b)1.

(b)1. If the court does not order restitution, or orders restitution of only a portion of the damages, as provided in this section, it shall state on the record in detail the reasons therefor.

2. An order of restitution entered as part of a plea agreement is as definitive and binding as any other order of restitution, and a statement to such effect must be made part of the plea agreement. A plea agreement may contain provisions that order restitution relating to criminal offenses committed by the defendant to which the defendant did not specifically enter a plea.

(c) The term "victim" as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, and the victim's trade association if the offense is a violation of s. 540.11(3)(a) 3. involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation in this paragraph relating to violations of s. 540.11(3)(a) 3. applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. As used in this paragraph, the term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

(2)(a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:

1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.
2. Pay the cost of necessary physical and occupational therapy and rehabilitation.
3. Reimburse the victim for income lost by the victim as a result of the offense.
4. In the case of an offense which resulted in bodily injury that also resulted in the death of a victim, pay an amount equal to the cost of necessary funeral and related services.

(b) When an offense has not resulted in bodily injury to a victim, a restitution order entered under subsection (1) may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

(3)(a) The court may require that the defendant make restitution under this section within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation if probation is ordered;
2. Five years after the end of the term of imprisonment imposed if the court does not order probation; or
3. Five years after the date of sentencing in any other case.

(c) Notwithstanding this subsection, a court that has ordered restitution for a misdemeanor offense shall retain jurisdiction for the purpose of enforcing the restitution order for any period, not to exceed 5 years, that is pronounced by the court at the time restitution is ordered.

(d) If not otherwise provided by the court under this subsection, restitution must be made immediately.

If the restitution ordered by the court is not made within the time period specified, the court may continue the restitution order through the duration of the civil judgment provision set forth in subsection (5) and as provided in s. 55.10.

(4) If a defendant is placed on probation or paroled, complete satisfaction of any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation, and the Parole Commission may revoke parole, if the defendant fails to comply with such order.

(5) An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action. The outstanding unpaid amount of the order of restitution bears interest in accordance with s. 55.03, and, when properly recorded, becomes a lien on real estate owned by the defendant. If civil enforcement is necessary, the defendant shall be liable for costs and attorney's fees incurred by the victim in enforcing the order.

(6)(a) The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense.

(b) The criminal court, at the time of enforcement of the restitution order, shall consider the financial resources of the defendant, the present and potential future financial needs and earning ability of the defendant and his or her dependents, and such other factors which it deems appropriate.

(7) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. The burden of demonstrating the present financial resources and the absence of potential future financial resources of the defendant and the financial needs of the defendant and his or her dependents is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.

(8) The conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent civil proceeding. An

order of restitution hereunder will not bar any subsequent civil remedy or recovery, but the amount of such restitution shall be set off against any subsequent independent civil recovery.

(9) When a corporation or unincorporated association is ordered to make restitution, the person authorized to make disbursements from the assets of such corporation or association shall pay restitution from such assets, and such person may be held in contempt for failure to make such restitution.

(10)(a) Any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment.

(b) The restitution obligation is not subject to discharge in bankruptcy, whether voluntary or involuntary, or to any other statutory or common-law proceeding for relief against creditors.

(11)(a) The court may order the clerk of the court to collect and dispense restitution payments in any case.

(b) The court may order the Department of Corrections to collect and dispense restitution and other payments from persons remanded to its custody or supervision.

(12)(a) *Issuance of income deduction order with an order for restitution.--*

1. Upon the entry of an order for restitution, the court shall enter a separate order for income deduction if one has not been entered.

2. The income deduction order shall direct a payor to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

3. The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

4. When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state:

a. All fees or interest which shall be imposed.

b. The total amount of income to be deducted for each pay period.

c. That the income deduction order applies to current and subsequent payors and periods of employment.

d. That a copy of the income deduction order will be served on the defendant's payor or payors.

e. That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

f. That the defendant is required to notify the clerk of court within 7 days after changes in the defendant's address, payors, and the addresses of his or her payors.

(b) *Enforcement of income deduction orders.--*

1. The clerk of court or probation officer shall serve an income deduction order and the notice to payor on the defendant's payor unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

2. a. Service by or upon any person who is a party to a proceeding under this subsection shall be made in the manner prescribed in the Florida Rules of Civil Procedure for service upon parties.

b. Service upon the defendant's payor or successor payor under this subsection shall be made by prepaid certified mail, return receipt requested, or in the manner prescribed in chapter 48.

3. The defendant, within 15 days after having an income deduction order entered against him or her, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed. The timely request for a hearing shall stay the service of an income deduction order on all payors of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

4. The notice to payor shall contain only information necessary for the payor to comply with the income deduction order. The notice shall:

a. Require the payor to deduct from the defendant's income the amount specified in the income deduction order and to pay that amount to the clerk of court.

b. Instruct the payor to implement the income deduction order no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on the payor.

- c. Instruct the payor to forward within 2 days after each payment date to the clerk of court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.
- d. Specify that, if a payor fails to deduct the proper amount from the defendant's income, the payor is liable for the amount the payor should have deducted plus costs, interest, and reasonable attorney's fees.
- e. Provide that the payor may collect up to \$5 against the defendant's income to reimburse the payor for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.
- f. State that the income deduction order and the notice to payor are binding on the payor until further notice by the court or until the payor no longer provides income to the defendant.
- g. Instruct the payor that, when he or she no longer provides income to the defendant, the payor shall notify the clerk of court and shall also provide the defendant's last known address and the name and address of the defendant's new payor, if known, and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.
- h. State that the payor shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payor to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.
- i. Inform the payor that, when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of court, the payor may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.
- j. Inform the payor that if the payor receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

5. The clerk of court shall enforce income deduction orders against the defendant's successor payor who is located in this state in the same manner prescribed in this subsection for the enforcement of an income deduction order against an original payor.

6. A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation.

7. When a payor no longer provides income to a defendant, the payor shall notify the clerk of court and shall provide the defendant's last known address and the name and address of the defendant's new payor, if known. A payor who violates this provision is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for a subsequent violation.

## Georgia

There is no specific human trafficking restitution provision. There is a general restitution provision, copied below. Restitution can include all special damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium. Georgia's human trafficking statute provides for the forfeiture of property used or intended to be used in violation of the code, under the RICO forfeiture law. GA. CODE ANN. § 16-5-46 (West 2011); GA. CODE ANN. § 16-14-7 (West 2012).<sup>24</sup>

### **HUMAN TRAFFICKING STATUTE:**

- Ga. Code Ann. § 16-5-46 (West 2011). Trafficking a person for labor or sexual servitude

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<sup>24</sup> Cisco v. State, 285 Ga. 656, 680 S.E.2d 831 (2009) held GA. CODE ANN. § 16-14-7 (West 2012) (unconstitutional where in personam forfeiture action brought prior to indictment or conviction because it deprives in personam forfeiture defendants of the constitutional safeguards of criminal procedure).

## **GA. CODE ANN. § 17-14-2 (WEST 2014). DEFINITIONS**

As used in this article, the term:

(1) "Conviction" means an adjudication of guilt of or a plea of guilty or nolo contendere to the commission of an offense against the laws of this state. Such term includes any such conviction or plea, notwithstanding the fact that sentence was imposed pursuant to Article 3 of Chapter 8 of Title 42. Such term also includes the adjudication or plea of a juvenile to the commission of an act which, if committed by an adult, would constitute a crime under the laws of this state.

(2) "Damages" means all special damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium. Such special damages shall not be limited by any law which may cap economic damages. Special damages may include the reasonably determined costs of transportation to and from court proceedings related to the prosecution of the crime.

(3) "Offender" means any natural person, firm, partnership, association, public or private corporation, or other legal entity that has been sentenced for any crime or any juvenile who has been adjudged delinquent.

(4) "Ordering authority" means:

- (A) A court of competent jurisdiction;
- (B) The State Board of Pardons and Paroles;
- (C) The Department of Corrections;
- (D) The Department of Juvenile Justice; or
- (E) Any combination thereof, as is required by the context.

(5) "Parent" means a person who is the legal mother as defined in paragraph (10.2) of Code Section 15-11-2, the legal father as defined in paragraph (10.1) of Code Section 15-11-2, or the legal guardian. Such term shall not include a foster parent.

(6) "Relief" means any parole or other conditional release from incarceration; the awarding of earned time allowances; reduction in security status; or placement in prison rehabilitation programs, including, but not limited to, those in which the offender receives monetary compensation.

(7) "Restitution" means any property, lump sum, or periodic payment ordered to be made by any offender or other person to any victim by any ordering authority. Where the victim is a public corporation or governmental entity or where the offender is a juvenile, restitution may also be in the form of services ordered to be performed by the offender.

(8) "Restitution order" means any order, decree, or judgment of an ordering authority which requires an offender to make restitution.

(9) "Victim" means any:

- (A) Natural person or his or her personal representative or, if the victim is deceased, his or her estate; or
- (B) Any firm, partnership, association, public or private corporation, or governmental entity suffering damages caused by an offender's unlawful act; provided, however, that the term "victim" shall not include any person who is concerned in the commission of such unlawful act as defined in Code Section 16-2-20.

## **GA. CODE ANN. § 17-14-3 (WEST 2010). COURT-ORDERED RESTITUTION**

(a) Subject to the provisions of Code Section 17-14-10, notwithstanding the provisions contained in Chapter 11 of Title 15, and in addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.

(b) If the offender is placed on probation, including probation imposed pursuant to Chapter 11 of Title 15 or Article 3 of Chapter 8 of Title 42, or sentence is suspended, deferred, or withheld, restitution ordered under this Code section shall be a condition of that probation, sentence, or order.

(c) If the offender is granted relief by the Department of Juvenile Justice, Department of Corrections, or the State Board of Pardons and Paroles, the terms of any court order requiring the offender to make restitution to a victim shall be a condition of such relief in addition to any other terms or conditions which may apply to such relief.

## Hawaii

Hawaii has a labor trafficking statute but not a specific sex trafficking statute. For victims of labor trafficking or non-payment of wages, restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. That a victim has not requested restitution or whether the victim has relocated outside of the United States or the court's jurisdiction has no bearing on the victim's right to restitution. HAW. REV. STAT. § 707-785 (labor trafficking); HAW. REV. STAT. § 707-785 (non-payment of wages). Hawaii does have a forfeiture statute that applies to offenses of labor trafficking, copied below.

### **HUMAN TRAFFICKING STATUTE:**

- Haw. Rev. Stat. § 707-780 (West 2011). Definitions
- Haw. Rev. Stat. § 707-781 (West 2011). Labor Trafficking in the First Degree
- Haw. Rev. Stat. § 707-782 (West 2011). Labor Trafficking in the Second Degree

### **HAW. REV. STAT. § 707-785 (WEST 2011). RESTITUTION FOR VICTIMS OF LABOR TRAFFICKING**

(1) In addition to any other penalty, and notwithstanding a victim's failure to request restitution under section 706-646(2), the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of:

(a) The total gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, Public Law 75-718, Title 29 United States Code sections 201 through 219, inclusive, whichever is greater.

(2) The return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not relieve the defendant of the defendant's restitution obligation.

### **HAW. REV. STAT. § 712A-4 (WEST 2013). COVERED OFFENSES**

Offenses for which property is subject to forfeiture under this chapter are:

(a) All offenses that specifically authorize forfeiture;

(b) Murder, kidnapping, labor trafficking, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, or electronic enticement of a child that is chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or

promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.

**HAW. REV. STAT. § 712A-5 (WEST 2002). PROPERTY SUBJECT TO FORFEITURE; EXEMPTION**

(1) The following is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

(c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;

(d) Contraband or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;

(e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;

(f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;

(g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;

(h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

(2) Except that:

(a) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under state law;

(b) No property shall be forfeited under this chapter to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;

(c) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(d) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

(e) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

## Idaho

Idaho does have a specific human trafficking restitution statute. Restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator, plus an amount determined by the court to compensate for medical and psychological expenses. IDAHO CODE ANN. § 18-8604. (West 2007). Forfeiture is limited in conjunction with controlled substances laws.

IDAHO CODE ANN. § 37-2744 (West 2009).

### **HUMAN TRAFFICKING STATUTES:**

- Idaho Code Ann. § 18-8601 (West 2007). Legislative intent
- Idaho Code Ann. § 18-8602 (West 2007). Human trafficking defined

### **IDAHO CODE ANN. § 18-8604 (WEST 2007). RESTITUTION--REHABILITATION**

(1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:

(a) The gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.

(2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

## Illinois

Illinois does have a specific human trafficking victim restitution provision within their human trafficking statute. Restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. 720 ILL. COMP. STAT. 5/10-9 (g) (West 2013). Illinois also has a forfeiture statute, copied below, which applies to crimes of involuntary servitude.

### **HUMAN TRAFFICKING STATUTE:**

- 720 Ill. Comp. Stat. Ann. § 5/10-9 (West 2013). Trafficking in Persons, involuntary servitude and related offenses.

### **720 ILL. COMP. STAT. ANN. 5/10-9 (WEST 2013). TRAFFICKING IN PERSONS, INVOLUNTARY SERVITUDE, AND RELATED OFFENSES**

(a) Definitions. In this Section:

(1) "Intimidation" has the meaning prescribed in Section 12-6.

(2) "Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

(3) "Financial harm" includes intimidation that brings about financial loss, criminal usury, or employment

contracts that violate the Frauds Act.

(4) (Blank).

(5) "Labor" means work of economic or financial value.

(6) "Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform that type of service.

(7) "Obtain" means, in relation to labor or services, to secure performance thereof.

(7.5) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(8) "Services" means activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of activities that are "services" under this Section. Nothing in this definition may be construed to legitimize or legalize prostitution.

(9) "Sexually-explicit performance" means a live, recorded, broadcast (including over the Internet), or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

(10) "Trafficking victim" means a person subjected to the practices set forth in subsection (b), (c), or (d).

(b) Involuntary servitude. A person commits involuntary servitude when he or she knowingly subjects, attempts to subject, or engages in a conspiracy to subject another person to labor or services obtained or maintained through any of the following means, or any combination of these means:

(1) causes or threatens to cause physical harm to any person;

(2) physically restrains or threatens to physically restrain another person;

(3) abuses or threatens to abuse the law or legal process;

(4) knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(5) uses intimidation, or exerts financial control over any person; or

(6) uses any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform the labor or services, that person or another person would suffer serious harm or physical restraint.

Sentence. Except as otherwise provided in subsection (e) or (f), a violation of subsection (b)(1) is a Class X felony, (b)(2) is a Class 1 felony, (b)(3) is a Class 2 felony, (b)(4) is a Class 3 felony, (b)(5) and (b)(6) is a Class 4 felony.

(c) Involuntary sexual servitude of a minor. A person commits involuntary sexual servitude of a minor when he or she knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, or causes or attempts to cause a minor to engage in one or more of those activities and:

(1) there is no overt force or threat and the minor is between the ages of 17 and 18 years;

(2) there is no overt force or threat and the minor is under the age of 17 years; or

(3) there is overt force or threat.

Sentence. Except as otherwise provided in subsection (e) or (f), a violation of subsection (c)(1) is a Class 1 felony, (c)(2) is a Class X felony, and (c)(3) is a Class X felony.

(d) Trafficking in persons. A person commits trafficking in persons when he or she 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 of involuntary servitude or involuntary sexual servitude of a minor.

Sentence. Except as otherwise provided in subsection (e) or (f), a violation of this subsection is a Class 1 felony.

(e) Aggravating factors. A violation of this Section involving kidnapping or an attempt to kidnap, aggravated criminal sexual assault or an attempt to commit aggravated criminal sexual assault, or an attempt to commit first degree murder is a Class X felony.

(f) Sentencing considerations.

(1) Bodily injury. If, pursuant to a violation of this Section, a victim suffered bodily injury, the defendant may be sentenced to an extended- term sentence under Section 5-8-2 of the Unified Code of Corrections. The sentencing court must take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and increased penalties for cases in which the victim was held for more than one year.

(2) Number of victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims, and may provide for substantially increased sentences in cases involving more than 10 victims.

(g) Restitution. Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution including 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 Law and overtime provisions of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater.

(h) Trafficking victim services. Subject to the availability of funds, the Department of Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses defined in this Section.

(i) Certification. The Attorney General, a State's Attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Section has begun and the individual who is a likely victim of a crime described in this Section is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims of a crime described in this Section who are under 18 years of age. This certification shall be made available to the victim and his or her designated legal representative.

(j) A person who commits involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons under subsection (b), (c), or (d) of this Section is subject to the property forfeiture provisions set forth in Article

124B of the Code of Criminal Procedure of 1963.

## **725 ILL. COMP. STAT. ANN. §5/124B-300 (WEST 2013). PERSONS AND PROPERTY SUBJECT TO FORFEITURE**

§ 124B-300. Persons and property subject to forfeiture. A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons for forced labor or services under Section 10A-10 of the Criminal Code of 1961 shall forfeit to the State of Illinois any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 of the Criminal Code of 1961 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of maintaining a person in involuntary servitude or participating in trafficking of persons for forced labor or services.

## **Indiana**

Indiana does have a human trafficking specific restitution statute under the chapter that deals with human trafficking. Restitution is mandatory and includes the greater of the gross income or value to the person of the victim's labor or services or the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of Fair Labor Standards Act. The restitution law also provides for payment of medical and psychological treatment, compensation for damages to property, and necessary funeral expenses. IND. CODE ANN. §35-50-5-3 (West 2012). Indiana has forfeiture statutes that are applied in conjunction with controlled substance and racketeering crimes which includes sex trafficking crimes. IND. CODE ANN. § 34-24-1-1 (West 2012) ("Seizure of vehicles or other property." Child sexual exploitation is cross-referenced, and included as an enumerated crime, in this forfeiture statute at §34-24-1-1(4)).

### **HUMAN TRAFFICKING STATUTE:**

- Ind. Code Ann. § 35-42-3.5-1 (West 2013). Promotion of human trafficking; sexual trafficking of a minor; human trafficking

### **IND. CODE ANN. §35-42-3.5-2 (WEST 2012). RESTITUTION TO VICTIM**

Sec. 2. In addition to any sentence or fine imposed for a conviction of an offense under section 1 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.

### **IND. CODE ANN. § 35-50-5-3 (WEST 2012). RESTITUTION ORDER**

Sec. 3. (a) Except as provided in subsection (i), (j), (l), or (m), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a), (i), (j), (l), or (m), is a judgment lien that:

- (1) attaches to the property of the person subject to the order;

(2) may be perfected;  
(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and  
(4) expires;  
in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a), (i), (j), (l), or (m), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a), (i), (j), (l), or (m), does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a), (i), (j), (l), or (m), is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and

(g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

(j) The court may order the person convicted of an offense under IC 35-43-5-3.5 to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of the amount of fraud or harm caused by the convicted person and any reasonable expenses

(including lost wages) incurred by the victim in correcting the victim's credit report and addressing any other issues caused by the commission of the offense under IC 35-43-5-3.5. If, after a person is sentenced for an offense under IC 35-43-5-3.5, a victim, a victim's estate, or the family of a victim discovers or incurs additional expenses that result from the convicted person's commission of the offense under IC 35-43-5-3.5, the court may issue one (1) or more restitution orders to require the convicted person to make restitution, even if the court issued a restitution order at the time of sentencing. For purposes of entering a restitution order after sentencing, a court has continuing jurisdiction over a person convicted of an offense under IC 35-43-5-3.5 for five (5) years after the date of sentencing. Each restitution order issued for a violation of IC 35-43-5-3.5 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for an offense under IC 35-43-5-3.5.

(k) The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

(1) The gross income or value to the person of the victim's labor or services.

(2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:

(A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or

(B) IC 22-2-2 (Minimum Wage);

whichever is greater.

(l) The court shall order a person who:

(1) is convicted of dealing in methamphetamine under IC 35-48-4-1.1(a)(1)(A); and

(2) manufactured the methamphetamine on property owned by another person, without the consent of the property owner;

to pay liquidated damages to the property owner in the amount of ten thousand dollars (\$10,000).

(m) The court shall order a person who:

(1) is convicted of dealing in marijuana under IC 35-48-4-10(a)(1)(A); and

(2) manufactured the marijuana on property owned by another person, without the consent of the property owner;

to pay liquidated damages to the property owner in the amount of two thousand dollars (\$2,000).

## Iowa

Contained within Iowa's criminal code, specifically the chapter on human trafficking, is a statute addressing forfeiture, copied below. IOWA CODE ANN. § 809A.3 (West 2013). Although there is no specific provision *mandating* restitution, courts *must consider* the value of the labor or services when determining restitution. IOWA CODE ANN. § 710A.4 (West 2006). Victims have a right to compensation regardless of immigration status. Iowa does allow for forfeiture for any crime that is an aggravated misdemeanor or felony. The statute, including the statute of what property is allowed to be seized, is copied below.

### **HUMAN TRAFFICKING STATUTES:**

- Iowa Code Ann. § 710A.2 (West 2006). Human trafficking
- Iowa Code Ann. § 710A.2A (West 2006). Solicitation of commercial sexual activity

### **IOWA CODE ANN. § 710A.4 (WEST 2006). RESTITUTION**

The gross income of the defendant or the value of labor or services performed by the victim to the defendant shall be considered when determining the amount of restitution.

### **IOWA CODE ANN. § 809A.3 (WEST 2013). CONDUCT GIVING RISE TO FORFEITURE**

The following conduct may give rise to forfeiture:

1. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.
2. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.
3. An act or omission committed in furtherance of any act or omission described in subsection 1, which is a serious or aggravated misdemeanor or felony, including any inchoate or preparatory offense.
4. Notwithstanding subsections 1 through 3, violations of chapter 321 or 321J shall not be considered conduct giving rise to forfeiture, except for violations of the following:
  - a. Section 321.232.
  - b. A second or subsequent violation of section 321J.4B, subsection 2, paragraph “a”, subparagraph (2).
  - c. Section 321J.4B, subsection 9.

### **IOWA CODE ANN. § 809A.4 (WEST 2013). PROPERTY SUBJECT TO FORFEITURE**

The following are subject to forfeiture:

1. All controlled substances, raw materials, controlled substance analogs, counterfeit controlled substances, imitation controlled substances, or precursor substances, that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state.
2. a. All property, except as provided in paragraph “b”, including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:
  - (1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.
  - (2) Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.
- b. If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection 5, real property is not subject to forfeiture and other property subject to forfeiture pursuant to paragraph “a”, subparagraph (2), may be forfeited only pursuant to section 809A.14.
3. All proceeds of any conduct giving rise to forfeiture.
4. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.
5. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct or through conduct giving rise to forfeiture.
6. a. Any property of a person up to the value of property which is either of the following:
  - (1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.
  - (2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.
- b. Property described in this subsection may be seized for forfeiture pursuant to a constructive seizure or an actual seizure pursuant to section 809A.6. Actual seizure may only be done pursuant to a seizure warrant issued on a showing, in addition to the showing of probable cause for the forfeiture of the subject property, that the subject property is not available for seizure for reasons described in section 809A.15, subsection 1, and that the value of the property to be seized is not greater than the total value of the subject property, or pursuant to a constructive

seizure. If property of a defendant up to the total value of all interests in the subject property is not seized prior to final judgment in an action under this section, the remaining balance shall be ordered forfeited as a personal judgment against the defendant.

7. As used in this section, "facilitate" means to have a substantial connection between the property and the conduct giving rise to forfeiture.

## **Kansas**

There is no specific human trafficking restitution provision within the human trafficking statute. There is, however, a general victim's restitution chapter in the code, copied below. Additionally, Kansas does allow for forfeiture and specifically mentions human trafficking as an offense for which forfeiture is allowed. KAN. STAT. ANN. § 60-4104 (West 2013).

### **HUMAN TRAFFICKING STATUTE:**

Kan. Stat. Ann. § 21-5426 (West 2011). Human trafficking; aggravated human trafficking

### **KAN. STAT. ANN. § 19-4807 (WEST 1990). RESTITUTION AWARDS; ORDER; PAYMENT; REIMBURSEMENT OF FUND**

(a) All restitution awards ordered by any court after the effective date of this act shall comply with administrative order No. 41 of the supreme court of Kansas. In addition to crediting restitution or reparation payments through the district court to pay for docket fees, costs, fines, reparations, restitution or attorney fees for indigent defendants, if a payment is made from a local board, upon application by the local board to the clerk of the district court, the clerk shall from restitution amounts received pay to the local board an amount equal to the sum or sums actually advanced to the victim by the local board, except that such amounts paid by the clerk shall not exceed the amounts fixed in subsections (g) or (h) of K.S.A. 19-4804.

(b) Victims may elect to receive as payment for part or all of their out of pocket loss from the local fund and the balance from the offender under court-ordered restitution.

(c) Any money recovered on behalf of the local board pursuant to subsections (a) or (d) shall be deposited in and credited to the local fund.

(d) If for any reason a victim receiving, or who is authorized to receive, restitution by court order leaves no forwarding address and after reasonable diligence the victim or the victim's family cannot be located by the clerk, restitution received pursuant to this section shall be remitted to the local fund, if any.

### **KAN. STAT. ANN. § 60-4104 (WEST 2013). COVERED OFFENSES AND CONDUCT GIVING RISE TO FORFEITURE**

Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

(a) All offenses which statutorily and specifically authorize forfeiture;

(b) violations involving controlled substances, as described in K.S.A. 21-5701 through 21-5717, and amendments thereto;

(c) theft, as defined in K.S.A. 21-5801, and amendments thereto;

(d) criminal discharge of a firearm, as defined in subsections (a)(1) and (a)(2) of K.S.A. 21-6308, and amendments

thereto;

(e) gambling, as defined in K.S.A. 21-6404, and amendments thereto, and commercial gambling, as defined in subsection (a)(1) of K.S.A. 21-6406, and amendments thereto;

(f) counterfeiting, as defined in K.S.A. 21-5825, and amendments thereto;

(g) unlawful possession of a scanning device or reencoder, as described in K.S.A. 21-6108, and amendments thereto;

(h) medicaid fraud, as described in K.S.A. 21-5925 through 21-5934, and amendments thereto;

(i) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(j) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(k) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(l) furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 21-6414, and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in subsections (a) and (b) of K.S.A. 21-6417, and amendments thereto;

(o) prostitution, as defined in K.S.A. 21-6419, and amendments thereto, promoting prostitution, as defined in K.S.A. 21-6420, and amendments thereto, and patronizing a prostitute, as defined in K.S.A. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 21-5417, and amendments thereto;

(s) giving a worthless check, as defined in K.S.A. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 21-5828, and amendments thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in subsections (a) and (b) of K.S.A. 21-6107, and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 21-5509, and amendments thereto; and

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto.

### **KAN. STAT. ANN. § 60-4105 (WEST 2013). PROPERTY SUBJECT TO FORFEITURE**

The following property is subject to forfeiture:

- (a) Property described in a statute authorizing forfeiture;
- (b) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:
  - (1) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or
  - (2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including, but not limited to, any computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a violation of K.S.A. 21-6108, and amendments thereto;
- (c) all proceeds of any conduct giving rise to forfeiture;
- (d) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;
- (e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;
- (f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;
- (g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;
- (h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and
- (i) any items bearing a counterfeit mark.

## **Kentucky**

There is no specific human trafficking restitution provision. There are several statutes that address general restitution, and the relevant provisions are copied below. Kentucky law mandates that restitution shall be provided for the full amount of a victim's damages not to exceed \$100,000. KY. REV. STAT. ANN. § 533.030(3) (West 2012). Forfeiture seems to be limited to offenses relating to controlled substances. KY. REV. STAT. ANN. § 218A.410 (West 2012).

### **HUMAN TRAFFICKING STATUTES:**

- Ky. Rev. Stat. Ann. § 529.100 (West 2007). Human trafficking

- Ky. Rev. Stat. Ann. § 529.110 (West 2007). Promoting human trafficking

**KY. REV. STAT. ANN. 533.030 (WEST 2010). CONDITIONS OF PROBATION AND CONDITIONAL DISCHARGE; RESTITUTION TO VICTIM**

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

- (a) Avoid injurious or vicious habits;
- (b) Avoid persons or places of disreputable or harmful character;
- (c) Work faithfully at suitable employment as far as possible;
- (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
- (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
- (f) Support his dependents and meet other family responsibilities;
- (g) Pay the cost of the proceeding as set by the court;
- (h) Remain within a specified area;
- (i) Report to the probation officer as directed;
- (j) Permit the probation officer to visit him at his home or elsewhere;
- (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
- (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court; and
- (m) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.732 and 67.374 under the same terms and conditions as provided in KRS 431.517.

(3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
- (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
- (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
- (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

(4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.

(5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.

(6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

### **KY. REV. STAT. ANN. § 532.032 (WEST 2002). RESTITUTION**

(1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.

(2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.

(3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.

(4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.

(5) Restitution payments ordered under this section shall be paid by the defendant to the clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney of the county.

## **Louisiana**

There is no specific human trafficking restitution provision. There is a general victim restitution statute, which is copied below. Guidelines as to what should be included in a restitution award are not mentioned. LA. CODE CRIM. PROC. ANN. art. 883.2 (2010). Under the Louisiana Sex Offender laws, there is a provision for forfeiture of property in connection with sexual offenses including human trafficking, copied below.

#### **HUMAN TRAFFICKING STATUTES:**

- La. Rev. Stat. Ann. § 14:46.2 (2012). Human Trafficking<sup>25</sup>
- La. Rev. Stat. Ann. § 14:46.3 (2012). Trafficking of children for sexual purposes

#### **LA. CODE CRIM. PROC. ANN. art. 883.2 (2010). RESTITUTION TO VICTIM**

A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 or 895.1 or any other provision of law permitting or requiring restitution to victims.

C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

#### **LA. REV. STAT. ANN. § 15:539.1 (2013). FORFEITED PROPERTY RELATED TO CERTAIN SEX CRIMES; EXEMPT PROPERTY; ALLOCATION OF FORFEITED PROPERTY**

A. When personal property is forfeited under the provisions of R.S. 14:40.3 (cyberstalking), R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), and R.S. 14:86 (enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

B. (1) The personal property shall be exempt from sale if it was stolen or if the possessor of the property was not the owner and the owner did not know that the personal property was being used in the commission of the crime. If this exemption is applicable, the personal property shall not be released until such time as all applicable fees related to its seizure and storage are paid. An Internet service provider shall not be required to pay seizure or storage fees to secure the release of equipment leased to an offender.

(2) Property subject to forfeiture pursuant to the provisions of this Section shall be exempt from forfeiture when a spouse, co-owner, or interest holder in the property establishes by sworn affidavit executed before a notary public the following:

(a) That he had no knowledge of the commission of the criminal conduct and could not have reasonably known of

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<sup>25</sup> Amended by 2012 La. Sess. Law Serv. Act 446 (H.B. 49) (WEST). HUMAN TRAFFICKING, TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES, AND THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN  
Approved June, 1, 2012

D. It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, solicited, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.

E. If any Subsection, Paragraph, Subparagraph, Item, sentence, clause, phrase, or word of this Section is for any reason held to be invalid, unlawful, or unconstitutional, such decision shall not affect the validity of the remaining portions of this Section.

the conduct.

(b) That he did not consent to the use of property in the commission of the criminal conduct.

(c) That he owns an interest in the property otherwise subject to forfeiture.

(3) The property of an Internet service provider shall be exempt from forfeiture.

(4) Intentionally falsifying information required by the provisions of Paragraph (2) of this Subsection shall subject the affiant to prosecution under the provisions of R.S. 14:125.

C. In addition, the personal property shall be exempt from sale if it is subject to a lien recorded prior to the date of the offense and if the applicable fees related to the property's seizure and storage are paid by a valid lien holder.

D. The proceeds of the public sale or public auction shall pay the costs of the public sale or public auction, court costs, and fees related to the seizure and storage of the personal property. Any proceeds remaining shall be distributed by the district attorney in the following manner:

(1) Sixty percent to the seizing agency or agencies in an equitable manner.

(2) Twenty percent to the prosecuting agency.

(3) Twenty percent to the criminal court fund of the parish in which the offender was prosecuted.

E. Notwithstanding Subsection D of this Section, when the property to be forfeited is related to human trafficking under R.S. 14:46.2 or trafficking of children for sexual purposes under R.S. 14:46.3, the proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining proceeds shall be distributed in the following manner:

(1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.

(2) Twenty-five percent to the prosecuting agency.

(3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S. 15:539.2.

## Maine

There is no specific human trafficking restitution provision. The Maine Revised Statutes include a human trafficking statute but it does not specifically address restitution to victims. ME. REV. STAT. tit. 5, § 4701 (2013). Maine has a general restitution statute that provides "work loss" and should be applied to human trafficking victims. ME. REV. STAT. tit. 17-A, § 1322 (2008). Maine's forfeiture statute specifically states assets used in or traceable to a human trafficking offense are subject to forfeiture, copied below.

### HUMAN TRAFFICKING STATUTE:

- Me. Rev. Stat. tit. 5, § 4701 (2013). Remedies for human trafficking

### ME. REV. STAT. tit. 17-A, § 1323 (2008). MANDATORY CONSIDERATION OF RESTITUTION

**1. Inquiry as to victim's financial loss.** The court shall, whenever practicable, inquire of a prosecutor, law

enforcement officer or victim with respect to the extent of the victim's financial loss, and shall order restitution when appropriate. The order for restitution shall designate the amount of restitution to be paid and the person or persons to whom the restitution will be paid.

**2. Reasons for not imposing restitution.** In any case where the court determines that restitution should not be imposed in accordance with the criteria set forth in section 1325, the court shall state in open court or in writing the reasons for not imposing restitution.

**3. Restitution required.** In any prosecution for a crime committed prior to the effective date of this chapter, or any amendment to this chapter, the court may, with the consent of the defendant, require the defendant to make restitution in accordance with this chapter as amended.

## **ME. REV. STAT. tit. 17-A, § 1322 (2008). DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

**1. Collateral source.** "Collateral source" means a source of benefits or advantages for economic loss resulting from a crime, which the victim has received, or which is readily available to him from:

- A.** The Government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of 2 or more states unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this chapter;
- B.** Social security, Medicare and Medicaid;
- C.** Workers' compensation;
- D.** Wage continuation programs of any employer;
- E.** Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminal conduct; or
- F.** A contract providing prepaid hospital and other health care services or benefits for disability.

**2. Dependent.** "Dependent" means a natural person who is wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.

**3. Economic loss.** "Economic loss" includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense, work loss, replacement services loss and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. "Economic loss" includes expenses of an emergency response by any public agency and critical investigation expenses.

**A.** "Allowable expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, counseling services and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

**A-1.** "Critical investigation expense" means a necessary expense incurred by a government or by a victim while investigating or prosecuting suspected criminal conduct. "Critical investigation expense" is limited to the cost of an audit or other financial analysis when that analysis is necessary to determine whether and to what extent a victim has suffered financial harm from criminal conduct by an employee or other person in a position of trust and the cost of analysis of suspected illegal drugs.

**B. “Dependent's economic loss”** means loss after a decedent's death of contributions of things of economic value to the decedent's dependents, not including services they would have received from the decedent if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

**C. “Dependent's replacement loss”** means loss reasonably incurred by dependents after a decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of the decedent's death and not subtracted in calculating dependent's economic loss.

**C-1. “Environmental clean-up expense”** means any reasonable expense incurred for products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals; to restore the environment to its previous condition prior to any harm or damage; and to properly dispose of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of chapter 45.<sup>1</sup>

**C-2. “Expense of an emergency response”** means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but only includes those costs directly arising because of the response to the particular incident. Reasonable costs include the costs of providing police, firefighting, rescue and emergency medical services at the scene of the incident, as well as the compensation for the personnel responding to the incident. “Public agency” means the State or any county, municipality, district or public authority located, in whole or in part, within this State that provides or may provide police, firefighting, ambulance or other emergency services.

**D. “Property loss”** means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed. A property loss includes the value of taxes or other obligations due to the government that have not been paid. “Property loss” also includes, in cases involving a violation of chapter 45, the value of money or other consideration given or offered in exchange for scheduled drugs by a law enforcement officer or another at the direction of a law enforcement officer that are not, in fact, recovered by the State at the time of sentencing, regardless of whether other money or items of value are sought, acquired or forfeited pursuant to Title 15, chapter 515.<sup>2</sup> In cases involving a violation of chapter 45, the court must make a finding that the property loss is specifically related to that case.

**E. “Replacement services loss”** means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of the injured person or the injured person's family, if the injured person had not been injured.

**F. “Work loss”** means loss of income from work the injured person would have performed if the injured person had not been injured and expenses reasonably incurred by the injured person in obtaining services in lieu of those the injured person would have performed for income, reduced by any income for substitute work actually performed by the injured person or by income the injured person would have earned in available appropriate substitute work the injured person was capable of performing but unreasonably failed to undertake. For a victim of a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C, “work loss” includes pay or benefits unfairly or illegally withheld from the victim by the offender or any unfair labor agreement under Title 26, section 629, as defined by rules adopted by the Department of Labor.

**4. Noneconomic detriment.** “Noneconomic detriment” means pain, suffering, inconvenience, physical impairment and other nonpecuniary damage.

**5. Offender.** “Offender” means any natural person or organization convicted of a crime.

**6. Restitution.** “Restitution” means:

**A. Monetary reimbursement,** in whole or in part, for economic loss;

- B. Work or service provided to a victim for economic loss; or
- C. Any combination of service or monetary reimbursement by an offender to the victim of his crime or to other authorized claimants, either directly or indirectly.

**7. Victim.** “Victim” means a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime.

### **ME. REV. STAT. tit. 15, § 5821 (2013). SUBJECT PROPERTY**

Except as provided in section 5821-A, the following are subject to forfeiture to the State and no property right may exist in them:

1. Scheduled drugs. All scheduled drugs that have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;
2. Materials related to scheduled drugs. All raw materials, products and equipment of any kind that are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug in violation of any law of this State, any other state or the United States;
3. Other property. All property which is used or intended for use as a container for property described in subsection 1 or 2, and all property which is used or intended for use to defend, protect, guard or secure any property or items described in subsection 1 or 2;

3-A. Firearms and other weapons. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs in which scheduled drugs are found. Except for those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822, all weapons seized, after notice and opportunity for hearing, must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon need not be forfeited if the owner appears prior to the declaration of forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

- A. That the owner had a possessory interest in the weapon at the time of the seizure sufficient to exclude every person involved with the seized drugs or every person at the site of the seizure;
- B. That the owner had no knowledge of or involvement with the drugs and was not at the site of the seizure; and
- C. That the owner had not given any involved person permission to possess or use the weapon.

Post-hearing procedures are as provided in section 5822.

A confiscated or forfeited firearm that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the firearm was stolen and the rightful owner was not the person who committed the homicide, in which case the firearm must be returned to the owner if ascertainable.

3-B. Forfeiture of firearms used in the commission of certain acts. In addition to the provisions of subsection 3-A and Title 17-A, section 1158-A, this subsection controls the forfeiture of firearms used in the commission of certain acts.

A. Except as provided in paragraph B, a firearm is subject to forfeiture to the State if the firearm is used by a person to commit a criminal act that in fact causes serious bodily injury or death to another human being and, following that act, the person either commits suicide or attempts to commit suicide and the attempt results in the person’s becoming incompetent to stand trial or the person is killed or rendered incompetent to stand trial as the result of a

justifiable use of deadly force by a law enforcement officer. Except as provided in paragraph B, a property right does not exist in the firearm subject to forfeiture.

B. A firearm that is used in the commission of a criminal act described in paragraph A is exempt from forfeiture under this subsection if the firearm belongs to another person who is the rightful owner from whom the firearm has been stolen and the other person is not a principal or accomplice in the criminal act. In that case, the firearm must be transferred to the other person unless that person is otherwise prohibited from possessing a firearm under applicable law.

A firearm subject to forfeiture pursuant to this subsection that is declared by a court to be forfeited pursuant to section 5822 must be promptly destroyed, or caused to be promptly destroyed, by the law enforcement agency that has custody of the firearm.

4. Conveyances. All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport or in any manner to facilitate the transportation, sale, trafficking, furnishing, receipt, possession or concealment of property described in subsection 1 or 2, except that:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under this section, unless it appears that the owner or other person in charge of the conveyance was a consenting party or had knowledge of that violation of law; and

B. No conveyance may be forfeited under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this State, any other state or of the United States;

4-A. Conveyances used in violation of litter laws. All conveyances, including aircraft, watercraft, vehicles, vessels, containers or cranes that are used, or attempted to be used, to dump more than 500 pounds or more than 100 cubic feet of litter in violation of Title 17, section 2264-A;

5. Records. All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of Title 17-A, chapter 45;1

6. Money instruments. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange; and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45.

A. No property may be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner;

7. Real property. Except as provided in paragraph A, all real property, including any right, title or interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended for use, in any manner or part, to commit or to facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B or 1105-C that is a Class A, Class B or Class C crime, with the exception of offenses involving marijuana.

A. Property may not be forfeited under this subsection, to the extent of an interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. When an owner of property that is that person's primary residence proves by a preponderance of the evidence that the owner is the spouse or minor child of the coowner of the primary residence who has used or intended to use the residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B or 1105-C, the State shall bear the burden of proving knowledge or consent of

the spouse or minor child by a preponderance of the evidence;

7-A. Computers. Except as provided in paragraph A, all computers, as defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but not limited to, printers and scanners, that are used or are attempted to be used in violation of Title 17-A, section 259-A.

A.2 Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner; and

8. Repealed. Laws 2007, c. 684, § C-1, eff. Jan. 1, 2009.

9. Assets in human trafficking offenses. All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C.

A forfeiture under this section of property encumbered by a perfected bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission upon which the right of forfeiture is based.

## Maryland

Currently, Maryland's pandering statute, serves as the state's human trafficking law. MD. CODE ANN., CRIM. LAW § 11-303 (West 2013). There is no specific restitution statute for pandering or human trafficking, but Maryland does have a general restitution statute. A court may enter a judgment of restitution that can cover actual medical, dental, hospital, counseling, funeral or burial expenses, direct out of pocket loss, loss of earnings or expenses incurred with rehabilitation. Maryland also has a human trafficking specific asset forfeiture statute, which applies to crimes that result in a violation of "human trafficking laws." MD. CODE ANN. CRIM. PROC. § 13-501 (West 2013). The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- Md. Code Ann., Crim. Law § 11-303 (West 2013). Pandering
- Md. Code Ann., Crim. Law § 3-324 (West 2013). Sexual solicitation of minors

### **MD. CODE ANN. CRIM. PROC. § 11-603 (WEST 2011). JUDGMENT OF RESTITUTION**

#### **Grounds for restitution**

(a) A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

(1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;

(2) as a direct result of the crime or delinquent act, the victim suffered:

- (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
- (ii) direct out-of-pocket loss;
- (iii) loss of earnings; or
- (iv) expenses incurred with rehabilitation;

(3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;

(4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;

(5) the Criminal Injuries Compensation Board paid benefits to a victim; or

(6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

**Victim presumed to have right to restitution**

(b) A victim is presumed to have a right to restitution under subsection (a) of this section if:

(1) the victim or the State requests restitution; and

(2) the court is presented with competent evidence of any item listed in subsection (a) of this section.

**Civil actions to recover damages**

(c)(1) A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor.

(2) A civil verdict shall be reduced by the amount paid under the criminal judgment of restitution.

**Children who have committed acts of graffiti**

(d) In making a disposition on a finding that a child at least 13 years old has committed an act of graffiti under § 6-301(d) of the Criminal Law Article, the court shall order the child to perform community service or pay restitution or both.

**MD. CODE ANN. CRIM. PROC. § 13-501 (WEST 2013). DEFINITIONS**

**In general**

(a) In this subtitle the following words have the meanings indicated.

**Chief executive officer**

(b) “Chief executive officer” means:

(1) for Baltimore City, the Mayor;

(2) for a charter county, the county executive or, if there is no county executive, the county council;

(3) for a code county, the county commissioners;

(4) for a commission county, the county commissioners; or

(5) for a municipal corporation, the legislative body established by municipal charter.

**Convicted**

(c) “Convicted” means found guilty.

**Final disposition**

(d) “Final disposition” means dismissal, entry of a nolle prosequi, marking of a criminal charge “stet” on the docket, entry of a not guilty verdict, pronouncement of sentence, or imposition of probation under § 6-220 of this article.

**Forfeiting authority**

(e) “Forfeiting authority” means:

(1) the unit or person designated by agreement between the State’s Attorney for a county and the chief executive officer of the governing body having jurisdiction over assets subject to forfeiture to act on behalf of the governing body regarding those assets; or

(2) if the seizing authority is a unit of the State, a unit or person that the Attorney General or the Attorney General’s designee designates by agreement with a State’s Attorney, county attorney, or municipal attorney to act on behalf of the State regarding assets subject to forfeiture by the State.

**Governing body**

(f) “Governing body” includes:

- (1) the State, if the seizing authority is a unit of the State;
- (2) a county, if the seizing authority is a unit of a county;
- (3) a municipal corporation, if the seizing authority is a unit of a municipality; and
- (4) Baltimore City, if the seizing authority is the Baltimore Police Department.

**Human trafficking law**

(g) “Human trafficking law” means § 3-324, § 11-207, § 11-303, § 11-304, and § 11-305 of the Criminal Law Article.

**Lien**

(h) “Lien” includes a mortgage, a deed of trust, a pledge, a security interest, an encumbrance, and a right of setoff.

**Lienholder**

(i) “Lienholder” means a person who has a lien or a secured interest on property created before the seizure.

**Local financial authority**

(j) “Local financial authority” means:

- (1) if the seizing authority is a unit of a county, the treasurer or director of finance of the county; or
- (2) if the seizing authority is a unit of a municipal corporation, the treasurer or director of finance of the municipal corporation.

**Owner**

(k)(1) “Owner” means a person having a legal, equitable, or possessory interest in property.

(2) “Owner” includes:

- (i) a co-owner;
- (ii) a life tenant;
- (iii) a remainderman to a life tenancy in real property;
- (iv) a holder of an inchoate interest in real property; and
- (v) a bona fide purchaser for value.

**Proceeds**

(l) "Proceeds" means profits derived from a violation of the human trafficking law or property obtained directly or indirectly from those profits.

**Property**

(m)(1) "Property" includes:

(i) real property and anything growing on or attached to real property;

(ii) motor vehicles; and

(iii) money.

(2) "Property" does not include:

(i) an item unlawfully in the possession of a person other than the owner when used in connection with a violation of the human trafficking law; or

(ii) a lessor's interest in property subject to a bona fide lease, unless the forfeiting authority can show that the lessor participated in a violation of the human trafficking law or that the property was the proceeds of a violation of the human trafficking law.

**Real property**

(n)(1) "Real property" means land or an improvement to land.

(2) "Real property" includes:

(i) a leasehold or any other limited interest in property;

(ii) an easement; and

(iii) a reversionary interest in a 99-year ground lease renewable forever.

**Seizing authority**

(o) "Seizing authority" means a law enforcement unit in the State that is authorized to investigate violations of the human trafficking law and that has seized property under this subtitle.

**MD. CODE ANN. CRIM. PROC. § 13-502 (WEST 2013). PROPERTY SUBJECT TO FORFEITURE**

The following are subject to forfeiture:

(1) except as provided in § 13-503 of this subtitle, a motor vehicle used in connection with a violation of and conviction under § 11-303 of the Criminal Law Article;

(2) money used in connection with a violation of and conviction under the human trafficking law, found in close proximity to or at the scene of the arrest for a violation of the human trafficking law; and

(3) except as provided in § 13-503 of this subtitle, real property used in connection with a violation of and conviction under § 11-303 of the Criminal Law Article.

**MD. CODE ANN. CRIM. PROC. § 13-503 (WEST 2013). FORFEITURE OF PROPERTY OR INTEREST IN PROPERTY**

### **Actual knowledge of property owner needed for forfeiture**

(a) Property or an interest in property described in § 13-502(1) or (3) of this subtitle may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of the human trafficking law was committed without the owner's actual knowledge.

### **Motor vehicles for transaction of business as a common carrier or for hire**

(b)(1) A motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire may not be seized or forfeited under this subtitle unless it appears that the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law.

(2) A motor vehicle may not be forfeited under this subtitle for an act or omission that the owner shows was committed or omitted by a person other than the owner while the person other than the owner possessed the motor vehicle in criminal violation of federal law or the law of any state.

### **Real property used as principal family residence**

(c) Subject to subsection (d) of this section, real property used as the principal family residence may not be forfeited under this subtitle unless one of the owners of the real property was convicted of a violation of § 11-303 of the Criminal Law Article or of an attempt or conspiracy to violate § 11-303 of the Criminal Law Article.

### **Real property used as principal family residence by husband and wife as tenants by entirety**

(d) Real property used as the principal family residence by a husband and wife and held by the husband and wife as tenants by the entirety may not be forfeited unless:

(1) the property was used in connection with a violation of § 11-303 of the Criminal Law Article or with an attempt or a conspiracy to violate § 11-303 of the Criminal Law Article; and

(2) both the husband and wife are convicted of a violation of § 11-303 of the Criminal Law Article or of an attempt or conspiracy to violate § 11-303 of the Criminal Law Article.

## **Massachusetts**

There is no specific human trafficking restitution provision. Massachusetts does, however, provide for forfeiture of property related to trafficking offenses within their criminal code, copied below. Money from the forfeiture can be awarded to the victim who has been given restitution under the general restitution statute. MASS. GEN. LAWS ANN. ch. 265, § 55-56 (West 2012).

### **HUMAN TRAFFICKING STATUTES:**

- Mass. Gen. Laws Ann. ch. 265, § 50 (West 2012). Trafficking of persons for sexual servitude; trafficking of persons under 18 years for sexual servitude; trafficking by business entities; penalties; tort actions brought by victims
- Mass. Gen. Laws Ann. ch. 265, § 51 (West 2012). Trafficking of persons for forced service; victims under 18 years; trafficking by business entities; penalties; tort actions brought by victims
- Mass. Gen. Laws Ann. ch. 265, § 26D (West 2012). Enticement of child under age 18 to engage in prostitution, human trafficking or commercial sexual activity

### **MASS. GEN. LAWS ANN. ch. 276, § 92 (WEST 2012). RESTITUTION OR REPARATION TO INJURED PERSON THROUGH PROBATION OFFICER**

If a person is placed on probation upon condition that he make restitution or reparation to the person injured by him in the commission of his offence, and payment is not made at once, the court may order that it shall be made to the probation officer, who shall give receipts for and keep record of all payments made to him, pay the money to the person injured and keep his receipt therefor, and notify the clerk of the court whenever the full amount of the money is received or paid in accordance with such order or with any modification thereof.

**MASS. GEN. LAWS ANN. ch. 265, § 55 (WEST 2012). FORFEITURE OF FUNDS USED TO FACILITATE VIOLATION OF SEC. 50 OR 51; VICTIM RESTITUTION**

All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any violation of section 50 or 51 shall be subject to forfeiture to the commonwealth and shall be made available by the court to any victim ordered restitution by the court pursuant to section 3 of chapter 258B.

**MASS. GEN. LAWS ANN. ch. 265, § 56 (WEST 2012). PROPERTY SUBJECT TO FORFEITURE RESULTING FROM VIOLATIONS OF SECS. 50 OR 51; PROCEDURE; EXCEPTIONS; RECORDS; PRELIMINARY ORDERS FOR SEIZURE; REFERRAL TO OFFICE OF SEIZED PROPERTY MANAGEMENT; HOMESTEAD EXEMPTIONS; RECORDING OF CERTIFICATE OF FACT OF FINAL JUDGMENT**

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 or 51;

(ii) all books, records and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51;

(iii) all negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments and securities used or intended to be used to facilitate any violation of section 50 or 51; and

(iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part to commit or to facilitate any violation of section 50 or 51.

No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture pursuant to clauses (i) to (iv), inclusive, of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under this section.

(c) The court shall order forfeiture of all conveyances and real property subject to forfeiture under this section, except as follows:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of section 50 or 51;

(ii) no conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, of the commonwealth or of any state; and

(iii) no conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in violation of section 50 or 51.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property or other things of value subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over the conveyance, real property or other things of value or having final jurisdiction over any related criminal proceeding brought under section 50 or 51. In all such suits in which the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (c). The owner of the conveyance or real property, or other person claiming thereunder, shall have the burden of proof as to all exceptions set forth in subsections (c) and (j). The court shall order the commonwealth to give notice by certified or registered mail to the owner of the conveyance, real property or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of the conveyance, real property or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of sections 50 or 51. At such hearing, the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in a forfeiture, the final order shall provide for disposition of the conveyance, real property or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as further provided in this section.

(e) The final order of the court shall be deposited into the Victims of Human Trafficking Trust Fund established in section 66A of chapter 10.

(f) Any officer, department, or agency having custody of any property subject to forfeiture under this section or having disposed of the property shall keep and maintain full and complete records showing from whom it received the property, under what authority it held or received or disposed of said property, to whom it delivered the property, the date and manner of disposition of the property, and the exact kinds, quantities and forms of the property. The records shall be open to inspection by all federal and state officers charged with enforcement of federal and state human trafficking laws. Persons making final disposition of the property under court order shall report, under oath, to the court the exact circumstances of such disposition.

(g) During the pendency of the proceedings, the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody including, but not limited to: an order that the commonwealth remove the property if possible and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and that a substitute custodian be appointed to manage such property. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of the property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution and return thereof shall be subject to chapter 276, so far as applicable.

(h) A district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought, to the division of capital asset management and maintenance office of seized property management, established under section 47 of chapter 94C. The office of seized property management shall preserve and manage the property in a reasonable fashion and dispose of the property upon a judgment ordering forfeiture, and to enter into contracts to preserve, manage and dispose of the property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney under paragraph (f) and shall subsequently be funded

by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in paragraph (d).

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of the principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town wherein the affected real property lies, and a description of the real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

## Michigan

There is no specific human trafficking victim restitution statute. There is however a general restitution statute, copied below. Restitution is mandatory and is calculated under the general victim restitution statute, § 16b of the William Van Regenmorter crime victim's rights act, MICH. COMP. LAWS ANN. § 780.766b; MICH. COMP. LAWS ANN. § 750.462j(5) (West 2011). Michigan's forfeiture law applies to human trafficking crimes as enumerated and defined in the statute. MICH. COMP. LAWS. § 600.4701(A)(VII)(B) (West 2011).

### **HUMAN TRAFFICKING STATUTES:**

- Mich. Comp. Laws Ann. § 750.462a (West 2006). Definitions
- Mich. Comp. Laws Ann. § 750.462b (West 2006). Subjecting or attempting to subject person to forced labor or services by causing or threatening to cause physical harm to another person; penalties
- Mich. Comp. Laws Ann. § 750.462c (West 2006). Subjecting or attempting to subject person to forced labor or services by physically restraining or threatening to physically restrain another person; penalties
- Mich. Comp. Laws Ann. § 750.462d (West 2006). Subjecting or attempting to subject person to forced labor or services by abusing or threatening to abuse the law or legal process; penalties
- Mich. Comp. Laws Ann. § 750.462e (West 2006). Subjecting or attempting to subject person to forced labor or services by destroying, concealing, etc., actual or purported government identification document of another person; penalties
- Mich. Comp. Laws Ann. § 750.462f (West 2006). Subjecting or attempting to subject person to forced labor or services by using blackmail, using or threatening financial harm to, or exerting or threatening to exert financial control over another person; penalties
- Mich. Comp. Laws Ann. § 750.462g (West 2006). Recruitment, transportation, etc. of minor knowing that minor will be used for sexually abusive activity; penalties
- Mich. Comp. Laws Ann. § 750.462h (West 2006). Recruitment, transportation, etc., of person intending or knowing that person will be subjected to forced labor or services; receipt of financial benefit or value from participation in venture that has engaged in act described in chapter; penalties
- Mich. Comp. Laws Ann. § 750.462i (West 2006). Penalty for violations of chapter involving kidnapping or attempted kidnapping, criminal sexual conduct or attempted criminal sexual conduct, or attempt to kill

- Mich. Comp. Laws Ann. § 750.462j (West 2006). Providing or obtaining labor or services of another person by force, fraud, or coercion; recruiting, etc., person for labor or services for purpose of holding person in involuntary servitude or debt bondage; construction with other laws; sentencing

**MICH. COMP. LAWS ANN. § 780.766 (WEST 2013). ORDERING OF PAYMENT OF RESTITUTION TO VICTIM BY DEFENDANT GENERALLY; REQUIREMENTS OF ORDER; ENFORCEMENT OF ORDER; DISPOSITION OF REFUSED OR UNCLAIMED PAYMENTS; MODIFICATION OF ORDER; NOTICE OF DECLARATION OF BANKRUPTCY BY DEFENDANT; RESTITUTION TO MINOR VICTIM**

Sec. 16. (1) As used in this section only, “victim” means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. As used in subsections (2), (3), (6), (8), (9), and (13) only, victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a crime.

(2) Except as provided in subsection (8), when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate. For an offense that is resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.

(3) If a crime results in damage to or loss or destruction of property of a victim of the crime or results in the seizure or impoundment of property of a victim of the crime, the order of restitution shall require that the defendant do 1 or more of the following, as applicable:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The fair market value of the property on the date of the damage, loss, or destruction. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value.

(ii) The fair market value of the property on the date of sentencing. However, if the fair market value of the property cannot be determined or is impractical to ascertain, then the replacement value of the property shall be utilized in lieu of the fair market value.

(c) Pay the costs of the seizure or impoundment, or both.

(4) If a crime results in physical or psychological injury to a victim, the order of restitution shall require that the defendant do 1 or more of the following, as applicable:

(a) Pay an amount equal to the reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.

(b) Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.

(c) Reimburse the victim or the victim’s estate for after-tax income loss suffered by the victim as a result of the crime.

(d) Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim's family actually incurred and reasonably expected to be incurred as a result of the crime.

(e) Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the crime or, if homemaking or child care is provided without compensation by a relative, friend, or any other person, an amount equal to the costs that would reasonably be incurred as a result of the crime for that homemaking and child care, based on the rates in the area for comparable services.

(f) Pay an amount equal to the cost of actual funeral and related services.

(g) If the deceased victim could be claimed as a dependent by his or her parent or guardian on the parent's or guardian's federal, state, or local income tax returns, pay an amount equal to the loss of the tax deduction or tax credit. The amount of reimbursement shall be estimated for each year the victim could reasonably be claimed as a dependent.

(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.

(5) If a crime resulting in bodily injury also results in the death of a victim or serious impairment of a body function of a victim, the court may order up to 3 times the amount of restitution otherwise allowed under this section. As used in this subsection, "serious impairment of a body function of a victim" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand or foot or use of a hand or foot.

(c) Loss of an eye or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of a body organ.

(6) If the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money.

(7) If the victim is deceased or dies, the court shall order that the restitution or remaining restitution be made to those entitled to inherit from the victim's estate.

(8) The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action.

(9) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim services commission made after an order of restitution under this section.

(10) If not otherwise provided by the court under this subsection, restitution shall be made immediately. However, the court may require that the defendant make restitution under this section within a specified period or in specified installments.

(11) If the defendant is placed on probation or paroled or the court imposes a conditional sentence as provided in section 3 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.3, any restitution ordered under this section shall be a condition of that probation, parole, or sentence. The court may revoke probation or impose imprisonment under the conditional sentence and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole or impose imprisonment, the court or parole board shall consider the defendant's employment status, earning ability, and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(12) Subject to subsection (18), a defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the defendant or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.

(13) An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien.

(14) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of probation or parole or otherwise for failure to pay restitution as ordered under this section unless the court or parole board determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

(15) If the court determines that a juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent or parents and an opportunity for the parent or parents to be heard the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution as ordered, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection:

(a) "Juvenile" means a person within the court's jurisdiction under section 2d or 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d and 712A.4.

(b) "Parent" does not include a foster parent.

(16) If the court orders a parent to pay restitution under subsection (15), the court shall take into account the parent's financial resources and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations the parent may have. If a parent is required to pay restitution under subsection (15), the court shall provide for payment to be made in specified installments and within a specified period of time.

(17) A parent who has been ordered to pay restitution under subsection (15) may petition the court for a modification of the amount of restitution owed by the parent or for a cancellation of any unpaid portion of the parent's obligation. The court shall cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim.

(18) In each case in which payment of restitution is ordered as a condition of probation, the court shall order any employed defendant to make regularly scheduled restitution payments. If the defendant misses 2 or more regularly scheduled payments, the court shall order the defendant to execute a wage assignment to pay the restitution. The probation officer assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be made within a specific period of time, the probation officer assigned to the case shall review the case at the end of the specific period of time to determine if the restitution has been paid in full. The final review shall be conducted not less than 60 days before the probationary period expires. If the probation officer determines at any review that restitution is not being paid as ordered, the probation officer shall file a written report of the violation with the court on a form prescribed by the state court administrative office or shall petition the court for a probation violation. The report or petition shall include a statement of the amount of the arrearage and any reasons for the arrearage known by the probation officer. The probation officer shall immediately provide a copy of the report or petition to the prosecuting attorney. If a petition or motion is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance.

(19) If a defendant who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of restitution to the department of corrections when the defendant is remanded to the department's jurisdiction.

(20) The court shall not impose a fee on a victim, victim's estate, or prosecuting attorney for enforcing an order of restitution.

(21) If a person or entity entitled to restitution under this section cannot be located, refuses to claim the restitution within 2 years after the date on which he or she could have claimed the restitution, or refuses to accept the restitution, the restitution to which that person or entity is entitled shall be deposited in the crime victim's rights fund created under section 4 of 1989 PA 196, MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court's revenue transmittal to the crime victim's rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity.

(22) The court may amend an order of restitution entered under this section on a motion by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.

(23) A court that receives notice that a defendant who has an obligation to pay restitution under this section has declared bankruptcy shall forward a copy of that notice to the prosecuting attorney. The prosecuting attorney shall forward the notice to the victim at the victim's last known address.

(24) If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

(a) Homemaking and child care expenses.

(b) Income loss not ordered to be paid under subsection (4)(h).

(c) Mileage.

(d) Lodging or housing.

(e) Meals.

(f) Any other cost incurred in exercising the rights of the victim or a parent under this act.

## Minnesota

Minnesota has no human trafficking specific restitution statute but does have a general victim restitution statute, copied below. Restitution, in Minnesota, is provided as a right to the victim of a crime. A restitution order may include, but is not limited to, any out of pocket losses resulting from the crime, including medical and therapy costs, and replacement of wages and services. MINN. STAT. ANN. § 611A.04 (West 2013). Forfeiture of property is allowed for designated offenses, which includes both labor and sex trafficking offenses. MINN. STAT. ANN. § 609.531(f)(3) (West 2013).

### HUMAN TRAFFICKING STATUTES:

- Minn. Stat. Ann. § 609.321 (West 2011). Prostitution and Sex Trafficking; Definitions
- Minn. Stat. Ann. § 609.282 (West 2006). Labor Trafficking

### MINN. STAT. ANN. § 611A.04 (WEST 2013). ORDER OF RESTITUTION

Subdivision 1. Request; decision. (a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional

hearing. The issue of restitution is reserved or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time. At the sentencing or dispositional hearing, the court shall give the offender an opportunity to respond to specific items of restitution and their dollar amounts in accordance with the procedures established in section 611A.045, subdivision 3.

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

(1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;

(2) sufficient evidence of a right to restitution has been submitted; and

(3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request.

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before the hearing. The court's restitution decision is governed by this section and section 611A.045.

(c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. In the case of a defendant who is on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment.

Subd. 1a. Crime board request. The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the court administrator or with the person or agency the court has designated to obtain information relating to restitution. The board shall submit the payment order not less than three business days after it is issued by the board. The court administrator shall provide copies of the payment order to the prosecutor and the offender or the offender's attorney within 48 hours of receiving it from the board or at least 24 hours before the sentencing or dispositional hearing, whichever is earlier. By operation of law, the issue of restitution is reserved if the payment order is not received at least three days before the sentencing or dispositional hearing. The filing of a payment order for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its own behalf and on behalf of the victim. If the board has not paid reparations to the victim or on the victim's behalf, restitution may be made directly to the victim. If the board has paid reparations to the victim or on the victim's behalf, the court shall order restitution payments to be made directly to the board.

Subd. 1b. Affidavit of disclosure. An offender who has been ordered by the court to make restitution in an amount of \$500 or more shall file an affidavit of financial disclosure with the correctional agency responsible for investigating the financial resources of the offender on request of the agency. The commissioner of corrections shall prescribe what financial information the affidavit must contain.

Subd. 2. Procedures. The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court

administrator who shall compile the data and make it available to the Supreme Court and the legislature upon request.

Subd. 3. Effect of order for restitution. An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action. Any order for restitution in favor of a victim shall also operate as an order for restitution in favor of the Crime Victims Reparations Board, if the board has paid reparations to the victim or on the victim's behalf. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim named in the restitution order. An order of restitution shall be docketed as a civil judgment, in the name of any person named in the order and in the name of the crime victims reparations board, by the court administrator of the district court in the county in which the order of restitution was entered. The court administrator also shall notify the commissioner of revenue of the restitution debt in the manner provided in chapter 270A, the Revenue Recapture Act. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. Whether the order of restitution has been docketed or not, it is a debt that is not dischargeable in bankruptcy. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Subd. 4. Payment of restitution. When the court orders both the payment of restitution and the payment of a fine and the defendant does not pay the entire amount of court-ordered restitution and the fine at the same time, the court may order that all restitution shall be paid before the fine is paid.

Subd. 5. Unclaimed restitution payments. Restitution payments held by the court for a victim that remain unclaimed by the victim for more than three years shall be deposited in the crime victims account created in section 611A.612.

At the time the deposit is made, the court shall record the name and last known address of the victim and the amount being deposited, and shall forward the data to the Crime Victims Reparations Board.

Subd. 6. Estate of victim. If a victim dies before or after a request for restitution is made or an order for restitution is issued, the personal representative of the victim's estate may request or enforce an order for restitution on behalf of the victim. If a personal representative is not appointed and no application is pending, an heir of the victim may file an affidavit to request or enforce an order for restitution pursuant to this subdivision. Appointment of a personal representative does not affect the right of other victims, as defined in section 611A.01, to request an order for restitution on their behalf.

## **MINN. STAT. ANN. § 609.5312 (WEST 2012). FORFEITURE OF PROPERTY ASSOCIATED WITH DESIGNATED OFFENSES**

Subdivision 1. Property subject to forfeiture. (a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture, except as provided in this section.

(b) All money used or intended to be used to facilitate the commission of a violation of section 609.322 or 609.324 or a violation of a local ordinance substantially similar to section 609.322 or 609.324 is subject to forfeiture.

(c) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 1a. Computers and related property subject to forfeiture. (a) As used in this subdivision, “property” has the meaning given in section 609.87, subdivision 6.

(b) When a computer or a component part of a computer is used or intended for use to commit or facilitate the commission of a designated offense, the computer and all software, data, and other property contained in the computer are subject to forfeiture unless prohibited by the Privacy Protection Act, United States Code, title 42, sections 2000aa to 2000aa-12, or other state or federal law.

(c) Regardless of whether a forfeiture action is initiated following the lawful seizure of a computer and related property, if the appropriate agency returns hardware, software, data, or other property to the owner, the agency may charge the owner for the cost of separating contraband from the computer or other property returned, including salary and contract costs. The agency may not charge these costs to an owner of a computer or related property who was not privy to the act or omission upon which the seizure was based, or who did not have knowledge of or consent to the act or omission, if the owner:

(1) requests from the agency copies of specified legitimate data files and provides sufficient storage media; or

(2) requests the return of a computer or other property less data storage devices on which contraband resides.

Subd. 2. Limitations on forfeiture of property associated with designated offenses. (a) Property used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section only if the owner of the property is a consenting party to, or is privy to, the commission of a designated offense.

(b) Property is subject to forfeiture under this section only if the owner was privy to the act or omission upon which the forfeiture is based, or the act or omission occurred with the owner’s knowledge or consent.

(c) Property encumbered by a bona fide security interest is subject to the interest of the secured party unless the party had knowledge of or consented to the act or omission upon which the forfeiture is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

(d) Notwithstanding paragraphs (b) and (c), property is not subject to forfeiture based solely on the owner’s or secured party’s knowledge of the act or omission upon which the forfeiture is based if the owner or secured party took reasonable steps to terminate use of the property by the offender.

Subd. 3. Vehicle forfeiture for prostitution offenses. (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, and 609.5313.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.324 or a local ordinance substantially similar to section 609.324. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecuting authority has failed to make the certification required by paragraph (b);

(2) the owner of the motor vehicle has demonstrated to the court’s satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or prostitution charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(f) The Department of Corrections Fugitive Apprehension Unit shall not participate in paragraphs (a) to (e).

Subd. 4. Vehicle forfeiture for fleeing peace officer. (a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit a violation of section 609.487 and endanger life or property. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, 609.5313, and 609.5315, subdivision 6.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.487. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecuting authority has failed to make the certification required by this paragraph;

(2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or the charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) A motor vehicle that is an off-road recreational vehicle as defined in section 169A.03, subdivision 16, or a motorboat as defined in section 169A.03, subdivision 13, is not subject to paragraph (b).

(f) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(g) The Department of Corrections Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraphs (a) to (f).

## Mississippi

There is no specific human trafficking restitution statute. There is a general victim restitution statute, copied below. The court may order a restitution award to cover pecuniary damages to the victim. There is a human trafficking specific asset forfeiture statute, copied below, which applies to crimes committed in violation of the Mississippi Human Trafficking Act. MISS. CODE. ANN. § 97-3-54.7 (West 2013).

### HUMAN TRAFFICKING STATUTES:

- Miss. Code. Ann. § 97-3-54 (West 2013). Human Trafficking; Short Title
- Miss. Code. Ann. § 97-3-54.1 (West 2013). Human Trafficking; Offenses
- Miss. Code. Ann. § 97-3-54.2 (West 2013). Human Trafficking; Prevention or Restriction of Liberty of Victim; Offense; Penalty
- Miss. Code. Ann. § 97-3-54.3 (West 2013). Aiding or Abetting Human Trafficking
- Miss. Code. Ann. § 97-3-54.4 (West 2013). Definitions Relating to Human Trafficking

### MISS. CODE. ANN. § 99-37-1 (WEST 1992). DEFINITIONS

As used in this chapter:

(a) "Criminal activities" shall mean any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(b) "Pecuniary damages" shall mean all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

(c) "Restitution" shall mean full, partial or nominal payment of pecuniary damages to a victim.

(d) "Victim" shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. "Victim" shall not include any coparticipant in the defendant's criminal activities, or any person knowingly participating in a criminal act at the time he became a victim.

### MISS. CODE. ANN. § 99-37-3 (WEST 2003). IMPOSITION AND AMOUNT

(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$5,000.00).

(2) In determining whether to order restitution which may be complete, partial or nominal, the court shall take into account:

- (a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;
- (b) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall, at the time of sentencing, allow him to be heard on such issue.

(4) If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination.

**MISS. CODE ANN. § 97-3-54 .7 (WEST 2013). FORFEITURE OF ASSETS AND DISPOSITION OF PROCEEDS**

(1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

(i) Conveyances, including aircraft, vehicles or vessels;

(ii) Books, records, telecommunication equipment, or computers;

(iii) Money or weapons;

(iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;

(v) Negotiable instruments and securities;

(vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;

(vii) Any property traceable to proceeds from a violation; and

(viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

(b)(i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of this act;

(ii) No property is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the property is a leased or rented property, then the confiscating authority shall notify the owner of the property within five (5) days of the confiscation or within five (5) days of forming reason to believe that the property is a leased or rented property;

(iii) Forfeiture of a property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(2) No property shall be forfeited under the provisions of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(3) Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

(4)(a) When any property is seized under this section, proceedings shall be instituted within a reasonable period of time from the date of seizure or the subject property shall be immediately returned to the party from whom seized.

(b) A petition for forfeiture shall be filed by the Attorney General or a district attorney in the name of the State of Mississippi, the county, or the municipality, and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought, or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in the circuit court or the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21. A copy of the petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the seizing law enforcement agency has actual knowledge; and

(iv) Any person in possession of property subject to forfeiture at the time that it was seized.

(5) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, inquiry of the Department of Revenue shall be made as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest that affects the vehicle.

(6) If the property is a motor vehicle and is not titled in the State of Mississippi, then an attempt shall be made to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, inquiry of the appropriate agency of that state shall be made as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device that affects the vehicle.

(7) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, inquiry of the appropriate office designated in Section 75-9-501, shall be made as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(8) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, inquiry of the Mississippi Department of Transportation shall be made as to what the records of the Federal Aviation Administration show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(9) If the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust that affects the property, the record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust that affects the property is to be named in the petition of forfeiture and is to be served with process in the same manner as in civil cases.

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to “the Unknown Owner of .....,” filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37, for publication of notice for attachments at law.

(11) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by this section shall be introduced into evidence at the hearing.

(12)(a) An owner of a property that has been seized shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the seizing law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in session within thirty (30) days after filing the answer. The court may postpone the forfeiture hearing to a date past the time any criminal action is pending against the owner upon request of any party.

(b) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The burden of proof placed upon the petitioner in regard to property forfeited under the provisions of this chapter shall be by a preponderance of the evidence.

(c) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

(13) Unless otherwise provided herein, all personal property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expense of liquidation, the proceeds shall be divided as follows:

(a) If only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Relief for Victims of Human Trafficking Fund, and fifty percent (50%) shall be deposited and credited to the budget of the participating law enforcement agency.

(b) If more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the Relief for Victims of Human Trafficking Fund, twenty-five percent (25%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty-five percent (25%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty-five percent (25%), a

petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(14) All money forfeited under this section shall be divided, deposited and credited in the same manner as provided in subsection (13).

(15) All real estate forfeited under the provisions of this section shall be sold to the highest and best bidder at a public auction for cash, the auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of the sale shall first be applied to the cost and expense in administering and conducting the sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on the property. The remaining proceeds shall be divided, forwarded and deposited in the same manner as provided in subsection (13).

(16)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property described in subsection (1)(a)(i) of this section that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. The county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(17) The forfeiture procedure set forth in this section is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

## Missouri

Missouri does have a specific human trafficking restitution provision, copied below. Restitution is mandatory and shall cover what is necessary to compensate the victim for the value of the victim's labor and/or for the mental and physical rehabilitation of the victim and any child of the victim. MO. ANN. STAT. § 566.218 (West 2011). Property that is a part of or derived from any criminal activity can be forfeited. MO. ANN. STAT. § 513.607 (West 2011).

### HUMAN TRAFFICKING STATUTES:

- Mo. Ann. Stat. § 566.206 (West 2011). Trafficking for the Purpose of Slavery, Involuntary Servitude, Peonage, or Force Labor – Penalty
- Mo. Ann. Stat. § 566.209 (West 2011). Trafficking for the Purpose of Sexual Exploitation – Penalty
- Mo. Ann. Stat. § 566.212 (West 2011). Sexual Trafficking of a Child – Penalty
- Mo. Ann. Stat. § 566.213 (West 2011). Sexual Trafficking of a Child Under Age Twelve – Affirmative Defense Not Allowed. When – Penalty
- Mo. Ann. Stat. § 566.215 (West 2011). Contributing to Human Trafficking – Penalty

## **MO. ANN. STAT. § 566.218 (WEST 2011). RESTITUTION REQUIRED FOR CERTAIN OFFENDERS**

Notwithstanding sections 557.011, 558.019, and 559.021, a court sentencing a defendant convicted of violating the provisions of section 566.203, 566.206, 566.209, 566.212, or 566.213 shall order the defendant to pay restitution to the victim of the offense regardless of whether the defendant is sentenced to a term of imprisonment or probation. The minimum restitution ordered by the court shall be in the amount determined by the court necessary to compensate the victim for the value of the victim's labor and/or for the mental and physical rehabilitation of the victim and any child of the victim.

## **MO. ANN. STAT. § 513.607 (WEST 2011). PROPERTY SUBJECT TO FORFEITURE--PROCEDURE--REPORTS**

1. All property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding.
2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules of civil procedure, except to the extent that special rules of procedure are stated herein.
3. Any property seized by a law enforcement officer or agent shall not be disposed of pursuant to section 542.301, RSMo, or by the uniform disposition of unclaimed property act, sections 447.500 through 447.595, RSMo, unless the CAFA proceeding involving the seized property does not result in a judgment of forfeiture.
4. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture proceeding may be instituted by petition by the prosecuting attorney of the county in which the property is located or seized by the attorney general's office. The proceeding may be commenced before or after seizure of the property.
5. In lieu of, or in addition to, an in rem proceeding under subsection 4 of this section, the prosecuting attorney or attorney general may bring an in personam action for the forfeiture of property, which may be commenced by petition before or after the seizure of property.
6. (1) If the petition is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds that reasonable cause does not exist to believe the property is subject to forfeiture, it shall dismiss the proceeding. If the court finds that reasonable cause does exist to believe the property is subject to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or destruction, it shall order service on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue. If the court finds that there is reasonable cause to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice issue a writ of seizure directing the sheriff of the county or other authorized law enforcement agency where the property is found to seize it.  
(2) Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition for forfeiture. The petition shall state, in addition to the information required in subdivision (1) of this subsection, the date and place of seizure. The burden of proof will be on the investigative agency to prove all allegations contained in the petition.

7. After the petition is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property shall be served, if not previously served, with a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of court and rules of civil procedure. Service by publication may be ordered upon any party whose whereabouts cannot be determined or if there be unknown parties.

8. The prosecuting attorney or attorney general to whom the seizure is reported shall report annually by January thirty-first for the previous calendar year all seizures. Such report shall include the date, time, and place of seizure, the property seized, the estimated value of the property seized, the person or persons from whom the property was seized, the criminal charges filed, and the disposition of the seizure, forfeiture and criminal actions. The report shall be made to the director of the Missouri department of public safety and shall be considered an open record. The prosecuting attorney or attorney general shall submit a copy of the report to the state auditor at the time the report is made to the director of the department of public safety.

9. The state auditor shall make an annual report compiling the data received from law enforcement, prosecuting attorneys and the attorney general, and shall submit the report regarding seizures for the previous calendar year to the general assembly annually by February twenty-eighth.

10. Intentional or knowing failure to comply with any reporting requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

## Montana

There is no specific human trafficking restitution provision. There is a general victim restitution statute, which is copied below. Restitution is mandatory and shall cover the victim's pecuniary losses. MONT. CODE ANN. § 46-18-241(West 2009). Forfeiture is applicable only to drug offenses. MONT. CODE ANN. § 45-9-206 (West 1995).

### HUMAN TRAFFICKING STATUTES:

- Mont. Code Ann. § 45-5-305 (West 2013). Subjecting Another to Involuntary Servitude – Definitions
- Mont. Code Ann. § 45-5-306 (West 2013). Trafficking of Persons for Involuntary Servitude
- Mont. Code Ann. § 45-5-310 (West 2013). Sexual Servitude of Child

### MONT. CODE ANN. § 46-18-241(2009). CONDITION OF RESTITUTION

<Section effective July 1, 2015. See, also, section effective until July 1, 2015.>

(1) As provided in 46-18-201, a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained a pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.

(2)(a) The offender shall pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than \$5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution must be made to the court until the offender has fully paid the restitution and the cost of supervising the payment of

restitution. The court shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed.

## Nebraska

There is no specific human trafficking restitution provision. There is a general victim restitution statute, copied below. The court may make an order of restitution for actual physical injury or property damage or loss sustained by the victim. NEB. REV. STAT. § 29-2280 (West 1992). Forfeiture is applicable when drug offenses are involved. NEB. REV. STAT. § 28-431 (West 1997).

### **HUMAN TRAFFICKING STATUTES:**

- Neb. Rev. Stat. § 28-830 (West 2013). Human trafficking; forced labor or services; terms, defined
- Neb. Rev. Stat. § 28-831 (West 2013). Human trafficking; forced labor or services; prohibited acts; penalties

### **NEB. REV. STAT. § 29-2280 (WEST 1992). RESTITUTION; ORDER; WHEN**

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. Whenever the court believes that restitution may be a proper sentence or the victim of any offense or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the actual damages sustained by the victim.

## Nevada

There is no specific human trafficking restitution provision. There is a general victim restitution statute, copied below. The statute provides that a restitution award may include payment of medical or psychological treatment for the victim. NEV. REV. STAT. ANN §176A.430 (West 1995). Forfeiture of property and proceeds attributable to the commission of any felony is allowed. NEV. REV. STAT. ANN § 179.1164, 179.1171, 179.1173. (West 2005).

### **HUMAN TRAFFICKING STATUTES:**

- Nev. Rev. Stat. Ann. § 200.467 (West 2007). Trafficking in persons for financial gain; penalties
- Nev. Rev. Stat. Ann. § 200.468 (West 2013). Trafficking in persons for illegal purposes; penalty

### **NEV. REV. STAT. ANN. § 176.033 (WEST 1995). SENTENCE OF IMPRISONMENT REQUIRED OR PERMITTED BY STATUTE: DEFINITE PERIOD FOR MISDEMEANOR OR GROSS MISDEMEANOR; MINIMUM AND MAXIMUM TERM FOR FELONY UNLESS DEFINITE TERM REQUIRED BY STATUTE; RESTITUTION; MODIFICATION OF SENTENCE**

1. If a sentence of imprisonment is required or permitted by statute, the court shall:

(a) If sentencing a person who has been found guilty of a misdemeanor or a gross misdemeanor, sentence the person to imprisonment for a definite period of time within the maximum limit or the minimum and maximum

limits prescribed by the applicable statute, taking due account of the gravity of the particular offense and of the character of the individual defendant.

(b) If sentencing a person who has been found guilty of a felony, sentence the person to a minimum term and a maximum term of imprisonment, unless a definite term of imprisonment is required by statute.

(c) If restitution is appropriate, set an amount of restitution for each victim of the offense and for expenses related to extradition in accordance with NRS 179.225.

2. At any time after a prisoner has been released on parole and has served one-half of the period of parole, or 10 consecutive years on parole in the case of a prisoner sentenced to life imprisonment, the State Board of Parole Commissioners, upon the recommendation of the division, may petition the court of original jurisdiction requesting a modification of sentence. The Board shall give notice of the petition and hearing thereon to the Attorney General or district attorney who had jurisdiction in the original proceedings. Upon hearing the recommendation of the State Board of Parole Commissioners and good cause appearing, the court may modify the original sentence by reducing the maximum term of imprisonment but shall not make the term less than the minimum term prescribed by the applicable penal statute.

### **NEV. REV. STAT. ANN. § 176A.430 (WEST 2013). RESTITUTION**

1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate circumstances, the court shall include as a condition of probation or suspension of sentence that the defendant execute an assignment of wages earned while on probation or subject to the conditions of suspension of sentence to the Division for restitution.

2. All money received by the Division for restitution must be deposited with the State Treasurer for credit to the Restitution Trust Fund.

3. The Division shall make pro rata payments from the money received from the defendant to each person to whom the restitution was ordered pursuant to this section. Such a payment must be made not less than once each fiscal year. Any money received from the defendant that is remaining at the end of each fiscal year must be paid at that time in pro rata payments to each person to whom the restitution was ordered. A final pro rata payment must be made to such persons when the defendant pays the entire restitution owed.

4. All payments from the Fund must be paid as other claims against the State are paid.

5. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

6. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure was caused by economic hardship resulting in his or her inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

7. If, within 3 years after the defendant has been discharged from probation, the Division has not located the person to whom the restitution was ordered, the money paid to the Division by the defendant must be deposited with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

### **NEV. REV. STAT. ANN. § 179.1164 (WEST 2005). PROPERTY SUBJECT TO SEIZURE AND FORFEITURE; EXCEPTIONS**

1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:

- (a) Any proceeds attributable to the commission or attempted commission of any felony.
- (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857.

2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.

3. Unless the owner of real property or a mobile home:

- (a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or
- (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254, the owner of real property or a mobile home used or intended for use by a tenant to facilitate any violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, is disputably presumed to have known of and consented to that use if the notices required by NRS 453.305 have been given in connection with another such violation relating to the property or mobile home. The holder of a lien or encumbrance on the property or mobile home is disputably presumed to have acquired an interest in the property for fair value and without knowledge or consent to such use, regardless of when the act giving rise to the forfeiture occurred.

## New Hampshire

Restitution is mandatory under New Hampshire human trafficking laws, and may include economic losses and the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. N.H. REV. STAT. ANN. § 633:10 (2010). Where not included in economic losses, the court may also award, at its discretion, the cost of medical and psychological treatment, transportation, housing, and childcare. *Id.* The court must award property damages, expenses incurred by relocating away from the defendant, and any other losses not covered. *Id.* The victim's location outside of the United States or court's jurisdiction has no bearing on the victim's right to restitution. *Id.* Forfeiture is allowed for human trafficking offenses and the statute is included within the human trafficking statutes chapter. N.H. Rev. Stat. Ann. § 633:8 (2010). The relevant statutes are copied below.

### HUMAN TRAFFICKING STATUTES:

- N.H. Rev. Stat. Ann. § 633:6 (2010). Definitions
- N.H. Rev. Stat. Ann. § 633:7 (2010). Trafficking in Persons
- N.H. Rev. Stat. Ann. § 633:8 (2010). Forfeiture of Items Used in Connection With Trafficking in Persons
- N.H. Rev. Stat. Ann. § 633:10 (2010). Restitution and Compensation

### N.H. REV. STAT. ANN. § 633:10 (2010). RESTITUTION AND COMPENSATION

I. A person convicted under this section shall be ordered by the court to pay restitution to the victim. Such restitution may include but not be limited to:

- (a) Any economic loss compensable under RSA 651:62, in accordance with the provisions of RSA 651:61-a through RSA 651:67; and
- (b) The value of the victim's labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act or the state minimum wage law, whichever is greater.

II. To the extent not included in economic loss that is compensable under paragraph I, the court may also order a person convicted under this section to pay compensation as follows:

- (a) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
- (b) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;

- (c) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items; and
- (e) Any and all other losses suffered by the victim as a result of an offense under this section.

III. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not relieve the defendant of his or her restitution obligation.

IV. Except as otherwise provided in this section, the provisions of RSA 651:61-a through RSA 651:67 shall govern all restitution and compensation orders.

### **N.H. REV. STAT. ANN. § 633:8 (2010). FORFEITURE OF ITEMS USED IN CONNECTION WITH TRAFFICKING IN PERSONS.**

I. All offenses under this section shall qualify as offenses for forfeiture and thereby upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

- (a) All materials, products, and equipment of any kind used in violation of this section.
- (b) Any property interest in any conveyance used in furtherance of an act which violates this section.
- (c) Any moneys, coin, currency, negotiable instruments, securities, or other investments knowingly used or intended for use in violation of this section.
- (d) Any books, records, ledgers, and research material, including formulae, microfilm, tapes, and any other data which are used or intended for use in felonious violation of this section.
- (e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in felonious violation of this section.

II. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

III. (a) Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

- (1) Upon process issued by any justice, associate justice, or special justice of the district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution, and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;
  - (2) Physically, without process on probable cause to believe that the property is subject to forfeiture under this section; or
  - (3) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this section, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this section.
- (b) A seizure for forfeiture without process under subparagraph (a)(2) or (a)(3) shall be reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

IV. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration, or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

V. Upon the seizure of any personal property, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of the seizure.

VI. Upon seizure of any real property, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable interest in the property within 7 days of the seizure.

VII. The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

VIII. The department of justice shall examine the facts and applicable law of the cases referred pursuant to paragraph VII, and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

IX. The department of justice shall, within 60 days of the seizure, file a petition in the superior court having jurisdiction under this section. If no such petition is filed within 60 days, the items or property interest seized shall be released or returned to the owners.

X. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

- (a) Place the property under seal;
- (b) Remove the property to a storage area for safekeeping;
- (c) Remove the property to a place designated by the court;
- (d) Request another agency to take custody of the property and remove it to an appropriate location within the state, or in the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion, the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general.

XI. The court may order forfeiture of all items or property interests under this section, except no item or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this section and had knowledge thereof.

XII. The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this section. Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph XI shall have the burden of proving such exception.

XIII. The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this section and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

XIV. At the request of any party to the forfeiture proceeding, the court shall grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this section and which arose from the transaction which gave rise to the forfeiture proceeding. No party's interest in property shall be forfeited unless a party has been found guilty of the underlying felonious charge.

XV. At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the

property is subject to forfeiture under this section. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

- (a) There is a substantial connection between the property to be forfeited and the underlying offense;
- (b) Criminal activities conducted by or through the use of the property were extensive; and
- (c) The value of the property to be forfeited greatly outweighs the cost of prosecution and the harm caused by the criminal conduct.

XVI. The court shall, thereupon, make a final order, from which all parties shall have a right of appeal. Final orders for forfeiture of property under this section shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including payment of restitution to a victim of trafficking or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items.

XVII. Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by the government.

XVIII. After payment of costs outlined in paragraph XVI, any forfeited money and the proceeds of any sale or public auction of forfeited items shall first be used to satisfy any order of restitution or compensation imposed by the court. Any remaining funds shall go to the victims' assistance fund as defined in RSA 21-M:8-i.

## New Jersey

A provision for restitution is included within the human trafficking statute. Restitution is mandatory and is calculated as the greater of either the victim's salary at minimum wage, other state labor laws, and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. N.J. STAT. ANN. § 2C:13-8(e) (West 2013). Forfeiture is allowed for anything used in furtherance of criminal activity. The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- N.J. Stat. Ann. § 2C:13-8 (West 2013). Human Trafficking

### **N.J. STAT. ANN. § 2C:13-8 (WEST 2013). HUMAN TRAFFICKING**

a. A person commits the crime of human trafficking if he:

(1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 or to provide labor or services:

(a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person;

(b) by means of any scheme, plan, or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;

(c) by committing a violation of N.J.S.2C:13-5 against the person;

(d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L.1997, c. 1 (C.2C:21-31), or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age or any other personal identifying information;

(e) by means of the abuse or threatened abuse of the law or legal process;

(f) by means of fraud, deceit, or misrepresentation against the person; or

(g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes;<sup>1</sup> or

(2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection; or

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1, whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

b. An offense under this section constitutes a crime of the first degree.

c. It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense of human trafficking created by this section, the defendant was a victim of human trafficking.

d. Notwithstanding the provisions of N.J.S.2C:43-6, the term of imprisonment imposed for a crime of the first degree under paragraph (2) or (3) of subsection a. of this section shall be either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor shall serve 20 years before being eligible for parole. Notwithstanding the provisions of N.J.S.2C:43-3, the sentence for a conviction for a crime of the first degree under this section shall include a fine in an amount of not less than \$25,000, which shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c. 396 (C.2C:46-4) and forwarded to the Department of the Treasury to be deposited in the "Human Trafficking Survivor's Assistance Fund" established by section 2 of P.L.2013, c. 51 (C.52:17B-238).

e. In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is 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 or services as determined by the "New Jersey Prevailing Wage Act," P.L.1963, c. 150 (C.34:11-56.25 et seq.), the "New Jersey State Wage and Hour Law," P.L.1966, c. 113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c. 71 (C.34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the "Fair Labor Standards Act of 1938," 29 U.S.C. s.201 et seq., or any other applicable federal law.

## **N.J. STAT. ANN. § 2C:64-1 (WEST 2011). PROPERTY SUBJECT TO FORFEITURE**

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

(1) Controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices, untaxed or otherwise contraband cigarettes or tobacco products, untaxed special fuel, unlawful sound recordings and audiovisual works and items bearing a counterfeit mark. These shall be designated

prima facie contraband.

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

b. Any article subject to forfeiture under this chapter may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when

(1) The article is prima facie contraband; or

(2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.

c. For the purposes of this section:

“Items bearing a counterfeit mark” means items bearing a counterfeit mark as defined in N.J.S.2C:21-32.

“Unlawful sound recordings and audiovisual works” means sound recordings and audiovisual works as those terms are defined in N.J.S.2C:21-21 which were produced in violation of N.J.S.2C:21-21.

“Untaxed special fuel” means diesel fuel, No. 2 fuel oil and kerosene on which the motor fuel tax imposed pursuant to R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or transferred in this State in a manner not authorized pursuant to R.S.54:39-1 et seq. or P.L. 1938, c. 163 (C.56:6-1 et seq.).

## New Mexico

A specific human trafficking restitution statute is included within the human trafficking statute, copied below. Restitution is mandatory and is calculated as the gross income or value of the victim’s services and any other actual damages, in accordance with the general restitution statute, N.M. STAT. ANN. § 31-17-1 (West 2005), which is also copied below. Forfeiture is only applicable in drug cases.

### **HUMAN TRAFFICKING STATUTE:**

- N.M. Stat. Ann. § 30-52-1 (West 2008). Human Trafficking

### **N.M. STAT. ANN. § 30-52-1 (WEST 2008). HUMAN TRAFFICKING**

A. Human trafficking consists of a person knowingly:

(1) recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;

(2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or

(3) benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to

enforce the provisions of this section.

C. Whoever commits human trafficking is guilty of a third degree felony; except if the victim is under the age of:  
(1) sixteen, the person is guilty of a second degree felony; or  
(2) thirteen, the person is guilty of a first degree felony.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

F. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages in accordance with Section 31-17-1 NMSA 1978.

G. As used in this section:

(1) "coercion" means:

- (a) causing or threatening to cause harm to any person;
- (b) using or threatening to use physical force against any person;
- (c) abusing or threatening to abuse the law or legal process;
- (d) threatening to report the immigration status of any person to governmental authorities; or
- (e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; and

(2) "commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.

### **N.M. STAT. ANN. § 31-17-1 (WEST 2005). VICTIM RESTITUTION**

A. It is the policy of this state that restitution be made by each violator of the Criminal Code to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:

- (1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;
- (2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, "actual damages" includes damages for wrongful death;
- (3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and
- (4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be

submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act or Article 2, Section 24 of the constitution of New Mexico. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.

E. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant; the defendant's age, education, employment circumstances, potential for employment and vocational training, family circumstances and financial condition; the number of victims; the actual damages of each victim; what plan of restitution will most effectively aid the rehabilitation of the defendant; and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of pecuniary damages of each victim.

F. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, pursuant to the provisions of Subsection C of this section.

G. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

H. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

I. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

J. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages.

## **New York**

There is no specific human trafficking restitution provision. However, there is a general victim restitution statute. The court shall consider an award of restitution, and a finding must be made as to the dollar amount of the fruits of the offense and the actual out-of-pocket loss to the victim. N.Y. PENAL LAW § 60.27 (McKinney 2013). Forfeiture of property that constitutes the proceeds of a crime is permitted. N.Y. C.P.L.R 1311 (McKinney 2010).

#### **HUMAN TRAFFICKING STATUTES:**

- N.Y. Penal Law § 230.34 (McKinney 2007). Sex trafficking
- N.Y. Penal Law § 135.35 (McKinney 2007). Labor trafficking

#### **N.Y. PENAL LAW § 60.27 (MCKINNEY 2013). RESTITUTION AND REPARATION**

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or reparation for the actual out-of-pocket loss caused thereby and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

2. Whenever the court requires restitution or reparation to be made, the court must make a finding as to the dollar amount of the fruits of the offense and the actual out-of-pocket loss to the victim caused by the offense. In making this finding, the court must consider any victim impact statement provided to the court. If the record does not contain sufficient evidence to support such finding or upon request by the defendant, the court must conduct a hearing upon the issue in accordance with the procedure set forth in section 400.30 of the criminal procedure law.

3. The provisions of sections 420.10, 420.20 and 420.30 of the criminal procedure law shall apply in the collection and remission of restitution and reparation.

4. For purposes of the imposition, determination and collection of restitution or reparation, the following definitions shall apply:

(a) the term “offense” shall include the offense for which a defendant was convicted, as well as any other offense that is part of the same criminal transaction or that is contained in any other accusatory instrument disposed of by any plea of guilty by the defendant to an offense.

(b) the term “victim” shall include the victim of the offense, the representative of a crime victim as defined in subdivision six of section six hundred twenty-one of the executive law, an individual whose identity was assumed or whose personal identifying information was used in violation of section 190.78, 190.79 or 190.80 of this chapter, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, a good samaritan as defined in section six hundred twenty-one of the executive law and the office of victim services or other governmental agency that has received an application for or has provided financial assistance or compensation to the victim. A victim shall also

mean any owner or lawful producer of a master recording, or a trade association that represents such owner or lawful producer, that has suffered injury as a result of an offense as defined in article two hundred seventy-five of this chapter.

5. (a) Except upon consent of the defendant or as provided in paragraph (b) of this subdivision, or as a condition of probation or conditional discharge as provided in paragraph (g) of subdivision two of section 65.10 of this chapter, the amount of restitution or reparation required by the court shall not exceed fifteen thousand dollars in the case of a conviction for a felony, or ten thousand dollars in the case of a conviction for any offense other than a felony. Notwithstanding the provisions of this subdivision, if an officer of a school district is convicted of violating any section of article one hundred fifty-five of this chapter where the victim of such crime is such officer's school district, the court may require an amount of restitution up to the full amount of the fruits of the offense or reparation up to the full amount of the actual out-of-pocket loss suffered by the victim, provided further that in such case the provisions of paragraph (b) of this subdivision shall not apply.

(b) The court in its discretion may impose restitution or reparation in excess of the amounts specified in paragraph (a) of this subdivision, provided however that the amount in excess must be limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant.

6. Any payment made as restitution or reparation pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment.

7. In the event that the court requires restitution or reparation to be made to a person and that person dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

8. The court shall in all cases where restitution or reparation is imposed direct as part of the disposition that the defendant pay a designated surcharge of five percent of the entire amount of a restitution or reparation payment to the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law. The designated surcharge shall not exceed five percent of the amount actually collected. Upon the filing of an affidavit of the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law demonstrating that the actual cost of the collection and administration of restitution or reparation in a particular case exceeds five percent of the entire amount of the payment or the amount actually collected, as the case may be, the court shall direct that the defendant pay an additional surcharge of not more than five percent of the entire amount of a restitution or reparation payment to such official or organization, or the actual cost of collection or administration, whichever is less unless, upon application of the defendant, the court determines that imposition of such additional surcharge would cause undue hardship to the defendant, or any other person who is financially supported by the defendant, or would otherwise not be in the interest of justice. Such additional surcharge, when added to the initial five percent surcharge, shall not exceed ten percent of the amount actually collected.

9. If the offense of which a person is convicted is a class A, class B, class C, or class D felony involving the sale of a controlled substance, as defined in article two hundred twenty of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this section, in addition to its ordinary meaning, shall mean any law enforcement agency of the state of New York or of any subdivision thereof which has expended funds in the purchase of any controlled substance from such person or his agent as part of the investigation leading to such conviction. Any restitution which may be required to be made to a law enforcement agency pursuant to this section shall be limited to the amount of funds expended in the actual purchase of such controlled substance by such law enforcement agency, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any law enforcement agency seeking restitution pursuant to this section shall file with the court and the district attorney an affidavit stating that funds expended in the actual purchase of a controlled substance for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding. Any law enforcement agency receiving restitution pursuant to this section shall promptly transmit to the

commissioner of the division of criminal justice services a report stating the dollar amount of the restitution received.

10. If the offense of which a person is convicted is defined in section 150.10, 150.15 or 150.20 of this chapter, and no other victim who is a person is seeking restitution in the case, the term “victim” as used in this section, in addition to its ordinary meaning, shall mean any municipality or volunteer fire company which has expended funds or will expend funds for the purpose of restoration, rehabilitation or clean-up of the site of the arson. Any restitution which may be required to be made to a municipality or volunteer fire company pursuant to this section shall be limited to the amount of funds reasonably expended or to be expended for the purpose of restoration, rehabilitation or clean-up of the site of the arson, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any municipality or volunteer fire company seeking restitution pursuant to this section shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended or to be expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding. For the purposes of this subdivision, “volunteer fire company” means a fire company as defined in paragraph a of subdivision two of section one hundred of the general municipal law.

11. Notwithstanding any other provision of this section to the contrary, when a person is convicted of harming an animal trained to aid a person with a disability in the second degree as defined in section 195.11 of this chapter, or harming an animal trained to aid a person with a disability in the first degree as defined in section 195.12 of this chapter, the court, in addition to any other sentence, shall order the payment of restitution to the person with a disability who was aided by such animal.

12. If the offense of which a person is convicted is defined in section 155.25, 155.30, 155.35, 155.40 or 155.42 of this chapter, and the property taken is timber, the court may upon conviction, in addition to any other sentence, direct the defendant to pay the rightful owner of such timber an amount equal to treble the stumpage value of the timber stolen as defined in section 71-0703 of the environmental conservation law and for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of monetary payment to make such restoration.

13. If the offense of which a person is convicted is defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62 or section 240.63 of this chapter, and no other victim who is a person is seeking restitution in the case, the term “victim” as used in this subdivision, in addition to the ordinary meaning, shall mean any school, municipality, fire district, fire company, fire corporation, ambulance association, ambulance corporation, or other legal or public entity engaged in providing emergency services which has expended funds for the purpose of responding to a false report of an incident or false bomb as defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62, or section 240.63 of this chapter. Any restitution which may be required to be made to a victim pursuant to this subdivision shall be limited to the amount of funds reasonably expended for the purpose of responding to such false report of incident or false bomb, less the amount of any funds which have been or will be recovered from any other source and shall not include a designated surcharge pursuant to subdivision eight of this section. Any victim seeking restitution pursuant to this subdivision shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding, except as provided for by section 3-112 of the general obligations law.

14. Where a transfer of probation has occurred pursuant to section 410.80 of the criminal procedure law and the probationer is subject to a restitution condition, the department of probation in the county in which the order of restitution was imposed shall notify the appropriate district attorney. Upon notification by the department of probation, such district attorney shall file a certified copy of the judgment with the clerk of the county in the

receiving jurisdiction for purposes of establishing a first lien and to permit institution of civil proceedings pursuant to the provisions of subdivision six of section 420.10 of the criminal procedure law.

## **N.Y. C.P.L.R. 1311 (McKINNEY 2010). FORFEITURE ACTIONS**

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law.

(a) Actions relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be grounded upon a conviction of a felony defined in subdivision five of section one thousand three hundred ten of this article, or upon criminal activity arising from a common scheme or plan of which such a conviction is a part, or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred. However, an action may be commenced, and a court may grant a provisional remedy provided under this article, prior to such conviction having occurred. An action under this paragraph must be dismissed at any time after sixty days of the commencement of the action unless the conviction upon which the action is grounded has occurred, or an indictment or information upon which the asserted conviction is to be based is pending in a superior court. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, however, that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provisions of law.

(b) Actions relating to pre-conviction forfeiture crimes. An action relating to a pre-conviction forfeiture crime need not be grounded upon conviction of a pre-conviction forfeiture crime, provided, however, that if the action is not grounded upon such a conviction, it shall be necessary in the action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the claiming authority, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provision of law.

2. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

3. In a forfeiture action pursuant to this article the following burdens of proof shall apply:

(a) In a forfeiture action commenced by a claiming authority against a criminal defendant, except for those facts referred to in paragraph (b) of subdivision nine of section one thousand three hundred ten and paragraph<sup>1</sup> (b) of subdivision one of this section which must be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

(b) In a forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i) in an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii) if the action relates to the proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew or should have known that the proceeds were obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

(iii) if the action relates to the substituted proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv) if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(v) if the action relates to a real property instrumentality of a crime, the burden shall be upon the claiming authority to prove those facts referred to in subdivision four-b of section thirteen hundred ten of this article by clear and convincing evidence. The claiming authority shall also prove by a clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either (A) knowingly and unlawfully benefitted from such conduct or (B) voluntarily agreed to the use of such property for the commission of such offenses by consent freely given. For purposes of this subparagraph, a non-criminal defendant knowingly and unlawfully benefits from the commission of a specified felony offense when he derives in exchange for permitting the use or occupancy of such real property by a person or persons committing such specified offense a substantial benefit that would otherwise not accrue as a result of the lawful use or occupancy of such real property. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i) a non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(ii) a non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article, shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime.

(iii) in an action relating to a post-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime of conviction or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv) a non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close

proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

(e) The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a preconviction forfeiture crime. In an action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of the penal law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonably directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, or to a felony conspiracy to commit the same.

4. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the claiming authority who instituted the action, or a defendant may (i) apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice, or (ii) may apply for an order limiting the forfeiture to an amount equivalent in value to the value of property constituting the proceeds or substituted proceeds of a crime in the interest of justice.

(b) Such application for the relief provided in paragraph (a) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) hereof must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property of<sup>2</sup> any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons; or

(iii) the appropriateness of a judgment of forfeiture in an action relating to pre-conviction forfeiture crime where the criminal proceeding based on the crime to which the property is allegedly connected results in an acquittal of the criminal defendant or a dismissal of the accusatory instrument on the merits; or

(iv) in the case of an action relating to an instrumentality, whether the value of the instrumentality substantially exceeds the value of the property constituting the proceeds or substituted proceeds of a crime.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

4-a. (a) The court in which a forfeiture action relating to real property is pending may, upon its own motion or upon the motion of the claiming authority which instituted the action, the defendant, or any other person who has a lawful property interest in such property, enter an order:

(i) appointing an administrator pursuant to section seven hundred seventy-eight of the real property actions and proceedings law when the owner of a dwelling is a defendant in such action, and when persons who are not defendants in such action lawfully occupy one or more units within such dwelling, in order to maintain and preserve the property on behalf of such persons or any other person or entity who has a lawful property interest in such property, or in order to remedy any other condition which is dangerous to life, health or safety; or

(ii) otherwise limiting, modifying or dismissing the forfeiture action in order to preserve or protect the lawful property interest of any non-criminal defendant or any other person who is not a criminal defendant, or the lawful property interest of a defendant which is not subject to forfeiture; or

(iii) where such action involves interest in a residential leasehold or a statutory tenancy, directing that upon entry of a judgment of forfeiture, the lease or statutory tenancy will be modified as a matter of law to terminate only the interest of the defendant or defendants, and to continue the occupancy or tenancy of any other person or persons who lawfully reside in such demised premises, with such rights as such parties would otherwise have had if the defendant's interest had not been forfeited pursuant to this article.

(b) For purposes of this subdivision the term "owner" has the same meaning as prescribed for that term in section seven hundred eighty-one of the real property actions and proceedings law and the term "dwelling" shall mean any building or structure or portion thereof which is principally occupied in whole or part as the home, residence or sleeping place of one or more human beings.

5. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title, or interest in any property who is not a defendant in the action. The claiming authority shall also file a copy of such papers with the state division of criminal justice services; provided, however, failure to file such papers shall not be grounds for any relief by a defendant in this section.

6. On the motion of any party to the forfeiture action, and for good cause shown, a court may seal any papers, including those pertaining to any provisional remedy, which relate to the forfeiture action until such time as the property which is the subject of the forfeiture action has been levied upon. A motion to seal such papers may be made ex parte and in camera.

7. Remission. In addition to any other relief provided under this chapter, at any time within one year after the entry of a judgment of forfeiture, any person, claiming an interest in the property subject to forfeiture who did not receive actual notice of the forfeiture action may petition the judge before whom the forfeiture action was held for a remission or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed by him. The court may restore said property upon such terms and conditions as it deems reasonable and just if (i) the petitioner establishes that he or she was without actual knowledge of the forfeiture action or any related proceeding for a provisional remedy and did not know or should not have known that the forfeited property was connected to a crime or fraudulently conveyed and (ii) the court determines that restoration of the property would serve the ends of justice.

8. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against non-criminal defendants for the value of the proceeds of the crime or substituted

proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

9. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions under sections 80.05 and 215.80 of the penal law.

10. The proper venue for trial of an action for forfeiture is:

(a) In the case of an action for post-conviction forfeiture commenced after conviction, the county where the conviction occurred.

(b) In all other cases, the county where a criminal prosecution could be commenced under article twenty of the criminal procedure law, or, in the case of an action commenced by the office of prosecution, special narcotics courts of the city of New York, under section one hundred seventy-seven-b of the judiciary law.

11. (a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the office of victim services, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the office of victim services, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(c) Any claiming authority or claiming agent which receives any property pursuant to chapter thirteen of the food and drug laws (21 U.S.C. § 801 et seq.) of the United States and/or chapter four of the customs duties laws (19 U.S.C. § 1301 et seq.) of the United States and/or chapter 96 of the crimes and criminal procedure laws (18 U.S.C. § 1961 et seq.) of the United States shall provide an affidavit to the commissioner of the division of criminal justice services stating the estimated present value of the property received.

12. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision and subdivision four of section one thousand three hundred twelve of this article, "bona fide" means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham transaction designed to shield property from forfeiture, hide its existence from governmental investigative agencies, or was conducted for any purpose other than for legitimate legal representation.

## North Carolina

North Carolina has human trafficking specific victim restitution and asset forfeiture statutes. N.C. GEN. STAT. ANN. § 14-43.20; §14-2-3 (West 2013). Restitution is mandatory and the court, at a minimum, shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act. The judge may also order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services. A person who commits a human

trafficking violation is subject to North Carolina's general property forfeiture statute, which calls for the forfeiture of any profit or property interest acquired in the commission of the crime. All relevant statutes are copied below.

**HUMAN TRAFFICKING STATUTES:**

- N.C. Gen. Stat. Ann. § 14-43.11 (West 2013). Human Trafficking
- N.C. Gen. Stat. Ann. § 14-43.12 (West 2013). Involuntary Servitude
- N.C. Gen. Stat. Ann. § 14-43.13 (West 2013). Sexual Servitude
- N.C. Gen. Stat. Ann. § 14-43.14 (West 2012). Unlawful sale, surrender, or purchase of a minor

**N.C. GEN. STAT. ANN. § 14-43.20 (WEST 2013). MANDATORY RESTITUTION; VICTIM SERVICES; FORFEITURE**

(a) Definition.--For purposes of this section, a "victim" is a person subjected to the practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.

(b) Restitution.--Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services.

(c) Trafficking Victim Services.--Subject to the availability of funds, the Department of Health and Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

(d) Certification.--The Attorney General, a district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 has begun and the individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims who are under 18 years of age. This certification shall be made available to the victim and the victim's designated legal representative.

(e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

**N.C. GEN. STAT. ANN. § 14-2.3 (WEST 2008). FORFEITURE OF GAIN ACQUIRED THROUGH CRIMINAL ACTIVITY**

(a) Except as is otherwise provided in Article 3 of Chapter 31A, in the case of any violation of Article 13A of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.

(b) An action to recover such property shall be brought by either a District Attorney or the Attorney General pursuant to G.S. 1-532. The action must be brought within three years from the date of the conviction for the offense.

(c) Nothing in this section shall be construed to require forfeiture of any money or property recovered by law-enforcement officers pursuant to the investigation of an offense when the money or property is readily identifiable by the owner or guardian of the property or is traceable to him.

## North Dakota

North Dakota's Human Trafficking statute orders that restitution be paid. N.D. CENT. CODE ANN. §12.1-40-01 (West 2009). For guidance on what restitution should cover, one must look at the general victim restitution statute. Note that restitution costs must be directly related to the criminal offense and expenses must have been incurred as a direct result of the defendant's criminal action. The general victim restitution statute is provided below and mentions calculation of damages and includes medical and psychological treatment, return of property, or compensation for property value. Restitution is limited to those costs directly related to the criminal offenses and expenses incurred as a direct result of the defendant's criminal actions. N.D. CENT. CODE ANN. § 12.1-32-08 (West 2009). Forfeiture seems to only be allowed in controlled substance cases. N.D. CENT. CODE ANN. § 19-03.1-36 (West).

It is important to note that there is judicial procedure governing forfeiture for other criminal offenses but the statute provides that forfeiture is a civil proceeding not dependent on a prosecution or criminal conviction of an offense. N.D. CENT. CODE ANN. § 29-31.1-04 (West).

### **HUMAN TRAFFICKING STATUTES:**

- N.D. Cent. Code Ann. § 12.1-40-01 (West 2009). Human trafficking—Penalty
- N.D. Cent. Code Ann. § 12.1-40-02 (West 2009). Definitions

### **N.D. CENT. CODE ANN. § 12.1-40-01 (WEST 2009). HUMAN TRAFFICKING--PENALTY**

1. A person is guilty of human trafficking if the person:

- a. Benefits financially or receives anything of value from knowing participation in human trafficking; or
- b. Promotes, recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to promote, recruit, entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.

2. An offense under this section is a class AA felony if the person subject to human trafficking is less than eighteen years of age. Otherwise, the offense is a class A felony.

3. If the person subject to human trafficking is under the age of eighteen years, it is no defense that the actor did not know the child's age or reasonably believed the child to be eighteen years of age or older.

4. In addition to any sentence or fine imposed for a conviction of an offense under this chapter, the court shall order the person convicted to make restitution to the victim of the crime.

### **N.D. CENT. CODE ANN. § 12.1-32-08 (WEST 2009). HEARING PRIOR TO ORDERING RESTITUTION, REPARATION, OR REIMBURSEMENT OF INDIGENT DEFENSE COSTS AND EXPENSES--CONDITIONS--COLLECTION OF RESTITUTION FOR INSUFFICIENT FUNDS CHECKS--CONTINUING APPROPRIATION**

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount of restitution. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:

a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.

b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.

c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

3. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

4. a. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation. Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment following a revocation or other postjudgment proceeding, shall notify the defendant, the defendant's probation officer, and the prosecuting attorney of the presumed amount of costs and expenses to be reimbursed, as determined by the commission on legal counsel for indigents, and of the right to a hearing on the reimbursement amount. The reimbursement amount must include an application fee imposed under section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement

of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.

5. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

## Ohio

There is no specific human trafficking restitution provision.<sup>26</sup> There is a general victim restitution statute, copied below. The amount should be based on the victim's economic loss. OHIO REV. CODE ANN. § 2929.18 (West 2013). Ohio does allow for forfeiture of property used to commit or gained in the commission of a felony. The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTE:**

- Ohio Rev. Code Ann. § 2905.32 (West 2013). Trafficking in Persons

### **OHIO REV. CODE ANN. § 2929.18 (WEST 2013). FINANCIAL SANCTIONS**

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

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<sup>26</sup> The specific human trafficking statute does not have a victim restitution provision; however, both kidnapping and abduction include mandatory restitution provisions. OHIO REV. CODE ANN. § 2905.01(C) (2) (West 2011). Kidnapping and OHIO REV. CODE ANN. § 2905.02 (West 2011). Abduction

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

(a) For a felony of the first degree, not more than twenty thousand dollars;

(b) For a felony of the second degree, not more than fifteen thousand dollars;

(c) For a felony of the third degree, not more than ten thousand dollars;

(d) For a felony of the fourth degree, not more than five thousand dollars;

(e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in section 2949.111 of the Revised Code.

(5)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under section 2951.021 of the Revised Code;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14, 2929.142, or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under section 4510.13 of the Revised Code.

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be

assessed pursuant to section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to section 2929.71 of the Revised Code.

(B)(1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of section 2925.03 of the Revised Code.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of section 2925.03 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of section 2925.03 of the Revised Code prescribed under those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section 2925.03 of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court shall not impose a fine under division (B)(6) of this section.

(8)(a) If an offender who is convicted of or pleads guilty to a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 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.

(b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.

(9) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for a felony that is a sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code, may impose a fine of not less than fifty nor more than five hundred dollars.

(C)(1) The offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by the department of rehabilitation and correction in operating a prison or other facility used to confine offenders pursuant to sanctions imposed under section 2929.14, 2929.142, or 2929.16 of the Revised Code to the treasurer of state. The treasurer of state shall deposit the reimbursements in the confinement cost reimbursement fund that is hereby created in the state treasury. The department of rehabilitation and correction shall use the amounts deposited in the fund to fund the operation of facilities used to confine offenders pursuant to sections 2929.14, 2929.142, and 2929.16 of the Revised Code.

(2) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to

any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(3) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(4) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A)(1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

(1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

(2) Obtain execution of the judgment or order through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;

- (ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;
- (iii) A creditor's suit under section 2333.01 of the Revised Code.
- (d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;
- (e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.
- (3) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.
- (E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.
- (F) Each court imposing a financial sanction upon an offender under this section or under section 2929.32 of the Revised Code may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code, a court shall comply with sections 307.86 to 307.92 of the Revised Code.
- (G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or section 2929.32 of the Revised Code that have not been paid.
- (H) No financial sanction imposed under this section or section 2929.32 of the Revised Code shall preclude a victim from bringing a civil action against the offender.

## **OHIO REV. CODE ANN. § 2981.02 (WEST 2007). PROPERTY SUBJECT TO FORFEITURE**

- (A) The following property is subject to forfeiture to the state or a political subdivision under either the criminal or delinquency process in section 2981.04 of the Revised Code or the civil process in section 2981.05 of the Revised Code:
- (1) Contraband involved in an offense;
  - (2) Proceeds derived from or acquired through the commission of an offense;
  - (3) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:
    - (a) A felony;
    - (b) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;
    - (c) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A)(3)(a) and (b) of this section.

(B) In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:

- (1) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;
- (2) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;
- (3) The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.

(C) This chapter does not apply to or limit forfeitures under Title XLV of the Revised Code, including forfeitures relating to section 2903.06 or 2903.08 of the Revised Code.

## Oklahoma

Within Oklahoma's human trafficking statute, there is a provision for court-ordered restitution, which is mandatory and awarded in accordance with Oklahoma's general victim restitution statute. OKLA. STAT. ANN. tit. 21, § 748 (West 2012). Restitution should compensate the victim for up to three times the amount of economic loss suffered as a direct result of the criminal act of the defendant. OKLA. STAT. ANN. tit. 22, § 991f (West 2001). Economic loss is then defined as medical expenses, damage to or loss of real property, and loss of earnings. *Id.* Forfeiture is limited to controlled substance crimes. OKLA. STAT. ANN. tit. 63, § 2-503 (West 2009). The relevant statutes are copied below.

### HUMAN TRAFFICKING STATUTE:

- Okla. Stat. Ann. tit. 21, § 748 (West 2012). Human trafficking for forced labor or forced sexual exploitation

### OKLA. STAT. ANN. tit. 21, § 748 (WEST 2012). HUMAN TRAFFICKING FOR FORCED LABOR OR FORCED SEXUAL EXPLOITATION

A. As used in Sections 748 and 748.2 of this title:

1. "Coercion" means compelling, forcing or intimidating a person to act by:
  - a. threats of harm or physical restraint against any person,
  - b. any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person,
  - c. the abuse or threatened abuse of the law or legal process,
  - d. knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or immigration document, or other government identification document, including but not limited to a driver license or birth certificate, of another person,
  - e. facilitating or controlling a person's access to any addictive or controlled substance other than for legal medical purposes,
  - f. blackmail,
  - g. demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person where such demand or claim arises from or is directly related to the act of prostitution,
  - h. determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party,
  - i. determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party, or
  - j. determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party;

2. "Commercial sex" means any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display;

3. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

4. "Human trafficking" means modern-day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor;

5. "Human trafficking for labor" means:

- a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion or for purposes of engaging the person in labor, or
- b. benefiting, financially or by receiving anything of value, from participation in a venture that has engaged in an act of trafficking for labor;

6. "Human trafficking for commercial sex" means:

- a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion for purposes of engaging the person in a commercial sex act,
- b. recruiting, enticing, harboring, maintaining, transporting, providing, purchasing or obtaining, by any means, a minor for purposes of engaging the minor in a commercial sex act, or
- c. benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex;

7. "Legal process" means the criminal law, the civil law, or the regulatory system of the federal government, any state, territory, district, commonwealth, or trust territory therein, and any foreign government or subdivision thereof and includes legal civil actions, criminal actions, and regulatory petitions or applications; and

8. "Minor" means an individual under eighteen (18) years of age.

B. It shall be unlawful to knowingly engage in human trafficking.

C. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than five (5) years, or by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Any person violating the provisions of this section where the victim of the offense is under eighteen (18) years of age at the time of the offense shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than ten (10) years, or by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment. The court shall also order the defendant to pay restitution to the victim as provided in Section 991f of Title 22 of the Oklahoma Statutes.

D. It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.

E. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

## **OKLA. STAT. ANN. tit. 22, § 991f (WEST 2001). RESTITUTION**

A. For the purposes of any provision of Title 22 of the Oklahoma Statutes relating to criminal sentencing and restitution orders and for the Restitution and Diversion Program:

1. "Restitution" means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant;

2. "Victim" means any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person;

3. "Economic loss" means actual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

B. In all criminal prosecutions and juvenile proceedings in this state, when the court enters an order directing the offender to pay restitution to any victim for economic loss or to pay to the state any fines, fees or assessments, the order, for purposes of validity and collection, shall not be limited to the maximum term of imprisonment for which the offender could have been sentenced, nor limited to any term of probation, parole, or extension thereof, nor expire until fully satisfied. The court order for restitution, fines, fees or assessments shall remain a continuing obligation of the offender until fully satisfied, and the obligation shall not be considered a debt, nor shall the obligation be dischargeable in any bankruptcy proceeding. The court order shall continue in full force and effect with the supervision of the state until fully satisfied, and the state shall use all methods of collection authorized by law.

C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution. Restitution may be ordered in addition to the punishments prescribed by law.

2. The court shall order full restitution based upon the following considerations:

- a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, and may allow the crime victim to receive payment in excess of the losses sustained; provided, the excess amount of restitution shall not be more than treble the actual economic loss incurred, and
- b. the amount of restitution shall be established regardless of the financial resources of the offender.

3. The court:

- a. may direct the return of property to be made as soon as practicable and make an award of restitution in the amount of the loss of value to the property itself as a direct result of the crime, including out-of-pocket expenses and loss of earnings incurred as a result of damage to or loss of use of the property, the cost to return the property to the victim or to restore the property to its pre-crime condition whichever may be appropriate under the circumstances,
- b. may order restitution in a lump sum or by such schedules as may be established and thereafter adjusted by agreement consistent with the order of the court,
- c. shall have the authority to amend or alter any order of restitution made pursuant to this section providing that the court shall state its reasons and conclusions as a matter of record for any change or amendment to any previous order,
- d. may order interest upon any ordered restitution sum to accrue at the rate of twelve percent (12%) per annum until the restitution is paid in full. The court may further order such interest to be paid to the victims of the crime or proportion the interest payment between the victims and the court fund, and/or the Restitution and Diversion Program,<sup>1</sup> in the discretion of the court, and
- e. shall consider any pre-existing orders imposed on the defendant, including, but not limited to, orders imposed under civil and criminal proceedings.

D. If restitution to more than one person, agency or entity is set at the same time, the court shall establish the following priorities of payment:

1. The crime victim or victims; and
2. Any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct.

E. 1. The district attorney's office shall present the crime victim's restitution claim to the court at the time of the conviction of the offender or the restitution provisions shall be included in the written plea agreement presented to the court, in which case, the restitution claim shall be reviewed by the judge prior to acceptance of the plea agreement.

2. At the initiation of the prosecution of the defendant, the district attorney's office shall provide all identifiable crime victims with written and oral information explaining their rights and responsibilities to receive restitution established under this section.

3. The district attorney's office shall provide all crime victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. This form shall be filed with any victim impact statement to be included in the judgment and sentence. Every crime victim receiving the restitution claim form shall be provided assistance and direction to properly complete the form.

4. The official restitution request form shall be presented in all cases regardless of whether the case is brought to trial. In a plea bargain, the district attorney in every case where the victim has suffered economic loss, shall, as a part of the plea bargain, require that the offender pay restitution to the crime victim. The district attorney shall be authorized to act as a clearing house for collection and disbursement of restitution payments made pursuant to this section, and shall assess a fee of One Dollar (\$1.00) per payment received from the defendant, except when the defendant is sentenced to incarceration in the Department of Corrections.

F. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

G. The court shall, upon motion by the crime victim, redact from the submitted documentation all personal information relating to the crime victim that does not directly and necessarily establish the authenticity of any document or substantiate the asserted amount of the restitution claim.

H. The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information. The court shall order the offender to submit either as part of the pre-sentence investigation or assessment and evaluation required for a community sentence or, if no pre-sentence investigation is conducted, in advance of the sentencing proceeding such information as the court may direct and finds necessary to be disclosed for the purpose of ascertaining the type and manner of restitution to be ordered.

I. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court shall not deprive the court of the authority to set restitution or set the schedule of payment. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information. The willful failure or refusal of the offender to provide all or part of the requisite information prior to sentencing, unless disclosure is deferred by the court, shall constitute an act of contempt.

J. The court shall conduct such hearings or proceedings as it deems necessary to set restitution and payment schedules at the time of sentencing or may bifurcate the sentencing and defer the hearing or proceedings relating to the imposition of restitution as justice may require. Amendments or alterations to the restitution order may be made upon the court's own motion, petition by the crime victim or petition by the offender.

K. An offender who files a meritless or frivolous petition for amendment or alteration to the restitution order shall pay the costs of the proceeding on the petition and shall have added to the existing restitution order the additional loss of earnings and out-of-pocket loss incurred by the crime victim in responding to the petition.

L. The restitution request form shall be promulgated by the District Attorneys Council and provided to all district attorney offices.

M. If a defendant who is financially able refuses or neglects to pay restitution as ordered by this section, payment may be enforced:

1. By contempt of court as provided in subsection A of Section 566 of Title 21 of the Oklahoma Statutes with imprisonment or fine or both;
2. In the same manner as prescribed in subsection N of this section for a defendant who is without means to make such restitution payment; or
3. Revocation of the criminal sentence if the sentence imposed was a suspended or deferred sentence or a community sentence.

N. If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes and to be certified in the district court of the county where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.

O. Whenever a person has been ordered to pay restitution as provided in this section or any section of the Oklahoma Statutes for a criminal penalty, the judge may order the defendant to a term of community service, with or without compensation, to be credited at a rate of Five Dollars (\$5.00) per day against the total amount due for restitution. If the defendant fails to perform the required community service authorized by this subsection or if the conditions of community service are violated, the judge may impose a term of imprisonment not to exceed five (5) days in the county jail for each failure to comply.

P. Nothing in subsections M through O of this section shall be construed to be additions to the original criminal penalty, but shall be used by the court as sanctions and means of collection for criminal restitution orders and restitution orders that have been reduced to judgment.

**OKLA. STAT. ANN. tit. 21, § 1738 (WEST 2011). SEIZURE AND FORFEITURE PROCEEDINGS--VEHICLES, AIRPLANES, VESSELS, ETC. USED IN ATTEMPT OR COMMISSION OF CERTAIN CRIMES**

A. 1. Any commissioned peace officer of this state is authorized to seize any equipment, vehicle, airplane, vessel or any other conveyance that is used in the commission of any armed robbery offense defined in Section 801 of this title, used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title, used in violation of the Trademark Anti-Counterfeiting Act, used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, used in the commission of any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of this title, used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of Section 748 of this title, or used by any defendant when such vehicle or other conveyance is used in any manner by a prostitute, pimp or panderer to facilitate or participate in the commission of any prostitution offense in violation of Sections 1028, 1029 or 1030 of this title; provided, however, that the vehicle or conveyance of a customer or anyone merely procuring the services of a prostitute shall not be included.

2. No conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such

conveyance was a consenting party or privy to the unlawful use of the conveyance in violation of this section.

3. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner, the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

B. In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section:

1. Property used in the commission of theft of livestock or in any manner to facilitate the theft of livestock;
2. The proceeds gained from the commission of theft of livestock;
3. Personal property acquired with proceeds gained from the commission of theft of livestock;
4. All conveyances, including aircraft, vehicles or vessels, and horses or dogs which are used to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock;
5. Any items having a counterfeit mark and all property that is owned by or registered to the defendant that is employed or used in connection with any violation of the Trademark Anti-Counterfeiting Act;
6. Any weapon possessed, used or available for use in any manner during the commission of a felony within the State of Oklahoma, or any firearm that is possessed by a convicted felon;
7. Any police scanner used in violation of Section 1214 of this title;
8. Any computer and its components and peripherals, including but not limited to the central processing unit, monitor, keyboard, printers, scanners, software, and hardware, when it is used in the commission of any crime in this state;
9. All property used in the commission of, or in any manner to facilitate, a violation of Section 1040.12a of this title;
10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of paragraph 1 of subsection A of Section 1021 of this title, where the victim of the crime is a minor child, subsection B of Section 1021 of this title, Section 1021.2 of this title, paragraph 1 of subsection A of Section 1111 of this title, or paragraphs 2 and 3 of subsection A of Section 1123 of this title;
11. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 748 of this title;
12. Any and all property used in any manner or part to facilitate, participate or further the commission of a human trafficking offense in violation of Section 748 of this title, and all property, including monies, real estate, or any other tangible assets or property of or derived from or used by a prostitute, pimp or panderer in any manner or part to facilitate, participate or further the commission of any prostitution offense in violation of Sections 1028, 1029 or 1030 of this title; provided, however, any monies, real estate or any other tangible asset or property of a customer or anyone merely procuring the services of a prostitute shall not be included; and
13. Any vehicle, airplane, vessel, or parts of a vehicle whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined.

C. Property described in subsection A or B of this section may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, the property shall be returned to the owner.

D. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

E. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code,<sup>1</sup> served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or
3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

F. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

G. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the state, if such fact is proven.

H. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

I. At the hearing the petitioner shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section or is property described in subsection B of this section with knowledge by the owner of the property.

J. The claimant of any right, title, or interest in the property may prove the lien, mortgage, or conditional sales contract to be bona fide and that the right, title, or interest created by the document was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

K. In the event of such proof, the court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due such person is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser, except for items bearing a counterfeit mark or used exclusively to manufacture a counterfeit mark.

L. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property may be forfeited to the state and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law and for property bearing a counterfeit mark which shall be destroyed.

M. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency as provided in the Trademark Anti-Counterfeiting Act. Except for property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act, the petitioner shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

N. The petitioner, or the law enforcement agency holding property pursuant to the Trademark Anti-Counterfeiting Act, shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

O. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to Section 1701 et seq. of this title.

P. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the

amount of such person's interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the investigating law enforcement agency; one-third (1/3) of said fund to be used and maintained as a revolving fund by the district attorney to be used to defray any lawful expenses of the office of the district attorney; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. If the petitioner is not the district attorney, then the one-third (1/3) which would have been designated to that office shall be distributed to the petitioner. Monies distributed to the jail maintenance fund shall be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section and was not property subject to forfeiture pursuant to subsection B of this section and is not property bearing a counterfeit mark, the court shall order the property released to the owner as the right, title, or interest appears on record in the Tax Commission as of the seizure.

R. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

S. Whenever any property is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order that the forfeited property may be retained for its official use by the state, county, or municipal law enforcement agency which seized the property.

## Oregon

There is no specific human trafficking restitution provision. There is, however, a general victim restitution provision. When a person is convicted of a crime that resulted in economic damages, the district attorney shall investigate and present to the court evidence of those damages and at that time, the court shall include a judgment of restitution to cover the economic damages suffered by the victim. OR. REV. STAT. ANN § 137.106 (West 2013). Oregon does allow for forfeiture of property that was used in the commission of a crime. OR. REV. STAT. ANN §131A.020 (West 2009). The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- Or. Rev. Stat. Ann. § 163.266 (West 2013). Trafficking in persons
- Or. Rev. Stat. Ann. § 163.263 (West 2007). Involuntary servitude; second degree
- Or. Rev. Stat. Ann. § 163.264 (West 2007). Involuntary servitude; first degree

### **OR. REV. STAT. ANN. § 137.106 (WEST 2013). RESTITUTION OF VICTIMS**

(1)(a) When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in economic damages, the district attorney shall investigate and present to the court, at the time of sentencing or

within 90 days after entry of the judgment, evidence of the nature and amount of the damages. The court may extend the time by which the presentation must be made for good cause. If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court. The lien, priority of the lien and ability to enforce the specific amount of restitution established under this paragraph by a supplemental judgment relates back to the date of the original judgment that is supplemented.

(b) Notwithstanding paragraph (a) of this subsection, a court may order that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim's economic damages only if:

(A) The victim consents to the lesser amount, if the conviction is not for a person felony; or

(B) The victim consents in writing to the lesser amount, if the conviction is for a person felony.

(c) As used in this subsection, "person felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) After the district attorney makes a presentation described in subsection (1) of this section, if the court is unable to find from the evidence presented that a victim suffered economic damages, the court shall make a finding on the record to that effect.

(3) No finding made by the court or failure of the court to make a finding under this section limits or impairs the rights of a person injured to sue and recover damages in a civil action as provided in ORS 137.109.

(4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to pay the judgment in full at the time the judgment is entered. If the court finds that the defendant is unable to pay, the court may establish or allow an appropriate supervising authority to establish a payment schedule, taking into consideration the financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant. The supervising authority shall be authorized to modify any payment schedule established under this section.

(b) As used in this subsection, "supervising authority" means any state or local agency that is authorized to supervise the defendant.

(5) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall allow the defendant to be heard on such issue at the time of sentencing or at the time the court determines the amount of restitution.

(6)(a) At least 10 days prior to the presentation described in subsection (1) of this section, the district attorney shall:

(A) Disclose to the defendant the names of any witnesses that may be called during the presentation; and

(B) Provide the defendant with copies of, or allow the defendant to inspect, any exhibits that will be used or introduced during the presentation.

(b) If the court finds that the district attorney has violated the requirements of this subsection, the court shall grant a continuance to allow additional time for preparation upon request of the defendant. Any additional time granted under this paragraph may not count toward the 90-day time limitation described in subsection (1) of this section.

## **OR. REV. STAT. ANN. § 131A.020 (WEST 2009). PROPERTY SUBJECT TO FORFEITURE**

The following property is subject to forfeiture under this chapter:

- (1) All controlled substances that have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct.
- (2) All raw materials, products and equipment of any kind that are used in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct.
- (3) All property that is used as a container for property described in subsection (1) or (2) of this section.
- (4) All conveyances, including aircraft, vehicles or vessels, that are used to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles or vessels, that are used in prohibited conduct or that are used to facilitate prohibited conduct in any manner.
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used to facilitate prohibited conduct in any manner.
- (6) All moneys, negotiable instruments, balances in deposit accounts or other accounts, securities or other things of value furnished by any person in the course of prohibited conduct, all proceeds of prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used to facilitate any prohibited conduct.
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used in any manner, in whole or part, to commit or facilitate prohibited conduct.
- (8) All weapons possessed, used or available for use in any manner to facilitate prohibited conduct.
- (9) Any property described in this section that was intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450.

## **Pennsylvania**

Contained within the chapter on trafficking of persons are sections for both restitution and asset forfeiture. Restitution is mandatory and includes the greater of the gross income or value to the person to whom the labor or services were performed or, the value of the victim's labor bases on the minimum wage of the Commonwealth. 18 PA. CONS. STAT. ANN. § 3003 (West 2007). All assets used or obtained in violation of the chapter on trafficking are subject to forfeiture. 18 PA. CONS. STAT. ANN. § 3004 (West 2007). The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTE:**

- 18 Pa. Cons. Stat. Ann. § 3002 (West 2007). Trafficking of persons

### **18 PA. CONS. STAT. ANN. § 3003 (WEST 2007). RESTITUTION FOR OFFENSES**

**(a) General rule.**--A person convicted of an offense under this chapter shall, in addition to any other remedy deemed appropriate by the court, be sentenced to pay the victim restitution, including the greater of:

- (1) the gross income or value to the person to whom the labor or services were performed by the victim; or

(2) the value of the victim's labor based on the minimum wage of this Commonwealth.

**(b) Private remedies.**--Nothing in this section shall be construed to preclude any other remedy at law or in equity.

## **18 PA. CONS. STAT. ANN. § 3004 (WEST 2007). FORFEITURE**

(a) General rule.--The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3002 (relating to trafficking of persons) and all assets, foreign or domestic, affording a person a source of influence over such individual, entity or organization.

(ii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3002.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3002.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates section 3002.

(b) Process and seizures.--Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(c) Custody of property.--

(1) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney.

(2) When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Transfer of property.--Whenever property is forfeited under this section, the property shall be transferred to the custody of the district attorney. The district attorney, where appropriate, may retain the property for official use or sell the property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of the criminal laws of Pennsylvania.

(e) Proceedings and petition.--The proceedings for the forfeiture or condemnation of property, the retention or sale of which is provided for in this section, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

(1) A description of the property seized.

(2) A statement of the time and place where seized.

(3) The owner, if known.

(4) The person or persons in possession, if known.

(5) An allegation that the property is subject to forfeiture pursuant to this section and an averment of material facts upon which forfeiture action is based.

(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned unless cause be shown to the contrary.

(f) Service.--A copy of the petition required under subsection (e) shall be served personally or by certified mail on the owner or the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in and right to possession of the property within 30 days from the service of this notice. You are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(g) Notice.--

(1) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding.

(2) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(3) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(h) Unknown owner.--For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address.

(i) Waiver of notice.--The notice provisions of this section are automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(j) Hearing date.--Upon the filing of a claim for the property setting forth a right of possession, the case shall be

deemed at issue, and a date and time shall be fixed for the hearing.

(k) Burden of proof.--At the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show by a preponderance of the evidence:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That the property was not unlawfully used or possessed by the claimant. If it appears that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(l) Claims of ownership.--If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging lawful ownership, right of possession, a lien or reservation of title to the property and if, on public hearing, due notice of which having been given to the district attorney, the claimant shall prove by a preponderance of the evidence that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with this section.

## Rhode Island

There is a human trafficking specific restitution statute under which restitution is mandatory and consists of the greater of either the victim's salary at minimum wage and Fair Labor Standards Act overtime, or the value of the victim's services to the perpetrator. R.I. GEN. LAWS ANN. § 11-67-4 (West 2007). Within the same chapter is a provision for forfeiture when a defendant is convicted of a trafficking offense. R.I. GEN. LAWS ANN. § 11-67-5 (West 2007). The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- R.I. Gen. Laws Ann. § 11-67-3 (West 2007). Trafficking of persons for forced labor or commercial sexual activity
- R.I. Gen. Laws Ann. § 11-67-6 (West 2009). Sex trafficking of a minor

### **R.I. GEN. LAWS ANN. § 11-67-4 (WEST 2007). RESTITUTION**

In addition to any other amount of loss identified, the court shall order restitution including the greater of:

- (a) the gross income or value to the defendant of the victim's labor or commercial sexual activity; or
- (b) the value of the victim's labor as guaranteed under the minimum wage law and overtime provisions of the fair labor standards act (FLSA) or the minimum wage law, whichever is greater.

### **R.I. GEN. LAWS ANN. § 11-67-5 (WEST 2007). FORFEITURES**

(a) A person who is found in a criminal proceeding to be in violation of § 11-67-2 or 11-67-3 shall forfeit to the state of Rhode Island any profits or proceeds and any interest or property he or she has acquired or maintained in violation of this act, that the sentencing court determines, after a forfeiture hearing, to have been acquired or

maintained as a result of maintaining a person in involuntary servitude or participating in trafficking in persons for forced labor in order to commit a criminal sexual activity.

(b) The court shall upon petition by the attorney general at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing the state shall have the burden of establishing by a preponderance of the evidence that property or property interests are subject to forfeiture under this section.

(c) In any action brought by the state of Rhode Island under this section, wherein any restraining order, injunction, or prohibition or any other action in connection with any property or interest subject to forfeiture under this section is sought, the court shall first determine whether there is probable cause to believe that the person or persons so charged have committed the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or commercial sexual activity and whether the property or property interest is subject to forfeiture pursuant to this section.

(d) All monies forfeited and the sale proceeds of all other property forfeited and seized under this section shall be deposited in the general fund.

## South Carolina

Restitution for victims of sex trafficking, in South Carolina, is mandatory and includes payment for all injuries, specific loss, and expenses sustained by the crime victim as a result of the offender's criminal conduct. S.C. CODE ANN. § 16-3-2040; § 16-3-1110 (2012). South Carolina also has a specific sex trafficking statute for asset forfeiture, under which all money, property, etc. is subject to forfeiture. S.C. CODE ANN. § 16-3-2090 (2012). The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- S.C. Code Ann. § 16-3-2010 (2012). Definitions
- S.C. Code Ann. § 16-2-2020 (2012). Trafficking in persons; penalties; defenses
- S.C. Code Ann. § 16-3-2030 (2012). Criminal liability of principal owners of business; penalties

### **S.C. CODE ANN. § 16-3-1110. (2012). DEFINITIONS**

For the purpose of this article and Articles 14 and 15 of this chapter:

- (1) "Board" means the South Carolina Crime Victim's Advisory Board.
- (2) "Claimant" means any person filing a claim pursuant to this article.
- (3) "Fund" means the South Carolina Victim's Compensation Fund, which is a division of the Office of the Governor.
- (4) "Director" means the Director of the Victim's Compensation Fund who is appointed by the Governor. The director shall be in charge of the State Office of Victim's Assistance which is part of this division under the supervision of the Governor.
- (5) "Field representative" means a field representative of the State Victim's Compensation Fund assigned to handle a claim.
- (6) "Crime" means an act which is defined as a crime by state, federal, or common law, including terrorism as defined in Section 2331 of Title 18, United States Code. Unless injury or death was recklessly or intentionally inflicted, "crime" does not include an act involving the operation of a motor vehicle, boat, or aircraft.

(7) "Recklessly or intentionally" inflicted injury or death includes, but is not limited to, injury or death resulting from an act which violates Sections 56-5-1210, 56-5-2910, 56-5-2920, or 56-5-2930 or from the use of a motor vehicle, boat, or aircraft to flee the scene of a crime in which the driver of the motor vehicle, boat, or aircraft knowingly participated.

(8) "Victim" means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor.

(9) "Intervenor" means a person other than a law enforcement officer performing normal duties, who goes to the aid of another, acting not recklessly, to prevent the commission of a crime or lawfully apprehend a person reasonably suspected of having committed a crime.

(10) "Deputy director" means the Deputy Director of the Victim's Compensation Fund.

(11) "Panel" means a three-member panel of the board designated by the board chairman to hear appeals.

(12)(a) "Restitution" means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. It includes, but is not limited to:

(i) medical and psychological counseling expenses;

(ii) specific damages and economic losses;

(iii) funeral expenses and related costs;

(iv) vehicle impoundment fees;

(v) child care costs; and

(vi) transportation related to a victim's participation in the criminal justice process.

Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium.

Restitution orders do not limit any civil claims a crime victim may file.

Notwithstanding any other provision of law, the applicable statute of limitations for a crime victim, who has a cause of action against an incarcerated offender based upon the incident which made the person a victim, is tolled and does not expire until three years after the offender's release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48 of Title 44, whichever is later. However, this provision shall not shorten any other tolling period of the statute of limitations which may exist for the crime victim.

## **S.C. CODE ANN. § 16-3-2040 (2012). RESTITUTION FOR VICTIMS OF TRAFFICKING**

(A) An offender convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in this section.

(B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim's issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the victim's estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) If a person is unable to pay restitution at the time of sentencing, or at any other time, the court may set restitution pursuant to Section 16-3-1270.

(D) Restitution for this section, pursuant to Section 16-3-1270, means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct pursuant to Section 16-3-1110(12)(a).

(E) Notwithstanding another provision of law, the applicable statute of limitations for a victim of trafficking in persons is pursuant to Section 16-3-1110(12)(a).

(F) Restitution must be paid to the victim promptly upon the conviction of the defendant. The return of the victim to his home country or other absence of the victim from the jurisdiction does not prevent the victim from receiving restitution.

### **S.C. CODE ANN. § 16-3-2090 (2012). FORFEITURE**

(A)(1) The following are subject to forfeiture:

(a) all monies used, or intended for use, in violation of Section 16-3-2020;

(b) all property constituting the proceeds obtained directly or indirectly, for a violation of Section 16-3-2020;

(c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of Section 16-3-2020;

(d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of Section 16-3-2020;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of Section 16-3-2020;

(f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of Section 16-3-2020. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 16-3-2020;

(g) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any kind of services under Section 16-3-2020, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange under Section 16-3-2020; and

(h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

(2) Any property subject to forfeiture may be seized by the investigating agency having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:

(a) seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon Section 16-3-2020;

(c) the investigating agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the investigating agency has probable cause to believe that the property was used or is intended to be used in violation of Section 16-3-2020.

(3) In the event of seizure, proceedings under this section regarding forfeiture and disposition must be instituted within a reasonable time.

(4) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the investigating agency making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(5) For the purposes of this section, whenever the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(6) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(7) When property and monies of any value as defined in this article or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(a) The report must provide the following information with respect to the property seized:

- (i) description;
- (ii) circumstances of seizure;
- (iii) present custodian and where the property is being stored or its location;
- (iv) name of owner;
- (v) name of lienholder; and
- (vi) seizing agency.

(b) If the property is a conveyance, the report shall include the:

- (i) make, model, serial number, and year of the conveyance;
- (ii) person in whose name the conveyance is registered; and
- (iii) name of any lienholders.

(c) In addition to the report, the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

- (i) a description of the quantity and nature of the property and money seized;
- (ii) the seizing agency;
- (iii) the make, model, and year of a conveyance; and
- (iv) the law enforcement agency responsible for the property or conveyance seized.

(d) Property or conveyances seized by a law enforcement agency or department may not be used by officers for personal purposes.

(B)(1) Forfeiture of property must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall provide the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also shall include the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

(2) The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. The Attorney General or his designee or the circuit solicitor or his designee has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture. If the judge finds a forfeiture, he shall then determine the lienholder's interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to this section.

(3) If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to this section.

(4) All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the State Budget and Control Board.

(5) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided, and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(6) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

(7) Disposition of forfeited property under this section must be accomplished as follows:

(a) Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.

(b) The victim and the South Carolina Victims' Compensation Fund shall each receive one-fourth, and law enforcement shall receive one-half of the value of the forfeited property.

(c) If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victims' Compensation Fund and law enforcement to be divided equally.

(d) If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this section, if they request or pursue any of the forfeiture. The equitable split must be pursuant to 21 U.S.C. Section 881(e)(1)(A) and (e)(3), 18 U.S.C. Section 981(e)(2), and 19 U.S.C. Section 1616a.

(C)(1) An innocent owner, manager, or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice. If the judge denies the application, the hearing may proceed as a forfeiture hearing.

(2) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(a) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; or

(b) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or

owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(3) The lien of an innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

(D) A person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture except for innocent owners, rental agencies, lienholders, and the like as provided for in this section, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days nor more than one year, fined not more than five thousand dollars, or both. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by another provision of this article.

## South Dakota

There is no restitution provision specifically for human trafficking. There is a general restitution statute, copied below. Restitution is mandatory and takes into account the pecuniary damages suffered by the victim. S.D. CODIFIED LAWS § 23A-28-5 (1999). Forfeiture is not allowed unless specifically expressed by statute and the only statutes that allow for it are controlled substance violations. S.D. CODIFIED LAWS § 23A-27-2; S.D. CODIFIED LAWS § 34-20B-70 (1985).

### **HUMAN TRAFFICKING STATUTES:**

- S.D. Codified Laws § 22-49-1 (2011). Human trafficking prohibited
- S.D. Codified Laws § 22-49-2 (2011). First degree human trafficking – felony
- S.D. Codified Laws § 22-49-3 (2011). Second degree human trafficking – felony

### **S.D. CODIFIED LAWS § 23A-28-1 (1997). POLICY OF STATE--ENFORCEMENT OF ORDER**

It is the policy of this state that restitution shall be made by each violator of the criminal laws to the victims of the violator's criminal activities to the extent that the violator is reasonably able to do so. An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

### **S.D. CODIFIED LAWS § 23A-28-5 (1999). FACTORS CONSIDERED IN FORMULATING RESTITUTION PLAN**

The court services officer when assisting the defendant in preparing the plan of restitution and the court before approving or modifying the plan of restitution shall consider the physical and mental health and condition of the defendant, the defendant's age, the defendant's education, the defendant's employment circumstances, the defendant's potential for employment and vocational training, the defendant's family circumstances, the defendant's financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and each victim, and such other factors as may be appropriate.

## Tennessee

The statutes for involuntary labor servitude and trafficking in persons for forced labor or services include restitution provisions, but the statute for trafficking in persons for a commercial sex act does not specifically

include a victim restitution provision. Restitution is mandatory and shall include the gross income of value to the defendant of the victim's labor or services or the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of Fair Labor Standards Act or the state, whichever is higher. TENN. CODE ANN. § 39-13-307 (West 2012); TENN. CODE ANN. § 39-13-308 (West 2008). Forfeiture proceedings, in Tennessee, are permissible in human trafficking cases, pursuant to the general forfeiture statute. TENN. CODE ANN. § 39-11-703 (West 2011); TENN. CODE ANN. § 39-13-312 (West 2011).

#### **HUMAN TRAFFICKING STATUTES:**

- Tenn. Code Ann. § 39-13-307 (West 2012). Involuntary labor servitude
- Tenn. Code Ann. § 39-13-308 (West 2008). Trafficking persons for forced labor or services
- Tenn. Code Ann. § 39-13-309 (West 2013). Trafficking a person for a commercial sex act

#### **TENN. CODE ANN. § 39-13-307 (WEST 2012). 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 serious bodily 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 the person's access to an addictive controlled substance; or
- (7) Controlling the person's movements through threats or violence.

(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;

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

(D) The victim was under thirteen (13) years of age.

**TENN. CODE ANN. § 39-13-308 (WEST 2008). 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.

**TENN. CODE ANN. § 39-11-703 (WEST 2011). 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.

## Texas

There is no specific human trafficking restitution statute provided for adult victims. There is a trafficking specific statute for child victims of trafficking covering the cost of necessary rehabilitation, including medical, psychiatric, and psychological case and treatment. TEX. CODE CRIM. PROC. ANN. art. 42.0372 (West 2011). There is a general victim restitution statute, copied below, that applies in cases involving adult victims. Restitution is not mandatory; the court may make an award. There are many factors in determining the amount that should be awarded. TEX. CODE CRIM. PROC. ANN. art. 42.037 (West 2009). Texas does allow for forfeiture of contraband, defined as any real property obtained during the commission of a felony. The relevant statutes are copied below. TEX. CODE CRIM. PROC. ANN. art. 59.02 (West 2011).

### HUMAN TRAFFICKING STATUTES:

- Tex. Penal Code Ann. § 20A.02 (West 2011). Trafficking of Persons
- Tex. Penal Code Ann. § 20A.03 (West 2011). Continuous Trafficking of Persons

### TEX. CODE CRIM. PROC. ANN. art. 42.037 (West 2009). RESTITUTION

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense or to the compensation to victims of crime fund established under Subchapter B, Chapter 56, to the extent that fund has paid compensation to or on behalf of the victim. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

(b)(1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:

(A) to return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the

greater of:

- (i) the value of the property on the date of the damage, loss, or destruction; or
- (ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.

(2) If the offense results in personal injury to a victim, the court may order the defendant to make restitution to:

- (A) the victim for any expenses incurred by the victim as a result of the offense; or
- (B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim.

(3) If the victim or the victim's estate consents, the court may, in addition to an order under Subdivision (2), order the defendant to make restitution by performing services instead of by paying money or make restitution to a person or organization, other than the compensation to victims of crime fund, designated by the victim or the estate.

(c) The court, in determining whether to order restitution and the amount of restitution, shall consider:

- (1) the amount of the loss sustained by any victim and the amount paid to or on behalf of the victim by the compensation to victims of crime fund as a result of the offense; and
- (2) other factors the court deems appropriate.

(d) If the court orders restitution under this article and the victim is deceased the court shall order the defendant to make restitution to the victim's estate.

(e) The court shall impose an order of restitution that is as fair as possible to the victim or to the compensation to victims of crime fund, as applicable. The imposition of the order may not unduly complicate or prolong the sentencing process.

(f)(1) The court may not order restitution for a loss for which the victim has received or will receive compensation only from a source other than the compensation to victims of crime fund. The court may, in the interest of justice, order restitution to any person who has compensated the victim for the loss to the extent the person paid compensation. An order of restitution shall require that all restitution to a victim or to the compensation to victims of crime fund be made before any restitution to any other person is made under the order.

(2) Any amount recovered by a victim from a person ordered to pay restitution in a federal or state civil proceeding is reduced by any amount previously paid to the victim by the person under an order of restitution.

(g)(1) The court may require a defendant to make restitution under this article within a specified period or in specified installments. If the court requires the defendant to make restitution in specified installments, in addition to the installment payments, the court may require the defendant to pay a one-time restitution fee of \$12, \$6 of which the court shall retain for costs incurred in collecting the specified installments and \$6 of which the court shall order to be paid to the compensation to victims of crime fund.

(2) The end of the period or the last installment may not be later than:

- (A) the end of the period of probation, if probation is ordered;
- (B) five years after the end of the term of imprisonment imposed, if the court does not order probation; or
- (C) five years after the date of sentencing in any other case.

(3) If the court does not provide otherwise, the defendant shall make restitution immediately.

(4) Except as provided by Subsection (n), the order of restitution must require the defendant to: (i) make restitution directly to the person or agency that will accept and forward restitution payments to the victim or other person eligible for restitution under this article, including the compensation to victims of crime fund; (ii) make restitution directly to the victim or other person eligible for restitution under this article, including the compensation to victims of crime fund; or (iii) deliver the amount or property due as restitution to a community supervision and corrections department for transfer to the victim or person.

(h) If a defendant is placed on community supervision or is paroled or released on mandatory supervision, the court or the parole panel shall order the payment of restitution ordered under this article as a condition of community supervision, parole, or mandatory supervision. The court may revoke community supervision and the parole panel may revoke parole or mandatory supervision if the defendant fails to comply with the order. In

determining whether to revoke community supervision, parole, or mandatory supervision, the court or parole panel shall consider:

- (1) the defendant's employment status;
  - (2) the defendant's current and future earning ability;
  - (3) the defendant's current and future financial resources;
  - (4) the willfulness of the defendant's failure to pay;
  - (5) any other special circumstances that may affect the defendant's ability to pay; and
  - (6) the victim's financial resources or ability to pay expenses incurred by the victim as a result of the offense.
- (i) In addition to any other terms and conditions of probation imposed under Article 42.12, the court may require a probationer to reimburse the compensation to victims of crime fund created under Subchapter B, Chapter 56,<sup>1</sup> for any amounts paid from that fund to or on behalf of a victim of the probationer's offense. In this subsection, "victim" has the meaning assigned by Article 56.32.

(j) The court may order a community supervision and corrections department to obtain information pertaining to the factors listed in Subsection (c) of this article. The probation officer shall include the information in the report required under Section 9(a), Article 42.12, of this code or a separate report, as the court directs. The court shall permit the defendant and the prosecuting attorney to read the report.

(k) The court shall resolve any dispute relating to the proper amount or type of restitution. The standard of proof is a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the defendant's dependents is on the defendant. The burden of demonstrating other matters as the court deems appropriate is on the party designated by the court as justice requires.

(l) Conviction of a defendant for an offense involving the act giving rise to restitution under this article estops the defendant from denying the essential allegations of that offense in any subsequent federal civil proceeding or state civil proceeding brought by the victim, to the extent consistent with state law.

(m) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(n) If a defendant is convicted of or receives deferred adjudication for an offense under Section 25.05, Penal Code, if the child support order on which prosecution of the offense was based required the defendant to pay the support to a local registry or the Title IV-D agency, and if the court orders restitution under this article, the order of restitution must require the defendant to pay the child support in the following manner:

- (1) during any period in which the defendant is under the supervision of a community supervision and corrections department, to the department for transfer to the local registry or Title IV-D agency designated as the place of payment in the child support order; and
- (2) during any period in which the defendant is not under the supervision of a department, directly to the registry or agency described by Subdivision (1).

(o) The department may waive a supervision fee or an administrative fee imposed on an inmate under Section 508.182, Government Code, during any period in which the inmate is required to pay restitution under this article.

(p)(1) A court shall order a defendant convicted of an offense under Section 28.03(f), Penal Code, involving damage or destruction inflicted on a place of human burial or under Section 42.08, Penal Code, to make restitution in the amount described by Subsection (b)(1)(B) to a cemetery organization operating a cemetery affected by the commission of the offense.

(2) If a court orders an unemancipated minor to make restitution under Subsection (a) and the minor is financially unable to make the restitution, the court may order:

- (A) the minor to perform a specific number of hours of community service to satisfy the restitution; or
- (B) the parents or other person responsible for the minor's support to make the restitution in the amount

described by Subsection (b)(1)(B).

(3) In this subsection, "cemetery" and "cemetery organization" have the meanings assigned by Section 711.001, Health and Safety Code.

(q) The court shall order a defendant convicted of an offense under Section 22.11, Penal Code, to make restitution to the victim of the offense or the victim's employer in an amount equal to the sum of any expenses incurred by the victim or employer to:

(1) test the victim for HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code; or

(2) treat the victim for HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code, the victim contracts as a result of the offense.

(r) [Blank]

(s)(1) A court shall order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution by:

(A) reimbursing the owner of the property for the cost of restoring the property; or

(B) with the consent of the owner of the property, personally restoring the property by removing or painting over any markings the defendant made.

(2) A court shall order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to a political subdivision that owns public property or erects a street sign or official traffic-control device on which the defendant makes markings in violation of Section 28.08, Penal Code, by:

(A) paying an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device; or

(B) with the consent of the political subdivision, restoring the public property, street sign, or official traffic-control device by removing or painting over any markings made by the defendant on the property, sign, or device.

(3) If the court orders a defendant to make restitution under this subsection and the defendant is financially unable to make the restitution, the court may order the defendant to perform a specific number of hours of community service to satisfy the restitution.

(4) Notwithstanding Subsection (g)(4), a court shall direct a defendant ordered to make restitution under this subsection as a condition of community supervision to deliver the amount or property due as restitution to the defendant's supervising officer for transfer to the owner. A parole panel shall direct a defendant ordered to make restitution under this subsection as a condition of parole or mandatory supervision to deliver the amount or property due as restitution to the defendant's supervising officer. The defendant's supervising officer shall notify the court when the defendant has delivered the full amount of restitution ordered.

(5) For purposes of this subsection, "official traffic-control device" has the meaning assigned by Section 541.304, Transportation Code.

### **TEX. CODE CRIM. PROC. ANN. art. 42.0372 (West 2011). MANDATORY RESTITUTION FOR CHILD VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION**

(a) The court shall order a defendant convicted of an offense under Section 20A.02 or 43.05(a)(2), Penal Code, to pay restitution in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment, for any victim of the offense who is younger than 18 years of age.

(b) The court shall, after considering the financial circumstances of the defendant, specify in a restitution order issued under Subsection (a) the manner in which the defendant must pay the restitution.

(c) A restitution order issued under Subsection (a) may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

(d) The court may hold a hearing, make findings of fact, and amend a restitution order issued under Subsection (a) if the defendant fails to pay the victim named in the order in the manner specified by the court.

## TEX. CODE CRIM. PROC. ANN. art. 59.01 (West 2011). DEFINITIONS

In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vii) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code,<sup>1</sup> if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(ix) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(x) any offense under Section 42.10, Penal Code;

(xi) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xii) any offense under Chapter 71, Penal Code; or

(xiii) any offense under Section 20.05, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

(3) "Crime of violence" means:

(A) any criminal offense defined in the Penal Code or in a federal criminal law that results in a personal injury to a victim; or

(B) an act that is not an offense under the Penal Code involving the operation of a motor vehicle, aircraft, or water

vehicle that results in injury or death sustained in an accident caused by a driver in violation of Section 550.021, Transportation Code.

(4) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.

(5) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(6) "Owner" means a person who claims an equitable or legal ownership interest in property.

(7) "Proceeds" includes income a person accused or convicted of a crime or the person's representative or assignee receives from:

(A) a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which the crime was reenacted; or

(B) the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

(8) "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority, and includes the collection of property or the act of taking possession of property.

(9) "Depository account" means the obligation of a regulated financial institution to pay the account owner under a written agreement, including a checking account, savings account, money market account, time deposit, NOW account, or certificate of deposit.

(10) "Primary state or federal financial institution regulator" means the state or federal regulatory agency that chartered and comprehensively regulates a regulated financial institution.

(11) "Regulated financial institution" means a depository institution chartered by a state or federal government, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

## **TEX. CODE CRIM. PROC. ANN. art. 59.02 (West 2009). FORFEITURE OF CONTRABAND**

(a) Property that is contraband is subject to seizure and forfeiture under this chapter.

(b) Any property that is contraband other than property held as evidence in a criminal investigation or a pending criminal case, money, a negotiable instrument, or a security that is seized under this chapter may be replevied by the owner or interest holder of the property, on execution of a good and valid bond with sufficient surety in a sum equal to the appraised value of the property replevied. The bond may be approved as to form and substance by the court after the court gives notice of the bond to the authority holding the seized property. The bond must be conditioned:

(1) on return of the property to the custody of the state on the day of hearing of the forfeiture proceedings; and

(2) that the interest holder or owner of the property will abide by the decision that may be made in the cause.

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder acquired and perfected the interest:

(1) before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real

property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or (2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

(A) was, at the time that the interest in the property was acquired, an owner or interest holder for value; and (B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

(d) Notwithstanding any other law, if property is seized from the possession of an owner or interest holder who asserts an ownership interest, security interest, or lien interest in the property under applicable law, the owner or interest holder's rights remain in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the owner or interest holder.

(e) On motion by any party or on the motion of the court, after notice in the manner provided by Article 59.04 of this code to all known owners and interest holders of property subject to forfeiture under this chapter, and after a hearing on the matter, the court may make appropriate orders to preserve and maintain the value of the property until a final disposition of the property is made under this chapter, including the sale of the property if that is the only method by which the value of the property may be preserved until final disposition.

(f) Any property that is contraband and has been seized by the Texas Department of Criminal Justice shall be forfeited to the department under the same rules and conditions as for other forfeitures.

(g) An individual, firm, corporation, or other entity insured under a policy of title insurance may not assert a claim or cause of action on or because of the policy if the claim or cause of action is based on forfeiture under this chapter and, at or before the time of acquiring the ownership of real property, security interest in real property, or lien interest against real property, the insured knew or reasonably should have known of the act or omission giving rise to the forfeiture or that the act or omission was likely to occur.

(h)(1) An owner or interest holder's interest in property may not be forfeited under this chapter if at the forfeiture hearing the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder was not a party to the offense giving rise to the forfeiture and that the contraband:

(A) was stolen from the owner or interest holder before being used in the commission of the offense giving rise to the forfeiture;

(B) was purchased with:

(i) money stolen from the owner or interest holder; or

(ii) proceeds from the sale of property stolen from the owner or interest holder; or

(C) was used or intended to be used without the effective consent of the owner or interest holder in the commission of the offense giving rise to the forfeiture.

(2) An attorney representing the state who has a reasonable belief that property subject to forfeiture is described by Subdivision (1) and who has a reasonable belief as to the identity of the rightful owner or interest holder of the property shall notify the owner or interest holder as provided by Article 59.04.

(3) An attorney representing the state is not liable in an action for damages resulting from an act or omission in the performance of the duties imposed by Subdivision (2).

(4) The exclusive remedy for failure by the attorney representing the state to provide the notice required under Subdivision (2) is submission of that failure as a ground for new trial in a motion for new trial or bill of review.

(i) The forfeiture provisions of this chapter apply to contraband as defined by Article 59.01(2)(B)(v) of this code only in a municipality with a population of 250,000 or more.

## Utah

There is no human trafficking specific restitution statute. There is, however, a general victim restitution statute, copied below. Restitution is mandatory and shall cover all losses to the victim caused by the defendant. UTAH CODE

ANN. § 77-38a-302 (West 2013). Forfeiture is allowed under Utah’s general forfeiture statute, which allows for the forfeiture of all property used in the commission of any state or federal offense. UTAH CODE ANN. § 24-4-102 (West 2013).

#### **HUMAN TRAFFICKING STATUTES:**

- Utah Code Ann. § 76-5-308 (West 2013). Human trafficking and human smuggling
- Utah Code Ann. § 76-5-309 (West 2013). Human trafficking and human smuggling—Penalties
- Utah Code Ann. § 76-5-310 (West 2013). Aggravated human trafficking and aggravated human smuggling—Penalties

#### **UTAH CODE ANN. § 77-38A-302 (WEST 2005). RESTITUTION CRITERIA**

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) “Complete restitution” means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) “Court-ordered restitution” means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5)(a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

(v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(vi) other circumstances that the court determines may make restitution inappropriate.

(d)(i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

## **UTAH CODE ANN. § 24-4-102 (WEST 2005). PROPERTY SUBJECT TO FORFEITURE**

(1) Except as provided in Subsection (3), all property that has been used to facilitate the commission of a federal or state offense and any proceeds of criminal activity may be forfeited under this chapter, including:

(a) real property, including things growing on, affixed to, and found in land; and

(b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.

(2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

- (a) the operator of the vehicle has previously been convicted of a violation, committed after May 12, 2009, of:
- (i) a felony driving under the influence violation under Section 41-6a-502;
  - (ii) a felony violation under Subsection 58-37-8(2)(g); or
  - (iii) automobile homicide under Section 76-5-207; or
- (b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license; and
- (i) the denial, suspension, revocation, or disqualification under Subsection (3)(c) was imposed because of a violation under:
- (A) Section 41-6a-502;
  - (B) Section 41-6a-517;
  - (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);
  - (D) Section 41-6a-520;
  - (E) Subsection 58-37-8(2)(g);
  - (F) Section 76-5-207; or
  - (G) a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections (3)(b)(i)(A) through (F); or
- (ii) the denial, suspension, revocation, or disqualification described in Subsections (3)(b)(i)(A) through (G):
- (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and
- (B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsections (3)(b)(i)(A) through (G).

## Vermont

Vermont does have a human trafficking specific restitution provision in their statute. Restitution is mandatory and shall be ordered pursuant to the general victim restitution statute. VT. STAT. ANN. tit. 13, §2657; §7043 (West 2013). Vermont allows for forfeiture only in connection with drug crimes. VT. STAT. ANN. tit. 18, § 4241 (West 2013).

### **HUMAN TRAFFICKING STATUTES:**

- Vt. Stat. Ann. tit. 13, § 2652 (West 2011). Human trafficking
- Vt. Stat. Ann. tit. 13, § 2653 (West 2011). Aggravated human trafficking
- Vt. Stat. Ann. tit. 13, § 2654 (West 2011). Patronizing or facilitating human trafficking
- Vt. Stat. Ann. tit. 13, § 2655 (West 2011). Solicitation

### **VT. STAT. ANN. tit. 13, § 2657 (WEST 2011). RESTITUTION**

(a) A person convicted of a violation of this subchapter shall be ordered to pay restitution to the victim pursuant to section 7043 of this title.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

### **Vt. STAT. ANN. tit. 13, § 7043 (WEST 2013). RESTITUTION**

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:

(A) attorney's fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. § 385.

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the prosecuting attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any amount of the restitution claim has been paid by the Victims Compensation Fund, the prosecuting attorney shall provide the defendant with copies of bills submitted by the Victims Compensation Board pursuant to section 5358a of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the victims compensation board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the prosecuting attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of dissemination of the documents to any person other than the defendant, the defendant's attorney, and the prosecuting attorney.

(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection (k) of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, and Social Security number;

(ii) include the name, address, and telephone number of the offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the restitution unit within 30 days if the offender's address or employment changes, including providing the name, address, and telephone number of each new employer.

(B) Repealed by 2005, Adj. Sess., No. 162, § 3, eff. Jan. 1, 2007.

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense.

(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The department of corrections shall work collaboratively with the restitution unit to assist with the collection of restitution. The department shall provide the restitution unit with information about the location and employment status of the offender.

(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing, or if expenses arose after the entry of a restitution order, the state may file a motion with the sentencing court to reopen the restitution case in order to consider a request for restitution payable from the restitution fund. Restitution ordered under this subdivision shall not be payable by the offender.

(B) A motion under this subdivision shall be filed within one year after the imposition of sentence or the entry of the restitution order.

(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(i)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the victims compensation board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the restitution unit, which shall make payment to the victims compensation fund.

(j) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims procedure in the same manner as a civil judgment. Superior and small claims filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

(k) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

(l) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

(m) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

(1) amending the payment schedule of the restitution order;

(2) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;

(3) ordering the offender's wages withheld pursuant to subsection (n) of this section; or

(4) ordering the suspension of any recreational licenses owned by the offender.

(n)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

(2) When an offender is entitled to a tax refund, any restitution owed by the offender shall be withheld from the refund pursuant to 32 V.S.A. chapter 151, subchapter 12.

(3)(A) For all Vermont lottery games, the lottery commission shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding restitution order. If the winner owes restitution, the lottery commission shall withhold the entire amount of restitution owed and pay it to the restitution unit. The remainder of the winnings, if any, shall be sent to the winner. The winner shall be notified by the restitution unit of the offset prior to payment to the victim and given a period not to exceed 20 days to contest the accuracy of the information.

(B) The restitution unit shall inform the lottery commission of persons with outstanding restitution orders upon request. Each person subject to such an order shall be identified by name, address, and Social Security number.

(C) If a lottery winner has an outstanding restitution order and an outstanding child support order, the lottery winnings shall be offset first pursuant to 15 V.S.A. § 792 by the amount of child support owed, and second pursuant to this subsection by the amount of restitution owed. The remainder of the winnings, if any, shall be sent to the winner.

(4) Unless otherwise provided, monies paid under this subsection shall be paid directly to the restitution unit.

(o) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

(p) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. §§ 523 and 1328; and

(2) not subject to any statute of limitations.

(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57, and the restitution unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.

## Virginia

There is no specific restitution provision within Virginia's anti-trafficking statutes. There is, however, a general restitution statute, copied below. VA. CODE ANN. § 19.2-305.1 (West 2013). Forfeiture may be ordered in cases involving multiple types of crimes, including crimes connected with gangs, money laundering, terrorism, computers, weapons, illegal drug transactions, and abduction of children. However, the provisions do not provide for general forfeiture for felonies. If the trafficking case was in connection with gang activity, an argument for forfeiture could be made under that statute. *See e.g.*, VA. CODE ANN. Chapter 22.2. Miscellaneous Forfeiture Provisions.

## **HUMAN TRAFFICKING STATUTES:**

- Va. Code Ann. § 18.2-47 (West 2009). Abduction and kidnapping defined; punishment
- Va. Code Ann. § 18.2-48 (West 2011). Abduction with the intent to extort money for immoral purpose.
- Va. Code Ann. § 18.2-59 (West 2010). Extortion of money, property or pecuniary benefit
- Va. Code Ann. § 18.2-355 (West 1997). Taking, detaining, etc., person for prostitution, etc., or consenting thereto

## **VA. CODE ANN. § 19.2-305.1 (WEST 2013). RESTITUTION FOR PROPERTY DAMAGE OR LOSS; COMMUNITY SERVICE**

Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

E1. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the court. For purposes of this subsection, “victim” means a person who is depicted in a still or videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

F. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims. Before making the deposit he shall record the name, last known address and amount of restitution due each victim appearing from the clerk's report to be entitled to restitution.

G. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

#### **VA. CODE ANN. § 19.2-305.2 (WEST 1989). AMOUNT OF RESTITUTION; ENFORCEMENT**

A. The court, when ordering restitution pursuant to § 19.2-305.1, may require that such defendant, in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense (i) return the property to the owner or (ii) if return of the property is impractical or impossible, pay an amount equal to the greater of the value of the property at the time of the offense or the value of the property at the time of sentencing.

B. An order of restitution may be docketed as provided in § 8.01-446 when so ordered by the court or upon written request of the victim and may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

#### **VA. CODE ANN. § 18.2-46.3:2 (WEST 2004). FORFEITURE (IN CONNECTION WITH CRIMES BY GANGS)**

All property, both personal and real, of any kind or character used in substantial connection with, intended for use in the course of, derived from, traceable to, or realized through, including any profit or interest derived from, any conduct in violation of any provision of this article is subject to civil forfeiture to the Commonwealth. Further, all property, both personal and real, of any kind or character used or intended to be used in substantial connection with, during the course of, derived from, traceable to, or realized through, including any profit or interest derived from, criminal street gang member recruitment as prohibited under § 18.2-46.3 is subject to civil forfeiture to the Commonwealth.

The forfeiture proceeding shall utilize the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this article. The application of one civil remedy under the article does not preclude the application of any other remedy, civil or criminal, under this article or any other provision of the Code.

## **Washington**

There is no specific human trafficking restitution statute. The Washington Revised Code provides for restitution both civilly as well as criminally. Restitution can compensate victims for injury to or loss of property, actual

expenses incurred for treatment for injury to persons, and lost wages resulting from injury, but shall not cover mental anguish, pain and suffering and other intangible losses. WASH. REV. CODE ANN. § 9.94A.750 (West 2003). Forfeiture is also allowed for all felonies. The relevant statutes are copied below.

#### **HUMAN TRAFFICKING STATUTE:**

- Wash. Rev. Code Ann. § 9A.40.100 (West 2013). Trafficking

#### **WASH. REV. CODE ANN. § 9.94A.750 (WEST 2003). RESTITUTION**

This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to 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. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial ten-year period or subsequent ten-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes

pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

## **WASH. REV. CODE ANN. § 7.68.020 (WEST 2011). DEFINITIONS**

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Accredited school" means a school or course of instruction which is:

- (a) Approved by the state superintendent of public instruction, the state board of education, or the state board for community and technical colleges; or
- (b) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW.

(2) "Average monthly wage" means the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve.

(3) "Beneficiary" means a husband, wife, registered domestic partner, or child of a victim in whom shall vest a right to receive payment under this chapter, except that a husband or wife of an injured victim, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received or attempted by process of law to collect funds for maintenance, shall be deemed living in a state of abandonment.

(4) "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the victim, all while under the age of eighteen years, or under the age of twenty-three years while

permanently enrolled as a full-time student in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

(5) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims' compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) trafficking as defined in RCW 9A.40.100. A "criminal act" does not include the following:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law unless:

(A) The injury or death was intentionally inflicted;

(B) The operation thereof was part of the commission of another nonvehicular criminal act as defined in this section;

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained. In cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(D) The injury or death was caused by a driver in violation of RCW 46.61.502; or

(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(6) "Department" means the department of labor and industries.

(7) "Financial support for lost wages" means a partial replacement of lost wages due to a temporary or permanent total disability.

(8) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(9) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

(10) "Invalid" means one who is physically or mentally incapacitated from earning wages.

(11) "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the victim from performing any work at any gainful occupation.

(12) "Private insurance" means any source of recompense provided by contract available as a result of the claimed

injury or death at the time of such injury or death, or which becomes available any time thereafter.

(13) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(14) "Temporary total disability" means any condition that temporarily incapacitates a victim from performing any type of gainful employment as certified by the victim's attending physician.

(15) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

### **WASH. REV. CODE ANN. § 7.68.120 (WEST 1995). REIMBURSEMENT--RESTITUTION TO VICTIM--NOTICE--FEES--ORDER TO WITHHOLD AND DELIVER--LIMITATION**

Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as provided in this section.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed the criminal act in either a civil or criminal court proceeding in which he or she is a party. If there has been a superior or district court order, or an order of the indeterminate sentence review board or the department of social and health services, as provided in subsection (4) of this section, the debt shall be limited to the amount provided for in the order. A court order shall prevail over any other order. If, in a criminal proceeding, a person has been found to have committed the criminal act that results in the payment of benefits to a victim and the court in the criminal proceeding does not enter a restitution order, the department shall, within one year of imposition of the sentence, petition the court for entry of a restitution order.

(2)(a) The department may issue a notice of debt due and owing to the person found to have committed the criminal act, and shall serve the notice on the person in the manner prescribed for the service of a summons in a civil action or by certified mail. The department shall file the notice of debt due and owing along with proof of service with the superior court of the county where the criminal act took place. The person served the notice shall have thirty days from the date of service to respond to the notice by requesting a hearing in superior court.  
(b) If a person served a notice of debt due and owing fails to respond within thirty days, the department may seek a default judgment. Upon entry of a judgment in an action brought pursuant to (a) of this subsection, the clerk shall enter the order in the execution docket. The filing fee shall be added to the amount of the debt indicated in the judgment. The judgment shall become a lien upon all real and personal property of the person named in the judgment as in other civil cases. The judgment shall be subject to execution, garnishment, or other procedures for collection of a judgment.

(3)(a) The director, or the director's designee, may issue to any person or organization an order to withhold and deliver property of any kind if there is reason to believe that the person or organization possesses property that is due, owing, or belonging to any person against whom a judgment for a debt due and owing has been entered under subsection (2) of this section. For purposes of this subsection, "person or organization" includes any individual, firm, association, corporation, political subdivision of the state, or agency of the state.

(b) The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person or organization upon whom service has been made shall answer the order within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein.

(c) If there is in the possession of the person or organization served with the order any property that might be subject to the claim of the department, the person or organization must immediately withhold such property and deliver the property to the director or the director's authorized representative immediately upon demand.

(d) If the person or organization served the order fails to timely answer the order, the court may render judgment by default against the person or organization for the full amount claimed by the director in the order plus costs.  
(e) If an order to withhold and deliver is served upon an employer and the property found to be subject to the notice is wages, the employer may assert in the answer all exemptions to which the wage earner might be entitled as provided by RCW 6.27.150.

(4) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or indeterminate sentence review board respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

(5) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or otherwise adjusted by the department in the interest of justice, the well-being of the victim, and the rehabilitation of the individual.

(6) The department shall not seek payment for a debt due and owing if such action would deprive the victim of the crime giving rise to the claim under this chapter of the benefit of any property to which the victim would be entitled under RCW 26.16.030.

#### **WASH. REV. CODE ANN. § 7.68.310 (WEST 1993). PROPERTY SUBJECT TO SEIZURE AND FORFEITURE**

The following are subject to seizure and forfeiture and no property right exists in them:

(1) All tangible or intangible property, including any right or interest in such property, acquired by a person convicted of a crime for which there is a victim of the crime and to the extent the acquisition is the direct or indirect result of the convicted person having committed the crime. Such property includes but is not limited to the convicted person's remuneration for, or contract interest in, any reenactment or depiction or account of the crime in a movie, book, magazine, newspaper or other publication, audio recording, radio or television presentation, live entertainment of any kind, or any expression of the convicted person's thoughts, feelings, opinions, or emotions regarding the crime.

(2) Any property acquired through the traceable proceeds of property described in subsection (1) of this section.

## **West Virginia**

There is no specific human trafficking restitution provision; however, there is a general victim restitution statute, copied below. The court shall order restitution and a number of factors are considered by the court, as required by statute. W. VA. CODE ANN. § 61-11A-4 (West 2006). The human trafficking statute does provide that victims of human trafficking can bring a civil action in circuit court. The court may then award actual damages, compensatory damages, punitive damages, injunctive relief and/or any other appropriate relief. A prevailing plaintiff is also entitled to attorney's fees and costs. W. VA. CODE ANN. § 61-2-17 (West 2013). Forfeiture is only allowed in conjunction with the West Virginia Contraband Forfeiture Act under the Uniform Controlled Substance Act. W. VA. CODE ANN. § 60A-7-703 (West 2001).

#### **HUMAN TRAFFICKING STATUTE:**

- W. Va. Code Ann. § 61-2-17 (West 2013). Human Trafficking; criminal penalties

#### **W. VA. CODE ANN. § 61-11A-4 (WEST 2006). RESTITUTION; WHEN ORDERED**

(a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law,

that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article.

If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.

(b) The order shall require that the defendant:

(1) In the case of an offense resulting in damage to, loss of, or destruction of property of a victim of the offense:

(A) Return the property to the owner of the property or someone designated by the owner; or

(B) If return of the property under subparagraph (A) is impossible, impractical or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing; or (ii) the value of the property on the date of the damage, loss or destruction less the value (as of the date the property is returned) of any part of the property that is returned;

(2) In the case of an offense resulting in bodily injury to a victim:

(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) Reimburse the victim for income lost by the victim as a result of the offense;

(3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) In any case, if the victim (or if the victim is deceased, the victim's estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

(d) The court shall impose an order of restitution to the extent that the order is as fair as possible to the victim and the imposition of the order will not unduly complicate or prolong the sentencing process.

(e) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all restitution to victims under the order be made before any restitution to any other person under the order is made.

(f) The court may require that such defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than: (i) The end of the period of probation, if probation is ordered; (ii) five years after the end of the term of imprisonment imposed, if the court does not order probation; and (iii) five years after the date of sentencing in any other case.

If not otherwise provided by the court under this subsection, restitution shall be made immediately.

(g) If the defendant is placed on probation or paroled under this article, any restitution ordered under this section shall be a condition of the probation or parole unless the court or Parole Board finds restitution to be wholly or partially impractical as set forth in this article.

The court may revoke probation and the Parole Board may revoke parole if the defendant fails to comply with the order. In determining whether to revoke probation or parole, the court or parole board shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

(h) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

(i) Notwithstanding any provision of this section to the contrary, the court may order, in addition to or in lieu of, restitution, that a defendant be required to contribute monetarily, or through hours of service, to a local crime victim's assistance program or juvenile mediation program which meets the following requirements:

(1) The program is approved by a circuit judge presiding in the judicial circuit; and

(2) The program is a nonprofit organization certified as a corporation in this state, and is governed by a board of directors.

## **W. VA. CODE ANN. § 61-2-17 (WEST 2013). HUMAN TRAFFICKING; CRIMINAL PENALTIES**

(a) As used in this section:

(1) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(2) “Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through a person’s:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm or physical restraint: Provided, That, this does not include work or services provided by a minor to the minor’s parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

(B) Physically restraining or threatening to physically restrain a person;

(C) Abuse or threatened abuse of the legal process; or

(D) 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 another person.

“Forced labor or services” does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

(3) “Human trafficking” means the labor trafficking or sex trafficking involving adults or minors where two or more persons are trafficked within any one year period.

(4) “Labor trafficking” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

(A) Debt bondage or forced labor or services; or

(B) Slavery or practices similar to slavery.

(5) “Sex trafficking of minors” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen by any means, whether a United States citizen or foreign national, for the purpose of causing the minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b), section five, article eight of this chapter or article eight-c of this chapter.

(6) “Sex trafficking of adults” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older, whether a United States citizen or foreign national for the purposes of engaging in violations of subsection (b), section five, article eight of this chapter by means of force, threat, coercion, deception, abuse or threatened abuse of the legal process, or any scheme, plan, pattern, or other action intended to cause a person to believe that, if the person did not engage in a violation of

subsection (b), section five, article eight of this chapter, that person or another person would suffer serious bodily harm or physical restraint.

(b) Any person who knowingly and wilfully engages in human trafficking is guilty of a felony and upon conviction shall be incarcerated in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or both.

(c) Any person who is a victim of human trafficking may bring a civil action in circuit court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief and any other appropriate relief. A prevailing plaintiff is also entitled to attorneys fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

(d) Notwithstanding the definition of victim in subsection (k), section three, article two-a, chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all purposes of article two-a, chapter fourteen of this code.

(e) This article and the rights and remedies provided in this article are cumulative and in addition to other existing rights.

(f) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, any person convicted of prostitution in violation of subsection (b), section five, article eight of this chapter where the conviction was a result of the person being a victim of human trafficking as defined in this section, may petition the circuit court of the county of conviction for an order of expungement pursuant to section twenty-six, article eleven of this chapter.

No victim of human trafficking seeking relief under this subsection shall be required to prove her or she has rehabilitated himself or herself in order to obtain expungement.

## Wisconsin

There is no human trafficking specific restitution provision. There is, however, a general victim restitution statute. WIS. STAT. ANN. § 973.20 (West 2010). The human trafficking statute does provide that the victim can bring a civil claim against the defendant and potentially collect actual damages, punitive damages, and attorney's fees. WIS. STAT. ANN. § 940.302 (West 2008). Forfeiture is allowed under the Uniform Controlled Substances Act, and also with crimes concerning racketeering activity, and criminal enterprises. WIS. STAT. ANN. § 961.55; §946.86 (West).

### **HUMAN TRAFFICKING STATUTE:**

- Wis. Stat. Ann. § 940.302 (West 2008). Human trafficking

### **WIS. STAT. ANN. § 973.20 (WEST 2010). RESTITUTION**

(1g) In this section:

(a) "Crime considered at sentencing" means any crime for which the defendant was convicted and any read-in crime.

(b) "Read-in crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing the defendant for the crime for which the defendant was convicted.

(1r) When imposing sentence or ordering probation for any crime, other than a crime involving conduct that constitutes domestic abuse under s. 813.12(1)(a) or 968.075(1)(a), for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing or, if the victim is deceased, to his

or her estate, unless the court finds substantial reason not to do so and states the reason on the record. When imposing sentence or ordering probation for a crime involving conduct that constitutes domestic abuse under s. 813.12(1)(a) or 968.075(1)(a) for which the defendant was convicted or that was considered at sentencing, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime or, if the victim is deceased, to his or her estate, unless the court finds that imposing full or partial restitution will create an undue hardship on the defendant or victim and describes the undue hardship on the record. Restitution ordered under this section is a condition of probation, extended supervision or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, extended supervision or parole, or if the defendant is not placed on probation, extended supervision or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under ch. 785.

(2) If a crime considered at sentencing resulted in damage to or loss or destruction of property, the restitution order may require that the defendant:

(a) Return the property to the owner or owner's designee; or

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee the reasonable repair or replacement cost or the greater of:

1. The value of the property on the date of its damage, loss or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(3) If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant do one or more of the following:

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric and psychological care and treatment.

(b) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation.

(c) Reimburse the injured person for income lost as a result of a crime considered at sentencing.

(d) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to ensure that the duties are continued until the person is able to resume performance of the duties.

(4) If a crime considered at sentencing resulted in death, the restitution order may also require that the defendant pay an amount equal to the cost of necessary funeral and related services under s. 895.04(5).

(4m) If the defendant violated s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.07, 948.08, or 948.085, or s. 940.302(2), if the court finds that the crime was sexually motivated, as defined in s. 980.01(5), and sub. (3)(a) does not apply, the restitution order may require that the defendant pay an amount, not to exceed \$10,000, equal to the cost of necessary professional services relating to psychiatric and psychological care and treatment. The \$10,000 limit under this subsection does not apply to the amount of any restitution ordered under sub. (3) or (5) for the cost of necessary professional services relating to psychiatric and psychological care and treatment.

(4o) If the defendant violated s. 940.302(2) or 948.051, and sub. (2) or (3) does not apply, the restitution order may require that the defendant pay an amount equal to any of the following:

(a) The costs of necessary transportation, housing, and child care for the victim.

(b) The greater of the following:

1. The gross income gained by the defendant due to the services of the victim.

2. The value of the victim's services as provided under the state minimum wage.

(c) Any expenses incurred by the victim if relocation for personal safety is determined to be necessary by the district attorney.

(d) The costs of relocating the victim to his or her city, state, or country of origin.

(5) In any case, the restitution order may require that the defendant do one or more of the following:

(a) Pay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.

(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom a crime considered at sentencing was committed resulting from the filing of charges or cooperating in the investigation and prosecution of the crime.

(c) Reimburse any person or agency for amounts paid as rewards for information leading to the apprehension or successful prosecution of the defendant for a crime for which the defendant was convicted or to the apprehension or prosecution of the defendant for a read-in crime.

(d) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) Any order under sub. (5)(c) or (d) shall require that all restitution to victims under the order be paid before restitution to other persons.

(7) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be transferred under sub. (11)(a). If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the department or the clerk to whom payments are made under sub. (11)(a) shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(8) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(9)(a) If a crime victim is paid an award under subch. I of ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required by the court. The rights of the state are subordinate to the claims of victims who have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(b) When restitution is ordered, the court shall inquire to see if an award has been made under subch. I of ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under subch. I of ch. 949, the restitution shall be credited to the appropriation account under s. 20.455(5)(hh). If the restitution ordered is greater than the award under subch. I of ch. 949, an amount equal to the award under subch. I of ch. 949 shall be credited to the appropriation account under s. 20.455(5)(hh) and the balance shall be paid to the victim.

(9m) When restitution is ordered, the court shall inquire to see if recompense has been made under s. 969.13(5)(a). If recompense has been made and the restitution ordered is less than or equal to the recompense, the restitution shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. If recompense has been made and the restitution ordered is greater than the recompense, the victim shall receive an amount equal to the amount of restitution less the amount of recompense and the balance shall be applied to the payment of costs and, if any restitution remains after the payment of costs, to the payment of the judgment. This subsection applies without regard to whether the person who paid the recompense is the person who is convicted of the crime.

(10) The court may require that restitution be paid immediately, within a specified period or in specified installments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period of probation, extended supervision or parole. If the defendant is sentenced to the intensive sanctions program, the end of a specified period shall not be later than the end of the sentence under s. 973.032 (3) (a).

(11)(a) Except as otherwise provided in this paragraph, the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the department for transfer to the victim or other person to

be compensated by a restitution order under this section. If the defendant is not placed on probation or sentenced to prison, the court may order that restitution be paid to the clerk of court for transfer to the appropriate person. The court shall impose on the defendant a restitution surcharge under ch. 814 equal to 5% of the total amount of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered under s. 973.05(1) and imposed under ch. 814, which shall be paid to the department or the clerk of court for administrative expenses under this section.

(b) The department shall establish a separate account for each person in its custody or under its supervision ordered to make restitution for the collection and disbursement of funds. A portion of each payment constitutes the surcharge for administrative expenses under par. (a).

(12)(a) If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under ss. 973.05 and 973.06 and ch. 814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments. If the costs for legal representation by a private attorney appointed under s. 977.08 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time.

(b) Except as provided in par. (c), payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines or surcharges under s. 973.05, then to pay costs, fees, and surcharges under ch. 814 other than attorney fees and finally to reimburse county or state costs of legal representation.

(c) If a defendant is subject to more than one order under this section and the financial obligations under any order total \$50 or less, the department or the clerk of court, whichever is applicable under sub. (11)(a), may pay these obligations first.

(13)(a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of a crime considered at sentencing.
2. The financial resources of the defendant.
3. The present and future earning ability of the defendant.
4. The needs and earning ability of the defendant's dependents.
5. Any other factors which the court deems appropriate.

(b) The district attorney shall attempt to obtain from the victim prior to sentencing information pertaining to the factor specified in par. (a)1. Law enforcement agencies, the department of corrections and any agency providing services under ch. 950 shall extend full cooperation and assistance to the district attorney in discharging this responsibility. The department of justice shall provide technical assistance to district attorneys in this regard and develop model forms and procedures for collecting and documenting this information.

(c) The court, before imposing sentence or ordering probation, shall inquire of the district attorney regarding the amount of restitution, if any, that the victim claims. The court shall give the defendant the opportunity to stipulate to the restitution claimed by the victim and to present evidence and arguments on the factors specified in par. (a). If the defendant stipulates to the restitution claimed by the victim or if any restitution dispute can be fairly heard at the sentencing proceeding, the court shall determine the amount of restitution before imposing sentence or ordering probation. In other cases, the court may do any of the following:

1. Order restitution of amounts not in dispute as part of the sentence or probation order imposed and direct the appropriate agency to file a proposed restitution order with the court within 90 days thereafter, and mail or deliver copies of the proposed order to the victim, district attorney, defendant and defense counsel.
2. Adjourn the sentencing proceeding for up to 60 days pending resolution of the amount of restitution by the court, referee or arbitrator.
3. With the consent of the defendant, refer the disputed restitution issues to an arbitrator acceptable to all parties, whose determination of the amount of restitution shall be filed with the court within 60 days after the date of referral and incorporated into the court's sentence or probation order.
4. Refer the disputed restitution issues to a circuit court commissioner or other appropriate referee, who shall conduct a hearing on the matter and submit the record thereof, together with proposed findings of fact and conclusions of law, to the court within 60 days of the date of referral. Within 30 days after the referee's report is filed, the court shall determine the amount of restitution on the basis of the record submitted by the referee and incorporate it into the sentence or probation order imposed. The judge may direct that hearings under this

subdivision be recorded either by audio recorder or by a court reporter. A transcript is not required unless ordered by the judge.

(14) At any hearing under sub. (13), all of the following apply:

(a) The burden of demonstrating by the preponderance of the evidence the amount of loss sustained by a victim as a result of a crime considered at sentencing is on the victim. The district attorney is not required to represent any victim unless the hearing is held at or prior to the sentencing proceeding or the court so orders.

(b) The burden of demonstrating, by the preponderance of the evidence, the financial resources of the defendant, the present and future earning ability of the defendant and the needs and earning ability of the defendant's dependents is on the defendant. The defendant may assert any defense that he or she could raise in a civil action for the loss sought to be compensated. The office of the state public defender is not required to represent any indigent defendant unless the hearing is held at or prior to the sentencing proceeding, the defendant is incarcerated when the hearing is held or the court so orders.

(c) The burden of demonstrating, by the preponderance of the evidence, such other matters as the court deems appropriate is on the party designated by the court, as justice requires.

(d) All parties interested in the matter shall have an opportunity to be heard, personally or through counsel, to present evidence and to cross-examine witnesses called by other parties. The court, arbitrator or referee shall conduct the proceeding so as to do substantial justice between the parties according to the rules of substantive law and may waive the rules of practice, procedure, pleading or evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person or to admissibility under s. 901.05. Discovery is not available except for good cause shown. If the defendant is incarcerated, he or she may participate by telephone under s. 807.13 unless the court issues a writ or subpoena compelling the defendant to appear in person.

(15) If misappropriation, from a cemetery, of an object that indicates that a deceased was a veteran, as described in s. 45.001, is a crime considered at sentencing, the restitution order shall require that the defendant reimburse an individual, organization, or governmental entity for the cost of replacing the object.

## **WIS. STAT. ANN. § 940.302 (WEST 2008). HUMAN TRAFFICKING**

(1) In this section:

(a) "Commercial sex act" means sexual contact for which anything of value is given to, promised, or received, directly or indirectly, by any person.

(b) "Debt bondage" means the condition of a debtor arising from the debtor's pledge of services as a security for debt if the reasonable value of those services is not applied toward repaying the debt or if the length and nature of the services are not defined.

(c) "Services" means activities performed by one individual at the request, under the supervision, or for the benefit of another person.

(d) "Trafficking" means recruiting, enticing, harboring, transporting, providing, or obtaining, or attempting to recruit, entice, harbor, transport, provide, or obtain, an individual without consent of the individual.

(2)(a) Except as provided in s. 948.051, whoever knowingly engages in trafficking is guilty of a Class D felony if all of the following apply:

1. One of the following applies:

a. The trafficking is for the purposes of labor or services.

b. The trafficking is for the purposes of a commercial sex act.

2. The trafficking is done by any of the following:

a. Causing or threatening to cause bodily harm to any individual.

b. Causing or threatening to cause financial harm to any individual.

c. Restraining or threatening to restrain any individual.

d. Violating or threatening to violate a law.

e. Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.

f. Extortion.

g. Fraud or deception.

h. Debt bondage.

i. Controlling any individual's access to an addictive controlled substance.

j. Using any scheme or pattern to cause an individual to believe that any individual would suffer bodily harm, financial harm, restraint, or other harm.

(b) Whoever benefits in any manner from a violation of par. (a) is guilty of a Class D felony if the person knows that the benefits come from an act described in par. (a).

(3) Any person who incurs an injury or death as a result of a violation of sub. (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

## Wyoming

Victim restitution is mandatory under Wyoming's Human Trafficking chapter. WYO. STAT. ANN. § 6-2-710. (West 2013). The amount of restitution to be provided is determined by Wyoming's general victim restitution statutes. WYO. STAT. ANN. § 7-9-103; §7-9-114 (West). The relevant statutes are copied below. Forfeiture is only allowed for offenses involving controlled substances. WYO. STAT. ANN. § 35-7-1049 (West 2012).

### HUMAN TRAFFICKING STATUTES:

- Wyo. Stat. Ann. § 6-2-702 (West 2013). Human trafficking in the first degree; penalty
- Wyo. Stat. Ann. § 6-2-703 (West 2013). Human trafficking in the second degree; penalty
- Wyo. Stat. Ann. § 6-2-704 (West 2013). Forced labor or servitude; penalty
- Wyo. Stat. Ann. § 6-2-705 (West 2013). Sexual servitude of an adult
- Wyo. Stat. Ann. § 6-2-706 (West 2013). Sexual servitude of a minor
- Wyo. Stat. Ann. § 6-2-707 (West 2013). Patronizing a victim of sexual servitude

### WYO. STAT. ANN. § 6-2-710 (WEST 2013). RESTITUTION

(a) In addition to any other punishment prescribed by law, upon conviction for felony under this article, the court

shall order a defendant to pay mandatory restitution to each victim as determined under W.S. 7-9-103 and 7-9-114.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to the victim's home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

#### **WYO. STAT. ANN. § 7-9-103 (WEST 2011). DETERMINATION OF AMOUNT OWED; EXECUTION**

(a) As part of the sentencing process including deferred prosecutions under W.S. 7-13-301, in any misdemeanor or felony case, the prosecuting attorney shall present to the court any claim for restitution submitted by any victim.

(b) In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction or in the order placing the defendant on probation under W.S. 7-13-301. In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 through 7-9-115.

(c) The court shall order the defendant to pay all or part of the restitution claimed or shall state on the record specific reasons why an order for restitution was not entered. If the court determines that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay in the future, the court shall enter specific findings in the record supporting its determination.

(d) Any order for restitution under this chapter constitutes a judgment by operation of law on the date it is entered. To satisfy the judgment, the clerk, upon request of the victim, the division of victim services or the district attorney, shall issue execution in the same manner as in a civil action.

(e) The court's determination of the amount of restitution owed under this section is not admissible as evidence in any civil action.

(f) The defendant shall be given credit against his restitution obligation for payments made to the victim by the defendant's insurer for injuries arising out of the same facts or event.

#### **WYO. STAT. ANN. § 7-9-114 (WEST 1991). DETERMINATION OF LONG-TERM RESTRICTION; TIME OF ORDER; ENFORCEMENT**

(a) In determining the amount of restitution to be ordered for long-term physical health care, the court shall consider the factors stated in W.S. 7-9-106 together with an estimated monthly cost of long-term physical health care of the victim provided by the victim or his representative. The victim's estimate of long-term physical health care costs may be made as part of a victim impact statement under W.S. 7-21-103 or made separately. The court shall enter the long-term physical health care restitution order at the time of sentencing. An order of restitution made pursuant to this section shall fix a monthly amount to be paid by the defendant for as long as long-term physical health care of the victim is required as a result of the crime. The order may exceed the length of any sentence imposed upon the defendant for the criminal activity. The court shall include as a special finding in the judgment of conviction its determination of the monthly cost of long-term physical health care.

(b) Restitution ordered under this section shall be paid as provided in W.S. 7-9-108. The restitution order shall be a civil judgment against the defendant and may be enforced by any means provided for enforcing other restitution orders and civil judgments.

## U.S. Territories

### American Samoa

American Samoa does not have human trafficking specific restitution or forfeiture statutes; however, Am. Samoa Code Ann. §§ 46.2001-2003 (2011) addresses restitution generally.<sup>27</sup> The American Samoa Code discusses forfeiture in the context of sentencing, providing that the Court is not limited, in any way, from ordering the forfeiture of a convicted offender's property.

#### HUMAN TRAFFICKING STATUTES

- Am. Samoa Code Ann. § 46.3705 (2011). Promoting Prostitution in the first degree
- Am. Samoa Code Ann. § 46.3706 (2011). Promoting Prostitution in the second degree

#### AM. SAMOA CODE ANN. § 46.2001 (2011). FINDINGS-PURPOSE

(a) The Legislature finds and declares that:

- (1) the number of victims of crime increases daily;
- (2) these victims suffer undue hardship by virtue of physical injury or loss of property;
- (3) persons found guilty of causing this suffering should be under a moral and legal obligation to make adequate restitution to those injured by their conduct;
- (4) restitution or reparation, or both, provided by criminal offenders to their victims, in money or service, may be an instrument of rehabilitation for offenders.

(b) The purpose of this chapter is to encourage the establishment of programs to provide for restitution to victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in the correctional and detention facility. It is the intent of the Legislature that restitution be utilized wherever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society.

#### AM. SAMOA CODE ANN. § 46.2002 (2011). ESTABLISHMENT OF RESTITUTION PROGRAMS

The Department of Public Safety may, as a means of assisting in the rehabilitation of persons committed to its care, establish programs and procedures whereby those persons may contribute toward restitution, in money or service, of those persons injured as a consequence of their criminal acts.

#### AM. SAMOA CODE ANN. § 46.1905 (2011). INTERPRETATION OF CHAPTER

This chapter is not to be construed to deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. An appropriate order exercising that authority may be included as part of any sentence

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<sup>27</sup> Legislators in American Samoa have approved the territory's first anti-human trafficking law. The territorial Senate approved the measure in March 2014 and it passed the House in late 2013. The bill would become law in 60 days if Gov. Lolo Matalasi Moliga signs it. Fili Sagapolutele, *Am. Samoa passes first anti-human trafficking law*, WASH. TIMES, March 10, 2014, <http://www.washingtontimes.com/news/2014/mar/10/am-samoa-passes-first-anti-human-trafficking-law/>.

## Guam

Guam does have a human trafficking specific restitution statute and it is found within the chapter on Human Trafficking and Criminal Exploitation. 9 GUAM CODE ANN. § 26.06 (2009). Guam's restitution statute provides for restitution of medical and psychological treatment, community services, value of labor under the Fair Labor Standards Act, property loss, relocation expenses, and any and all other losses suffered. *Id.* Guam's human trafficking chapter also includes an asset forfeiture law providing that statutes governing forfeiture should be applied to human trafficking cases. 9 GUAM CODE ANN. § 26.07 (2009).

### **HUMAN TRAFFICKING STATUTE:**

- 9 Guam Code Ann. § 26.02 (2009). Criminal Provisions

### **9 GUAM CODE ANN. § 26.06 (2009). RESTITUTION**

(a) A person convicted of violations of this article shall be ordered to pay mandatory restitution to the victim as provided in paragraph (c) of this section.

(b) Restitution under this section shall include items covered by existing Guam statutes governing victim restitution and any of the following if not already included in Guam's restitution statute:

(1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;

(2) costs of necessary transportation, temporary housing, and child care, at the court's discretion;

(3) the greater of:

(A) the gross income or value to the defendant of the trafficking victim's commercial sex acts or sexually-explicit performances, or labor or services;

(B) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or

(C) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of Guam labor laws.

(4) return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;

(5) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and

(6) any and all other losses suffered by the victim as a result of violations of this article.

(d) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this subsection applied first to payment of restitution. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

(e) Nonpayment or delay in payment of restitution shall be governed by Guam restitution statute(s) governing non-payment or delay in restitution payments.

### **9 GUAM CODE ANN. § 26.07 (2009). ASSET FORFEITURE**

(a) All offenses under this section shall qualify as offenses for forfeiture and thereby subject to the provisions of statute(s) governing forfeiture according to existing Guam law.

(b) Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by the government.

(c) Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward funding services for victims of trafficking, or Guam crime victims' fund.

## Northern Mariana Islands

Northern Mariana Islands does not have human trafficking specific restitution or asset forfeiture statutes. It does have a general victim restitution statute, which provides for “economic loss incurred as a result of the person’s criminal conduct, including, but not limited to” property damaged, medical expenses, mental health counseling expenses, and several others included in the full text below. 6 N. MAR. I. CODE § 4109 (2013). Northern Mariana Island’s code has a provision for asset forfeiture specific to contraband offenses. 6 N. MAR. I. CODE § 2150 (2013).

### HUMAN TRAFFICKING STATUTE:

- 6 N. Mar. I. Code § 1344 (2013). Promoting Prostitution

### 6 N. MAR. I. CODE § 4109 (2013). RESTITUTION, COMPENSATION, OR FORFEITURE.

(a) If a person is convicted of any offense defined in this title or any violation of the Commonwealth Code, the court shall, if appropriate, order the person to pay restitution as a condition of probation. This section also authorizes or the forfeiture of wrongfully obtained property to the Commonwealth.

(b) For the purposes of this Title, “restitution” means reimbursement or compensation to the victim or victims, as defined in 6 CMC § 9101, for every determined economic loss incurred as a result of the person’s criminal conduct, including, but not limited to:

- (1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is feasible;
- (2) Medical expenses;
- (3) Mental health counseling expenses;
- (4) Burial, funeral, cremation or other expenses incurred by the family or estate of a homicide victim as a result of the crime;
- (5) 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;
- (6) 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;
- (7) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to the victim or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime;
- (8) Expenses incurred by an adult victim of a crime involving domestic violence to install or increase residential security incurred related to the crime, including, but not limited to, a home security device or system, or replacing or increasing the number of locks;
- (9) Expenses incurred by an adult victim of a crime involving domestic violence in relocating away from the probationer, including, but not limited to, deposits for utilities or phone service, deposits for rental housing, temporary lodging and food expenses, clothing and personal items. Expenses incurred pursuant to this section must be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health

treatment provider to be necessary for the emotional well-being of the victim;

(10) Pre-judgment or post-judgment interest, as provided by statute or court rule, that accrues as of the date or loss or sentencing, as determined by the court;

(11) Actual and reasonable attorney's fees and costs of collection accrued by a private entity on behalf of the victim.

(c) *Garnishment.* The Court may order that a probationer's wages from employment be garnished to satisfy any outstanding restitution sum.

(d) In determining the amount of any restitution award, the court shall order the probationer to pay full restitution, unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. If the amount of the award cannot be determined at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. A probationer's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of any restitution order.

(e) The probationer has the right to a hearing before the sentencing judge to contest the amount of the restitution. The court may modify the amount, on its own motion, or on that of the prosecutor, the victim or victims, or the probationer. If a motion for hearing on the restitution amount is filed, the victim shall be notified at least 10 days prior to the hearing on the motion. The amount of restitution shall be determined by the judge, and proven by a preponderance of the evidence.

(f) A restitution order under this section does not limit any civil liability of the probationer arising from the probationer's conduct. Nor is the amount of restitution ordered pursuant to this section affected by the indemnification or subrogation rights of any third party.

(g) Regardless of whether restitution is ordered as a condition of probation or as part of a direct sentence, a restitution order under this section is not discharged by the completion of any period of probation, or by the serving of any sentence imposed.

(h) A restitution order under this section is a judgment lien that:

(1) Attaches to the property of the person subject to the order;

(2) May be perfected; and

(3) May be enforced against a probationer as if the order were a civil judgment enforceable by execution, to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued, or the person's assignee. Nothing in this section limits the authority of the court to enforce fines and orders of restitution to victims, including, but not limited to, the court's authority to revoke the probationer's probation for failure to comply with any part of the restitution order.

(i) If the probationer defaults in the payment of any fine or restitution, or in any installment payment authorized by the court for periodic payment of a fine or restitution, the court may order the probationer to show cause why the probationer should not be held in contempt of court for nonpayment and, if the payment was made a condition of the probationer's probation, may revoke the probationer's probation, pursuant to the procedures set out in 6 CMC § 4105. In a contempt or probation revocation proceeding brought as a result of the probationer's failure to pay a fine, restitution, or other financial obligation imposed as part of a sentence or probation condition, it is an affirmative defense that the probationer was unable to pay despite having made continuing good faith efforts to do so. If the court finds the probationer was unable to pay despite having made continuing good faith efforts to do so, the probationer may not be imprisoned solely because of the inability to pay. If the court does not find the probationer's default attributable to an inability to pay, despite continuing good faith efforts, the court may revoke all or part of the suspended sentence. A term of imprisonment or any contempt sanction imposed solely for failure

to pay restitution may be consecutive to any portion of the probationer's sentence revoked for other noncompliance with conditions of probation, and may not exceed one day for each \$50 of the unpaid fine or restitution, or one year, whichever is shorter.

(j) A probationer who has been sentenced to pay a fine or restitution may request a hearing regarding the probationer's ability to pay the fine or restitution. The court may deny the request for hearing if it has previously considered the probationer's ability to pay and the probationer's request does not allege a substantial change in circumstances. The victim shall be notified at least 10 days prior to the hearing, and shall be given an opportunity to be heard at the hearing. If at the hearing under this subsection, the probationer proves by a preponderance of the evidence that the probationer will be unable to pay through good faith efforts to satisfy the order requiring payment of the fine or restitution, the court shall modify the order so that the probationer can pay the fine or restitution through good faith efforts. The court may, for good cause shown, reduce the fine or restitution ordered, change the payment schedule, extend the probationer's probation up to the maximum period of time allowed under the law, or otherwise modify the order.

(k) Nothing in this section prohibits a person who has been ordered to pay restitution from satisfying the obligation by means of traditional or customary restitution, barter, or other means, with the consent of the victim, unless the crime for which the restitution has been ordered is a crime involving domestic violence, or the court has ordered the defendant not to have any contact with the victim during the period of probation.

(l) In the event that any restitution paid is unclaimed by the victim more than 180 days after it is paid, it may be forfeited by order of the court. The Office of Adult Probation shall file with the court a notice of intent to seek forfeiture, summarizing its efforts to locate the victim, and shall publish the notice in a publication of general distribution for three consecutive weeks after the notice is filed with the court, stating the name of the victim entitled to the restitution, the amount of the restitution, and the date and time of the forfeiture hearing set by the court. At that hearing, if the court finds a diligent, good faith effort has been made to locate the victim prior to forfeiture, and if it appears unlikely that the victim will claim the restitution in the future, the court may order it forfeited in whole or in part to programs providing aid to victims of domestic violence, sexual assault and sexual abuse, provided such programs are approved by the Attorney General.

## **Puerto Rico**

Puerto Rico does not have human trafficking specific restitution or asset forfeiture statutes. The jurisdiction does provide for restitution as a form of punishment in the form of money, services, or the delivery of illegally appropriated property. P.R. LAWS ANN. tit. 33, § 4689 (2005). Asset forfeiture is only permitted where expressly provided as a penalty under the law. P.R. LAWS ANN. tit. 33, § 4692 (2005).

### **HUMAN TRAFFICKING STATUTES:**

- P.R. Laws Ann. tit. 33, § 4780 (2004) Proxenetism, pandering and human trafficking
- P.R. Laws Ann. tit. 33, § 4781 (2004). Aggravated Proxenetism, pandering and human trafficking

### **P.R. LAWS ANN. tit. 33, § 4689 (2005). RESTITUTION**

The penalty of restitution consists of the court imposed obligation to compensate the victim for the damages and losses caused to his/her person or property as a consequence of the crime. The penalty of restitution does not include suffering and mental anguish.

The court may order that the penalty of restitution be compensated in money, through the rendering of services, the delivery of the illegally appropriated property or the equivalent, if the property is not available.

If the penalty of restitution is compensated in money, the sum thereof shall be established by the court taking into

consideration the following: the total amount of damages to be restored, the allocated participation of the convicted person if there were several perpetrators of the criminal act, the convicted person's ability to pay and all other elements that allow an adequate adjustment to the circumstances of the case and the condition of the convicted person.

The penalty of restitution shall be paid immediately. Nevertheless, at the request of the sentenced person and at the discretion of the court, taking into consideration the financial situation of the convict, it may be paid in full or in installments within a reasonable term after the date on which the sentence becomes effective.

### **P.R. LAWS ANN. tit. 33, § 4692 (2005). PROHIBITION ON FORFEITURE OF PROPERTY**

No conviction for any crime entails the loss or forfeiture of property, except for cases in which said penalty is expressly imposed by the law, or the property was used to commit the crime, or is the product thereof and their owner is unknown.

## **Virgin Islands**

The Virgin Islands does not have a human trafficking specific restitution statute. There are three statutes that provide for restitution generally, and they are copied below. Forfeiture is allowed for offenses involving controlled substances and organized crime. V.I. CODE ANN. tit. 19, § 623 (2012) Forfeitures; V.I. CODE ANN. tit. 14, § 1607 (2012) Civil Remedies.

### **HUMAN TRAFFICKING STATUTES:**

- V.I. Code Ann. tit. 14, § 132 (2012). Purpose
- V.I. Code Ann. tit. 14, § 133 (2012). Definitions
- V.I. Code Ann. tit. 14, § 134 (2012). Prosecution

### **V.I. CODE ANN. tit. 5, § 3721 (2012). RESTITUTION TO VICTIMS**

If a person is convicted of a crime and is otherwise eligible, the court, by order, may withhold sentence or impose sentence and stay its execution, and in either case place the person on probation for a stated period, stating in the order the reasons therefor, and may impose any conditions of the probation which appear to be reasonable and appropriate to the court. If the court places the person on probation, the court shall require restitution designed to compensate the victim's pecuniary loss resulting from the crime to the extent possible, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. The court may require that restitution be paid to an insurer or surety or government entity which has paid any claims or benefits to or on behalf of the victim. If the court does require restitution, it shall specify the amount.

If the court does require restitution, it shall require the person or defendant to pay a surcharge equal to 5 percent of the amount of restitution to the clerk of the court for administrative expenses under this section.

### **V.I. CODE ANN. tit. 5, § 4606 (2012). RESTITUTION OF VICTIMS**

Whenever the Territorial Parole Board shall order the parole of an inmate, the Board, unless it finds compelling circumstances which would render a plan of restitution unworkable, shall order as a condition of parole that the parolee make restitution to the victim for the damage or loss caused by the parolee's crime, in an amount and manner specified in the Journal entry of the court that sentenced the inmate.

### **V.I. CODE ANN. tit. 34, § 203 (2012). RIGHTS OF VICTIMS AND WITNESSES**

This section may be cited and shall be known as the 'Victim's and Witness' Bill of Rights.' To the extent reasonably possible and subject to available resources, victims and witnesses of crime are afforded the following rights where applicable:

(a) Victims and witnesses have a right to be treated with dignity and compassion.

(1) A victim has a right to basic human services to meet emergency and long term needs caused by financial, physical, or psychological injury.

(2) A victim or witness has a right to be treated with dignity by human service professionals who provide basic assistance.

(3) A victim or witness has a right to receive courteous assistance as he cooperates with criminal justice personnel.

(b) Victims and witnesses have a right to protection from intimidation and harm.

(1) A victim has the right to be free from intimidation when involved in the criminal justice system.

(2) When the threat of damaging intimidation cannot be avoided, law enforcement agencies shall take measures to protect the victim or witness, including, but not limited to, transportation to and from court and physical protection in the courtroom and adjoining facilities.

(3) The court shall provide the victim or witness waiting areas that are separate from those that will be used by the defendant, his family, or friends.

(4) If a witness is threatened, the prosecutor shall, to the extent reasonably possible, attempt to prosecute the person.

(c) Victims and witnesses have a right to be informed concerning the criminal justice process. Victims and witnesses who wish to receive notification and information must provide the Department of Justice or the United States Attorney, as applicable, with their current address and telephone numbers. The prosecutor who is prosecuting the case shall have the responsibility of ensuring that the rights listed in this subsection are promulgated and complied with, except subsection (c)(6) and (7) of this section which are the responsibility of the Bureau of Corrections.

(1) A victim or a witness has a right to be informed about the procedures and practices of the criminal justice system.

(2) A victim has a right to be informed of financial assistance and other social services available to victims and witnesses.

(3) A victim has a right to be informed of any compensation or fees to which he is entitled.

(4) A victim has a right to know the status and progress of his case from the police investigation to final disposition.

(5) A victim or prosecution witness has a right to be informed of a defendant's release on bail.

(6) A victim or prosecution witness has a right to be informed of post-sentence hearings affecting the probation or parole of the offender.

(7) A victim or prosecution witness has the right to be informed when the convicted offender receives a temporary, provisional, or final release from custody or the offender escapes from custody.

(8) Unless there is a judicial determination to restrict attendance, a victim or witness has the right to attend all hearings and procedures involving his case. A victim or witness has the right to be informed of all hearings and procedures in time to exercise his right to attend.

(9) A victim has the right to be informed of whatever rights to legal counsel are available to him in this Territory.

(10) A victim has the right to discuss his case with the prosecutor.

(11) A victim has a right to be informed of all available civil remedies respecting his case and to proceed in civil suits for recovery of damages if possible, including placing a lien on any profits received by the offender as a result of publication or media coverage resulting from the crime.

(12) A victim has the right to discuss his case with the prosecutor and to be informed of any offers to plea bargain with the defendant.

(13) A victim or prosecution witness has the right to be notified in advance when a court proceeding has been rescheduled or cancelled.

(14) A witness has a right to be informed of financial assistance, compensation, or fees to which he is entitled.

(d) Victims and witnesses have a right to reparations.

(1) A victim or witness has the right to receive a reasonable witness fee plus reimbursement for necessary out-of-pocket expenses associated with lawfully observing a subpoena. The court shall determine the rate of reimbursement and reimburse all eligible persons in a timely manner.

(2) A victim, or his surviving dependents, has the right to receive financial compensation for physical or emotional injuries suffered as a result of being a victim of a violent, bodily crime. The eligibility and award will be determined by the Virgin Islands Criminal Victims Compensation Commission.

(3) A victim has the right to receive restitution for expenses or property loss incurred as a result of the crime. The judge shall order restitution at every sentencing for a crime against person or property, or as a condition of probation or parole, unless the court finds a substantial and compelling reason not to order restitution. The court shall diligently, fairly, and in a timely manner enforce all orders of restitution.

(e) Victims and witnesses have a right to preservation of property and employment.

(1) A victim or witness has the right to respond to a subpoena without fear of retaliation or loss of wages from his employer. Victims and witnesses must be provided, where appropriate, with employer and creditor intercession services by the prosecutor who:

(A) shall seek employer cooperation in minimizing an employee's loss of pay and other benefits resulting from his participation in the criminal justice process, and

(B) shall seek consideration from creditors if the victim is unable, temporarily, to continue payments.

(2) A victim has the right to have recovered or taken personal property returned as expeditiously as possible unless the property is contraband, property subject to evidentiary analysis, property the ownership of which is disputed, or the property is needed for law enforcement or prosecution purposes. The property must be returned by the court, the prosecutor, or law enforcement agencies using photographs of property as evidence whenever possible.

(f) Victims and witnesses have a right to due process in criminal court proceedings. The court, the prosecutor and the defense shall recognize the rights due victims and witnesses and protect them as diligently as the defendant's rights.

(1) A victim has the right to participate in the criminal justice process directly or through representation.

(2) A victim or witness has the right to retain counsel with standing in court to represent him in cases involving the victim's reputation.

(3) A victim or witness has the right to a speedy disposition of the case so as to minimize the stress, cost and inconvenience resulting from his involvement in a prosecution.

(g) Victims and witnesses who are very young, elderly, who are handicapped, or who have special needs, have a right to special recognition and attention by all criminal justice, medical, and social service agencies. The court shall treat 'special' witnesses sensitively, using closed or taped sessions when appropriate. The prosecutor or defense shall notify the court when a victim or witness deserves special consideration.

## **Federal Law**

The federal law on human trafficking includes both a mandatory restitution statute as well as a provision for civil asset forfeiture. The relevant statutes are copied below.

### **HUMAN TRAFFICKING STATUTES:**

- 18 U.S.C. §§ 1581-1596 (2008). Trafficking Victims Protection Reauthorization Act of 2008
- 22 U.S.C. §§ 7101-7200 (2000). Trafficking Victims Protection Act

### **18 U.S.C. § 1593 (2008). MANDATORY RESTITUTION**

(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

(4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853).

(c) As used in this section, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

### **18 U.S.C. § 1594 (2008). GENERAL PROVISIONS**

(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.

(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States--

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(e)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

(f) Witness protection.--Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).