

2017
National
Seminar

Sex Trafficking Overview: Statutes, Guidelines, & Restitution Issues

In response to an increase in sex trafficking offenses, Congress implemented Justice for Victims Act in 2015 to increase efforts to investigate and punish these crimes. The legislation includes, among other things, a new monetary assessment on defendants convicted of certain trafficking statutes. This primer provides an overview of statutes, relevant sentencing guidelines, and special restitution considerations in sex trafficking cases.

Common Statutes Involving Sex Trafficking

18 U.S.C. § 1591 (Sex Trafficking)

- § 1591(b)(1): If the offense was involved force, fraud, or coercion or if the victim was under 14 years of age. *Penalty - 15 Years to Life.*
- § 1591(b)(2): If the offense did not involve force, fraud, or coercion and the victim was older than 14 years of age but less than 18. *Penalty - 10 Years to Life.*

18 U.S.C. § 2421 (Transportation)

- § 2421 (a): Transportation of any individual in interstate commerce with the intent that such individual engage in prostitution. *Penalty - 10 Year Maximum.*

18 U.S.C. § 2422 (Coercion & Enticement)

- § 2422 (a): Whoever coerces, induces or persuades someone to travel for purposes of prostitution. *Penalty - 20 Year Maximum.*
- § 2422 (b): Whoever, using means of interstate commerce, coerces, induces, or persuades someone under 18 to engage in prostitution or illegal sexual activity. *Penalty - 10 Years to Life.*

18 U.S.C. § 2423 (Transportation of Minors)

- § 2423(a): Transportation of an individual under the age of 18 with the intent to engage in criminal sexual activity. *Penalty - 10 Years to Life.*
- § 2423(b): Travel with the intent to engage in illicit sexual conduct. *Penalty - 30 Year Maximum.*
- § 2423(c): Engaging in illicit sexual conduct in foreign places. *Penalty - 30 Year Maximum.*

8 U.S.C. § 1328 (Importation of Alien for Immoral Purposes)

- 8 U.S.C. § 1328 (a): Importing an alien for purposes of prostitution. *Penalty - 10 Year Maximum.*

Relevant Sentencing Guideline Provisions

§2G1.1: Promotion a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor

Base offense level based on statute of conviction:

- 34 (§ 1591 (b)(1))
- 14 otherwise

§2G1.3: Travel & Child Sex Trafficking Cases

Base offense level based on statute of conviction:

- 34 (§ 1591(b)(1)) - Victim under 14
- 30 (§ 1591(b)(2)) - Victim between 14-18)
- 28 (§ 2422(b) or § 2423(a)) - Enticement or transport of minor)
- 24 Otherwise

Number of Sex Trafficking Cases by Statute (FY15)

18 U.S.C. § 2422 - 180

18 U.S.C. § 2423 - 125

18 U.S.C. § 1591 - 122

18 U.S.C. § 2421 - 62

8 U.S.C. § 1328 - 4



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Special Restitution and Assessments in Sex Trafficking Cases

Mandatory Restitution for Sex Trafficking 18 U.S.C. § 1593

Court must order restitution for any offender convicted of offenses related to trafficking of persons. (18 U.S.C. § 1593 (a)).

The order of restitution shall direct the defendant to pay the victim, through the appropriate mechanism, the full amount of the victim's losses (18 U.S.C. § 1593 (b)(1)).

"The full amount of victim's losses" has the same meaning as outlined in section 2259(b)(3) and in addition shall "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. (18 U.S.C. § 1593 (b)(3)).

The term "victim" means any individual harmed as a result of the crime. If the victim is under 18, incompetent, incapacitated, or deceased, the court can appoint the legal guardian of the victim, another family member, or any other suitable by the court as a representative. (18 U.S.C. § 1593 (c)).

Losses Included for Restitution Purposes (18 U.S.C. § 2259):

Definition.—For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

Justice for Victims of Trafficking Act (18 U.S.C. § 3014)

New Mandatory Assessment

- Imposes an additional assessment of \$5000, until the end of fiscal year 2019, on all non-indigent defendants convicted of offenses under these chapters or statutes:
 - **Chapter 77** (peonage, slavery, trafficking in persons);
 - **Chapter 109A** (sexual abuse);
 - **Chapter 110** (sexual exploitation/abuse of children);
 - **Chapter 117** (transportation for illegal sexual activity);
 - **8 U.S.C. § 1324** (human smuggling)
- The money collected under this section will be used to establish the Domestic Trafficking Victims' Fund, which will go to pay for services for sex trafficking victims and to develop trafficking deterrence programs. (18 U.S.C. § 3014 (c)).
- Any assessment under this section is not payable until a defendant has satisfied all other court-ordered fines, orders of restitution, or any other victim compensation fees. (18 U.S.C. § 3014 (b)).
- The money from this assessment is to be collected in the same manner as fines in criminal cases. (18 U.S.C. § 3014 (f)).
- Under this statute, the defendant is obligated to pay until the assessment is paid in full. (18 U.S.C. § 3014 (g)).

Common Statutes Under 18 U.S.C. § 3014

- 18 U.S.C. § 1591 - (Sex trafficking)
- 18 U.S.C. § 2251 - (Sexual exploitation of children)
- 18 U.S.C. § 2252 - (Material involving the sexual exploitation of children)
- 18 U.S.C. § 2252A - (Material containing child pornography)
- 18 U.S.C. § 2242 - (Coercion and enticement)

