

# Report Cards on Child & Youth Sex Trafficking

*State Action. National Change.*



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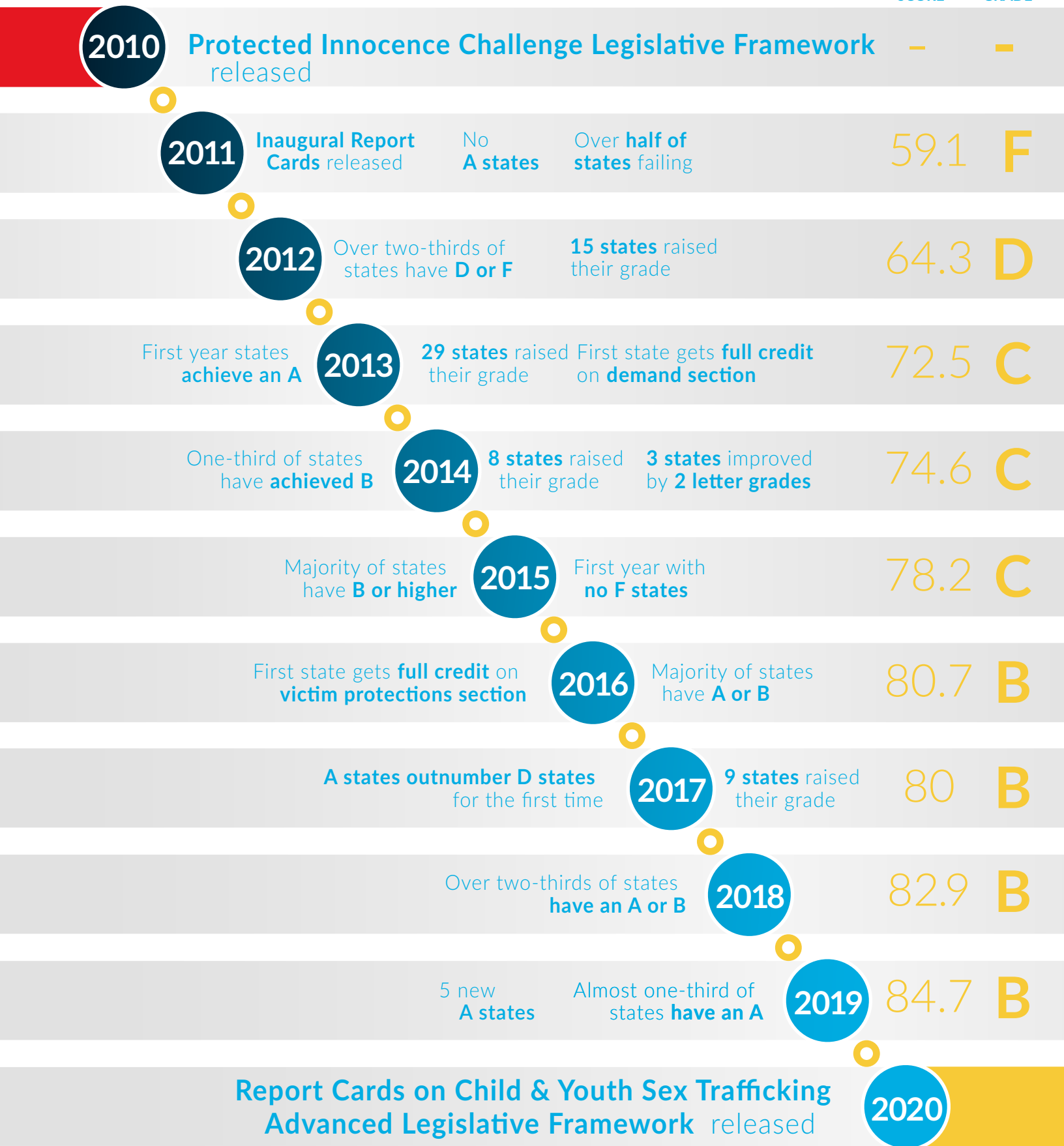
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# REPORT CARDS TIMELINE

# 2010-2020

A look at the last ten years

NATIONAL AVERAGE SCORE NATIONAL AVERAGE GRADE



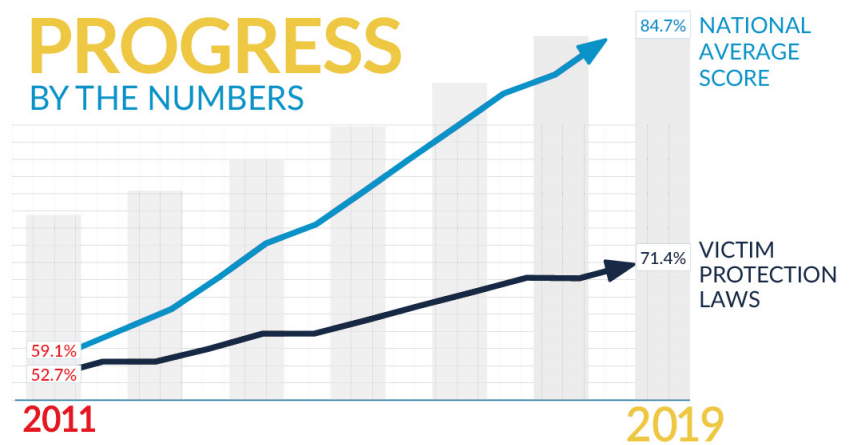
# PURPOSE

## Nearly a decade ago, Shared Hope developed the nation’s first legal framework

that challenged states to enact laws that comprehensively address the crime of child sex trafficking. When we launched the Protected Innocence Challenge—and issued the inaugural State Report Cards—the majority of states received an “F” grade, reflecting the reality that many states’ laws failed to even recognize the crime of child sex trafficking. Over the past 10 years, we have been working to lay the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to enact the minimum fabric of laws needed to address these heinous crimes. Ten years later, no state received an “F” grade, and a majority of the country received an “A” or “B.”

The Protected Innocence Challenge project was Shared Hope’s vision for mobilizing collective state action to ensure national change. Ten years of grassroots mobilization, advocacy, technical assistance, and consistent collaboration has allowed this vision to become reality. All states now have a child sex trafficking law and collectively, the country has made exciting progress to provide imperative protections and access to specialized services for child survivors. However, 10 years has also led to new research and opportunities to listen to survivors, providing waves of information that require us, as a nation, to confront where we are and where we should be going. The Report Cards on Child & Youth Sex Trafficking Legislative Framework will build on the original Protected Innocence Challenge Framework, preserving the most fundamental components while including new policy priorities that reflect feedback and research from the field. Specifically, this advanced legislative framework focuses largely on victim protection laws, including policies pertaining to specialized service responses and access to justice. Comprehensive and accessible victim protections are, undoubtedly, the most crucial components of a strong response to child sex trafficking and, yet, as a nation we continue to fall behind.

Importantly, this framework will also acknowledge the intersection of child sex trafficking with child labor trafficking and the unique challenges faced by youth age 18+. As such, several components of the advanced framework are eligible for receiving extra credit when state law extends the protective policy to child victims of labor trafficking and/or youth age 18+. For a complete list of eligible components, please see the Extra Credit section of the framework below.



# METHODOLOGY

**Building upon 10 years of foundational research under the Protected Innocence Challenge (PIC),** Shared Hope International undertook this re-imagining of the PIC Framework to include advanced policies and practices designed to shape the next 10 years of policy development at the state level. Through expert convenings, the JuST Response Council, and a nationwide survey, Shared Hope drew on the expertise of individuals in the field to identify challenges as well as promising practices related to victim protections. Specifically, the Report Cards on Child & Youth Sex Trafficking Legislative Framework was developed with the input of the Research to Action Stakeholder Workgroup and supported by in-depth vector outreach to state attorneys general, governors, and state agency human trafficking coordinators.

## **Research to Action Stakeholder Workgroup**

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In April 2019, Shared Hope convened over 60 leaders in the anti-trafficking movement from around the country, hosting a gathering in Phoenix, Arizona, to engage in conversation around the implementation and enforcement of state laws. Attendees divided into workgroups based on their fields of expertise (e.g., law enforcement, service providers, state agencies, and policy stakeholders), each tasked with identifying gaps and emerging trends based on their collective experiences. Attendees then reconvened for a larger group discussion on steps to move the nation closer to ending the scourge of child sex trafficking.

Following the Arizona convening, Shared Hope distributed a nationwide survey, seeking a broad range of perspectives on the challenges and successes of implementing laws that combat child sex trafficking and address the needs of survivors. This outreach was critical for developing the Report Cards on Child & Youth Sex Trafficking Legislative Framework as it connects Shared Hope's policy work with emerging and established promising practices from a diverse field. Over 200 responses were collected and considered.

In October 2019, Shared Hope once again convened state stakeholders from around the country in Cincinnati, Ohio, this time moderating panels on victim-centered prosecutions and service responses, which were carefully designed to generate robust discussion and to create a space for sharing ideas for tackling barriers that currently impact the field. Panelists shared the challenges and successes in their jurisdictions, and individual attendees were encouraged to share what they had observed as promising practices in the field.

Based on the wealth of information shared by Research to Action participants, Shared Hope drafted the Report Cards on Child & Youth Sex Trafficking Legislative Framework under which states will be graded beginning in 2021. The draft framework took into consideration and addressed many of the challenging issues identified through the breakout sessions, panel discussions, and nationwide survey. As a final step, Research to Action stakeholders were consulted to review and provide feedback on the draft framework.

## **Vettor Review**

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The Report Cards on Child & Youth Sex Trafficking Legislative Framework has undergone several rounds of review to ensure that the next stage of policy development at the state level will be informed by the experiences of those who regularly tackle the challenge of responding to child sex trafficking and observing the implementation of states' laws as intended. Those invited to vet the framework included Research to Action stakeholders and Shared Hope's JuST Response Council, a group of over 30 experts from around the country who collaborate to improve responses to child sex trafficking victims, including policy advocates, government officials, medical professionals, law enforcement, judges, academics, and service providers, many of whom are themselves survivors of sex trafficking. State attorneys generals, governors, statewide coordinators, and task force supervisors were also asked to review and advise on the framework.

## **Report Cards on Child & Youth Sex Trafficking Legislative Framework**

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The resulting Report Cards on Child & Youth Sex Trafficking Legislative Framework analyzes 40 legal components for each of the 50 states and the District of Columbia. These laws are grouped into six policy issue areas:

- 1. Criminal Provisions**
- 2. Identification of and Response to Victims**
- 3. Continuum of Care**
- 4. Access to Justice for Trafficking Survivors**
- 5. Tools for a Victim-Centered Criminal Justice Response**
- 6. Prevention and Training**

This framework is designed to provide a consistent measure of state progress while simultaneously operating as a dynamic tool to account for ever-evolving practices that are informing and shaping system responses to child sex trafficking victims. As such, the framework will be able to adapt to incorporate the expanded knowledge that comes from implementation.

## **Grading**

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The Report Cards on Child & Youth Sex Trafficking Legislative Framework assigns a point value of 0 to 2.5 for each of the 40 critical components of law included under the six policy issue areas noted above. That score is based on a written point allocation scheme. Those scores will be added together to determine the total score, which translates to the corresponding letter grade.

After receiving full credit for achieving the policy goal set out in an applicable component, states will be eligible for extra credit if that same protective policy is provided to youth age 18+ and/or child labor trafficking victims. Extra credit only applies to the components listed in the extra credit section of the framework. States can earn up to 1 point of extra credit per component with a max of 5 points for components extended to youth age 18+ and a max of 5 points for components extended to child labor trafficking victims (i.e. a max of 10 points total).

It is important to note that the point allocation rubric looks solely at enacted statutes in a given state and their *de jure* compliance with the Report Cards on Child & Youth Sex Trafficking at the time of review. This analysis does not review caselaw interpretation, agency rules or regulations, or implementation and enforcement of state law. While not analyzed for purposes of the report cards, Shared Hope acknowledges the critically important role that implementation and enforcement play. For that reason, we regularly consult with the field on application of the laws analyzed under the framework and factor these considerations into our technical assistance.

## DEFINITIONS

**Child:** This term refers to any person under the age of 18.

**Child sex trafficking victim:** The term “child sex trafficking victim” includes any child who has experienced commercial sexual exploitation, regardless of whether anyone is charged or prosecuted in connection with their victimization and regardless of the prosecuted offense.

**Child sexual abuse material (CSAM):** CSAM includes photographs, film, or other visual depictions of a child engaged in actual or simulated sexual activity.

**Commercial sexual exploitation of children (CSEC):** CSEC refers to an array of criminal conduct involving the sexual abuse or exploitation of a person under 18 for the financial benefit of the person or the provision of anything of value, including non-monetary items, in exchange for a sexual act with or performance by a person under 18.<sup>1</sup>

**Domestic child sex trafficking victim:** The term “domestic child sex trafficking victim” includes any child who is trafficked within the borders of the United States, regardless of their nationality or country of origin.

**Non-criminalization:** Non-criminalization laws prohibit the criminalization of child sex trafficking survivors for crimes committed pursuant to their victimization, ideally directing survivors away from punitive processes toward specialized services and care.

**Trauma-informed:** This term refers to policies, programs, or practices that reflect an understanding of the vulnerabilities and experiences of trauma survivors, placing priority on restoring the survivor’s



feelings of safety, autonomy, and control.<sup>2</sup>

**Victim/survivor:** This term refers to any person who has been subjected to conduct that violates the sex trafficking law. This report uses “victim” and “survivor” interchangeably to align with statutory language and cross-agency terminology. **Shared Hope recognizes that individuals who have experienced trafficking are survivors at all stages of their abuse and recovery and are not defined by their victimization. Shared Hope also recognizes that people with lived experience with trafficking may refer to themselves in many ways, which may or may not include the terms “victim” and/or “survivor.”**

**Victim-centered:** This term refers to policies, programs, or practices that prioritize the needs and interests of survivors while safeguarding against re-traumatization.<sup>3</sup>

**Victim-offender (VO):** For purposes of this report, “victim-offender” refers to an individual who has been subjected to sex trafficking victimization and is alleged to have engaged in conduct that violates the sex trafficking law. However, any discussion of VOs in this report may also have application to cases involving trafficking victims charged with other serious crimes that are not trafficking but are, nevertheless, related to their trafficking victimization.

**Victim-offender intersectionality (VOI):** For purposes of this report, this term refers to the phenomenon of sex trafficking victims alleged to have engaged in conduct that violates the sex trafficking law. Under this definition, the trafficking violation could involve a broad range of conduct, including recruitment, transportation, advertising, and harboring.

**Youth/transition age youth:** For purposes of this report, this term refers to any person between 18 and 24 years of age (i.e. 18 to 23 year olds). This report uses “youth” and “transition age youth” interchangeably, and this age range aligns with the foster care age coverage option within the Justice for Victims of Trafficking Act (JVTA).<sup>4</sup>

**Safe harbor:** The term “safe harbor” has no clear, singular meaning. Current “safe harbor” laws range from affirmative defenses with no clear path to services to comprehensive service responses that reduce or eliminate criminalization of commercially sexually exploited children and mandate access to specialized services. Accordingly, Shared Hope avoids using the term “safe harbor” when discussing services responses since the responses vary widely and not all “safe harbor” laws are necessarily safe or effective.

<sup>1</sup> *Commercial Sexual Exploitation of Children*, OFFICE OF JUVENILE JUSTICE DELINQUENCY PREVENTION, <https://ojjdp.ojp.gov/programs/commercial-sexual-exploitation-children> (last visited Nov. 17, 2020).

<sup>2</sup> Glossary, U.S. DEPARTMENT OF JUSTICE, OFFICE FOR VICTIMS OF CRIME <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/5/glossary.html> (last visited Nov. 11 2020).

<sup>3</sup> *Id.*

<sup>4</sup> Justice for Victims of Trafficking Act of 2015, Public. Law. No: 114-22, 129 Stat 227Sec. 802(c)(1)(b) (2015).

# KEYSTONE STATUTES

- ▶ State laws addressing child sex trafficking
- ▶ State laws addressing commercial sexual exploitation of children (CSEC)
- ▶ State laws addressing child sexual abuse material (CSAM)

**Like the keystone that provides stability and structure to a building,** state laws that criminalize child sex trafficking, commercial sexual exploitation of children (CSEC), and the creation, promotion, purchase, and possession of child sexual abuse material (CSAM) create the infrastructure for combatting child sex trafficking and protecting child victims. These keystone statutes have ensured that state laws specifically criminalize trafficking of all minors under 18 for CSE without requiring force, fraud, and coercion, criminalize the entire range of potential CSEC conduct, and recognize the harm of CSAM by requiring substantial penalties (e.g., sentences and asset forfeiture) for those who purchase or possess such materials. They provide the essential foundation on which the provisions within the Report Cards on Child & Youth Sex Trafficking are built.

When Shared Hope first commenced the Protected Innocence Challenge (PIC) in 2011, many states lacked these fundamental laws. In fact, many states did not have a child sex trafficking statute, let alone a robust set of laws that appropriately addressed the complexity and nuances of the crime. Presently, all states have child sex trafficking laws and at least one CSEC and CSAM statute. Accordingly, these components of the PIC framework have been fulfilled and will no longer be graded as a part of the advanced legislative framework. Instead, these keystone statutes will be analyzed from a historical perspective as they provide the foundation for the critical next steps that will drive the next 10 years of state action and national change.

# ADVANCED LEGISLATIVE FRAMEWORK

**6** **ISSUE AREAS** ARE IDENTIFIED:

CRIMINAL PROVISIONS

IDENTIFICATION OF AND RESPONSE TO VICTIMS

CONTINUUM OF CARE

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

PREVENTION AND TRAINING

**40** **COMPONENTS OF LAW** ARE ANALYZED

**110** **POINTS TOTAL**

States earn up to **2.5 points per component**

100 possible points

**Extra credit:** Protections for labor and youth 18+

plus up to 10 points

**FINAL LETTER GRADES** ARE ASSIGNED:

**A** | 90-110   **B** | 80-89   **C** | 70-79   **D** | 60-69   **F** | >60

ROBUST  
TRAFFICKING  
LAWS

HARDY CSEC  
CRIMINAL  
LAWS

AND  
LET'S BE CLEAR  
ABOUT BUYERS  
(IN THE LAW)

FOR PURCHASING OR SOLICITING  
COMMERCIAL SEX WITH A MINOR

CSEC LAWS

INCLUDE  
TRAFFICKING  
CONDUCT

TRAFFICKING LAWS  
APPLY TO

BUYERS



FINANCIALLY  
BENEFITING FROM  
TRAFFICKING IS  
PROHIBITED



PROTECT  
ALL  
MINORS

POLICY  
ISSUE

#1

CRIMINAL  
PROVISIONS

FINANCIAL  
PENALTIES  
ON OFFENDERS



VICTIM  
SERVICES  
FUND

If we  
didn't have  
people buying  
children for  
sex, we wouldn't  
have a victim.



UM, I made  
a BIG age  
mistake.

UM, that  
was just a  
police officer!

ACCOUNTABILITY

UM,  
NOPE

DECOY



# ADVANCED LEGISLATIVE FRAMEWORK

## 1

### CRIMINAL PROVISIONS

Clear criminal laws, including those that criminalize buyers of sex with children, are needed to ensure all sex trafficking offenders can be held accountable.

**POLICY GOAL 1.1:** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Mirroring the federal law, state child sex trafficking statute(s) should unequivocally apply to the conduct of buyers by criminalizing the act of “purchasing” or “patronizing” a minor for sex, regardless of the child’s age. States with existing ambiguous language (i.e. “obtains,” “causes,” or “procures”) should mitigate the risk of prosecutorial or judicial misinterpretation and add clear buyer conduct to the child sex trafficking statute(s).

**POLICY GOAL 1.2:** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

In addition to using the child sex trafficking law to prosecute buyers, law enforcement and prosecutors should also be able to investigate and charge a wide range of buyer conduct under state CSEC laws. These laws must clearly apply to buyers by criminalizing the act or attempt to solicit, purchase, or patronize a minor for sex without requiring an additional and limiting actus reus (e.g., use of computer to solicit the minor, transporting the minor). Historically, CSEC laws did not provide protections for younger minors while minimizing protections for older minors; to ensure this disparity is addressed, states should not limit buyer-applicable CSEC laws to younger minors.

**POLICY GOAL 1.3:** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Child sex trafficking cases are complicated to investigate and prosecute, making it imperative for law enforcement and prosecutors to have a variety of offenses in addition to the trafficking offense that cover an array of exploitive conduct. State CSEC laws should protect all minors under 18 without requiring an additional and limiting actus reus (e.g., use of computer to solicit the minor, transporting the minor).

**POLICY GOAL 1.4:** Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

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The harm caused by buyers and traffickers is not mitigated by the offender's apparent ignorance regarding the child victim's age, and the offender, not the child victim, should bear the risk of that mistake. As such, all state child sex trafficking and CSEC laws should clearly prohibit buyers and traffickers from asserting a mistake of age defense in a prosecution for those crimes in all cases involving minor victims who are under 18 years of age.

**POLICY GOAL 1.5:** Use of a law enforcement decoy is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

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Permitting law enforcement to pose as a minor for the purpose of investigating sex trafficking or CSEC is essential to fighting the crime without risking actual harm to children. Child sex trafficking and CSEC laws should expressly prohibit buyers and traffickers from raising a defense that the person solicited was not an actual minor.

**POLICY GOAL 1.6:** The trafficking law expressly prohibits financially benefiting from assisting or enabling child sex trafficking.

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Child sex trafficking laws that clearly criminalize financially benefitting from trafficking support law enforcement and prosecutors' ability to investigate and prosecute offending entities that may not be directly involved in trafficking conduct but, instead, aid, assist, or enable the trafficking enterprise for purposes of financial gain. Importantly, states should acknowledge and prevent the potential misapplication of trafficking laws to victim-offenders who may engage in assisting and enabling the crime as a result of their own victimization by targeting entities that financially benefit from their role in facilitating trafficking.

**POLICY GOAL 1.7:** State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

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Financial penalties may function as both a deterrent for offenders and a victim services funding stream, the latter providing a valuable resource for ensuring much needed services are adequately funded and available statewide. Accordingly, state asset forfeiture laws should direct a percentage of a sex trafficking or CSEC offender's forfeited assets toward a victim services fund. Additionally, states should assess a mandatory fee against sex trafficking and CSEC offenders that is directed toward a victim services fund.

## CRIMINAL PROVISIONS

**POLICY GOAL:** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

**Demand for commercial sex with a child is a significant driving force behind the phenomenon of child sex trafficking.** Yet, many states fail to recognize buyers as sex trafficking offenders and, as such, fail to impose meaningful penalties to address and stifle demand as many buyers of commercial sex with minors are not sanctioned or will face lesser charges.<sup>1</sup> States that do not penalize buyers as sex trafficking offenders also face barriers to prosecuting child sex trafficking cases because buyers are often the primary, if not the only, offender involved—particularly in cases in which minors do not have, or are unable to identify, a third-party controller.<sup>2</sup> Some states, in line with federal statutory language prior to the Justice for Victims of Trafficking Act (JVTA), include the word “obtains” in their child sex trafficking law to address buyer conduct. However, broad terminology such as “obtains” has resulted in very few buyers being charged with trafficking offenses. Therefore, child sex trafficking laws that unambiguously target the actions of buyers are critical for combatting demand.<sup>3</sup> As such, other states, motivated by the federal statutory changes resulting from the JVTA, have added the terms “patronizes,” “purchases, and/or “hires” to the range of actions addressed within the definition of sex trafficking.

Further, enacting child sex trafficking laws that explicitly include the conduct of buyers could lessen the burden experienced by survivors to prove their status as sex trafficking victims.<sup>4</sup> Under the

federal anti-trafficking law, prosecutors must only show that the buyer solicited the minor for sex acts in exchange for money (or something of value).<sup>5</sup> However, at the state level, states may require proof that the child was under the control of a trafficker/ third party. Eliminating prosecutors’ needs to determine whether a victim was under the control of a trafficker is crucial to obtaining justice for a broader scope of trafficking victims, including some of the most vulnerable and underserved populations such as boys, homeless and runaway youth, and LGBTQ+ youth.<sup>6</sup> These populations are disproportionately vulnerable to engaging in a form of commercial sex known as transactional, or survival, sex in order to meet basic needs—often without the participation of a third party controller.<sup>7</sup> Buyer-specific child sex trafficking laws allow criminal justice actors to prioritize the drivers of demand while better protecting commercially sexually exploited children.

Criminalization of buyers also promotes positive survivor outcomes. The successful criminalization of buyers is directly related to a survivor’s experience of justice, and survivors consider buyer accountability to be essential in creating a victim-centered approach to combating sex trafficking.<sup>8</sup> Additionally, the opportunity to bring a case against a buyer may be the first form of legal justice in which a survivor is ready to engage as many still struggle with complicated relationships with their traffickers due to trauma bonding or fear.<sup>9</sup>

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

- ▶ Explicitly identify buyers who provide something of value in exchange for commercial sex with a child as sex trafficking offenders; this can be accomplished by adding “purchasing” or “patronizing” as prohibited conduct under the sex trafficking law.
- ▶ Define “anything of value” to address the exchange of non-monetary things of value, including, but not limited to, shelter, food, transportation, hormone replacement therapy medication, medical care, gang membership, and illicit substances.
- ▶ Ensure all minors under the age of 18 are protected under the child sex trafficking law, avoiding differentiations in offenses and baseline penalties for buying younger children versus older children.

## **RELATED ISSUES:**

- 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.
- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

## **SUPPORTING RESOURCES:**

- ▶ DEMAND.
- ▶ Demanding Justice report
- ▶ Prosecuting Demand as a Crime of Human Trafficking
- ▶ Demanding Justice Arizona
- ▶ Buyers Beware video
- ▶ The Problem of Demand in Combating Sex Trafficking

<sup>1</sup> See Daniel Michael Criswell, *Mens Rea Reform as a Demand-Side Solution to the Problem of Sex Trafficking*, 51 CASE W. RES. J. INT’L L. 327, 339 (2019) (noting how few sex trafficking cases have been brought against buyers since 2013); Ann Wagner & Rachel Wagley McCann, *Prostitutes or Prey: The Evolution of Congressional Intent in Combating Sex Trafficking*, 54 HARV. J ON LEGIS. 17, 66-67, 95 (2017) (discussing a lack of prioritization of prosecuting buyers and how the JVTa explicitly stated that buyers should be prosecuted as sex traffickers; describing how some states penalizes adults sexually abusing minors outside of the commercial sex industry more harshly than adults who pay to have sex with children).

<sup>2</sup> Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 443-44 (2017); DEMANDING JUSTICE REPORT, SHARED HOPE INT’L 4-5 (2014).

<sup>3</sup> DEMANDING JUSTICE REPORT, SHARED HOPE INT’L 15 (2014).

<sup>4</sup> Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 438, 447-48 (2017).

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* at 443-44.

<sup>7</sup> LAURA T. MURPHY, LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH 8 (2016).

<sup>8</sup> *How Do We Reduce Demand?* DEMAND ABOLITION. <https://www.demandabolition.org/cease/how-do-we-reduce-demand/> (last visited Nov. 11 2020).

<sup>9</sup> Chitra Raghavan, Ph.D. & Kendra Doychak, B.A., *Trauma-Coerced Bonding and Victims of Sex Trafficking: Where Do We Go From Here?* 17 INT’L J. OF EMERGENCY MENTAL HEALTH & HUM. RESILIENCE. 583-87(2015).



## CRIMINAL PROVISIONS

**POLICY GOAL:** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

**In addition to using the child sex trafficking law to prosecute buyers, law enforcement and prosecutors should also be able to investigate and charge a wide range of buyer conduct under state commercial sexual exploitation of children (CSEC) laws.** These laws encompass a variety of criminal offenses committed against a child in which the child engages, or promises to engage, in a sex act in exchange for something of value either directly or through a third party. Though states have enacted an array of laws addressing this type of conduct, all CSEC laws have three main elements in common. First, these laws are either specifically protective of children or they provide an enhanced penalty when the victim is a child. Second, there must be a commercial component to the crime. And third, the offense must involve some form of sex act or promise thereof.

These laws address, among other acts, prostitution-related activity, enticement, grooming, and sex tourism. Buyers, however, may not face criminal liability for CSEC when statutes fail to encompass the purchase or solicitation of a child for sex. Failure to include buyer conduct leaves prosecutors with few charging options, including misdemeanor prostitution or general sex offenses, which generally carry significantly lesser penalties than CSEC-related offenses. As such, state CSEC laws should include clear buyer-applicable language (e.g., solicit, purchase, or patronize) in addition to other conduct—such as grooming a minor for commercial sex acts—to acknowledge the wide array of conduct and harm caused by buyers.

Further, state CSEC laws must protect all persons under the age of 18. Failure to protect older minors dismisses the extreme trauma older minors face from being bought and sold for sex and reinforces the perception that these children are somehow more culpable for their exploitation.<sup>1</sup> While federal law considers all children who have experienced commercial sexual exploitation to be victims, including older minors,<sup>2</sup> many states still allow children to be charged with prostitution offenses—not recognizing them “as victims of statutory rape once the conduct has been commercialized.”<sup>3</sup> Failure to protect older minors under state CSEC laws is also inconsistent with a host of other laws that recognize the vulnerability of children under 18 and the incomplete maturation of their brains, including prohibitions on cigarette and alcohol sales, execution of legally binding contracts, and military enlistment. Widely recognized is the fact that a teenager’s brain is not yet fully developed; this impacts decision-making, impulsivity, risk-taking, and enhanced vulnerability. Additionally, it is equally important to understand that a developing brain is more severely impacted and damaged by trauma, such as sexual violence, than an adult brain.<sup>4</sup> Damage to brain matter caused by trauma at a young age can further exacerbate impulsivity and increase the chances of substance abuse and depression, which can increase vulnerability to revictimization.<sup>5</sup> Understanding this, state CSEC laws must include all minors within their definitions of “victim” and avoid placing limitations on protections for older minors.

Notably, without specific buyer-applicable CSEC laws, many child victims may be unable to access specialized services if eligibility is connected to crime victim status.<sup>6</sup> Further, a state’s capability of

effectively prosecuting instances of online CSEC alongside charges of child sex trafficking is enhanced if a separate law offers additional prosecutorial provisions and victim service accessibility.<sup>7</sup>

## DRAFTING CONSIDERATIONS:

To accomplish this policy goal, state law should...

- ▶ Ensure CSEC laws specifically address buyer conduct.
- ▶ Ensure CSEC laws protect all persons under the age of 18.
- ▶ Ensure CSEC laws are not restricted by additional requirements, including use of a computer, transportation of the child, etc.
- ▶ Ensure CSEC laws define “anything of value” to encompass the exchange of non-monetary things of value, including, but not limited to, shelter, food, transportation, medical care, gang membership, and illicit substances.

## RELATED ISSUES:

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.
- 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.
- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

## SUPPORTING RESOURCES

- ▶ [DEMAND.](#)
- ▶ [Demanding Justice report](#)
- ▶ [Demanding Justice Arizona](#)
- ▶ [Buyers Beware video](#)

- <sup>1</sup> Seeking Justice: Legal Approaches to Eliminate Criminal Liability for Juvenile Sex Trafficking Victims, Shared Hope Int’l 9 (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) [hereinafter Seeking Justice].
- <sup>2</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1243, 127 Stat. 154 (2013), codified at 22 U.S.C. § 7101 note (requiring that model anti-trafficking laws consider individuals under 18 arrested for engaging in prostitution or commercial sex acts to be victims of a severe form of trafficking and prohibit the “charging or prosecution of an individual” describe above).
- <sup>3</sup> Kate Price & Keith Gunnar Bentele, *Voting to End Vulnerability: Understanding the Recent Proliferation of State-Level Child Sex Trafficking Legislation*, 23 William & Mary J. Women & Law 1, 5 (2016); Seeking Justice, supra note 1; and see Christine Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 Wake Forest L. Rev. 435 442 n.45, 455 (2017).
- <sup>4</sup> *Serving Teen Survivors: A Manual for Advocates*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (2018), <https://www.nsvrc.org/sites/default/files/publications/2018-12/Serving%20Teen%20Survivors%20A%20Manual%20for%20Advocates.txt>. (last visited Nov. 11, 2020); Leonard Holmes, *How Childhood Abuse Changes the Brain*, VERY WILL MIND (2020) <https://www.verywellmind.com/childhood-abuse-changes-the-brain-2330401> (last visited Nov. 11, 2020).
- <sup>5</sup> *Id.*
- <sup>6</sup> The Se. Reg’l Human Trafficking Advisory Grp. *Guiding Principles for Agencies Serving Survivors of Human Trafficking* (2018) <https://cclou.org/wp-content/uploads/2018/11/Guiding-Principles-for-Agencies-16-FINAL.pdf> (last visited Nov. 11, 2020).
- <sup>7</sup> Adams, W., Flynn, A. (2017). *Federal prosecution of commercial sexual exploitation of children cases, 2004-2013*. U.S. Department of Justice, Bureau of Justice Statistics.

## CRIMINAL PROVISIONS

**POLICY GOAL: Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.****Federal anti-trafficking laws provide criminal penalties for traffickers who commit commercial sexual exploitation of children (CSEC) offenses.**

In addition to considering all children who experience commercial sexual exploitation to be victims of sex trafficking, federal law also outlines additional CSEC offenses under which a trafficker could be charged, including procuring, pandering, and transporting a minor intending for the minor to engage in commercial sex.<sup>1</sup> Child sex trafficking cases are complicated to investigate and prosecute, making it imperative for law enforcement and prosecutors to have a variety of crimes, covering an array of exploitive conduct, available to ensure offenders can be held accountable.

In alignment with federal law, states should ensure that traffickers are subject to CSEC laws in addition to laws prohibiting trafficking. By including CSEC offenses within the types of crimes for which traffickers can be charged, criminal justice stakeholders would be better equipped to identify, investigate, and prosecute human trafficking offenses within their jurisdictions as they would not have to rely solely on prostitution-related offenses or other general sex crimes that may not carry as heavy penalties or provide access to the relief available specifically for CSEC victims.<sup>2</sup> Having CSEC offenses as an additional tool for prosecutors to use in charging traffickers could have the additional benefit of enhancing and clarifying data collected on human trafficking cases from the enforcement perspective. It bears emphasizing that CSEC offenses should be charged *in addition* to sex trafficking offenses, where possible.<sup>3</sup>

Further, state CSEC laws must protect all persons

under the age of 18. This would not only align with federal anti-trafficking law that recognizes all persons under 18 as victims, but also other laws that offer recognition of the vulnerability of children under 18 and the incomplete maturation of their brains; such laws include prohibitions on cigarette and alcohol sales, execution of legally binding contracts, and military enlistment. Widely recognized is the fact that a teenager's brain is not yet fully developed, which impacts decision-making, impulsivity, risk-taking, and vulnerability; however, it is equally important to understand that a developing brain is more severely impacted and damaged by trauma, such as sexual violence, than an adult brain.<sup>4</sup> Damage to brain matter caused by trauma at a young age can further exacerbate impulsivity and increase the chances of substance abuse and depression, which can increase vulnerability to revictimization.<sup>5</sup> Traffickers often recognize these vulnerabilities and may specifically target those under 18, which underscores the importance of recognizing the vulnerability of all children under 18 years of age. State CSEC laws must, therefore, include all minors in the definition of "victim" without limiting applicability by requiring an additional actus reus (e.g., use of computer to solicit the minor, transporting the minor).

Notably, commercial sexual exploitation and sex trafficking victims may engage in conduct that violates CSEC laws for reasons such as coercion or duress, a coping/survival technique, or as a crisis reaction to trauma.<sup>6</sup> While this is a complex issue, states should consider addressing victim-offender intersectionality (VOI) within CSEC laws to avoid unfair criminalization of victims. This may include guidance on assessing for VOI as well as legal and practical alternatives to

traditional criminal justice responses when VOI is identified.<sup>7</sup>

The effective prosecution of a survivor's trafficker(s) is an essential element to the survivor's access to justice and their perception of the criminal justice system.<sup>8</sup> Many child sex trafficking victims face the false perception in society that they are willingly

engaged in prostitution, especially those who seem to be self-promoting online or those considered victim-offenders.<sup>9</sup> Accordingly, trafficker-applicable CSEC offenses not only enhance the tools available to prosecutors as they seek justice for victims, but also ensure access to services for all victims of commercial sexual exploitation, dispelling misperceptions related to victimhood.<sup>10</sup>

## DRAFTING CONSIDERATIONS:

To accomplish this policy goal, state law should...

- ▶ Ensure CSEC laws specifically address trafficker conduct.
- ▶ Ensure CSEC laws protect all minors under the age of 18.
- ▶ Ensure CSEC laws are not restricted by additional requirements, including use of a computer, transportation of the child, etc.
- ▶ Ensure CSEC laws include additional considerations on using a victim-centered approach to addressing victim-offender intersectionality.

## RELATED ISSUES:

- 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

## SUPPORTING RESOURCES:

- ▶ [The National Report on Domestic Minor Sex Trafficking](#)
- ▶ [The U.S. Mid-Term Review on the Commercial Sexual Exploitation of Children in America](#)
- ▶ [A Legislative Framework for Combatting Domestic Minor Sex Trafficking](#)

1 18 U.S.C. §§ 1591, 2251(A), 2251, 2423(a).

2 See SARAH GODOY, ET AL., *SHEDDING LIGHT ON SEX TRAFFICKING: RESEARCH, DATA, AND TECHNOLOGIES WITH THE GREATEST IMPACT* 29 (2016) (explaining how statutory misinterpretation and unfamiliarity with human trafficking can lead to under-investigation by law enforcement).

3 See Ann Wagner & Rachel Wagley McCann, *Prostitutes or Prey? The Evolution of Congressional Intent in Combating Sex Trafficking*, 54 HARV. J. LEGIS. 17, 71 (2017) (highlighting a federal case where a trafficker paid to have sex with a 14-year-old and had engaged in sex trafficking before, but prosecutors only charged him under the Mann Act rather than additionally charging him under the federal trafficking law).

4 *Serving Teen Survivors: A Manual for Advocates*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (2018), <https://www.nsvrc.org/sites/default/files/publications/2018-12/Serving%20Teen%20Survivors%20A%20Manual%20for%20Advocates.txt> (last visited Nov. 11, 2020); Leonard Holmes, *How Childhood Abuse Changes the Brain*. VERY WILL MIND (2020) <https://www.verywellmind.com/childhood-abuse-changes-the-brain-2330401> (last visited Nov. 11, 2020).

5 *Id.*

6 See SHARED HOPE INT'L, *RESPONDING TO SEX TRAFFICKING: VICTIM OFFENDER INTERSECTIONALITY* (2020).

7 *Id.*

8 INSTITUTE OF MEDICINE AND NATIONAL RESEARCH COUNCIL, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES* 146-149 (The National Academies Press 2013).

9 *Myth and Facts About Trafficking for Legal and Illegal Prostitution*, Elijah Rising (2009) <https://www.elijahrising.org/resources/myth>.

10 Farrell, A. PhD et al., *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases*, NAT'L INST. OF JUST. 144-154 (2012).

## CRIMINAL PROVISIONS

**POLICY GOAL:** Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

A mistake of age (MOA) defense allows a defendant to escape criminal liability based on a reasonable belief that a victim was of a specified age (e.g., at least 18 years of age).<sup>1</sup> In some states, the defendant must prove he or she reasonably believed that the victim was not a minor; conversely, other states require the prosecution to prove that the defendant knew that the victim was a minor by making knowledge of age an element of the offense.<sup>2</sup> Regardless of the approach, permitting a MOA defense subverts the intention of protecting children from exploitation and creates a weakness in the laws needed to deter child sex trafficking and commercial sexual exploitation of children (CSEC). Under federal law, all children who have experienced commercial sex exploitation are recognized as sex trafficking victims. Providing a victim-centered response to these children necessitates an inability to raise a MOA defense to avoid liability for exploiting a child. As such, all state child sex trafficking and CSEC laws should clearly prohibit buyers and traffickers from asserting a MOA defense in a prosecution for those crimes.

The harm caused by buyers and traffickers is not mitigated by the offender's apparent ignorance regarding the sex trafficking or CSEC victim's age. Buyers and traffickers, not the child victims, should bear the risk of that mistake. In addition, allowing buyers and traffickers to submit evidence of an attempt to ascertain the victim's age as part of a MOA defense fails to recognize the complex reasons that a child sex trafficking victim may be deceptive about their age, including coercive tactics used by traffickers, perceived autonomy, and posting

requirements on Internet advertisement sites.

Notably, this protection should extend to all minors. According to a national survey of children who experienced commercial sexual exploitation conducted by THORN, the majority of participants entered the commercial sex industry at age 15.<sup>3</sup> Allowing a MOA defense for buyers and traffickers engaging in CSEC will disproportionality impact these older minors in terms of their recognition as crime victims and access to justice. Further, eliminating MOA defenses will also serve the added purpose of mitigating the perpetuation of the debilitating myths surrounding victims of commercial sexual exploitation by definitively categorizing them as victims.<sup>4</sup>

State child sex trafficking and CSEC laws can be, and often are, written in a way that knowledge of the victim's age is not an essential element of the crime. In their decision in *United States vs. Daniels*, the Eleventh Circuit Court of Appeals noted that "although there is a general presumption that a knowing mens rea applies to every element in a criminal statute, cases concerned with the protection of minors are within a special context where that presumption is rebutted."<sup>5</sup> Through this assertion, the Court recognized that efforts to protect young people allow for a contextual approach to interpreting statutes and the intent of the law.<sup>6</sup> States should ensure that their sex trafficking and CSEC laws are written for the explicit purpose of protecting minors from being trafficked or exploited as well as offering full protections for those that have been trafficked or

exploited. It should be clear under all possible interpretations that proof of knowledge of the age of the victim is not required. Excluding knowledge of age as an element of the offense

and eliminating MOA as an available defense ensures that sex trafficking and CSEC laws protect minors rather than offenders who are turning a blind eye to a victim's age.

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

- ▶ Avoid making knowledge of age an element under their child sex trafficking and CSEC laws.
- ▶ Ensure child sex trafficking and CSEC laws expressly prohibit a mistake of age defense.

## **RELATED ISSUES:**

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.
- 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.
- 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.
- 1.5** Use of a law enforcement decoy is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

## **SUPPORTING RESOURCES:**

- ▶ [Demanding Justice report](#)
- ▶ [Demanding Justice Arizona](#)
- ▶ [Buyers Beware video](#)

<sup>1</sup> Kathleen Houck, “Mistake of Age” as a Defense?: Looking to Legislative Evidence for the Answer, 55 AM. CRIM. L. REV. 813, 813 (2018); see also Blacks Law Dictionary (11th ed. 2019) (defining “mistake-of-fact defense” as a “criminal defendant’s claim that some factual error negates the mens rea necessary for a guilty verdict”).

<sup>2</sup> Houck, *supra* note 1 at 816-17.

<sup>3</sup> VANESSA BOUCHÉ, THORN, SURVIVOR INSIGHTS: THE ROLE OF TECHNOLOGY IN DOMESTIC MINOR SEX TRAFFICKING 8 (Jan 2018).

<sup>4</sup> RICHARD K. JAMES, CRISIS INTERVENTION STRATEGIES Ch. 9 (2017).

<sup>5</sup> United States v. Daniels, 685 F.3d 1237, 1248-89 (11th Cir. 2012).

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

## CRIMINAL PROVISIONS

**POLICY GOAL:** Use of a law enforcement decoy is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

**In this new digital-age, social media and personal advertisement platforms have made it easier than ever for buyers and traffickers to solicit minors for commercial sex, providing offenders with a sense of freedom and anonymity.**<sup>1</sup> But just as buyers and traffickers have taken to the Internet, efforts to criminalize these perpetrators have also gone online.

To effectively and proactively combat commercial sexual exploitation, law enforcement agencies have increasingly relied on “reverse sting” operations in which officers pose as minors to identify and arrest buyers and traffickers who seek to recruit or purchase minors for commercial sex.<sup>2</sup> Permitting law enforcement to pose as a minor for the purpose of investigating commercial sex crimes is essential to fighting these crimes without risking actual harm to children. Such stings, whether initiated through print media or web-based services, are generally safer for law enforcement and allow officers to collect more evidence and build stronger cases against buyers and traffickers.<sup>3</sup> Accordingly, use of a law enforcement decoy is an effective and child-protective approach to proactively investigate trafficking and CSEC offenders.

In interpreting and enforcing child sex trafficking and commercial sexual exploitation of children (CSEC) laws, the focus should be on the intent of the defendant to engage in commercial sex with a child and the steps he or she took in furtherance of that intent. The fact that an agreement for commercial sex was made between the defendant and a law enforcement decoy does not negate the fact that the defendant intended to solicit an actual child for sex.

Accordingly, states can ensure buyers and traffickers are held accountable in these situations by amending their trafficking and CSEC laws to expressly prohibit defendants from asserting a defense based on the fact that a law enforcement officer, rather than an actual minor, was involved. Some states have taken the added step of defining “minor,” for purposes of certain offenses, to include a person under 18 years of age, a law enforcement officer posing as a person under 18 years of age, or a person the offender believed to be under 18 years of age.<sup>4</sup>

Notably, statutes permitting prosecution—even when the person solicited or purchased was not actually a minor—have withstood constitutional challenges.<sup>5</sup> Offenders in such states are unable to assert decoy defenses. For example, in *State [of North Dakota] v. Sheperd*, a defendant was arrested and charged with patronizing a minor for commercial sexual activity after responding to an online advertisement during a sting operation. The defendant tried to present an argument that he did not violate the statute because it requires the presence of a minor; however, the court ruled that the statute does not require the presence of a minor because part of the purpose and context of the statute is to target individuals who intentionally seek out children as their sexual objects. A Texas appellate court made a similar statement when it upheld a conviction for online solicitation of a minor in *Zapata v. State*. This defendant was also arrested during a sting operation. In upholding the conviction, the court stated that the offense of online solicitation is complete at the time of solicitation.

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

- ▶ Ensure child sex trafficking and CSEC laws allow for use of a law enforcement decoy by prohibiting decoy defenses.

## **RELATED ISSUES:**

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.
- 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.
- 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.
- 1.4** Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

## **SUPPORTING RESOURCES:**

- ▶ [Demanding Justice report](#)

- <sup>1</sup> DR. VANESSA BOUCHÉ, THORN, SURVIVOR INSIGHTS: THE ROLE OF TECHNOLOGY IN DOMESTIC MINOR SEX TRAFFICKING 6-7 (2018).
- <sup>2</sup> Mary Graw Leary, *Dear John, You Are A Human Trafficker*, 68 S.C. L. REV. 415, 428-29, 429 n.71 (2017); U.S. DEPARTMENT OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS 44 (2010) <https://www.justice.gov/psc/docs/natstrategyreport.pdf> (noting that police posed as minors in 25% of arrests for internet crimes against children).
- <sup>3</sup> David Barney, *Trafficking Technology: A Look at Different Approaches to Ending Technology-Facilitated Human Trafficking*, 45 PEPPERDINE L. REV. 747, 778 (2018); *see also* Ann Wagner & Rachel Wagley McCann, *Prostitutes or Prey: The Evolution of Congressional Intent in Combating Sex Trafficking*, 54 HARV. J. ON LEGIS. 17, 90 (2017).
- <sup>4</sup> *See* 15 Am. Jur. 2d *Computers and the Internet* §16 (2020). Similarly, according to Federal Sentencing Law and Practice, sentencing guidelines for crimes of Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; and Use of Interstate Facilities to Transport Information about a Minor define “minor” as “(A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.” Thomas W. Hutchison, et al., Federal Sentencing Law and Practice § 2G1.3 (2020 update).
- <sup>5</sup> 33 A.L.R. 6th 373 §§ 6-10 (2008).



## CRIMINAL PROVISIONS

**POLICY GOAL:** The trafficking law expressly prohibits financially benefiting from assisting or enabling child sex trafficking.

The term “facilitator,” also known as a “secondary profiteer,”<sup>1</sup> refers to an entity that knowingly or intentionally assists, enables, aids, or financially benefits from participation in a trafficking venture.<sup>2</sup> This includes entities that harbor and transport victims as well as those that organize for a child’s exploitation by placing ads or providing a place for the commercial sexual exploitation to occur. Motels, hotels, taxi companies, restaurants, and massage parlors are common examples of facilitators. While facilitators are often critical to the success of a sex trafficking enterprise, they rarely face prosecution.<sup>3</sup> Only 1.3% of federal sex trafficking charges initiated in 2018 were based solely on a defendant benefitting financially from the trafficking or exploitation.<sup>4</sup> Because the risk of being prosecuted for financially benefitting from child sex trafficking is minimal, facilitators reap the financial benefits of the commercial sex industry oftentimes without being held criminally liable.

Child sex trafficking laws that clearly define and criminalize financially benefitting from trafficking support law enforcement and prosecutors’ abilities to investigate and prosecute offending entities that may not be directly involved in trafficking conduct but, nevertheless, aid, assist, or enable the trafficking enterprise for purposes of financial gain. This is a crucial step toward holding all sex trafficking offenders criminally accountable. Further, clearly defined laws addressing facilitation of child sex trafficking serve as an important tool for obtaining justice for victims; therefore, state child sex trafficking laws should expressly prohibit

financially benefiting, or receiving anything of value, from trafficking.<sup>5</sup>

As noted above, however, of particular importance is whether the entity knowingly or intentionally engaged in the prohibited conduct. The intent behind these laws is to hold facilitators accountable for intentional actions that allowed the entity to financially benefit from child sex trafficking. The same types of entities (e.g., hotels and taxis) that frequently act as facilitators can also be those that unwittingly financially benefit from sex trafficking. For example, a child sex trafficking victim may be transported via a ride-share service to a hotel; although these parties may financially benefit, they may not be aware that they are facilitating child sex trafficking. In drafting this component of child sex trafficking laws, states should include clear language that addresses intentional versus unintentional conduct. States should also include language to address situations of reckless disregard or where facilitators should have reasonably known child sex trafficking was occurring.

Finally, in strengthening sex trafficking laws to include the conduct of facilitators, lawmakers should be mindful of the historical and potential misapplication of trafficking laws to victim-offenders. Specifically, states should couple legislative efforts that include or increase criminal liability for facilitators with clear non-criminalization laws for trafficking victims who engage in acts amounting to sex trafficking conduct as a result of their own victimization.

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

- ▶ Expressly prohibit benefiting *financially* from assisting or enabling child sex trafficking.
- ▶ Ensure the trafficking law clearly defines “financial gain.”
- ▶ Ensure the trafficking law is carefully crafted to avoid criminalizing victim-offenders by including a provision that provides clear non-criminalization protections for sex trafficking victims who offend the sex trafficking law as a result of their own victimization.
- ▶ Incorporate legislative intent to further clarify that the intent of the trafficking law is not to criminalize those who are themselves involved in the commercial sex industry.

## **RELATED ISSUES:**

- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

## **SUPPORTING RESOURCES:**

- ▶ [A Legislative Framework for Combatting Domestic Minor Sex Trafficking](#)
- ▶ [The National Report on Domestic Minor Sex Trafficking](#)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

<sup>1</sup> SARAH GODOY, ET AL., *SHEDDING LIGHT ON SEX TRAFFICKING: RESEARCH, DATA, AND TECHNOLOGIES WITH THE GREATEST IMPACT* 23 (2016).

<sup>2</sup> See 18 U.S.C. § 1591(a)(2) (2018).

<sup>3</sup> ALYSSA CURRIER, ET AL., *THE 2018 FEDERAL HUMAN TRAFFICKING REPORT*, HUMAN TRAFFICKING INST. iv, 21 (2019) (noting that in 2018 only two entities, a farm and a hotel, were defendants in active trafficking cases).

<sup>4</sup> *Id.* at 21. It should be noted that “43.5% (162) [of federal sex trafficking charges were] based on both the prohibited trafficking activities and benefiting financially from the sex trafficking venture.” *Id.*

<sup>5</sup> Jim Ehrman, *Why Prosecution Matters for the Youth We Work With*, LOVE146 (April 11, 2016), <https://love146.org/why-prosecution-matters/>.

## CRIMINAL PROVISIONS

**POLICY GOAL:** State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

**Financial penalties may function as both a deterrent for offenders and a funding stream for victim services, the latter providing a valuable resource for ensuring much needed services are adequately funded and available statewide.**

Accordingly, state asset forfeiture laws should direct a percentage of a sex trafficking or commercial sexual exploitation of children (CSEC) offender's forfeited assets toward a victim services fund. Additionally, states should assess a mandatory fee against sex trafficking and CSEC offenders that is also directed toward a victim services fund. The fee should apply to the original charge of sex trafficking or CSEC, not the final judgement or conviction.

In 2015, the Justice for Victims of Trafficking Act (JVTA)<sup>1</sup> created a mandatory special assessment to be imposed on those convicted of human trafficking. A \$5,000 fee is assessed in addition to other court-ordered fines, orders of restitution, and any other victim-compensation obligations but is collected after all these other financial penalties are addressed. The JVTA also created the Domestic Trafficking Victims' Fund into which the fees collected from the special assessment are transferred and utilized to fund and enhance victim

services for trafficking survivors. The number of defendants ordered by federal courts to pay this \$5,000 special assessment has increased each year since its enactment in 2015 with 34 defendants convicted in sex trafficking cases ordered to pay this fee in 2019.<sup>2</sup> By also establishing the Domestic Victims' Trafficking Fund through the JVTA, the federal government guaranteed this money would be utilized for services and programming for trafficking survivors.

Child sex trafficking victims often have complex needs, and it is important that they not only receive a broad array of treatment but also that the treatment is specialized to the trauma associated with commercial sexual exploitation.<sup>3</sup> Statutorily mandating a percentage of sex trafficking and CSEC offenders' forfeited assets and a mandatory fee against these offenders can create a key source of support for specialized, sex trafficking victim services. Following the example of the JVTA, states should also consider statutorily mandating the creation and operation of a specific victim services fund for child sex trafficking and CSEC to ensure that these funds are specifically utilized to support services to address the unique needs of this population.

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

- ▶ Require a mandatory fee be assessed to sex trafficking and CSEC offenders and direct the fee toward a designated victim services fund.
- ▶ Mandate that a percentage of forfeited assets is directed toward a victim services fund.

## **RELATED ISSUES:**

- 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

## **SUPPORTING RESOURCES:**

- ▶ [A Legislative Framework for Combatting Domestic Minor Sex Trafficking](#)
- ▶ [Demanding Justice](#) report
- ▶ [Demanding Justice Arizona](#)

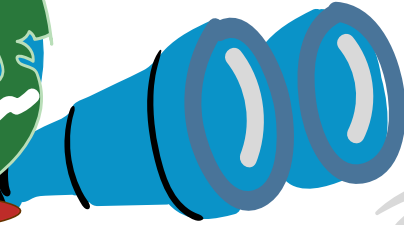
<sup>1</sup> Justice for Victims of Trafficking Act of 2015, Pub. L. No: 114-22, 129 Stat 227 (2015).

<sup>2</sup> KYLEIGH FEEHS & ALYSSA CURRIER, HUMAN TRAFFICKING INSTITUTE, FEDERAL HUMAN TRAFFICKING REPORT 60 (2019).

<sup>3</sup> See U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES.

# PROTECTIVE POLICY GUIDANCE

FOR FOREIGN NATIONAL KIDS



Trauma Informed CSEC SCREENING

at risk children

Juvenile Justice

Child Welfare Agencies

★

When we identify victims as criminals, we are creating more damage.



Child Welfare can respond apart from caregiver fault or no fault.

POLICY ISSUE

#2

IDENTIFICATION AND RESPONSE TO VICTIMS

COMMERCIAL SEX TRAFFICKING

ABUSE

AFFIRMATIVE DEFENSE



shifting Blame + Liability to Traffickers



3rd Party Controller



GOING FROM A PUNITIVE TO A PROTECTIVE MINDSET

ALL <sup>under 18</sup> law violations go to Juvenile Court

PROHIBIT criminalization

of minors for prostitution

um, it's trafficking

crimes committed as a result of victimization

Don't have one?

Can't prove it?

STILL TRAFFICKING

# ADVANCED LEGISLATIVE FRAMEWORK

## 2 IDENTIFICATION OF & RESPONSE TO VICTIMS

States' laws must identify all commercially sexually exploited children as victims of trafficking and provide for a protective, rather than punitive, response.

**POLICY GOAL 2.1:** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

It is imperative that all CSE minors are rightfully identified as victims of child sex trafficking. This legal designation importantly facilitates a victim's ability to access opportunities for protection, services, and justice that are specifically designed for child sex trafficking victims. As such, the core child sex trafficking law should include all minors who experience commercial sex, regardless of whether the minor has, or identifies, a third party controller.

**POLICY GOAL 2.2:** State law requires child welfare to develop policy guidance on responding to foreign national children.

State child abuse laws should protect all child sex trafficking victims, regardless of immigration status; however, foreign national victims of child trafficking are regularly barred from accessing critical services, benefits, and protections provided for under state law. As such, state child welfare agencies should develop policy guidance for stakeholders who interact with and serve foreign national children to facilitate access to care and benefits and mitigate the collateral consequences of working with this population (e.g., under-identification, punitive immigration proceedings).

**POLICY GOAL 2.3:** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Under federal law, child sex trafficking victims fall under the definition of abuse and neglect and are entitled to specialized services through child welfare. Additionally, children already involved in the child welfare system are disproportionately more likely to have experienced or be at risk of experiencing commercial sexual exploitation. To ensure identification of victimization and the provision of specialized care, as well as the prevention of future harm, child welfare agencies should adopt trauma-informed CSEC screening measures to screen children at risk of sex trafficking.

**POLICY GOAL 2.4:** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Commercially sexually exploited minors are disproportionately more likely to be involved in the juvenile justice system for offenses related to their trafficking victimization or offenses committed

as a result of other life circumstances. Juvenile justice, as a rehabilitation and child serving entity, plays an important role in identifying and providing an appropriate, service-based response to all CSE children in its care. To ensure identification of victimization and the provision of specialized care, as well as the prevention of future harm, juvenile justice agencies should be mandated to adopt trauma-informed CSEC screening measures to screen children at risk of sex trafficking.

**POLICY GOAL 2.5:** State law prohibits the criminalization of minors under 18 for prostitution offenses.

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Commercially sexually exploited minors are not prostitution offenders; contrarily, all minors who experience commercial sex are victims of sex trafficking and should be identified and responded to as such. The state prostitution statute should be clearly inapplicable to persons under 18 years of age, regardless of whether a finding of trafficking victimization is made.

**POLICY GOAL 2.6:** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

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Recognizing that many child sex trafficking victims are forced or compelled to engage in other criminal conduct as a result of their victimization, state non-criminalization laws should extend to offenses beyond prostitution, including status offenses as well as misdemeanor and non-violent felony offenses committed pursuant to trafficking victimization.

**POLICY GOAL 2.7:** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

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Aligning with their underlying victimization, child sex trafficking victims should not be charged as sex trafficking offenders or as accomplices alongside their exploiters. Prohibiting the criminalization of child sex trafficking victims for sex trafficking offenses committed as a result of their trafficking victimization accounts for the actual dynamics of trafficking, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors.

**POLICY GOAL 2.8:** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

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A sex trafficking-specific affirmative defense allows sex trafficking victims accused of engaging in criminal conduct as a result of their victimization to assert a defense to prosecution and potentially avoid criminal liability if successful. Due to the forceful nature of violent felonies and the oftentimes severe harm caused to the crime victim, an affirmative defense is likely a more appropriate route than providing non-criminalization protections because an affirmative defense would shift the burden to the accused to establish why they should not be held criminally liable for the harm caused. Accordingly, a child sex trafficking victim would need to establish their victimization and prove the nexus between the violent felony and their own victimization to benefit from this protection.

**POLICY GOAL 2.9:** Juvenile court jurisdiction extends to all minors under 18 charged with a law violation.

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To ensure the provision of a developmentally appropriate response, all minors under 18 should be afforded the rehabilitative-focused services that are connected to the juvenile justice system. This policy further protects CSE minors who have disproportionately higher rates of juvenile justice involvement for offenses related to their victimization or offenses committed as a result of other life circumstances.

**POLICY GOAL 2.10:** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.

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Federal law requires that child sex trafficking be defined and treated as a form of child abuse. However, state and local child welfare systems have historically been prohibited or underutilized in coordinating and/or providing a specialized response in child sex trafficking cases. To ensure that all reports of child sex trafficking are investigated or assessed and that all victims are afforded access to child welfare services, states should expressly identify child sex trafficking as a form of child abuse.

**POLICY GOAL 2.11:** State law clearly defines child welfare's role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

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Child welfare's ability to respond in child sex trafficking cases should not hinge on whether a parent, guardian, or other person responsible for the child's welfare is responsible for the child's harm. Accordingly, state law should provide for an alternative response in non-familial trafficking cases based on a trafficking-specific risks and services assessment, ensuring access to appropriate services for the child and their family.



## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

**State child sex trafficking laws should protect all persons under the age of 18.** Federal law does not require evidence of force, fraud, or coercion when the victim of trafficking is a person under the age of 18.<sup>1</sup> State laws should similarly exclude the requirement of demonstrating force, fraud, or coercion as this is consistent with the legal concept that an underage child cannot legally consent to sex. Relatedly, under the Trafficking Victims Protection Act (TVPA) of 2000, any minor who engages in commercial sex is identified as a trafficking victim regardless of whether a trafficker or controlling third party is involved or identified.<sup>2</sup> In contrast, some state statutory schemes still create third party control requirements; in fact, requiring identification of a trafficker to qualify a child as a victim of sex trafficking is one of the most common limitations within state definitions of child sex trafficking.<sup>3</sup> This limitation is extremely problematic as it not only minimizes the role buyers play in fueling demand and engaging in the exploitation that trafficking laws are designed to punish, but it also prevents child victims from being identified as victims and accessing related relief and services.

In addition to under-identification of child victims, third party control requirements can result in the prosecution requiring the child to serve as a victim-witness to prove the factors leading to his or her own exploitation, a process that is often re-traumatizing. Additionally, even when a

controlling third party is involved, child victims may be unable to understand their victimization or safely identify their trafficker. Further, requiring a child to demonstrate the control of a trafficker may exclude some of the most vulnerable children from legal protection, including children who have bonds with their traffickers, male victims, homeless and runaway youth, and LGBTQ youth.<sup>4</sup> These vulnerable groups are less likely to identify themselves as victims, less likely to actively seek help, and more likely to interact with buyers directly.<sup>5</sup>

Survivors may also be more hesitant to holistically outline the nature of their trauma if they fear culpability and a punitive response due to a lack of third party control. When child victims of commercial exploitation are forced to prove their victimhood, it reinforces the perception that the criminal justice system is against them.<sup>6</sup> The process of detailing their experience can be incredibly retraumatizing for many adults and is often even more difficult for children, youth, and adolescents.<sup>7</sup> Survivors have cited this requirement as a distinct reason that has kept them from pursuing legal relief.<sup>8</sup> There are still likely to be cases in which victim testimony is requested and/or exceedingly beneficial to the outcome of litigation; however, the added burden of proof for establishing victimhood for access to services and opportunity to pursue legal relief is unnecessary and harmful to victims.

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

- ▶ Expressly identify buyers as sex trafficking offenders; this can be accomplished by including “purchasing” or “patronizing” as prohibited conduct under the core child sex trafficking law.
- ▶ Remove language that requires third party control in order for buyers to be held liable under the core child sex trafficking law.

## **RELATED ISSUES:**

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

## **SUPPORTING RESOURCES:**

- ▶ [Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims](#)
- ▶ Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 450 (2017)

<sup>1</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

<sup>2</sup> *Id.*

<sup>3</sup> Christine M. Raino, *Criminalizing Buyers under Child Sex Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 436 (2017).

<sup>4</sup> *Id.* at 439, 443-44.

<sup>5</sup> *Id.*

<sup>6</sup> Peters, A. (2016) *Reconsidering federal and state obstacles to human trafficking and entitlements victim status*. Utah Law Review (2016, 3),(538-554). <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1013&context=ulr>

<sup>7</sup> Jones, A. (2009). *Post-traumatic stress disorder and victims of human sex trafficking: a perpetuation of chronic indignity*. Intercultural Human Rights Law Review. (4)(330-331). <https://www.stu.edu/wp-content/uploads/sites/5/2019/04/4-17Jones.pdf> (last visited Nov. 11, 2020).

<sup>8</sup> U.S. Immigration and Customs Enforcement (n.d.) *Her story*. <https://www.ice.gov/features/human-trafficking-victim-shares-story> (last visited Nov. 11, 2020).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law requires child welfare to develop policy guidance on responding to foreign national children.

**State child abuse laws should protect all child sex trafficking victims, regardless of immigration status; however, foreign national victims of child trafficking may be barred from accessing critical services, benefits, and protections provided for under state law.** Noncitizen immigrant children, particularly those who have recently arrived or have arrived unaccompanied, are particularly vulnerable to human trafficking and commercial sexual exploitation (CSE).<sup>1</sup> Children may enter the United States as a result of their trafficking, or they may face victimization after their arrival. Federal law provides several forms of immigration relief to trafficked children, but federal immigration law provides only limited guidance on what types of services should be made available to noncitizen trafficked and exploited children. For example, only youth who are identified as unaccompanied<sup>2</sup> are transferred out of the Department of Homeland Security to the custody of the U.S. Department of Health and Human Services.<sup>3</sup> States must, therefore, ensure that all children, regardless of immigration status or nationality, are afforded access to all services and benefits available for survivors of child sex trafficking and CSE.

Under federal immigration law, child trafficking victims can access relief by filing for Special Immigrant Juvenile Status (SIJS), a T-visa (for trafficking victims), or a U-visa (for crime victims). Despite these federal immigration law protections in place for sex trafficked and commercially sexually exploited children, state protections and benefits for survivors need to encompass noncitizen and undocumented children as they will often encounter state agencies before the

federal immigration system. Federal law also does not equally cover all exploited children; federal immigration law provides more robust protections to *unaccompanied* children, therefore excluding noncitizen children who enter with their traffickers or parents or other legal guardians.<sup>4</sup> State law must therefore be equipped to address the needs of noncitizen child trafficking victims through specific language pertaining to this population within state laws addressing child welfare's response to identifying and serving sex trafficking and CSE victims.

State child welfare agencies play a key role identifying and serving child sex trafficking victims regardless of immigration status. However, they also play a specific and important role in serving unaccompanied minors and other foreign national children. As an example, child welfare agencies assist in coordinating individualized services for children (i.e. refugee services) involved in a child protective services investigation for suspected trafficking victimization. They also may house the state refugee coordinators that serve as a liaison between the state and the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR), the federal office responsible for issuing Eligibility Letters verifying that a child is a trafficking victim and is, therefore, eligible for benefits.<sup>5</sup> Recognizing the important role of child welfare in serving this population, state law should require state child welfare agencies to develop policy guidance for stakeholders who interact with and serve foreign national children. The goal of this mandate is to facilitate access to care and benefits and mitigate the collateral consequences

(e.g., under-identification, punitive immigration proceedings). Policy guidance should inform child protective services workers that there is no mandate to report immigration status of a child or family and that a referral to CPS should not trigger immigration proceedings. Policy guidance should also include information on relief options

and how to access relief, including coordinating with local refugee services agencies and state refugee coordinators to apply for Eligibility Letters through ORR. Finally, policy guidance should consider addressing the inclusion of refugee service organizations in multidisciplinary team responses.

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

- ▶ Require child welfare to develop policy guidance on responding to foreign national children.
- ▶ Explicitly state that a child's immigration status should not be considered when providing services and benefits to child sex trafficking victims.
- ▶ Ensure these laws will not be used to target foreign nationals and their families for detention or deportation.
- ▶ Ensure youth are provided access to legal representation on immigration issues.

## **RELATED ISSUES:**

**3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

## **SUPPORTING RESOURCES:**

- ▶ [State Impact Memo](#)

1 Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 PENN STATE J.L. & INT'L AFF. 614, 615 (2016).

2 An unaccompanied child is one who has no lawful immigration status in the U.S., is under the age of 18, and there is no parent or legal guardian in the U.S. or no parent or legal guardian in the U.S. can provide care and physical custody. 6 U.S.C. § 279(g) (2018).

3 Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United States*, 32 GEO. IMMIGR. L.J. 59, 81 (2017).

4 Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United States*, 32 GEO. IMMIGR. L.J. 59, 81 (2017).

5 *Fact Sheet: Victims of Human Trafficking*, ADMINISTRATION FOR CHILDREN AND FAMILIES [https://www.acf.hhs.gov/sites/default/files/orr/orr\\_fact\\_sheet\\_victim\\_of\\_trafficking.pdf?nocache=1358884320](https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_victim_of_trafficking.pdf?nocache=1358884320) (last visited Nov. 9 2020).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

**Recognizing and addressing the commercial sexual exploitation of children (CSEC) is a relatively new policy and practice area within child welfare, both federally and at the state level.**<sup>1</sup> Enacted in 2014, the Preventing Sex Trafficking and Strengthening Families Act requires states to develop policies and procedures to identify and determine services for children under state child welfare supervision who are victims of sex trafficking or at risk of victimization.<sup>2</sup> The following year, the Justice for Victims of Trafficking Act (JVTA) expanded the federal definition of “child abuse and neglect” to include human trafficking and commercial sexual exploitation.<sup>3</sup> In states where this allegation category was not yet established, this led to updates of state child maltreatment types to include sex trafficking as a form of child abuse. As a result of these changes to federal law, all commercially sexually exploited children are entitled to a response through child welfare regardless of whether they are currently under state supervision.

Unfortunately, state systems continue to misidentify or fail to identify CSEC victims, which creates a barrier to initiating a protective response.<sup>4</sup> Children often do not identify themselves as having been trafficked or commercially sexually exploited, which can create an additional barrier to being identified by child welfare staff.<sup>5</sup> Despite the lack of identification, studies have shown that

CSEC victims are highly likely to have had child welfare system involvement at some point.<sup>6</sup> States have reported that between 41-98% of trafficking victims had prior child welfare involvement.<sup>7</sup> Importantly, youth already involved in the child welfare system may be particularly at-risk for CSEC victimization as runaway and homeless youth, and youth experiencing neglect are at a higher risk for experiencing commercial sexual exploitation.<sup>8</sup> Identification is the first step to intervention and provision of specialized services. It is critical that state law mandates trauma-informed CSEC screening for children at risk of sex trafficking, both at entry and throughout involvement with the system.

Success in implementing mandates to identify commercially sexually exploited children is reliant on clear state guidance on screening and assessment protocols and related trainings.<sup>9</sup> The screening process, if not done in a trauma-informed and child-centered way, can be re-traumatizing.<sup>10</sup> State law addressing CSEC screening within child welfare should include a mandate that professionals responsible for screening receive comprehensive training on CSEC and how to administer the screening in a trauma-informed way prior to conducting any screenings. Additional emphasis should be placed on utilizing a screening tool that has been validated for use within child welfare settings.

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

- ▶ Mandate CSEC screening by child welfare for *all* children who are referred to child welfare and are at risk of sex trafficking, not just those under state supervision.
- ▶ Require that child welfare staff administering those screenings be trained on CSEC and how to administer the tool in a trauma-informed way.
- ▶ Mandate that CSEC screenings conducted by child welfare are performed in a trauma-informed manner, utilizing a validated screening tool.

## **RELATED ISSUES:**

- 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.
- 2.10** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.
- 2.11** State law clearly defines child welfare's role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.
- 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

## **SUPPORTING RESOURCES:**

- ▶ [INTERVENE](#)
- ▶ [JuST Response Council Protective Response Model report](#)

- <sup>1</sup> Deborah A. Gibbs, Alana M. Henninger, Stephen J. Tueller, & Marianne N. Kluckman, *Human Trafficking and the Child Welfare Population in Florida*, 88 CHILD. & YOUTH SERV. REV. 1, (2018).
- <sup>2</sup> Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) of 2014, Pub. L. No. 183, 128 Stat. 1919.
- <sup>3</sup> 34 U.S.C. § 20302(5).
- <sup>4</sup> Jennifer E. O'Brien, "What Does it Matter How We Define It?": *Exploring Definitions of DMST Among Service Providers and Victims/Survivors*, 5 J. HUM. TRAFFICKING 1, 3 (2019).
- <sup>5</sup> *Id.* at 3-4.
- <sup>6</sup> See, e.g., Michael D. Pullmann, et al., *Residential Instability, Running Away, and Juvenile Detention Characterizes Commercially Sexually Exploited Youth Involved in Washington State's Child Welfare System*, 102 CHILD ABUSE & NEGLECT 1, 2 (2020); Carlomagno C. Panlilio, et al., *Assessing Risk of Commercial Sexual Exploitation Among Children Involved in the Child Welfare System*, 87 CHILD ABUSE & NEGLECT 88, 89 (2019).
- <sup>7</sup> Carlomagno C. Panlilio, et al., *Assessing Risk of Commercial Sexual Exploitation Among Children Involved in the Child Welfare System*, 87 CHILD ABUSE & NEGLECT 88, 89 (2019).
- <sup>8</sup> Michael D. Pullmann, et al., *Residential Instability, Running Away, and Juvenile Detention Characterizes Commercially Sexually Exploited Youth Involved in Washington State's Child Welfare System*, 102 CHILD ABUSE & NEGLECT 1, 3 (2020).
- <sup>9</sup> Gibbs et al. *supra* note 1, at 8.
- <sup>10</sup> MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, *GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING* 25 (2018).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

**Many children who have been identified as victims of commercial sexual exploitation (CSE) have been involved with the juvenile justice system, either preceding the CSE or as a result of acts committed during CSE victimization.**<sup>1</sup>

While many states have taken the important step of enacting non-criminalization laws—laws that prevent victims from being charged with prostitution or other offenses related to their own exploitation—CSE children may still interact with the juvenile justice system while awaiting identification as a victim or due to masking charges or charges for offenses not covered by non-criminalization laws.<sup>2</sup> CSE children may also use drugs or alcohol as a coping mechanism or as a result of forced use by their traffickers, which can also lead to juvenile justice involvement.<sup>3</sup> Therefore, juvenile justice, as a rehabilitation and child-serving entity, plays a vital role in identifying potential CSE children and ensuring provision of specialized care to all CSE children identified in its care. Because juvenile justice serves as a key intervention point, it is imperative that states mandate juvenile justice agencies to

screen all children at risk of sex trafficking for CSE victimization regardless of when, how, or why they enter the system.

Without appropriate screening, CSE children may be subject to traditional penal methods of addressing criminal or delinquent charges, which could retraumatize the child and cause further harm.<sup>4</sup> In contrast, effective screening practices can initiate efforts to ensure that CSE children avoid harsh punitive measures and have access to multi-disciplinary, trauma-informed services.

The screening process, if not done in a trauma-informed and child-centered way, can be retraumatizing.<sup>5</sup> State law addressing CSEC screening within juvenile justice should include a mandate that professionals responsible for screening receive comprehensive training on CSEC and how to administer the screening in a trauma-informed way prior to conducting any screenings. Additional emphasis should be placed on utilizing a screening tool that has been validated for use with minors in juvenile justice settings.

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

- ▶ Ensure CSEC screening conducted by state juvenile justice agencies is trauma-informed and utilizes a validated screening tool.
- ▶ Mandate screening for *all* juvenile justice-involved children at risk of sex trafficking.
- ▶ Require that juvenile justice staff administering those screenings be trained on CSEC and how to administer the tool in a trauma-informed way.
- ▶ Avoid limiting mandated CSEC screening to children who participate in particular programs, such as diversion programs.

## RELATED ISSUES:

- 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.
- 3.3** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.
- 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

## SUPPORTING RESOURCES:

- ▶ [JuST Response Council Protective Response Model report](#)

<sup>1</sup> Eraka P. Bath, et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Seeking Justice: Legal Approaches to Eliminate Criminal Liability for Juvenile Sex Trafficking Victims, Shared Hope Int'l 18 (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 11, 2020).

<sup>4</sup> Eraka P. Bath, et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020) (noting that traditional, punitive responses to victims of CSE can lead to “poorer outcomes and higher healthcare needs”).

<sup>5</sup> MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING 25 (2018).



## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law prohibits the criminalization of minors under 18 for prostitution offenses.

**To prevent the harmful and re-traumatizing effects of arrest and prosecution for crimes committed pursuant to trafficking victimization, states should enact non-criminalization laws.**

“Non-criminalization” reflects the concept that “charging a child with a crime related to their own rape is not properly enshrined in the criminal code.”<sup>1</sup> A key first step in enacting non-criminalization laws is to prohibit the criminalization of minors under 18 for prostitution offenses, ensuring that they cannot be arrested and prosecuted for such offenses.

State sex trafficking laws should simultaneously criminalize the actions of buyers, traffickers, and facilitators while protecting victims. It is, therefore, counterproductive and harmful to hold minors criminally liable for the crimes committed against them by charging and prosecuting them for prostitution. Doing so creates a legal contradiction between sex trafficking laws, which identify a child who experiences commercial sex as a victim, and prostitution laws, which seek to criminalize that same child.<sup>2</sup>

Because punishing CSE minors undermines survivor-centered efforts to address CSE, harms victims, and hinders a needed shift in cultural attitudes,<sup>3</sup> state prostitution statutes should be clearly inapplicable to persons under 18 years of age, regardless of whether a finding of trafficking victimization is made. This acknowledges that child sex trafficking victims and children engaged in commercial sex are the same persons and,

as such, should consistently be offered non-punitive responses as well as protection from criminalization. Acknowledgement of victimization further removes barriers to connecting youth with services to address their victimization.

Best practices for enacting non-criminalization legislation include protecting all minors under the age of 18, not requiring legal identification of victimhood or proof of third-party control, and incorporating access to specialized services.<sup>4</sup> Mechanisms that direct survivors to specialized services and away from the juvenile or criminal justice systems are critical to ensure survivors receive the specialized care they need. These services should be provided through a non-punitive system, meaning that they are not meant to simply serve as diversion programs or referrals in lieu of arrest.<sup>5</sup> Furthermore, services should not be connected to a child-in-need-of-supervision process as this process can also be inherently punitive and force engagement in services.

To provide a mechanism for connecting victims to specialized services, states should incorporate services for trafficked youth into non-criminalization provisions. This provides law enforcement with an alternative to arresting a child for the child’s own protection and will, instead, allow them to refer the child to social services.<sup>6</sup> This offers a vital alternative to the harmful practice of arresting and prosecuting minors for crimes resulting from their victimization and the traumatizing impact of punitive processes.<sup>7</sup>

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

- ▶ Prohibit the criminalization of all minors under 18 for prostitution offenses.
- ▶ Ensure the non-criminalization law prohibits arrest and detention while providing access to specialized services.

## **RELATED ISSUES:**

- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.3** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.

## **SUPPORTING RESOURCES:**

- ▶ [Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims](#)
- ▶ [Non-Criminalization of Juvenile Sex Trafficking Victims](#)
- ▶ [Justice for Juveniles: Exploring Non-Criminal Response Mechanisms for Child Sex Trafficking](#)
- ▶ [JuST Response Council Protective Response Model report](#)
- ▶ [States' Laws Say "Kids are Not Prostitutes." So Why are They Still Being Punished?" blog](#)

<sup>1</sup> SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L 4 (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 11, 2020) [hereinafter SEEKING JUSTICE].

<sup>2</sup> Shared Hope Int'l, *Non-Criminalization of Juvenile Sex Trafficking Victims*, JUST RESPONSE POLICY PAPER 1 (2016) <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf> (last visited Nov. 11, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 12.

<sup>5</sup> See SEEKING JUSTICE, *supra* note 1.

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

<sup>7</sup> See Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257-276 (2013).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

A complicated history of adjudications, convictions, and/or arrests creates numerous tangible obstacles in the lives of survivors as they attempt to regain control of their lives and strive toward becoming independent.<sup>1</sup> Criminal and delinquency records hinder survivors from obtaining employment, securing safe housing, taking out loans, accessing education, traveling, and obtaining visas.<sup>2</sup> Limiting access to benefits and services perpetuates the categorization of survivors as criminals for the crimes they were induced to commit in the context of their victimization. This can be debilitating to the mental health of survivors as many of them struggle to view their experiences through a trauma-informed lens.<sup>3</sup>

As advocates and legislators have become aware of the problems caused by criminalizing commercially sexually exploited (CSE) children, they have begun to shift away from criminalization and toward a more victim-centered approach.<sup>4</sup> To prevent the harmful effects of arrests and convictions for crimes committed pursuant to their trafficking victimization, some states have enacted non-criminalization laws, laws designed to prohibit the criminalization of survivors for crimes committed pursuant to their victimization. Although many states have taken the important step of enacting non-criminalization laws for prostitution offenses, CSE children may still interact with juvenile or criminal justice systems due to other crimes resulting from their victimization. Oftentimes these are petty offenses, such as theft or drug possession, or status offenses, such as truancy,<sup>5</sup> but could also include conduct related to

commercial sex, such as promoting prostitution. Recognizing that many child sex trafficking victims are forced or compelled to engage in other criminal conduct as a result of their victimization, state non-criminalization laws should extend to offenses beyond prostitution, including status, misdemeanor, and non-violent felony offenses committed pursuant to trafficking victimization.

When state non-criminalization provisions do not extend to offenses outside of prostitution, many child sex trafficking victims will likely be subjected to unnecessary re-traumatization through interactions with the criminal justice system.<sup>6</sup> Traffickers often force their victims to commit crimes because (1) they know that the punishment for the child is likely to be lower if they are caught due to the child's age and (2) once a victim has committed a crime, they are less likely to seek help for fear of being punished for the crime(s).<sup>7</sup> Trauma responses resulting from CSE victimization can impact a victim's susceptibility to coercion to commit crimes.<sup>8</sup> Additionally, victims may commit other crimes to protect themselves in self-defense, to avoid abuse by their exploiter, or to escape or avoid their own sexual exploitation.<sup>9</sup> Expanding non-criminalization to all status, misdemeanor, and non-violent felony offenses—in addition to prostitution-related offenses—recognizes that numerous offenses can be connected to sex trafficking victimization and offers a vital alternative to the harmful practice of arresting and prosecuting minors for crimes resulting from their victimization and the traumatizing impact of juvenile justice involvement.<sup>10</sup>

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

- ▶ Ensure non-criminalization protections apply to status, misdemeanor, and non-violent felony offenses related to trafficking victimization.
- ▶ Provide survivors of child sex trafficking with access to specialized services.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.3** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.

## **SUPPORTING RESOURCES:**

- ▶ [Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims](#)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

- 1 Polaris. *Victims of human trafficking aren't criminals* (Sept. 29, 2016) <https://polarisproject.org/blog/2016/09/victims-of-human-trafficking-arent-criminals/> (last visited Nov. 11, 2020).
- 2 *Id.*
- 3 Williamson, E., Dutch, N., Clawson, H. (2008). *Evidence-based mental health treatment for victims of human trafficking*. U.S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/76116/index.pdf>.
- 4 Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1284-85; SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 11, 2020).
- 5 Eraka P. Bath et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 2 (2020).
- 6 *Seeking Justice*, *supra* note 4, at 18.
- 7 Polaris. *The importance of criminal record relief for human trafficking survivors* (Mar. 20, 2019) <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/> (last visited Nov. 11, 2020).
- 8 See SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING: VICTIM-OFFENDER INTERSECTIONALITY (2020) [https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL\\_updatedApril2020.pdf](https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf) (last visited Nov. 11, 2020).
- 9 *Id.* at 51.
- 10 Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257-276 (2013).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

**Arresting and prosecuting sex trafficking victims for sex trafficking offenses is in direct conflict with a victim-centered criminal justice approach and reflects a limited understanding of the complex nature of victim-offender intersectionality (VOI).**<sup>1</sup> Prohibiting the criminalization of child sex trafficking victims for sex trafficking offenses accounts for the actual dynamics of trafficking, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors. Aligning with their underlying victimization, child sex trafficking victims should not be charged as sex trafficking offenders or as accomplices alongside their exploiters. Accordingly, state non-criminalization laws should apply to sex trafficking offenses, including accomplice and co-conspirator liability.

To establish a more victim-centered approach to working with child sex trafficking victims, some states have enacted non-criminalization laws, laws designed to prohibit the criminalization of victims for crimes committed pursuant to their victimization.<sup>2</sup> While all of those states have taken the important step of enacting non-criminalization laws for prostitution offenses, far fewer of these states extend non-criminalization to offenses outside of prostitution. Fewer still extend non-criminalization to sex trafficking offenses, including accomplice and co-conspirator liability.

Failure to identify sex trafficking VOI and offer alternative responses can create significant barriers in accessing vital services to address a victim-offender's trauma.<sup>3</sup> In addition to minimizing re-traumatization associated with a criminal justice response through non-criminalization laws, states can also facilitate access to services through these laws. Importantly, these services should be provided through a non-punitive system, meaning that they are not meant to simply serve as diversion programs or referrals in lieu of arrest.<sup>4</sup>

Successful implementation of this change in law and practice will require training as well as active participation from criminal justice stakeholders, including law enforcement, victim advocates, prosecutors, and judges. In an effort to improve identification of sex trafficking victim-offenders, criminal justice stakeholders should take proactive steps throughout the criminal justice process to assess whether a person that is suspected of trafficking had also experienced trafficking victimization.<sup>5</sup> Training for criminal justice stakeholders on identifying and responding to sex trafficking VOI is important. Of equal importance is training that increases understanding of victim-offenders' actions by teaching stakeholders how to view this conduct through a trauma-informed lens. Finally, successful implementation will require the development of alternative responses to arrest and prosecution that can be utilized when sex trafficking VOI is identified.

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

- ▶ Ensure non-criminalization protections apply to sex trafficking offenses, including accomplice and co-conspirator liability.
- ▶ Provide survivors of child sex trafficking with access to specialized services.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.3** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)
- ▶ [Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims](#)
- ▶ [When Difficult News is the Most Important News blog](#)

<sup>1</sup> See SHARED HOPE INT’L, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS (2020) [https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL\\_updatedApril2020.pdf](https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf) (last visited Nov. 11, 2020) [hereinafter VOI REPORT].

<sup>2</sup> Seeking Justice: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT’L (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 11, 2020) [hereinafter SEEKING JUSTICE].

<sup>3</sup> VOI REPORT, *supra* note 1.

<sup>4</sup> SEEKING JUSTICE, *supra* note 2.

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

The phenomenon of commercial sexual exploitation (CSE) victims committing crimes during their victimization is so prevalent that it is largely unavoidable.<sup>1</sup> Child sex traffickers often force their victims to commit a variety of crimes for a variety of reasons. Traffickers may force a child victim to commit a crime knowing that the punishment for the child is likely to be lower if they are caught due to the child's age or that, once a victim has committed a crime, they are less likely to seek help for fear of being punished for the aforementioned crime(s).<sup>2</sup> Trauma responses resulting from CSEC victimization can impact a victim's susceptibility to coercion to commit crimes.<sup>3</sup> Additionally, victims may commit crimes to protect themselves in self-defense, to avoid abuse by their exploiter, or to escape or avoid their own sexual exploitation.<sup>4</sup> Consequently, in the course of their victimization, trafficking victims may commit or be indirectly involved in violent felonies, such as kidnapping or robbery at the direction of their trafficker and assault or homicide resulting from an act of self-defense.

Just as traditional affirmative defenses allow criminal defendants to demonstrate that they lacked the criminal intent to commit the crime, trafficking victims need an opportunity to demonstrate the nexus between criminal conduct and their trafficking victimization. To accomplish this, state law should provide child sex trafficking victims with a trafficking-specific affirmative defense to violent felonies that were committed as a result of trafficking victimization. If successful, a sex-trafficking-specific affirmative defense would allow sex trafficking victims accused of engaging in criminal conduct as a result of their victimization to avoid unjust criminalization for acts they were coerced to commit. Importantly,

a sex-trafficking specific affirmative defense can account for the actual dynamics of trafficking, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors. In this way, a sex trafficking-specific affirmative defense can account for potential inadequacies of general affirmative defenses that may fail to protect trafficking survivors from unfair criminalization. Additionally, this defense may be rebutted by the prosecution and a child sex trafficking victim would need to establish their victimization and prove the nexus between the violent felony and their own victimization in order to benefit from this protection.

Although the juvenile justice system was created to promote rehabilitation, criminal justice processes are still adversarial; they may involve situations of physical restraint, solitary confinement and other deprivation of liberty and control, limited services to address victimization, and other situations that can retraumatize child sex trafficking victims.<sup>5</sup> As such, it is absolutely critical to utilize a trauma-informed, victim-centered approach throughout the criminal justice process to address sex trafficking victims' complex needs and support access to services. Importantly, this includes victims who are and are not able to present a successful affirmative defense; regardless of the disposition of the case and resulting punitive measures, it is vital that victims are connected to specialized services that can address the trauma of sex trafficking victimization.

Implementation of this change in law and practice will require training as well as active participation from criminal justice stakeholders, including law enforcement, victim advocates, and prosecutors.

Asserting a successful sex trafficking-specific affirmative defense starts with recognition of victim-offender intersectionality (VOI) by criminal justice stakeholders. In order to improve identification of sex trafficking victim-offenders, criminal justice stakeholders should take proactive steps throughout the criminal justice process to assess whether a

person that is suspected of committing a crime was also experiencing trafficking victimization.<sup>6</sup> Training for criminal justice stakeholders on identifying and responding to VOI is important. Of equal importance is training that increases understanding of victim-offenders' actions by teaching stakeholders how to view this conduct through a trauma-informed lens.

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

- ▶ Provide child sex trafficking victims with an affirmative defense to all violent felonies.
- ▶ Provide survivors of child sex trafficking with access to specialized services.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)
- ▶ [Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims](#)

<sup>1</sup> SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS (2020) [https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL\\_updatedApril2020.pdf](https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf) (last visited Nov. 11, 2020) [hereinafter VOI REPORT].

<sup>2</sup> *The Importance of Criminal Record Relief for Human Trafficking Survivors*, POLARIS (March 20, 2019) <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/> (last visited Nov. 11, 2020).

<sup>3</sup> VOI REPORT, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> Shared Hope Int'l, *Non-Criminalization of Juvenile Sex Trafficking Victims*, JUST RESPONSE POLICY PAPER (2016) <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf> (last visited on Nov. 11, 2020).

<sup>6</sup> VOI REPORT, *supra* note 1.



## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** Juvenile court jurisdiction extends to all minors under 18 charged with a law violation.

Juvenile courts were created to provide a non-adversarial and rehabilitative approach for children who had engaged in criminal activity.<sup>1</sup> The juvenile justice system promotes an individualized approach to treat, supervise, and rehabilitate children.<sup>2</sup> This system recognizes children as malleable, and juvenile courts are given the discretion to divert children away from the consequences of formal court proceedings.<sup>3</sup> Juvenile courts afford minors with specific protections: proceedings are not open to the public, proceeding information is confidential, and juvenile adjudications are not considered convictions.<sup>4</sup>

Unfortunately, the protections of the juvenile justice system do not extend to all minors. Some barriers keep minors out of juvenile court from the outset. Almost half of states exclude certain crimes, usually violent felonies, from the jurisdiction of juvenile courts.<sup>5</sup> Additionally, some states restrict access to the juvenile justice system by limiting its jurisdiction to those under 17, and five states limit juvenile court jurisdiction to children under age 16.<sup>6</sup> A few states limit access further by allowing prosecutors to choose, for certain offenses, whether to try the case in adult court or juvenile court.<sup>7</sup> Lastly, many states follow a “once an adult, always an adult” practice that requires juveniles to be prosecuted in adult criminal court if they have been tried as an adult in the past.<sup>8</sup> Troublingly, states allow judicial waiver/transfer of cases out of juvenile court for children as young as 10, and about one-third of states have no minimum age requirement.<sup>9</sup>

Recognizing the risks associated with transferring a minor to adult court, some jurisdictions (less than one-third of states) limit transfers to “judicially controlled transfers,” requiring all juveniles to start their cases in juvenile court, regardless of the crime

charged. Importantly, this practice removes automatic statutory exclusion that would otherwise bar certain children from juvenile court jurisdiction and replaces unchecked prosecutorial discretion to try juveniles charged with certain crimes in adult court with a deliberative process.<sup>10</sup>

When juveniles are tried in adult criminal court, they lose many protections afforded in juvenile proceedings discussed above. For example, adult courts are open to the public and focused on punishment, while juvenile proceedings are closed to the public and rehabilitation-focused. Juvenile adjudications are typically sealed while adult conviction records are publicly accessible.<sup>11</sup> Additionally, convictions in adult court can lead to harsher sentences and imprisonment with adults. When children are imprisoned with adults, they face physical, psychological, and social harms. Juveniles housed with adults are more likely to be physically and sexually assaulted.<sup>12</sup> Children who are victimized may be placed in solitary confinement for their own safety, which can lead to serious mental health problems, including depression and suicidal ideations. Juveniles placed in adult populations “face suicide rates 36 times higher than juveniles held in juvenile facilities.”<sup>13</sup> Adult prisons also lack the educational and rehabilitative programming available in the juvenile justice system, and children surrounded by incarcerated adults are more likely to recidivate and identify themselves as a “criminal.”<sup>14</sup> Specific to sex trafficked and commercially sexually exploited children, adult prisons are not equipped to provide an age-appropriate and trauma-informed response to address their victimization.

To ensure the provision of a developmentally appropriate response, state law should ensure that

all minors under 18 are afforded the protection and rehabilitative-focused services that are connected to the juvenile justice system and specific barriers

related to type of crime committed and age should be removed from statute.

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

- ▶ Extend juvenile court jurisdiction to all minors under 18.
- ▶ Ensure all cases involving minors originate in the juvenile court regardless of the offense.
- ▶ Establish a process for transferring cases to the adult criminal court.
- ▶ Ensure transfer to criminal court is not determined by prosecutorial discretion alone.

## **RELATED ISSUES:**

- 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.
- 3.3** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.
- 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [VOI blog series](#) (addressing CST victims sentenced in adult court)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

1 Andrea L Dennis, *Decriminalizing Childhood*, 45 *FORDHAM URB. L.J.* 1, 11 (2017).

2 Peterson Tavit, *Mandatory Transfer of Juveniles to Adult Court: A Deviation from the Purpose of the Juvenile Justice System and a Violation of their Eight Amendment Rights*, 52 *REV. JURIDICA U. INTER. P.R.* 377, 385 (2017).

3 *Id.* at 390.

4 *Id.* at 390–92; see *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990) (“Under [the Juvenile Justice and Delinquency Prevention Act], prosecution results in an adjudication of status—not a criminal conviction.”); see also U.S. DEP’T OF JUSTICE, CRM 123, *Adjudication as a Juvenile Delinquent* (2020), <https://www.justice.gov/archives/jm/criminal-resource-manual-123-adjudication-juvenile-delinquent> (last visited Nov. 11, 2020).

5 *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> (last visited Apr. 9, 2020).

6 *Id.*; THOMAS A. JACOBS & NATALIE C. JACOBS, *CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS* § 8:5 (2019 ed.).

7 *Id.*

8 *Juvenile Waiver (Transfer to Adult Court)*, FINDLAW, <https://criminal.findlaw.com/juvenile-justice/juvenile-waiver-transfer-to-adult-court.html> (last visited Apr. 9, 2020).

9 *Id.*

10 *Id.*

11 *Id.*

12 Stephanie Tabashneck, *Raise the Age Legislation: Developmentally Tailored Justice*, 32 *CRIM JUST.* 13 (2018).

13 *Id.* at 15.

14 *Id.*

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.

The Justice for Victims of Trafficking Act (JVTA) amended the federal definition of child abuse to include human trafficking and the production of child sexual abuse material.<sup>1</sup> Through child welfare guidelines, care workers are mandated to report instances of child abuse; however, up until this addition to the federal definition, agencies were not mandated to extend treatment and services to child sex trafficking victims.<sup>2</sup> As a result, state and local child welfare systems have historically been prohibited or underutilized in coordinating and/or providing a specialized response in child sex trafficking cases. The JVTA allowed for the provisions outlined in the Preventing Sex Trafficking and Strengthening Families Act of 2014 to be accessible to all children interacting with the child welfare system, not just those under state child welfare supervision.<sup>3</sup> By law, states must: develop policies to identify, document, screen, and determine services for children that are victims of sex trafficking, require child welfare agencies to report sex trafficking victims to law enforcement, and abide by additional screening and data collection measures.<sup>4</sup> As a result of these changes, all commercial sexually exploited (CSE) minors and sex trafficking victims are entitled to a specialized response through child welfare. To ensure that all reports of child sex trafficking are investigated and that all victims are afforded access to child welfare services, states should expressly identify child sex trafficking as a form of child abuse regardless of the child's relationship to the perpetrator.

Additionally, it is imperative that state law not limit child protective responses to situations where a commercially sexually exploited child is exploited by a third party or readily-identifiable

trafficker. Limiting response to those cases in which a child is exploited by a third party excludes the most vulnerable populations, including homeless and runaway youth and LGBTQ youth. These populations are disproportionately vulnerable to engaging in a form of commercial sex directly with a buyer known as transactional, or survival, sex in order to have basic needs met. Accordingly, if the state's definition of child sex trafficking is limited (e.g., contains a third party control requirement or excludes buyers as sex trafficking offenders), states should include child sex trafficking *as defined by federal law* as a form of child abuse to ensure all commercially sexually exploited children have access to services through child welfare.

Recognizing the differences in responding to child sex trafficking in comparison to other forms of child abuse is key to successful implementation. The primary purpose of modifying statute to expressly identify child sex trafficking as a form of child abuse is to ensure that all child sex trafficking and CSE victims have access to a specialized, non-punitive response that facilitates coordination of services and support for each child. Child welfare policy and training addressing this population should foster a trauma-informed response that encourages connection to services and limits system involvement when appropriate. While states should ensure that the specialized service process is mandatory for child welfare in cases of sex trafficking, the process should be optional for the child survivor and their family.

Finally, the JVTA also required that states develop procedures for providing training on the sex trafficking and CSE of children to child

protective services workers, including areas such as identification, assessment, provision of comprehensive services, and multidisciplinary service responses with other child-serving agencies and service providers.<sup>6</sup> Any section of state law that addresses child welfare's response to sex

trafficking should include statewide training initiatives addressing victim identification and response protocols as well as adequate funding to ensure that the alternative response can be implemented.

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

- ▶ Expressly include child sex trafficking within the definition of child abuse.
- ▶ Ensure services are not limited to situations where a commercially sexually exploited child is exploited by a third party or readily identifiable trafficker.
- ▶ Ensure services are available to a commercially sexually exploited child regardless of the child's relationship to the perpetrator.

## **RELATED ISSUES:**

- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.
- 2.11** State law clearly defines child welfare's role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

## **SUPPORTING RESOURCES:**

- ▶ [State Impact Memo](#)

<sup>1</sup> 34 U.S.C. § 20302(5).

<sup>2</sup> CHILD WELFARE INFORMATION GATEWAY, ABOUT CAPTA: A LEGISLATIVE HISTORY (2019).

<sup>3</sup> *Preventing Sex Trafficking and Strengthening Families Act of 2014*, NATIONAL CONFERENCE OF STATE LEGISLATURES (October 6 2016) <https://www.ncsl.org/research/human-services/preventing-sex-trafficking-and-strengthening-families-act-of-2014.aspx> (last visited Nov. 11, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> LAURA T. MURPHY, LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH 8 (2016).

<sup>6</sup> Justice for Victims of Trafficking Act of 2015, Pub. L. No: 114-22, 129 Stat 227 (2015).

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

State and local child welfare agencies play a lead role in investigating cases of suspected child abuse and neglect, which, per federal definition, includes “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”<sup>1</sup> Child welfare’s jurisdiction to investigate suspected cases of child abuse is often limited to cases in which a caregiver/caretaker (as defined in state statute) is the alleged perpetrator. However, in 2015, the Justice for Victims of Trafficking Act (JVTA) expanded the federal definition of “child abuse and neglect” to include sex trafficking as defined by the Trafficking Victims Protection Act (TVPA), regardless of the relationship between the alleged perpetrator and the victim.<sup>2</sup>

In an effort to identify and serve all child sex trafficking and CSEC victims, state law should recognize that children are often trafficked or commercially sexually exploited by people that fall outside of the definition of caregiver.<sup>3</sup> Child welfare’s ability to respond in child sex trafficking cases should not hinge on whether a parent, guardian, or other person responsible for the child’s welfare is responsible for the child’s harm. Accordingly, state law should provide for an alternative response in non-familial trafficking cases based on a trafficking-specific risks and services assessment, ensuring access to appropriate services for the child and their family. In outlining this alternative response in statute, it is important to include language that ensures the process is

mandatory for child welfare but optional for the child survivor and their family unless the parents or caregivers are determined to have committed other forms of child abuse.

As laws designed to protect child sex trafficking victims increasingly rely on child welfare to provide services to exploited youth, and as child welfare increasingly encounters children under its care who have been commercially sexually exploited, statutory restrictions on child welfare’s jurisdiction undermine its ability to respond appropriately. However, it is also important that removing these barriers does not detrimentally impact non-offending parents and caregivers. Additionally, laws should not limit services to situations where a commercially sexually exploited child is exploited by a third party or readily-identifiable trafficker.<sup>4</sup> Limiting services to those cases in which a child is exploited by a third party excludes the most vulnerable populations, including homeless and runaway youth and LGBTQ youth,<sup>5</sup> who are disproportionately vulnerable to engaging in a form of commercial sex directly with a buyer known as transactional, or survival, sex in order to have basic needs met.<sup>6</sup>

Furthermore, the JVTA also required that states develop procedures for providing training on the sex trafficking and CSE of children to child protective services workers, including areas such as identification, assessment, provision of comprehensive services, and multidisciplinary service responses with other child-serving agencies and service providers.<sup>7</sup> Any section of state law that addresses child welfare’s response to sex trafficking

should include statewide training initiatives addressing victim identification and response

protocols as well as adequate funding to ensure that the alternative response can be implemented.

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

- ▶ Provide an alternative specialized response to non-familial child sex trafficking that does not hinge on caregiver fault AND requires a trafficking-specific risks and services assessment.
- ▶ Provide jurisdiction to child welfare to investigate child sex trafficking cases regardless of whether the alleged perpetrator meets the definition of a caregiver.

## **RELATED ISSUES:**

- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.
- 2.10** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

## **SUPPORTING RESOURCES:**

- ▶ [State Impact Memo](#)
- ▶ [Defining a JuST Response Webinar: Policy & Practice](#)
- ▶ [Protective Response Model](#)

<sup>1</sup> Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No 93-247 (most recently amended on Jan. 7, 2019 by the Victims of Child Abuse Act Reauthorization Act of 2018, Pub. L. No. 115-424).

<sup>2</sup> Justice for Victims of Trafficking Act (JVTA) of 2015, Pub. L. No: 114-22, 129 Stat 227 (2015).

<sup>3</sup> Dr. Dominique Roe-Sepowitz et al., *A Six-Year Analysis of Sex Traffickers of Minors*, ARIZ. STATE U. OFF. OF SEX TRAFFICKING INTERVENTION RSCH. iii-iv (2017).

<sup>4</sup> See Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 438, 448 (2017) (arguing that requiring third-party control places the burden on the child to prove his or her victimization).

<sup>5</sup> See *id.* at 443-44.

<sup>6</sup> *Justice for Victims of Trafficking Act: Section-By-Section Analysis*, SHARED HOPE INT'L <https://www.omicsonline.org/open-access/traumacoerced-bonding-and-victims-of-sex-trafficking-where-do-we-go-from-here-1522-4821-1000223.php?aid=55771> (last visited Nov. 11, 2020).

<sup>7</sup> *Id.*

WHETHER  
no system  
involvement

OR  
OR  
OR  
in juvenile  
justice  
system

SURVIVORS  
NEED ACCESS  
TO specialized  
services

FOR

addressing  
previous harm

preventing  
future  
exploitation

child serving  
agencies



survivor  
centered  
multidisciplinary  
teams

for victim  
well being



TRANSITION  
AGE YOUTH

18-23

WELFARE  
PROTECTIONS

POLICY  
ISSUE

#3

# CONTINUUM OF CARE

BREAK THE  
CYCLE OF  
EXPLOITATION

THE STATE BUDGET To pay for these SERVICES



We want  
them to become  
strong adults  
who feel  
supported and  
not forgotten.

# ADVANCED LEGISLATIVE FRAMEWORK

## 3 CONTINUUM OF CARE

To break the cycle of exploitation, state laws must provide victims access to funded, trauma-informed services.

### **POLICY GOAL 3.1:** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

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The availability and provision of specialized services outside of a punitive response is imperative for addressing previous harm and preventing future exploitation. State law should mandate that all CSE minors are connected to specialized services without having to be directed into a punitive system or restrictive placement and regardless of what state or local system(s) they are involved in. To facilitate the provision of such services, state law should also have a clear process for connecting the minor to services without relying on arrest or mandatory court-involvement.

### **POLICY GOAL 3.2:** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

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A specialized multi-disciplinary team (MDT) approach in child sex trafficking cases ensures a coordinated response that addresses the holistic needs of survivors throughout the criminal justice and service response processes. Through MDTs, law enforcement, service providers, advocates, and other professionals work collaboratively to prioritize the wellbeing of the survivor and provide trauma-informed support and services.

### **POLICY GOAL 3.3:** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.

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State law should ensure juvenile justice-involved trafficking victims have access to specialized services and care. Such services are imperative for addressing past harm while ideally preventing future exploitation. Additionally, specialized services and care should be accessible to all identified victims, regardless of whether they participate in a diversion process.

### **POLICY GOAL 3.4:** State law extends child welfare protections to transition age youth.

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Many transition age youth (i.e. youth ages 18-23 years old) are acutely vulnerable to exploitation. Frequently barred from accessing services and care specific to children, transition age youth are forced, oftentimes overnight, to coordinate the provision of their own basic needs with little support. To mitigate vulnerabilities, ensure a continuum of care, and provide a bridge between



adolescence and adulthood, state law should allow transition age youth to receive services and support through child welfare.

**POLICY GOAL 3.5: State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.**

Over the past 10 years, state legislatures have made significant changes to state laws addressing care and protection for child sex trafficking victims. However, such advancements cannot be fully implemented without adequate funding; as such, state legislatures should make appropriations to specifically support specialized CSEC services and a continuum of care through community-based services or non-governmental organizations.

**POLICY GOAL 3.6: State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.**

Funding remains one of the greatest barriers to ensuring child sex trafficking victims receive the services and support necessary to promote healing. As such, state legislatures should make appropriations to specifically support specialized CSEC services and a continuum of care for sex trafficked children through child serving agencies (i.e. child welfare, foster care, and juvenile justice).

## CONTINUUM OF CARE

### **POLICY GOAL:** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Survivors of child sex trafficking often have complex needs that cannot be addressed by a single agency or service provider; instead, survivors need support from a number of service providers addressing various needs, including physical health, mental health, reproductive health, malnutrition, substance use, and self-destructive behaviors.<sup>1</sup> While some of their needs are shared by other children who have experienced abuse or trauma, it is important that child sex trafficking victims not only receive a broad array of treatment but also that treatment is specialized to the unique trauma associated with commercial sexual exploitation.<sup>2</sup> These services should be provided through a non-punitive system, meaning that they are not meant to simply serve as diversion programs or referrals in lieu of arrest.<sup>3</sup> When punitive measures remain, survivors continue to bear the burden of unjust interactions with a juvenile or criminal system that continues to victimize, rather than serve, them. Fear of a punitive response may also be a barrier to connecting the child to services.<sup>4</sup>

Because commercially sexually exploited and sex trafficked children are identified by service providers at various points of entry, clear statutory mechanisms that direct survivors to specialized services and away from the juvenile or criminal justice systems are critical to ensuring survivors receive the

specialized care they need. It is important to note that commercially sexually exploited children have often experienced a range of Adverse Childhood Experiences<sup>5</sup> that, in addition to the commercial sexual exploitation, may lead to Posttraumatic Stress Disorder and other severe mental health diagnoses.<sup>6</sup> As a result, medical or clinical recommendations may necessitate restrictive placements. In such cases, guidance should provide that service and placement determinations opt for the least restrictive setting appropriate for meeting the child's needs.

Legislation can achieve specialized service provision and a coordinated response for commercially sexually exploited children through a variety of means, including requiring social services agencies to provide resources such as emergency housing, medical care, counseling, or crisis intervention for commercially sexually exploited children.<sup>7</sup> States can also use legislation to direct law enforcement on where to refer or take commercially sexually exploited children, rather than arresting and detaining them, and to ensure these service responses apply to all identified victims regardless of current system-involvement.<sup>8</sup> Such measures, however, will require adequate funding to ensure that the services can actually be provided as well as statewide training initiatives addressing victim identification and response or referral options<sup>9</sup>

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

- ▶ Provide for a non-punitive method to connect victims to services.
- ▶ Require that the provided services be specialized.
- ▶ Require that the provided services be available to all sex trafficked children regardless of their system involvement.
- ▶ Appropriate funding to ensure these efforts can be implemented.

## RELATED ISSUES:

- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.
- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 2.10** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.
- 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.
- 3.6** State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.
- 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

## SUPPORTING RESOURCES:

- ▶ [Protective Response Model](#)
- ▶ [Nat'l Colloquium: 2012 Final Report](#)
- ▶ [Defining a JuST Response Webinar: Trauma-Informed Care](#)

<sup>1</sup> U.S. Department of Health and Human Services (n.d.) *Guidance to states and services on addressing human trafficking of children and youth in the united states*. Administration for Children, Youth and Families. [https://www.acf.hhs.gov/sites/default/files/cb/acyf\\_human\\_trafficking\\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf) (last visited Oct. 16, 2020) [hereinafter *Guidance to states*].

<sup>2</sup> *Id.*

<sup>3</sup> Shared Hope International (2018). *Seeking Justice Report*. [https://sharedhope.org/wp-content/uploads/2018/07/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver4.pdf](https://sharedhope.org/wp-content/uploads/2018/07/ANALYSIS-OF-STATUTORY-APPROACHES_ver4.pdf) (last visited Nov. 12, 2020).

<sup>4</sup> Elizabeth Barnert, MD, MPH, MS et. al, *Commercial Sexual Exploitation and Sex Trafficking of Children and Adolescents: A Narrative Review*, ACADEMIC PEDIATRICS (2017).

<sup>5</sup> Joan A. Reid et al., *Human Trafficking of Minors and Childhood Adversity in Florida*, RESEARCH AND PRACTICE, Dec. 20, 2016.

<sup>6</sup> *Guidance to states*, *supra* note 1.

<sup>7</sup> Ellen B. Fichtelman, *The Double Entendre of Juvenile Prostitution: Victim versus Delinquent and the Necessity of State Uniformity*, 65 JUV. & FAM. CT. J. 27, 37-39 (2014).

<sup>8</sup> *Id.* at 39.

<sup>9</sup> *Id.*

## CONTINUUM OF CARE

**POLICY GOAL:** State law provides for a survivor-centered multidisciplinary team response to child sex trafficking cases.

**Collaborative, multidisciplinary groups addressing human trafficking (often referred to as task forces, multidisciplinary teams, coalitions, networks, or coordination teams) have become essential in the national fight against human trafficking and the provision of necessary services and resources to survivors.** In 2004, the Department of Justice's (DOJ) Office for Victims of Crime (OVC) and Bureau for Justice Assistance (BJA) first began funding local law enforcement and victim service agencies that worked collaboratively to combat human trafficking. This response model, which includes various disciplines working collaboratively, is encouraged by the DOJ and is recognized worldwide as a best practice in the anti-trafficking field.<sup>1</sup>

These collaborative bodies may work together to address human trafficking at the state-level, community-level, or the individual case level. At the individual level, a specialized multidisciplinary team (MDT) approach in child sex trafficking cases ensures a coordinated response that addresses the holistic needs of survivors throughout the criminal justice and service response processes. Through MDTs, law enforcement, child welfare, service providers, advocates, other professionals, as well as the child and their family can work collaboratively to prioritize the wellbeing of the survivor and provide trauma-informed support and services. The importance of MDT responses to child sex trafficking is reflected in federal law. In 2015, the Justice for Victims of Trafficking Act (JVTA) required that states develop procedures for providing training on the sex trafficking and commercial sexual exploitation (CSE) of children to child protective services workers in the areas of identification, assessment, provision of

comprehensive services, and multidisciplinary service responses with other child-serving agencies and service providers.<sup>2</sup>

Survivors of child sex trafficking often have complex needs that cannot be addressed by a single agency or service provider; instead, survivors need support from a number of service providers addressing various needs, including physical health, mental health, reproductive health, malnutrition, substance use, and self-destructive behaviors.<sup>2</sup> While some of their needs are shared by other children who have experienced abuse or trauma, it is important that child sex trafficking victims not only receive a broad array of treatment but that treatment is specialized to the unique trauma associated with commercial sexual exploitation.<sup>3</sup> A MDT response provides a comprehensive, coordinated effort that creates increased capacity to meet a myriad of needs through a specialized service response. Therefore, state law should mandate a survivor-centered MDT response be utilized for child sex trafficking cases.

Importantly, the quality of a MDT response is reliant on some key components. First, MDTs must utilize a survivor-centered (sometimes referred to as victim-centered) approach. A survivor-centered approach seeks to minimize re-traumatization by providing collaborative supports and empowering survivors as engaged participants in the process.<sup>3</sup> A survivor-centered approach necessitates that the MDT response process be non-punitive, trauma-informed, as well as empowerment and strengths-based. It allows a survivor to be a key participant in the decision-making process while the MDT leverages resources and facilitates access to services to meet the survivors' needs. Additionally, members of any MDT

responding to child sex trafficking cases should be trained in identifying and serving this population and, preferably, have expertise in doing so.

Furthermore, quality of an MDT response can be enhanced through clear guidance on structure, purpose, and processes. Specifically, state mandates may include guidance related to developing the

MDT response on the following: formal cooperative agreements between participating agencies, the purpose of the team (e.g. coordination of services), mandatory members as well as additional professionals to invite to meet additional needs of a local team, frequency of meetings, and confidentiality.<sup>4</sup>

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

- ▶ Require a child sex trafficking specific MDT response in all cases involving commercially sexually exploited children.
- ▶ Include additional language providing guidance on the development and structure of the MDT response.

## **RELATED ISSUES:**

- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.
- 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.
- 6.3** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Protective Response Model](#)
- ▶ [Nat’l Colloquium: 2012 Final Report](#)
- ▶ [Defining a JuST Response Webinar: Public-Private Partnerships and MDTs](#)
- ▶ [Defining a JuST Response Webinar: Policy & Practice](#)

<sup>1</sup> Office for Victims of Crimes (n.d.) *Human trafficking task force e-guide: strengthening collaborative responses*. Training and Technical Assistance Center. <https://www.ovcttac.gov/taskforceguide/eguide/> (last visited Nov. 11, 2020).

<sup>2</sup> U.S. Department of Health and Human Services (n.d.) *Guidance to states and services on addressing human trafficking of children and youth in the united states*. Administration for Children, Youth and Families. [https://www.acf.hhs.gov/sites/default/files/cb/acyf\\_human\\_trafficking\\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf) (last visited Oct. 16, 2020).

<sup>3</sup> *Human Trafficking Task Force e-Guide*, OFFICE OF JUSTICE PROGRAMS <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited Nov. 11 2020).

<sup>4</sup> Mississippi House Bill 1559, LEGISCAN, <https://legiscan.com/MS/text/HB1559/id/2199335>.

## CONTINUUM OF CARE

**POLICY GOAL:** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.

Many children who have been identified as victims of commercial sexual exploitation (CSE) have been involved with the juvenile justice system, either preceding the CSE or as a result of CSE victimization.<sup>1</sup> Historically, legal systems failed to protect child victims of CSE by criminalizing such minors for acts committed during their exploitation,<sup>2</sup> but, in recent years, many states took the important step of enacting non-criminalization laws—laws that generally prevent victims from being charged with commercial sex or sex-based offenses related to their own victimization. However, CSE children may still interact with the juvenile justice system due to other crimes related to their victimization such as theft, truancy, drug-related offenses, or other petty offenses.<sup>3</sup> Additionally, in states where there remains a lack of safe facilities for victims, law enforcement may rely on juvenile justice facilities and may charge CSE children with crimes as a mechanism for accessing safety.<sup>4</sup> Therefore, juvenile justice is a key point of intervention and plays a vital role in identifying potential CSE children and ensuring provision of specialized care to all CSE children identified in its care.

The juvenile justice system may be the first point of intervention in which a CSE child can be connected to services. Many of these children have significant trauma resulting from their CSE victimization and other traumatic events.<sup>5</sup> As advocates and legislators have become aware of the problems caused by criminalizing CSE children, the juvenile justice system and other stakeholders have begun to shift away from criminalization and toward a more victim-centered approach.<sup>6</sup> As this shift continues, professionals within the juvenile

justice system must be trained and prepared to support children who have been commercially sexually exploited.

In addition to mandating CSEC screening in the juvenile justice system, state law should also require juvenile justice to coordinate and/or provide specialized services for all CSE children currently involved with the system. This should include those awaiting adjudication, in diversion programs, on probation, and in commitment facilities such as detention centers. Such services are imperative for addressing past harm while also aiming to prevent future exploitation; however, they should be voluntary and not contingent on participating in certain judicial processes. Specialized services (e.g., specialized therapy, advocacy, prevention/awareness, or mentoring services) could be incorporated directly into juvenile justice programs or provided through partnerships with community-based service providers.

Due to the rate at which CSE children interact with the juvenile justice system, it is necessary to equip juvenile justice with the statutory guidance, training, and funding required to identify and serve CSE children. However, state law should also establish a comprehensive, coordinated response for identifying and serving CSE children in which child welfare, not juvenile justice, is the primary response agency. Effective 2017, the federal Child Abuse and Prevention Treatment Act (CAPTA) was amended to ensure that sex trafficking victims were included in the definition of “child abuse,” thereby ensuring access to treatment and services through child welfare.<sup>7</sup> Mechanisms that direct survivors to specialized services and away from the

juvenile or criminal justice systems are critical to ensure survivors receive the specialized care they need. Specialized CSEC courts, for example, could establish a mechanism early in the juvenile justice

process for addressing CSE victimization through a multidisciplinary decision-making process that ensures the most appropriate means for connecting the child with trauma-informed programming.<sup>8</sup>

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

- ▶ Require that specialized services to address CSEC victimization be provided by the juvenile justice system.
- ▶ Not place limitations around eligibility for these services, including limitations on age of entry, type of charge, type of juvenile justice program in which the youth is involved (e.g. diversion, probation, etc.).
- ▶ Ensure participation in specialized services is voluntary and access to these services is not contingent on participation in certain judicial processes.

## **RELATED ISSUES:**

**2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

**6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

## **SUPPORTING RESOURCES:**

- ▶ [Intervene](#)
- ▶ [JuST Response Council Protective Response Model report](#)

<sup>1</sup> Erika P. Bath, et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020).

<sup>2</sup> Cheryl Nelson Butler, *Bridge over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281, 1283-84 (2015); see Seeking Justice: Legal Approaches to Eliminate Criminal Liability for Juvenile Sex Trafficking Victims, Shared Hope Int'l 6 (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 11, 2020) [hereinafter Seeking Justice] (explaining how treating older minors as consenting criminals leads to further traumatization through the criminal justice process rather than providing protection and justice).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Brandi D. Liles, Ph.D. et al., *A California Multidisciplinary Juvenile Court: Serving Sexually Exploited and At-Risk Youth*, 34 BEHAV. SCI. & L. 234-245 (2016).

<sup>6</sup> Butler, *supra* note 2, at 1284-85; Seeking Justice, *supra* note 2, at 4 (noting that as of 2018, 23 states and the District of Columbia eliminated criminal liability for prostitution offenses).

<sup>7</sup> Child Welfare Information Gateway (2019). *About capta: a legislative history*. Children's Bureau. <https://www.childwelfare.gov/pubPDFs/about.pdf>.

<sup>8</sup> Brandi D. Liles, et al., *A California Multidisciplinary Juvenile Court: Serving Sexually Exploited and At-Risk Youth*, 34 BEHAV. SCI. & L. 234, 235 (2016). In Sacramento, California, the Presiding Juvenile Court Judge created a separate docket specifically for commercially sexually exploited youth. Creating the special docket has led to increased training for social workers and juvenile justice stakeholders regarding CSEC offenses and victimization, increased collaboration across various local agencies, and implementation of trauma-informed programming for youth involved with the special docket. *Id.* at 237-40.

## CONTINUUM OF CARE

**POLICY GOAL:** State law extends child welfare protections to transition age youth.

**Federal legislation, funding and programming recognize that vulnerability among young people can continue long past the age of 18.** Under the John H. Chafee Foster Care Program for Successful Transition to Adulthood (as amended by the Bipartisan Budget Act of 2018), states can receive funds to provide financial, housing, counseling, employment, education, and other support services to former foster care youth who are between 18 and 23 years old (if the state certifies that it will serve youth of that age).<sup>1</sup> Similarly, under the Justice for Victims of Trafficking Act (amending the Child Abuse Prevention and Treatment Act), states can define the term “child” to include persons under the age of 24, allowing states to receive funding for child abuse prevention and treatment programs for older youth.<sup>2</sup> Under a Housing and Urban Development (HUD) Program, the Foster Youth to Independence Initiative, youth under the age of 25 who have been involved in foster care can be eligible for a Tenant Protection Voucher.<sup>3</sup> In alignment with these and other pieces of federal legislation, state law should extend child welfare protections and support to transition age youth and encourage the use of federal resources to develop specialized CSEC prevention and intervention services for this population.

According to a Congressional Research Service Report, youth up to age 24 are still transitioning to adulthood due to cultural and economic trends that have extended adolescence.<sup>4</sup> Brain science also demonstrates the growth and development that continues during this pivotal period, presenting challenges in exercising the same judgement and decision-making skills as adults. Vulnerable

youth, including those experiencing homeless or displacement and those involved with the juvenile justice system and/or foster care system, can experience additional barriers and poor outcomes when transitioning to adulthood.<sup>5</sup> Such barriers include, but are not limited to, losing access to public benefits, health insurance, and supplemental income upon turning 18.<sup>6</sup> Transition age youth are often barred from accessing services and care that was once available to them as children and, as a result, are left to coordinate the provision of their own basic needs with little support. Many of the risk factors that lead to poor outcomes for transition age youth, such as child maltreatment, family instability, exposure to violence in the community, and housing instability, both increase one’s risk of experiencing commercial sexual exploitation as a child and increase the risk that a person will subsequently be commercially sexually exploited in young adulthood.<sup>7</sup> Enhancing stability and support for transition age youth through extended child welfare programs, such as extended foster care, have been shown to not only provide long-term benefits to the youth but also provide benefits to the state and cost savings over time.<sup>8</sup>

Because vulnerable young adults face additional barriers that place them at risk of further sexual exploitation, and because many young adults in the commercial sex trade were coerced into commercial sex as children, it is important that states mitigate vulnerabilities by extending eligibility of the support and services for child sex trafficking and commercially sexually exploited children to transition age youth.



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

- ▶ Provide for extended child welfare services up to age 24.
- ▶ Provide for extended juvenile court jurisdiction.
- ▶ Provide for extended non-criminalization up to 24 while facilitating access to specialized services to all transition age youth involved in the commercial sex industry.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
- 2.9** Juvenile court jurisdiction extends to all minors under 18 charged with a law violation.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

## **SUPPORTING RESOURCES:**

- ▶ [Bridge to Success blog](#)

<sup>1</sup> 42 U.S.C. § 677(a)(4).

<sup>2</sup> P. L. 114-22, Title VIII, § 802(c)(1), (3), codified at 42 U.S.C. § 5106g(b).

<sup>3</sup> Tenant Protection Vouchers for Foster Youth to Independence Initiative, PIH Notice 2019-20 (July 26, 2019). As of January 2020, HUD extended funding to four housing authorities to support the issuance of such vouchers. *See HUD Awards Nearly \$500,000 to Public Housing Authorities to Help Young People Aging Out of Foster Care*, HUD Pub. Affairs, HUD No. 20-004, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_20\\_004](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_004) (last visited Jan. 14, 2020).

<sup>4</sup> Vulnerable Youth: Background and Policies, Cong. Res. Serv., RL33975 (updated Jan. 30, 2018).

<sup>5</sup> *Id.* at 5.

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

<sup>7</sup> *See id.* (describing the various risk factors that lead to poor outcomes during transition to adulthood); *see also* DR. VANESSA BOUCHÉ, THORN, SURVIVOR INSIGHTS: THE ROLE OF TECHNOLOGY IN DOMESTIC MINOR SEX TRAFFICKING 52 (2018) (noting that many victims of domestic minor sex trafficking had numerous adverse childhood experiences, including abuse, neglect, and involvement in the foster care system, that made them vulnerable to traffickers).

<sup>8</sup> JUVENILE LAW CENTER, *Extended Foster Care* (2020) <https://jlc.org/issues/extended-foster-care> (last visited Nov. 16, 2020).

## CONTINUUM OF CARE

**POLICY GOAL:** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

Over the past 10 years, state legislatures have made significant changes to state laws addressing care and protection for child sex trafficking victims; however, this has not always included adequate funding to support these advancements.

There are a number of federal grant options and programs that offer funding that can be allocated to commercially sexually exploited children, including but not limited to: CAPTA funds, TVPA/JVTA funds, grants through the DOJ Specialized Services and Mentoring for Child and Youth Victims of Sex Trafficking and Sexual Exploitation program, and the Crime Victims Fund established by the Victims of Crime Act.<sup>1</sup> While beneficial, these funds are not all specifically allocated for CSEC services and are in competition with other child welfare/crime victims services. In 2017, the National Conference of State Legislatures found that only 25 states had set aside funding specifically for anti-human trafficking efforts, and not all of those states specifically allocate funds to service agencies or efforts.<sup>2</sup> As of 2017, only 6 states had funding specifically for anti-child trafficking initiatives.<sup>3</sup> State initiatives to address child sex trafficking and CSEC cannot be fully implemented without adequate funding. Therefore, state legislatures should make appropriations to specifically support specialized CSEC services and a continuum of care through community-based services or non-governmental organizations. To enhance sustainability of specialized services, states should establish recurring appropriations while ensuring the amount can be adjusted, if necessary, to meet the need.

States must prioritize funding services specifically for CSEC and sex trafficking victims so that

the coordinated, holistic responses required to comprehensively address survivors' needs are funded regardless of whether the survivor is system involved. Service providers across the U.S. have identified funding as a barrier to providing additional and more holistic services.<sup>4</sup> In addition to a general lack of funds, statutory restrictions for certain grant programs create gaps in who is eligible for services.<sup>5</sup> For example, some funding is only available for services provided through the child welfare system, therefore leaving non-system involved children without services (or cause judges to shelter children into dependency/the child welfare system so that they can qualify for services).<sup>6</sup> Funding must be made available specifically for all CSE children without limitation based on system involvement.

Furthermore, state funding should be robust and flexible enough to address the myriad of needs of child sex trafficking survivors. Survivors of child sex trafficking often have complex needs that cannot be addressed by a single agency or service provider; instead, survivors need support from a number of service providers addressing various needs, including physical health, mental health, reproductive health, malnutrition, substance use, and self-destructive behaviors.<sup>7</sup> It is vital that a full continuum of care, from specialized long-term residential options to a variety of community-based services (e.g., mental health, legal, etc.), is accessible to all child sex trafficking survivors.

Finally, states should also consider developing a method for ensuring an equitable distribution of funds, both geographically and across different service types. States may consider establishing a statewide funding coordinator position to oversee

equitable distribution of funds to appropriate partners. This person would need to have training or experience working with child sex trafficking survivors to ensure that they understand the services and funding required. A coordinator may also be responsible for vetting or ensuring quality/

effectiveness of services for providers receiving CSEC-specialized funding as well as collecting data on expenditures, number of people served, types of services provided, and gaps in funding to inform future funding needs and distribution.

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

- ▶ Ensure funds are appropriated specifically to serve commercially sexually exploited (CSE) children.
- ▶ Ensure funds are appropriated to provide for a statewide service response for CSE youth.
- ▶ Ensure funds are appropriated to provide support for specialized CSEC services and a continuum of care through community-based services or non-governmental organizations.

## **RELATED ISSUES:**

- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 3.6** State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

## **SUPPORTING RESOURCES:**

- ▶ Protective Response Model
- ▶ [Nat'l Colloquium: 2012 Final Report](#)

<sup>1</sup> RICH WILLIAMS, NATIONAL CONFERENCE OF STATE LEGISLATURES, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING (2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Brianna O'Steen, ACCESS AND BARRIERS TO SERVICES FOR DEPENDENT AND NON-DEPENDENT COMMERCIALY SEXUALLY EXPLOITED CHILDREN IN FLORIDA 41 (2016); KATLIN KNODEL TERNES, IMPROVING SERVICES FOR CHILD TRAFFICKING SURVIVORS: LESSONS LEARNED FROM PROVIDERS 47 (2016).

<sup>5</sup> O'STEEN, *supra* note 4.

<sup>6</sup> *Id.* at 29, 45.

<sup>7</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (N.D.) GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES. ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES. [https://www.acf.hhs.gov/sites/default/files/cb/acyf\\_human\\_trafficking\\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf) (last visited Oct. 16, 2020).

## CONTINUUM OF CARE

**POLICY GOAL:** State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

Over the past 10 years, federal and state lawmakers have made significant changes to laws addressing care and protection for child sex trafficking victims with much of the responsibility in identifying and serving this population directed towards child-serving agencies. At the federal level, the Preventing Sex Trafficking and Strengthening Families Act (2014) and the Justice for Victims of Trafficking Act (2015) established requirements for child welfare to identify and provide comprehensive services for sex trafficking and commercial sexual exploitation (CSE) victims and to coordinate with agencies, such as juvenile justice, in serving this population. As a result of these changes to federal law, all CSE victims are entitled to a specialized multidisciplinary response through child welfare regardless of whether they are currently under state supervision. At the state level, states have addressed care and protection for child sex trafficking victims in a variety of ways, such as enacting non-criminalization laws and/or mandating child-serving agencies to screen, identify, coordinate a multidisciplinary team response, and provide specialized services to survivors. However, such measures cannot be fully implemented without adequate funding.

Unfortunately, funding remains one of the greatest barriers to ensuring child sex trafficking victims receive the services and support necessary to promote healing. Screening and identification efforts, multidisciplinary responses, training of personnel, and provision of comprehensive, specialized services for sex trafficking and CSE victims all require funding to implement and sustain. In addition to these efforts being required within federal law as well as some states' laws, research has shown how vital a role child-serving agencies, including juvenile justice and child welfare, have in identifying and ensuring provision of specialized

care to all CSE children. Research has shown that many children who have been identified as victims of CSE have been involved with the juvenile justice system, either preceding the CSE or as a result of acts committed during the CSE victimization.<sup>1</sup> Studies have also shown that CSEC victims are highly likely to have had child welfare system involvement at some point,<sup>2</sup> and states have reported that between 41-98% of trafficking victims had prior child welfare involvement.<sup>3</sup>

There are a number of federal grant options and programs that offer funding that can be allocated to CSE children, including, but not limited to, the following: CAPTA funds, TVPA/JVTA funds, grants through the DOJ Specialized Services and Mentoring for Child and Youth Victims of Sex Trafficking and Sexual Exploitation program, and the Crime Victims Fund established by the Victims of Crime Act.<sup>4</sup> While these funds are beneficial, they are not all specifically allocated for CSEC services and are in competition with other child welfare/crime victims services. As such, state legislatures should make appropriations to specifically support specialized CSEC services and a continuum of care for sex trafficked children through child-serving agencies. To adequately equip and sustain child-serving agencies' provision of specialized services, states should both expand available funding and establish recurring appropriations ensuring the amount can be adjusted, if necessary, to meet the need. This is necessary to ensure that child-serving agencies can provide the coordinated, holistic responses required to comprehensively address survivors' needs.

Furthermore, funding should be made available specifically for all CSE youth without limitation based on system involvement. State funding should

also be robust and flexible enough to address the myriad of needs of child sex trafficking survivors. Survivors of child sex trafficking often have complex needs that cannot be addressed by a single agency or service provider; instead, survivors need support from a number of service providers addressing various needs, including physical health, mental health, reproductive health, malnutrition, substance use, and self-destructive behaviors.<sup>5</sup> It is vital that a full continuum of care, from specialized long-term residential options to a variety of community-based services (e.g. mental health, legal, etc.), is accessible to all child sex trafficking survivors.

Finally, states should also consider developing a method for ensuring adequacy and appropriate use of funds. States may consider establishing a statewide coordinator position utilizing someone with training or experience working with child sex trafficking survivors to ensure that they understand the level of need and funding required to meet the need. A coordinator may be responsible for vetting or ensuring quality/effectiveness of services for providers receiving CSEC-specialized funding as well as collecting data on expenditures, number of people served, types of services provided, and gaps in funding to inform future funding needs.

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

- ▶ Ensure funds are appropriated to support specialized CSEC services and a continuum of care for sex trafficked children through child serving agencies.

## **RELATED ISSUES:**

- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

## **SUPPORTING RESOURCES:**

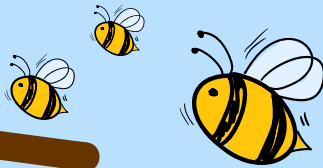
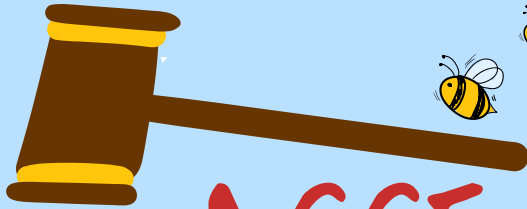
- ▶ [Protective Response Model](#)
- ▶ [Nat'l Colloquium: 2012 Final Report](#)

<sup>1</sup> Eraka P. Bath, et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020).  
<sup>2</sup> See, e.g., Michael D. Pullmann, et al., *Residential Instability, Running Away, and Juvenile Detention Characterizes Commercially Sexually Exploited Youth Involved in Washington State's Child Welfare System*, 102 CHILD ABUSE & NEGLECT 1, 2 (2020); Carlomagno C. Panlilio, et al., *Assessing Risk of Commercial Sexual Exploitation Among Children Involved in the Child Welfare System*, 87 CHILD ABUSE & NEGLECT 88, 89 (2019).  
<sup>3</sup> Panlilio et al., *supra* note 2.  
<sup>4</sup> RICH WILLIAMS, NATIONAL CONFERENCE OF STATE LEGISLATURES, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING (2017).  
<sup>5</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES, GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 5-6 (n.d.).

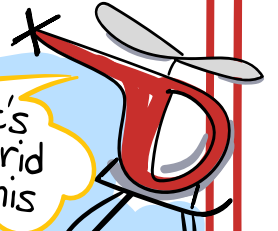
Civil Orders  
of Protection



RESTITUTION  
FOR CSEC +  
ABUSE MATERIAL  
OFFENSES



let's  
get rid  
of this



POLICY  
ISSUE

#4

# ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

STATUTE OF  
LIMITATIONS

TRAFFICKING  
VICTIM

PATHWAYS FOR CIVIL  
REMEDIES

MAKING  
THINGS  
RIGHT

NO, I'M  
CERTAINLY  
ELIGIBLE!

for  
healing

## VACATUR RELIEF

PLEASE!!!  
the waiting  
is a struggle

simply a clean  
record opens  
up the world



TO  
ACCESS VICTIM  
COMPENSATION

Survivors  
need relief from  
legal obligations  
for past crimes  
they were  
forced to do

EMPLOYMENT



EDUCATION



HOUSING

# ADVANCED LEGISLATIVE FRAMEWORK

## 4 ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

A range of civil and criminal justice remedies must be available for victims under the law.

### **POLICY GOAL 4.1: Civil orders of protection are specifically available to trafficking victims.**

Presently, most states provide opportunities for victims of intimate partner violence and sexual assault to seek orders of protection against their offenders. These protections are imperative for documenting violence, identifying offenders, and insulating victims from future harm, regardless of whether there are criminal charges pending against their offenders. To ensure this same opportunity for justice and protection, state law should allow victims of sex trafficking to pursue and receive ex parte civil orders of protection.

### **POLICY GOAL 4.2: Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.**

Crime victim compensation (CVC) is a valuable tool for receiving support to offset the financial impact experienced by crime victims, including costs associated with receiving physical and mental health care or lost income. However, many states' CVC laws prohibit the provision of financial awards or reduce the amount based upon a number of factors, including the timeliness of a victim's report to law enforcement and cooperation in a related investigation, the victim's contributory fault, and CVC filing deadlines. However, these factors are incompatible with the realities of trafficking victimization. To ensure CSE minors have access to critical financial support to increase stabilization and healing, CVC laws should provide specific exceptions to all ineligibility factors for victims of sex trafficking and CSEC.

### **POLICY GOAL 4.3: Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for offenses arising from trafficking victimization without a waiting period.**

Sex trafficked children and youth are commonly compelled to commit juvenile and criminal offenses. In addition to harms caused by criminalization, related records present detrimental challenges and barriers to seeking safe housing, meaningful employment, and educational opportunities. To prevent ongoing discrimination and harm, state law should allow sex trafficked children and youth to seek vacatur relief for adjudications or convictions received as a result of their trafficking victimization without mandating a waiting period between completion of their sentence and filing of a petition for vacatur relief.

**POLICY GOAL 4.4:** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.

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Restitution is critical for survivors' attainment of justice and for providing a meaningful form of punishment for offenders. In addition to serving as a financial penalty, requiring restitution orders as a part of child sex trafficking, CSEC, and CSAM sentences can support survivors' ability to obtain comprehensive services without being left with significant out-of-pocket costs.

**POLICY GOAL 4.5:** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

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The ability to pursue civil remedies against trafficking perpetrators is an important and practical aspect of justice. State law should provide victims of child sex trafficking with a specific opportunity to pursue civil relief to support full restoration for damages suffered.

**POLICY GOAL 4.6:** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

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Eliminating both criminal and civil statute of limitations (SoL) for child sex trafficking and CSEC offenses is a necessary and trauma-informed approach to supporting survivors' access to justice. Importantly, the elimination of SoLs recognizes the complexity of identifying and reporting victimization as well as the challenges of investigating and building successful cases against offenders.



## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** Civil orders of protection are specifically available to trafficking victims.

**The Violence Against Women Act (VAWA) defined protective orders in broad terms to allow the definition to encompass a variety of injunctions and restraining orders.**<sup>1</sup> Both civil and criminal orders of protections can be available for survivors depending on the state where the trafficking took place.<sup>2</sup> This is an important resource for survivors because, in some circumstances, civil orders of protection (CPOs) can provide more comprehensive relief than the criminal justice system.<sup>3</sup> Some survivors are able to petition for custody, child support, counseling, and eviction of the abuser within the context of a CPO. Additionally, there is no fee for obtaining protective orders, which makes them an incredibly valuable resource to the survivor community.<sup>4</sup> CPOs require a lower burden of proof than a criminal order, which require a criminal conviction. However, laws that allow civil emergency protection orders to be issued *ex parte* are incredibly beneficial for survivors as they solely require the sworn statement of the victim. This allows for immediate relief in a way that considers safety for survivors.

Presently, most states provide opportunities for victims of intimate partner violence and sexual assault to seek CPOs against their offenders. However, this form of relief may not be specifically available to sex trafficking or commercial sexual exploitation (CSE) survivors and may include restrictions or parameters that would exclude protections for some survivors. Many states require petitioners filing for a CPO due to sexual violence to have a “qualifying relationship” with the perpetrator, which is usually limited to a romantic partner, current or former spouse, someone with whom the victim has a child in common, a parent,

or past or present household member.<sup>5</sup> While some states provide CPOs specifically for sexual assault victims that do not require a “qualifying relationship” with the perpetrator, states vary on what conduct is included in the definition of “sexual assault” and on what standard of proof the petitioner must meet.<sup>6</sup> To ensure the same opportunity for justice and protection, states should expand their CPO laws to specifically include victims of sex trafficking or CSEC and, where applicable, to include traffickers within “qualifying relationships.”

Additionally, states require minors to meet various criteria to apply for a CPO without an adult filing for one on their behalf. For example, in Washington, DC, a minor 16 years or older can file for any CPO on his or her own; for a minor between 12 and 16 years old, that minor can only file for a CPO on their own if their abuser is a former or current significant other, spouse, or domestic partner. No minor under age 12 can file for a CPO on his or her own behalf.<sup>7</sup> Alternatively, in some states, there are no age limits on who can file for a CPO, but a minor filing on their own behalf must be filing against her parent/legal guardian or the parent/legal guardian must be unavailable.<sup>8</sup> Limiting the ability of minors to seek a CPO on their own behalf restricts the feasibility of obtaining such protections as requiring parental involvement can be a significant deterrent for reporting abuse and victimization.<sup>9</sup> State law also needs to explicitly provide CPOs to minor sex trafficking and CSEC victims, regardless of age, so that they are entitled to the same relief as other victims of sexual violence.

Orders of protection are one of the first lines of defense that a survivor may try to seek and offer a vital resource for survivors, especially those fearing for the safety of themselves or their families. These protections are imperative for exposing offenders and protecting victims from future harm, and it is crucial to include measures to enhance safety in pursuing these protections. In addition to the

previous recommendations, state law should also allow victims of sex trafficking to receive an *ex parte* CPO. An *ex parte* order allows the court to make a ruling with only one party—in this case, the survivor—present, meaning the court can order a CPO, most typically on a temporary basis, without the offender having a chance to appear or be heard.

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

- ▶ Ensure civil orders of protection are available specifically for trafficking victims.
- ▶ Remove age limitations on orders of protection so that minors can file for an order of protection on their own behalf.
- ▶ Provide for *ex parte* orders of protection specific to trafficking victims.

## **RELATED ISSUES:**

- 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
- 5.2** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.

## **SUPPORTING RESOURCES:**

- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

- 1 BATTERED WOMEN'S JUSTICE PROJECT, NATIONAL CENTER ON PROTECTION ORDERS AND FULL FAITH & CREDIT, FULL FAITH AND CREDIT FOR PROTECTION ORDERS 3 (n.d.).
- 2 BATTERED WOMEN'S JUSTICE PROJECT, *supra* note 1 at 5-6.
- 3 MAURER SCHOOL OF LAW, PROTECTIVE ORDERS, IND. UNIV. BLOOMINGTON, <https://law.indiana.edu/academics/experiential-education/projects/pop/protective-orders.html> (last visited Nov. 15, 2020).
- 4 *Id.*
- 5 SHAWN E. FIELDS, *Debunking the Stranger-in-the-Bushes Myth: The Case for Sexual Assault Protection Orders*, 2017 WIS. L. REV. 429, 450-51 (2017); COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, AMERICAN BAR ASSOCIATION, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOs) (2016).
- 6 COMMISSION ON DOMESTIC & SEXUAL VIOLENCE, *supra* note 5.
- 7 *Restraining Orders: Civil Protection Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/dc/restraining-orders/civil-protection-orders-domestic-violence-victims/who-can-get-civil-1> (updated as of November 1, 2019).
- 8 *Restraining Orders: Civil Protection Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/az/restraining-orders/domestic-violence-orders-protection/who-can-get-order-protection#node-28507> (updated January 10, 2020).
- 9 YOUTH ACCESS TO PROTECTION ORDERS: A NATIONAL OVERVIEW, BREAK THE CYCLE 2 (2014).

## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.

**State law provides for compensation through the government for victims of certain crimes to cover victims' out-of-pocket expenses, including costs associated with receiving physical and mental health care or lost income.** Money is available through a government-administered fund and is either allocated through authorized expenditures or is collected from offenders who have been assessed penalties during sentencing.<sup>1</sup> This type of relief is often known as crime victims' compensation (CVC) and is a separate form of relief from criminally-ordered restitution or damages awarded in a civil proceeding. To be eligible for CVC, a victim must demonstrate that a crime occurred, but importantly, states generally do not require that the perpetrator be apprehended or convicted.<sup>2</sup>

CVC is a valuable tool for receiving support to offset the financial impact experienced by crime victims. However, there are numerous criteria that impact ability to access these funds, including definitional barriers limiting eligibility to victims of certain crimes, bars based on misconduct or justice system involvement, and sometimes physical harm requirements. Other states bar CVC based on contributory conduct, filing and reporting deadlines, and cooperation requirements.<sup>3</sup> However, these ineligibility factors are incompatible with the realities of child sex trafficking and CSEC victimization.

While this is a valuable resource to provide aid and

relief for crime victims and their families, many states report that their compensation programs are underutilized.<sup>4</sup> Applying for funding can be difficult for many victims as they navigate through the complex eligibility requirements—even more so for victims of sex trafficking and CSEC.<sup>5</sup> Survivors of CSE and their families may feel the financial effects of their abuse through medical bills, mental health counseling expenses, fixing/replacing damaged property, loss of income, and, in worst cases, even funeral costs.<sup>6</sup> However, issues with eligibility that bar them from accessing compensation due to circumstances of their victimization may hinder their ability to cover these costs.

Requiring applicants for CVC to be free of prior misconduct or misconduct related to the crime at issue is a particularly problematic barrier for CSE children because victims oftentimes engage in an array of delinquent and/or criminal conduct as a result of their victimization. Further, many victims of trafficking and CSEC do not self-identify as victims, making them unlikely to report their victimization in a timely manner. Victims may also not wish to cooperate with law enforcement because of possible attachment to or threats from their traffickers, general mistrust of law enforcement, or possible immigration consequences.<sup>7</sup> Thus, to ensure access to critical financial support to increase stabilization, CVC laws should provide specific exceptions to all ineligibility factors for victims of sex trafficking and CSEC.

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

- ▶ Provide specific exemptions to all CVC ineligibility factors for victims of child sex trafficking and CSEC.
- ▶ Expand the definition of "victim" from purposes of seeking CVC to specifically include child sex trafficking and CSEC.
- ▶ Remove threshold barriers, including participation in justice system processes, for child sex trafficking and CSEC victims.

## **RELATED ISSUES:**

- 4.4** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.
- 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.
- 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

## **SUPPORTING RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

<sup>1</sup> James L Buchwalter, 29 CAUSES OF ACTION 2d 229 § 1 (2020 ed. 2005).

<sup>2</sup> *Id.* § 8.

<sup>3</sup> *See id.* §§ 13–17.

<sup>4</sup> DOUGLAS N. EVANS, COMPENSATING VICTIMS OF CRIME, RESEARCH & EVALUATION CENTER, JOHN JAY COLLEGE OF CRIMINAL JUSTICE (2014).

<sup>5</sup> *Id.*

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

<sup>7</sup> Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status and Entitlements*, 2016 UTAH L. REV. 535, 561 (2016).

## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for offenses arising from trafficking victimization without a waiting period.

**Sex trafficked children and youth are commonly compelled to commit juvenile and criminal offenses during their victimization.** In addition to harms caused by criminalization, related records present detrimental challenges and barriers to the restoration and healing process for survivors of child sex trafficking and commercial sexual exploitation (CSE). Juvenile records may result in school expulsion, denial of professional licenses, or denial of access to public benefits. Criminal records hinder survivors from obtaining employment, securing safe housing, taking out loans, seeking education, and obtaining visas.<sup>1</sup> Such collateral consequences result in further victimization, including psychological harm, that may hinder a survivor's ability to rebuild his or her life.<sup>2</sup>

States, recognizing the hardships faced by victims with criminal or juvenile records due to their victimization, have begun formulating post-conviction reliefs.<sup>3</sup> Post-conviction relief for trafficking survivors can include sentence mitigation, record expungement, and vacatur.<sup>4</sup> Each is an important tool in offering relief to survivors. Expunging records can apply to either arrest records or delinquency adjudications/criminal convictions, or both.<sup>5</sup> Expungement “erases” the record in the eyes of the law, but it is still “accessible as part of a person's criminal record,” making it available for some government agencies.<sup>6</sup> Vacatur, however, “sets aside” the adjudication or conviction, recognizing that it never should have occurred.<sup>7</sup> Accordingly, state law should allow survivors to vacate any adjudications or convictions arising from their trafficking

victimization and expunge all related records.

It is imperative that states do not limit the types of crimes or charges for which a child sex trafficking survivor can seek post-conviction relief to sex offenses. Child sex trafficking and CSE victims are victimized in a variety of ways and charged with an array of crimes, including prostitution, theft, drug trafficking, conspiracy to commit sex trafficking, or even crimes of violence.<sup>8</sup> States limiting post-conviction relief to trafficking survivors who are convicted of prostitution or other sex offenses leave many sex trafficking survivors without any avenue for relief. States that require survivors to have an arrest or adjudication/conviction for prostitution in order to qualify for post-conviction relief eliminates access for a large group of sex trafficking survivors, who have been arrested for other crimes.

Additionally, some states impose a statute of limitation, requiring survivors to apply for relief within a certain amount of time while others require survivors to wait a prescribed amount of time before being eligible to apply for post-conviction relief.<sup>9</sup> To prevent ongoing discrimination and harm, state law should allow sex trafficked children and youth to seek vacatur relief for all adjudications or convictions received as a result of their trafficking victimization without mandating a waiting period between completion of their sentence and filing of a petition for vacatur relief.

Finally, state law should include measures, in addition to removal of waiting periods, to ensure that the process for seeking post-conviction relief is

victim-centered and minimizes re-traumatization including the following: utilizing the least restrictive burden of proof standard, allowing official documentation of trafficking victimization

to serve as a presumption of eligibility for legal relief, eliminating filing fees, and including measures to protect confidentiality.<sup>10</sup>

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

- ▶ Ensure vacatur is available for both convictions *and* delinquency adjudications.
- ▶ Ensure vacatur is available for prostitution and other offenses committed as a result of trafficking victimization.
- ▶ Remove waiting periods for vacatur and provide for a victim-centered approach to vacatur.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

## **SUPPORTING RESOURCES:**

- ▶ [Vacatur and Expungement Law Policy Brief](#)
- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

1 Jessica Emerson & Alison Aminzadeh, *Left Behind: How the Absence of a Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 239, 241 (2016); *Victims of Human Trafficking Aren't Criminals*, POLARIS (Sep. 29, 2016), <https://polarisproject.org/blog/2016/09/victims-of-human-trafficking-arent-criminals/>.

2 Emerson, *supra* note 1.

3 *See id.* (explaining how in 2010 New York became the first state to enact a vacatur law for trafficking victims to have prostitution-related convictions due to their victimization set aside).

4 *See* NATIONAL STATE LAW SURVEY: EXPUNGEMENT AND VACATUR LAWS, SHARED HOPE, INT'L (2019) [hereinafter *Expungement and Vacatur*].

5 ERIN MARSH, ET AL., POLARIS, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 7 (2019).

6 *Id.*

7 *See id.*

8 MARSH, ET AL., *supra* note 5; *see* SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS 2, 48–49 (2020).

9 MARSH ET AL., *supra* note 5; *see* *Expungement and Vacatur*, *supra* note 4 (illustrating how some states that provide vacatur relief require a 1 or 2 year waiting period before the survivor can apply).

10 MARSH ET AL., *supra* note 5.

## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.

**Restitution is a financial penalty ordered in criminal cases in which defendants must pay their victims for the cost of their victimization.**

Restitution is intended to make victims whole again.<sup>1</sup> Restitution also serves to “vindicate the rights of society” and as punishment to deter defendants from committing future crimes.<sup>2</sup> Restitution differs from other forms of victims’ compensation, such as a crime victims’ compensation fund or monetary awards ordered in a civil suit, because restitution is ordered as part of a criminal defendant’s sentence. Additionally, federal restitution orders may be worth more than civil judgements as federal criminal restitution orders under the anti-trafficking statute are tax-free.<sup>3</sup> Restitution also does not require the victim to meet the plethora of criteria that is sometimes required to qualify for crime victims’ compensation.<sup>4</sup>

Under federal law, restitution is mandatory when a defendant is convicted under the federal human trafficking or child sexual exploitation statutes. The federal mandatory restitution statute is broad, allowing victims to recover the “full amount” of their losses, including any costs the victim incurred, or is projected to incur, as a result of his or her victimization and profits the defendant gained from the victim’s “services.”<sup>5</sup> State law should follow suit and ensure that restitution is not only mandatory for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material

(CSAM) offenses, but also includes payment for medical and psychological treatment, lost income, attorney’s fees and costs, and other damages. To ensure that victims receive this important support, state law should include mechanisms for assuring accountability from the offender for paying restitution. Further, state law should guarantee that restitution is collected and paid to the victim prior to collecting money to cover other fines and fees associated with the conviction.

Restitution is critical for survivors’ attainment of justice and for providing a meaningful form of punishment for offenders. In addition to serving as a financial penalty, requiring restitution orders as a part of sex trafficking, CSEC, and CSAM sentences can support survivors’ ability to obtain comprehensive services without being left with significant out-of-pocket costs.

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

- ▶ Require *mandatory* restitution for child sex trafficking, CSEC, and CSAM offenses.
- ▶ Include a mechanism to enforce payment of restitution.

## **RELATED ISSUES:**

- 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
- 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.
- 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

## **SUPPORTING RESOURCES:**

- ▶ Protected Innocence Challenge Framework Brief (Section 5)

<sup>1</sup> RESTITUTION IN FEDERAL CRIMINAL CASES: A SKETCH, CONG. RSCH. SERV. (Oct. 15, 2019).

<sup>2</sup> 24 C.J.S. CRIMINAL PROCEDURE AND RIGHTS OF ACCUSED § 2484 (updated Mar. 2020).

<sup>3</sup> Charisa Smith, *No Quick Fix: The Failure of Criminal Law and the Promise of Civil Law Remedies for Domestic Child Sex Trafficking*, 71 U. MIAMI L. REV. 1, 76 (2016).

<sup>4</sup> See Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status*, 2016 UTAH L. REV. 535, 560–61 (2016) (describing the eligibility requirements for CVC and how they pose particular barriers for human trafficking survivors, including filing a timely claim, reporting the crime to law enforcement, and cooperating with law enforcement investigations).

<sup>5</sup> 18 U.S.C. §§ 1953, 2248, 2259(c)(2); RESTITUTION IN FEDERAL CRIMINAL CASES, *supra* note 1, at 5.



## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

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

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

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

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

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

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

## **RELATED ISSUES:**

- 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
- 4.4** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.
- 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

## **SUPPORTING RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

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

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

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

<sup>4</sup> 18 U.S.C. § 1595 (2018); Charisa Smith, *No Quick Fix: The Failure of Criminal Law and the Promise of Civil Law Remedies for Domestic Child Sex Trafficking*, 71 U. MIAMI L. REV. 1, 73 (2016).

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

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

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

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

<sup>9</sup> *Id.* at 70–71.

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

## ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

**POLICY GOAL:** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

**The effect of sex trafficking or commercial sexual exploitation on a child is traumatic, potentially long-lasting, and extremely injurious to the victim.** Many survivors of trafficking and commercial sexual exploitation do not identify as victims or recognize their victimization for a prolonged period. Therefore, they may not report their victimization in a timeline that aligns with existing statutory limitations. Eliminating both criminal and civil statutes of limitation (SoLs) for trafficking and CSEC offenses is a necessary and trauma-informed approach to supporting survivors' access to justice. Importantly, the elimination of SoLs recognizes the complexity of identifying and reporting victimization as well as the challenges of investigating and building successful cases against offenders.

SoLs are meant to promote judicial efficiency, deter negligence or fraud, and promote the timely filing of claims,<sup>1</sup> but their validity is questioned when they “effectively divest a plaintiff of the court access intended by the grant of a substantive right.”<sup>2</sup> SoLs

must not act as a barrier for victims seeking justice. Nearly 90% of child victims of sexual assault do not report their victimization to authorities, and most do not disclose their victimization until adulthood.<sup>3</sup> Survivors often need time to address medical, mental health, housing, and a myriad of other needs before they are ready or able to work with law enforcement in the prosecution of their exploiter. It is important to provide survivors with the opportunity to bring forward evidence once they feel safe and stable enough to do so. The process towards gaining the level of stability necessary to engage in this process could take many years. Merely expanding the SoL for sex trafficking and/or CSEC claims, therefore, does not fully meet the needs of survivors, nor does it fully facilitate their access to justice in criminal and civil forums. Accordingly, state law addressing SoLs for criminal and civil actions should fully eliminate the SoLs for child sex trafficking and CSEC offenses to ensure survivors and prosecutors have a meaningful opportunity to file related suits or charges, respectively.

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

- ▶ Eliminate statutes of limitation for civil *and* criminal cases.

- 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
- 4.4** State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.
- 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

## SUPPORTING RESOURCES:

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

<sup>3</sup> Symone Shinton, Comment, *Pedophiles don't Retire: Why the Statute of Limitations on Sex Crimes against Children Must Be Abolished*, 92 CHI.-KENT L. REV. 317, 320 (2017).

# VICTIM ADVOCATES



AT ALL STAGES  
FOR COMMERCIAL  
SEX TRAFFICKING  
VICTIMS



PRIVILEGED  
COMMUNICATION  
WITH CASE  
WORKERS

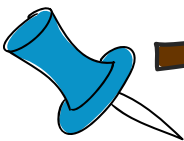


POLICY  
ISSUE  
**#5**

## TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE



A bunch of  
felons gave  
me more  
protection  
than the  
justice system.



# ADVANCED LEGISLATIVE FRAMEWORK

## 5 TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

Criminal justice procedures for the benefit and protection of victims must be provided under the law.

**POLICY GOAL 5.1:** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

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Child sex trafficking cases present an array of evidentiary challenges, including the difficulty of corroborating allegations of a crime that is oftentimes hidden. However, child victims often make out-of-court statements to trusted adults in their lives that, per states' evidentiary rules, may be barred from being admitted in proceedings against their offenders. To overcome this challenge, states should enact hearsay exceptions, allowing a victim's non-testimonial out-of-court statements to be admitted into evidence.

**POLICY GOAL 5.2:** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.

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Oftentimes, victim-witness testimony is the link between an allegation of sex trafficking and a successful conviction of the offender. Yet, the act of testifying, particularly in the presence of the perpetrator, can be a highly traumatic process. To mitigate the risk of re-traumatization and support the child's ability to provide accurate testimony regarding their exploitation insulated from the influence of fear, state law should allow all child sex trafficking victims, regardless of the prosecuted offense or the child's age, to testify by closed circuit television.

**POLICY GOAL 5.3:** Child sex trafficking victims have the right to a victim advocate at all stages of the investigation and prosecution of the perpetrator(s).

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Reporting a crime and participating in a resulting investigation and prosecution can be daunting for any crime victim; however, it is particularly intimidating for child victims of sexual violence, including child sex trafficking. To lessen the presence and impact of fear, state law should ensure that child sex trafficking victims are afforded access to a victim advocate at all stages of the criminal justice process (i.e. from initial law enforcement interview to the offender's sentencing hearing). The availability of victim advocates can also play an important role in supporting a positive rapport between the child victim and law enforcement, ultimately contributing towards more successful investigations and prosecutions.

**POLICY GOAL 5.4:** State law provides for privileged communications between caseworkers and child sex trafficking victims.

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Trust is an essential component of a productive child-case worker relationship. When trust is established, child victims often disclose aspects of their victimization that, if made available to others, could adversely impact the child, including disclosure of criminal conduct. However, that trust can be broken when caseworkers are compelled to divulge to law enforcement, or in the course of a prosecution, sensitive and/or potentially incriminating statements made by the child. To protect the child, foster productive child-caseworker relationships, and ultimately promote healing, states should enact child sex trafficking-specific caseworker privilege laws that protect a child sex trafficking victim's communications with a caseworker from being disclosed during the prosecution or investigation related to the child's trafficking victimization.

## TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

**POLICY GOAL:** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

**Reporting a crime and participating in a resulting investigation and prosecution can be daunting for any crime victim; however, it is particularly intimidating for child victims of sexual violence, including child sex trafficking.**

While the prosecution of a child's trafficker can be one mechanism for formally recognizing victimization and harm,<sup>1</sup> participating in the criminal justice process as a victim-witness can result in the child being re-traumatized. Providing testimony may necessitate discussing sometimes vivid and "deeply personal and violent experiences of abuse" to the court.<sup>2</sup> As such, child witness experts recommend creating policies that can minimize the risk of re-traumatization and emotional distress.<sup>3</sup> In order to facilitate a victim-centered criminal justice process, it is important that states enact a robust set of laws that offer protections for child sex trafficking victims in the trial process.

One way in which legislation can create more victim-friendly, child-appropriate court procedures is to provide hearsay exceptions for non-testimonial evidence, including texts, emails, and other records created by the child regarding their exploitation. Child sex trafficking cases present an array of evidentiary challenges, including the difficulty of corroborating allegations of a crime that is oftentimes hidden. While child victims often make out-of-court statements or document their abuse to trusted persons in their lives, states'

evidentiary rules often bar the evidence from being admitted in proceedings against their offenders. To overcome this challenge, states should enact hearsay exceptions, allowing a victim's non-testimonial, out-of-court statements to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony. This will reduce the reliance on victim testimony, which will mitigate the risk of re-traumatization while still sustaining the defendants' Sixth Amendment right to confront witnesses.

Notably, a strong state law will ensure the child sex trafficking-specific hearsay exception applies to all victims up to age 18. Testifying can be a severely traumatic process for commercially sexually exploited minors regardless of their age at the time of testifying, and victims of child abuse often experience severe forms of trauma and stress when providing testimony in court.<sup>4</sup>

While the hearsay exception should be specific to child sex trafficking, states may also consider applying it to CSEC victim-witnesses as well. States should also clearly address that this hearsay exception applies only to non-testimonial evidence to avoid any concerns with the Sixth Amendment's Confrontation Clause. Finally, to facilitate prosecutors' use of this hearsay exception, states should have a complementary law requiring prosecutors to be trained on child sex trafficking and victim-centered prosecutions.



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

- ▶ Provide a hearsay exception specifically for child sex trafficking and CSEC victims.
- ▶ Ensure the child sex trafficking-specific hearsay exception applies to all victims up to age 18 rather than limiting this protection to younger minors.
- ▶ Clarify that the hearsay exception only applies to non-testimonial evidence to avoid constitutional challenges.

## **RELATED ISSUES:**

- 5.2** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

<sup>1</sup> Jim Ehrman, *Why Prosecution Matters for the Youth We Work With*, LOVE146 (Apr. 11, 2016) <https://love146.org/why-prosecution-matters/> (last visited Nov. 11, 2020).

<sup>2</sup> SURVIVOR PROTECTION: REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS, RIGHTS4GIRLS (Jan. 2018) <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/01/Survivor-Protection.pdf> (last visited Nov. 11, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> Yasmin Vafa and Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUNDATION NEWS (Feb. 21, 2018, 14:54 GMT), <https://news.trust.org/item/20180221145440-fkal6>; see also Jazmine Ulloa, *California Bill Would Make Testifying in Court Easier for Young Victims of Human Trafficking*, L.A. TIMES (Aug. 7, 2016, 12:05 AM), <https://www.latimes.com/politics/la-pol-sac-human-trafficking-young-witnesses-20160806-snap-story.html> (last visited Nov. 11, 2020).

## TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

**POLICY GOAL:** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.

**Victim-witness testimony by sex trafficking and commercial sexual exploitation (CSE) victims provided during a trial of their alleged trafficker can serve a key role in a successful conviction.** However, the delivery of victim testimony can be a severely traumatic process for CSE minors regardless of their age at the time of testifying. Victims of child abuse often experience severe forms of trauma and stress when providing testimony in court.<sup>1</sup> This traumatic response can be severely heightened when the testimony is conducted in the presence of their exploiter<sup>2</sup> and can have long-term psychological and emotional impacts on the child.<sup>3</sup> Sex trafficking and CSE victims may experience fear deriving from potentially facing their exploiter directly or indirectly.<sup>4</sup> Further, providing testimony may mean providing sometimes vivid and “deeply personal and violent experiences of abuse” to the court, which can result in the minor being re-traumatized.<sup>5</sup>

One mechanism for mitigating the risk of re-traumatization is allowing sex trafficking and CSE victims to testify via closed circuit television (CCTV). This allows for the testimony to be provided outside of the courtroom through a secure video system and can be used to minimize the number of people in the room when the child testifies. Studies have shown that this may reduce stress and anxiety levels for some children.<sup>6</sup> Despite the possible benefits, however, a number of states currently limit the ability to utilize CCTV for providing witness testimony.<sup>7</sup> For example, some states limit use of CCTV to younger minors.<sup>8</sup> Age limitations vary; some states base it on the age of

the victim at the time the crime was committed while others base it on the minors’ age when providing testimony.<sup>9</sup> Conversely, recognizing that the majority of child sex trafficking and CSE victims identified are older minors (ages 13-17), more than a dozen states currently provide eligibility to testify via CCTV to anyone under the age of 18 who is providing witness testimony related to sex trafficking, including those that are not the alleged victim.<sup>10</sup> Following this example, states should mitigate re-traumatization by providing statutory allowances to all child sex trafficking victims, regardless of the child’s age, to testify by CCTV and also consider CCTV eligibility for all child witnesses in these cases. Further, because traffickers may be prosecuted for a variety of offenses other than sex trafficking (e.g., solicitation or promoting prostitution), state law should ensure eligibility is connected to status as a CSEC or sex trafficking victim regardless of prosecuted offense.

In addition to mitigating revictimization, providing sex trafficked and CSE minors with the ability to testify via CCTV can be monumental in enhancing the accuracy of the testimony provided.<sup>11</sup> A minor who has experienced abuse in relation to sex trafficking may forget important details of their abuse or they may recant their testimony entirely when facing their abuser directly.<sup>12</sup> Providing the minor with the ability to utilize CCTV, as opposed to facing their alleged exploiter in person, can offer the minor a sense of safety that may increase the accuracy of the testimony as well as the likelihood that they will willingly cooperate with the prosecution in an effort to convict their exploiter.<sup>13</sup>

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

- ▶ Allow all commercially sexually exploited children to testify via CCTV regardless of the minor victim's age.
- ▶ Ensure that the ability to testify via CCTV is based on the minor's victimization, not on the prosecuted offense.

## **RELATED ISSUES:**

- 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

- <sup>1</sup> Yasmin Vafa and Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUNDATION NEWS (Feb. 21, 2018, 14:54 GMT), <https://news.trust.org/item/20180221145440-fkal6/>; see also Jazmine Ulloa, *California Bill Would Make Testifying in Court Easier for Young Victims of Human Trafficking*, L.A. TIMES (Aug. 7, 2016, 12:05 AM), <https://www.latimes.com/politics/la-pol-sac-human-trafficking-young-witnesses-20160806-snap-story.html> (last visited Nov. 11, 2020).
- <sup>2</sup> SURVIVOR PROTECTION: REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS, RIGHTS4GIRLS (Jan. 2018) <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/01/Survivor-Protection.pdf> (last visited Nov. 11, 2020).
- <sup>3</sup> *Id.*
- <sup>4</sup> *The Victim As a Witness*, OFFICE FOR VICTIMS OF CRIME, <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/54-landing-a-successful-prosecution/the-victim-as-a-witness/> (last visited Nov. 16 2020).
- <sup>5</sup> *Survivor Protection*, *supra* note 2.
- <sup>6</sup> *Id.* at 17.
- <sup>7</sup> *What is Sex Trafficking*, SHARED HOPE INT'L, <https://sharedhope.org/the-problem/what-is-sex-trafficking/> (last visited July 15, 2020).
- <sup>8</sup> *Survivor Protection*, *supra* note 2, at 32.
- <sup>9</sup> *Id.* at 24.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.* at 18.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*

## TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

**POLICY GOAL:** Child sex trafficking victims have the right to a victim advocate at all stages of the investigation and prosecution of the perpetrator(s).

**Reporting a crime and participating in a resulting investigation and prosecution can be daunting for any crime victim; however, it is particularly intimidating for child victims of sexual violence, including child sex trafficking.**<sup>1</sup>

Victim-centered investigations and prosecutions can mitigate the impact of fear and minimize re-traumatization by providing collaborative supports and empowering survivors as engaged participants in the process.<sup>2</sup> Recognizing the vital role victims play in successful prosecutions, addressing the needs of a survivor through access to services, and ensuring protection of their rights as crime victims are the key components of victim-centered human trafficking investigations and prosecutions.<sup>3</sup> Victim advocates are a key part of this approach; they understand the importance of victim-centered advocacy and meeting the individual needs of each child.<sup>4</sup> To mitigate the trauma associated with participation in criminal justice processes, state law should ensure that all child sex trafficking victims are afforded access to a victim advocate at all stages of the criminal justice process regardless of the specific offenses charged to the perpetrator.

Victim advocates are an important support to child sex trafficking victims for many reasons. First, they can support a victim throughout the criminal justice process, from the moment a crime is reported through post-conviction. This can include provision of crisis intervention services at the time a crime is reported, assessment of safety needs, explanation of victims' rights at every stage, explanation of court processes and preparation of

victims for hearings or victim impact statements, and assistance of victims with concerns related to inmates.<sup>5</sup> Victim advocates are also adept at collaborative responses and working with multiple systems while understanding the importance of confidentiality and safety, all of which are critical in working with child sex trafficking victims.<sup>6</sup> They can also help the victim and their family access crime victims' compensation funds.<sup>7</sup> Moreover, victim advocates can play an important role in supporting a positive rapport between the child victim, law enforcement, and the prosecutor, ultimately contributing towards more successful investigations and prosecutions.

Finally, they can play a key role in specialized multi-disciplinary team (MDT) approaches in child sex trafficking cases. The MDT approach facilitates a coordinated response that addresses the holistic needs of survivors throughout the criminal justice process and prioritizes the wellbeing of the survivor through provision of trauma-informed support and services. Including victim advocates as a core component of survivor-centered multidisciplinary team responses can ensure the provision of a victim advocate to all child sex trafficking victims that are currently involved in the investigation or prosecution of a perpetrator. It can also help to ensure that the child is supported by the same victim advocate from investigation through sentencing. Finally, victim advocates working with child sex trafficking victims should be specifically trained to serve that population and, ideally, have expertise in doing so.

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

- ▶ Ensure that all child sex trafficking victims are afforded a victim advocate at all stages of the investigation and prosecution.

## **RELATED ISSUES:**

- 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.
- 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
- 5.2** State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.

## **SUPPORTING RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

- <sup>1</sup> See Yasmin Vafa and Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUNDATION NEWS (Feb. 21, 2018, 14:54 GMT), <https://news.trust.org/item/20180221145440-fkal6/>. (last visited Oct. 12, 2020); see also Jazmine Ulloa, *California Bill Would Make Testifying in Court Easier for Young Victims of Human Trafficking*, L.A. TIMES (Aug. 7, 2016, 12:05 AM), <https://www.latimes.com/politics/la-pol-sac-human-trafficking-young-witnesses-20160806-snap-story.html> (last visited Nov. 12, 2020).
- <sup>2</sup> *Victim-Centered Approach*, OFFICE FOR VICTIMS OF CRIME, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited Nov. 16, 2020).
- <sup>3</sup> *Id.*
- <sup>4</sup> HANDBOOK ON HUMAN TRAFFICKING, DOMESTIC & SEXUAL VIOLENCE ADVOCATE (2d ed. 2004).
- <sup>5</sup> *Worksheet 3.1, Participant Worksheets*, NATIONAL VICTIM ASSISTANCE ACADEMY TRACK 1: FOUNDATION-LEVEL TRAINING [https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents\\_NVAA2011/WorksheetHandouts/NVAA\\_MAR\\_2011\\_TR1\\_partwkshts\\_508.pdf](https://www.ovcttac.gov/downloads/views/TrainingMaterials/NVAA/Documents_NVAA2011/WorksheetHandouts/NVAA_MAR_2011_TR1_partwkshts_508.pdf) (last visited Nov. 16, 2020).
- <sup>6</sup> *Id.*
- <sup>7</sup> SURVIVOR PROTECTION: REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS, RIGHTS4GIRLS (Jan. 2018) <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/01/Survivor-Protection.pdf> (last visited Nov. 16, 2020).

## TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

**POLICY GOAL:** State law provides for privileged communications between caseworkers and child sex trafficking victims.

**The process towards achieving justice through a successful investigation and prosecution can be empowering to a child sex trafficking victim, but it risks the child being retraumatized.**<sup>1</sup>

Victim-centered investigations and prosecutions can mitigate the impact of fear and minimize re-traumatization by providing collaborative supports and empowering survivors as engaged participants in the process.<sup>2</sup> To achieve a victim-centered approach, child witness experts recommend instituting policies that can minimize the risk or re-traumatization and emotional distress.<sup>3</sup> Such protections are often afforded to child victims of similar types of violence and abuse, but it is critical that they also specifically apply to child sex trafficking victims. To facilitate a victim-centered criminal justice process that prioritizes the well-being of the child victim-witness, states should enact a robust set of laws that offer protections for child sex trafficking victims.

One important way in which states can institute victim-friendly processes is to ensure communication between a child sex trafficking victim and their caseworker are protected through privilege laws. Trust is an essential component of a productive child-case worker relationship. When trust is established, child victims often disclose aspects of their victimization that, if made available to others, could adversely impact the child, including disclosure of criminal conduct. However, that trust can be broken when caseworkers are compelled to divulge to law enforcement or other criminal justice stakeholders sensitive and/or potentially incriminating statements made by the child. It is vital that states enact policies that protect the child, foster productive child-

caseworker relationships, and ultimately promote healing. To that end, state law should provide for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with a caseworker from being disclosed during the prosecution or investigation related to the child's trafficking victimization.

Additionally, states should consider utilizing a broad definition for "caseworker" in an effort to protect the relationship between the child victims and a broad range of people providing support and assistance. Child sex trafficking caseworkers can be both employees and volunteers (e.g., mentors) of programs for victims of human trafficking and both specialized human trafficking service providers and other community providers who offer specialized human trafficking services. They include employees and volunteers within those programs who have received specialized training to work with child sex trafficking victims and provide services such as counseling, advising, support, and assistance. Providing for privileged communications between these caseworkers and child sex trafficking victims will ensure a victim-centered approach that allows victims to determine when confidential communications should or should not be disclosed.

Notably, this protection would not supersede any requirements that a state has previously enacted regarding mandatory reporting situations that are intended to prioritize the safety and best interest of the child. For example, a child may disclose a situation of abuse or neglect to a caseworker that must be reported to child welfare. This privilege protects a child sex trafficking victim's communications with a caseworker from being

disclosed during the prosecution or investigation related to the child's trafficking victimization but

should not negate a requirement to report any suspected child abuse or neglect.

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

- ▶ Provide for privileged communications between caseworkers and child sex trafficking victims.
- ▶ Clarify that the privileged communication law does not supersede any state mandated reporting requirements for caseworkers (e.g., child abuse or threats to self or others).

## **RELATED ISSUES:**

- 5.3** Child sex trafficking victims have the right to a victim advocate at all stages of the investigation and prosecution of the perpetrator(s).

## **RESOURCES:**

- ▶ [Protected Innocence Challenge Framework Brief \(Section 5\)](#)

<sup>1</sup> See Yasmin Vafa and Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUNDATION NEWS (Feb. 21, 2018, 14:54 GMT), <https://news.trust.org/item/20180221145440-fkal6j> (last visited Oct. 15, 2020); see also Jazmine Ulloa, *California Bill Would Make Testifying in Court Easier for Young Victims of Human Trafficking*, L.A. TIMES (Aug. 7, 2016, 12:05 AM), <https://www.latimes.com/politics/la-pol-sac-human-trafficking-young-witnesses-20160806-snap-story.html> (last visited Oct. 15, 2020).

<sup>2</sup> SURVIVOR PROTECTION: REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS, RIGHTS4GIRLS (Jan. 2018) <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/01/Survivor-Protection.pdf> (last visited Nov. 11, 2020).

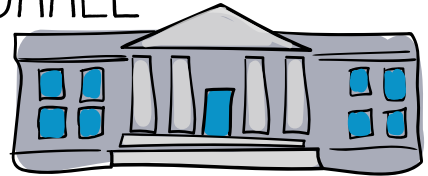
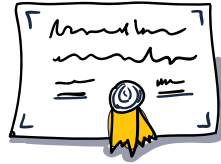
<sup>3</sup> *Id.*

# PROSECUTORS

VICTIM-CENTERED TRAINING



IDENTIFICATION TRAINING FOR SCHOOL PERSONNEL



OF INVESTIGATIONS AND PROSECUTIONS



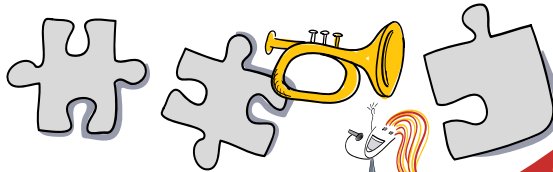
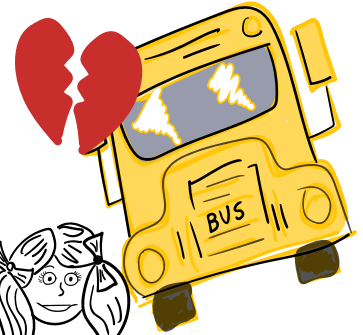
AGE-APPROPRIATE AWARENESS FOR PUBLIC SCHOOL CHILDREN.

POLICY ISSUE

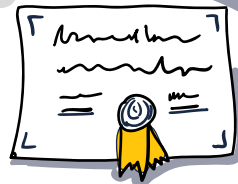
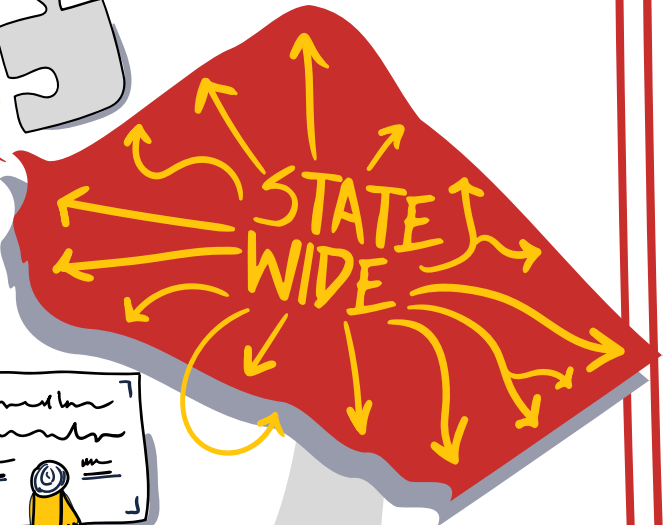
#6

# PREVENTION & TRAINING

MORE JUST RESPONSES!



VICTIM-CENTERED TRAINING LAW ENFORCEMENT



IDENTIFICATION AND RESPONSE TRAINING

CHILD WELFARE SYSTEM

JUVENILE JUSTICE SYSTEM



When a community is informed and law enforcement trained, our kids are more safe.





# ADVANCED LEGISLATIVE FRAMEWORK

## 6

### PREVENTION AND TRAINING

To help prevent trafficking and promote more just responses to child sex trafficking victims, training for child welfare, juvenile justice, law enforcement, prosecutors, and school personnel as well as prevention education for students, must be required by law.

#### **POLICY GOAL 6.1:** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

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Child welfare agencies play an important role in identifying exploitation, caring for victims, and preventing future harm. However, statewide training on child sex trafficking is critical for empowering a strong and appropriate child welfare response. At a minimum, and in compliance with federal law, state law should require the provision of statewide training on child sex trafficking identification and response for all child welfare employees.

#### **POLICY GOAL 6.2:** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

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Research demonstrates that child sex trafficking victims are over-represented in the juvenile justice system, oftentimes unbeknownst to the agencies themselves. To facilitate identification and the provision of appropriate care, state law should mandate the provision of training on identification and appropriate responses to child sex trafficking for all juvenile justice agency personnel.

#### **POLICY GOAL 6.3:** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.

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Law enforcement's response to child sex trafficking has a tremendous impact on the well-being of the child victim and the trajectory of the case. Law enforcement are often the first to encounter a child sex trafficking victim, making it critically important that they have the knowledge, skills, and resources to deliver a safe and trauma-informed response. Law enforcement can facilitate strong prosecutions when equipped with the information and tools necessary for conducting a comprehensive, victim-centered trafficking investigation. As such, state law should mandate the provision of training on child sex trafficking at both the academy and continued in-service training levels.

#### **POLICY GOAL 6.4:** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

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Prosecutors have an enormous potential to positively impact the lives of child victims and secure justice against their offenders. Prosecutors also face particular challenges as they may be both

in the position of working with child sex trafficking victims as victim-witnesses and also in the position of prosecuting child sex trafficking victims for crimes committed as a result of sex trafficking victimization. To support prosecutors' role in ensuring child victims' access to justice in the criminal justice process, state law should mandate the provision of training on child sex trafficking to facilitate appropriate charging and plea-bargaining decisions and support victim-centered prosecutions.

**POLICY GOAL 6.5: State law mandates child sex trafficking training for school personnel.**

School personnel, including teachers and school counselors, who understand the dynamics of child sex trafficking are more likely to identify trafficking exploitation and will be better equipped to respond appropriately. State law should require the provision of such prevention education training in all public schools.

**POLICY GOAL 6.6: State law mandates child sex trafficking prevention education in schools.**

A developmentally and age-appropriate child sex trafficking curriculum can serve as a valuable tool for supporting students' ability to recognize and safely report suspected or known personal exploitative experiences or the experiences of their peers. State law should require the provision of such prevention education in all public schools.

## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.**Child welfare agencies play an important role in identifying exploitation, caring for victims, and preventing future harm.**

However, recognizing and addressing child sex trafficking and commercial sexual exploitation (CSE) victimization is a relatively new policy and practice area within child welfare, both federally and at the state level. In 2014, the Preventing Sex Trafficking and Strengthening Families Act was passed, which required states to develop policies and procedures to identify and determine services for children under state child welfare supervision that are victims of sex trafficking or at risk of victimization.<sup>1</sup> The following year, the Justice for Victims of Trafficking Act (JVTA) expanded the federal definition of “child abuse and neglect” to include human trafficking and CSE.<sup>2</sup> The JVTA also required that states develop procedures for providing training on the sex trafficking and CSE to child protective services workers, including areas such as identification, assessment, provision of comprehensive services, and multidisciplinary service responses with other child-serving agencies and service providers.<sup>3</sup> These changes to federal law direct primary responsibility to child welfare for identification and provision of a specialized service response to all trafficking and CSE victims regardless of whether they are currently under state supervision.

Unfortunately, state systems continue to misidentify or fail to identify victims of child sex trafficking and CSE, which creates a barrier to initiating a protective response. As such, statewide training on child sex trafficking is critical to equipping child welfare personnel with the tools needed to develop a strong and appropriate child welfare response to this

population. In compliance with federal law, state law should, at a minimum, require the provision of statewide training on child sex trafficking identification and response for all child welfare employees. Codifying these training requirements in state law is important for many reasons. Mandating this effort through state law provides recognition and emphasis at the state-level of the important role that child welfare personnel have in identifying and serving sex trafficking and CSEC victims. Further, including a training mandate within state law allows states to highlight the importance of continued training efforts by mandating both initial and ongoing training related to child sex trafficking and including fiscal support for implementation.

To guide the implementation, states should consider including additional language on training requirements within the law. For example, state law should ensure that the training content is survivor-informed by a group of survivors with a diverse set of experiences. Survivors of CSEC and sex trafficking can provide valuable first-hand knowledge related to traffickers, buyers, grooming and recruitment tactics, and victim vulnerabilities as well as successful methods for identifying, engaging, and serving this population.<sup>4</sup> State law may also provide more specific direction related to content than what is outlined in JVTA training requirements. Specifically, states may require that this training address definitions, recruitment tactics, common venues, vulnerabilities, trauma associated with victimization, and how to report suspected trafficking involving minors and adults. With the breadth of survivor-informed training resources available, child welfare agencies could utilize existing resources to fulfill training requirements.

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

- ▶ Mandate ongoing, statewide training for child welfare agencies on identification and response to child sex trafficking and CSEC.
- ▶ Ensure CSEC training for child welfare includes a fiscal plan to ensure these efforts can be implemented on an on-going basis.

## **RELATED ISSUES:**

- 2.2** State law requires child welfare to develop policy guidance on responding to foreign national children.
- 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.
- 2.10** State law defines child sex trafficking as a form of abuse for purposes of child welfare involvement.
- 2.11** State law clearly defines child welfare's role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.
- 3.4** State law extends child welfare protections to transition age youth.

## **SUPPORTING RESOURCES:**

- ▶ [Intervene](#)

<sup>1</sup> Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) of 2014, Pub. L. No. 183, 128 Stat. 1919 (2014).

<sup>2</sup> Justice for Victims of Trafficking Act (JVTA) of 2015, Pub. L. No: 114-22, 129 Stat 227 (2015).

<sup>3</sup> *Id.*

<sup>4</sup> MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING (2018).

## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

**Many children who have been identified as victims of commercial sexual exploitation (CSE) have been involved with the juvenile justice system, either preceding the CSE or as a result of acts committed during CSE victimization.**<sup>1</sup>

While many states have taken the important step of enacting non-criminalization laws—laws that prevent victims from being charged with commercial sex or sex-based offenses related to their own rape—CSE children may still interact with the juvenile justice system due to other crimes related to their victimization such as theft, truancy, or other petty offenses.<sup>2</sup> CSE children may also use drugs or alcohol as a coping mechanism or as a result of forced use by their traffickers, which can also lead to juvenile justice involvement.<sup>3</sup> Therefore, juvenile justice, as a rehabilitation and child-serving entity, plays a vital role in identifying potential CSE children and ensuring provision of specialized care to all CSE children identified in its care. To facilitate identification and the provision of appropriate care, state law should mandate the provision of training on identification and appropriate responses to child sex trafficking for all juvenile justice agency personnel.

While some juvenile justice agencies do this voluntarily, codifying these training requirements in state law is important for many reasons. Mandating this effort through state law recognizes and emphasizes the important role that juvenile justice personnel have in identifying and serving sex trafficking and CSE victims. It also ensures that these efforts will continue as agency-level priorities as needs change. Federal law has included juvenile justice as a key aspect of service response

for sex trafficking and CSE survivors. In 2015, the Justice for Victims of Trafficking Act (JVTA) required child protective services personnel to provide comprehensive services for sex trafficking and CSE victims and coordinate with agencies, such as juvenile justice, in serving this population.<sup>4</sup> Training juvenile justice personnel on an on-going basis, utilizing up-to-date information from the anti-trafficking field, is a key part of providing continued collaborative service responses for CSE survivors.

To guide the implementation, states should consider including additional language on training requirements within the law. For example, state law should ensure that the training content is survivor-informed by a group of survivors with a diverse set of experiences. Survivors of CSE and sex trafficking can provide valuable first-hand knowledge related to traffickers, buyers, grooming and recruitment tactics, and victim vulnerabilities as well as successful methods for identifying, engaging, and serving this population.<sup>5</sup> State law may also provide direction related to content, requiring the training to address definitions, recruitment tactics, common venues, vulnerabilities, trauma associated with victimization, and how to report suspected trafficking involving minors and adults. With the breadth of survivor-informed training resources available, juvenile justice agencies could utilize existing resources to fulfill training requirements.

Finally, because juvenile justice serves as a key intervention point, it is imperative that states mandate juvenile justice agencies to screen all children at risk of sex trafficking for CSE

victimization regardless of when, how, or why they enter the system. Effective screening practices can initiate advocacy efforts to ensure that CSE children avoid harsh punitive measures and have access to multi-disciplinary, trauma-informed services. The screening process, if not done in a trauma-informed and child-centered way, can be

retraumatizing.<sup>6</sup> State law addressing CSE screening within juvenile justice should also include a mandate that professionals responsible for screening receive additional training on how to administer the screening in a trauma-informed way prior to conducting any screenings.

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

- ▶ Mandate ongoing, statewide training for juvenile justice agencies on identification and response to child sex trafficking and CSEC.
- ▶ Ensure CSEC training for juvenile justice includes a fiscal plan to ensure these efforts can be implemented on an on-going basis.

## **RELATED ISSUES:**

- 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.
- 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.
- 3.3** State law requires specialized services for identified sex trafficked children and youth in the juvenile justice system.

## **SUPPORTING RESOURCES:**

- ▶ Intervene

<sup>1</sup> Eraka P. Bath, et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Seeking Justice: Legal Approaches to Eliminate Criminal Liability for Juvenile Sex Trafficking Victims, Shared Hope Int'l 18 (2018) [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (last visited Nov. 16, 2020).

<sup>4</sup> 34 U.S.C. § 20302

<sup>5</sup> MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING (2018).

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

## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.

**Law enforcement's response to child sex trafficking has a tremendous impact on the well-being of the child victim and the trajectory of the case.** Law enforcement are often the first to encounter a child sex trafficking victim, making it critically important that they have the knowledge, skills, and resources to deliver a safe and trauma-informed response. Law enforcement can facilitate strong prosecutions when equipped with the information and tools necessary for conducting a comprehensive, victim-centered trafficking investigation. As such, states should enact laws mandating trafficking-specific training for law enforcement.

Law enforcement may encounter sex trafficking victims through numerous avenues, including targeted raids or sting operations, self-reports or reports from concerned community members, referrals, traffic stops, or arrests involving people engaged in illegal commercial sex acts (e.g., prostitution) or trafficking.<sup>1</sup> Equipping officers with the training and protocols to identify and safely recover child sex trafficking victims is crucial to initiating a trauma-informed response that can facilitate effective engagement in the investigation. Trafficking-specific training is particularly imperative because of the victim-offender intersectionality that frequently occurs in trafficking cases, which necessitates alternative responses that take the impact of victimization into account when assessing criminal/delinquent activity.<sup>2</sup> As a result, state law should mandate the provision of training on child sex trafficking at both the academy and continued in-service training levels. Because

there are many ways in which a law enforcement officer may encounter sex trafficking victims, state mandates on trafficking-specific training should apply to all law enforcement.

In addition to training officers to recognize child sex trafficking and initiate a safe, trauma-informed response to victims, state law should include a mandate that officers receive training on victim-centered investigations. A victim-centered investigation respects the dignity and strives to meet the needs and wishes of the victim.<sup>3</sup> This process starts with providing non-punitive responses and understanding the harm caused by arresting and prosecuting minors for crimes resulting from their victimization.<sup>4</sup> Mandating training on victim-centered investigations also recognizes the importance of empowerment and support throughout the criminal justice process and ensures protection of survivors' rights as crime victims.<sup>5</sup>

While some law enforcement agencies voluntarily require trafficking-specific training, codifying these training requirements in state law remains important. Mandating this effort through state law recognizes the complexity of sex trafficking investigations and the important role that law enforcement personnel have in identifying sex trafficking and CSE victims and initiating a trauma-informed response. Codifying training requirements also ensures that these efforts will continue as agency-level priorities as needs change.

Finally, to guide the implementation, states should consider including additional language on training requirements within the law. For example, state

law should ensure that the training content is survivor-informed by a group of survivors with a diverse set of experiences. Survivors of CSE and sex trafficking can provide valuable first-hand knowledge related to traffickers, buyers, grooming and recruitment tactics, and victim vulnerabilities as well as successful methods for identifying and engaging this population in the

investigation process.<sup>6</sup> State law may also provide direction related to content, requiring that the training address victim-offender intersectionality and trauma-informed, victim-centered, MDT responses. With the breadth of survivor-informed training resources available, law enforcement agencies could utilize existing resources to fulfill training requirements.

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

- ▶ Mandate trafficking-specific training for law enforcement both in the academy and as in-service training.
- ▶ Mandate training on victim-centered investigations for law enforcement.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

## **SUPPORTING RESOURCES:**

- ▶ [Intervene](#)

1 OFFICE FOR VICTIMS OF CRIMES (n.d.) *Human trafficking task force e-guide: strengthening collaborative responses*. TRAINING AND TECHNICAL ASSISTANCE CENTER. <https://www.ovcttac.gov/taskforceguide/eguide/> (last visited Nov. 11, 2020).

2 SHARED HOPE INT'L, *Responding to Sex Trafficking: Victim-Offender Intersectionality* (2020) [https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL\\_updatedApril2020.pdf](https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf) (last visited Nov. 11, 2020).

3 OFFICE FOR VICTIMS OF CRIMES, *supra* note 1.

4 MUSTO, J. *Domestic minor sex trafficking and the detention-to-protection pipeline*. DIALECTICAL ANTHROPOLOGY, 37. 257-276 (2013).

5 OFFICE FOR VICTIMS OF CRIMES, *supra* note 1.

6 MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING (2018).



## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

**Prosecutors have an enormous potential to positively impact the lives of child victims and secure justice against their offenders.** A successful and victim-centered prosecution relies on recognizing the indicators of victimization and an understanding of the dynamics of sex trafficking,<sup>1</sup> which may include victims' trauma responses, perpetrator's use of force, fraud, and coercion, and victim-offender intersectionality. To support prosecutors' role in ensuring child victims' access to justice in the criminal justice process, state law should mandate the provision of training on child sex trafficking to facilitate appropriate charging and plea-bargaining decisions and support victim-centered prosecutions.

Trafficking-specific training is particularly imperative for prosecutors because of victim-offender intersectionality that frequently occurs in trafficking cases. Prosecutors face particular challenges as they may be both in the position of working with child sex trafficking victims as victim-witnesses and also in the position of prosecuting child sex trafficking victims for crimes they commit as a result of their victimization. Studies have shown that conditions of the juvenile justice process, secure confinement, and the stigma of criminal records further harm and traumatize child sex trafficking victims.<sup>2</sup> To minimize re-traumatization, prosecutors should consider alternative responses that take the impact of victimization into account when addressing criminal or delinquent activity.<sup>3</sup>

Furthermore, trafficking-specific training for prosecutors is important because the victims' trauma may impact a human trafficking case differently

than it may other types of cases. Victims of child sex trafficking are unlikely to self-identify, they may have trauma bonds with their traffickers that result in efforts to protect them, and they may waver in terms of participation in support services and investigation processes.<sup>4</sup> This may increase the amount of time needed to build rapport, empower the victim throughout the process to enhance participation, and address inconsistencies in statements across time. Accordingly, state law should also include a mandate that prosecutors receive training on victim-centered investigations and prosecutions, which respect the dignity of the victim and strive to meet their needs and wishes.<sup>5</sup>

While some agencies voluntarily require trafficking-specific training for their prosecutors, codifying these training requirements in state law remains important. Mandating this effort through state law recognizes the complexity of sex trafficking prosecutions and ensures that these efforts will continue as agency-level priorities as needs change. Further, mandating training can offer an opportunity to ensure uniformity and quality of training across the state. Quality training facilitates accurate understanding and uniform enforcement of sex trafficking laws and equips prosecutors statewide with tools for successfully prosecuting these crimes.

Finally, to guide the implementation, states should consider including additional language on training requirements within the law. For example, state law should ensure that the training content is survivor-informed by a group of survivors with a diverse set of experiences who can provide valuable first-hand knowledge related to traffickers, buyers,

grooming and recruitment tactics, and victim vulnerabilities as well as successful methods for identifying and engaging this population in the investigation process.<sup>6</sup> State law may also provide direction related to content such as requiring that the training address victim-

offender intersectionality and trauma-informed, victim-centered responses. With the breadth of survivor-informed training resources available, prosecutors could utilize existing resources to fulfill training requirements.

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

- ▶ Mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.
- ▶ Require both initial and on-going trafficking-specific trainings.

## **RELATED ISSUES:**

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

## **SUPPORTING RESOURCES:**

- ▶ [Intervene](#)

1 Aequitas, *Enhancing Prosecutions of Human Trafficking and Related Violence Against Sexually Exploited Women*, STRATEGIES: THE PROSECUTOR'S NEWSLETTER ON VIOLENCE AGAINST WOMEN (2012) <https://aequitasresource.org/wp-content/uploads/2018/09/Enhancing-Prosecutions-of-Human-Trafficking.pdf> (last visited Nov. 16, 2020).

2 HUMAN RIGHTS PROJECT FOR GIRLS, et. al. *The Sexual Abuse to Prison Pipeline*, <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf> (last visited Nov. 16, 2020).

3 SHARED HOPE INT'L, *Responding to Sex Trafficking: Victim-Offender Intersectionality* (2020) [https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL\\_updatedApril2020.pdf](https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf) (last visited Nov. 11, 2020).

4 OFFICE FOR VICTIMS OF CRIMES (n.d.) *Human trafficking task force e-guide: strengthening collaborative responses*. TRAINING AND TECHNICAL ASSISTANCE CENTER. <https://www.ovcttac.gov/taskforceguide/eguide/> (last visited Nov. 11, 2020).

5 *Id.*

6 MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, *GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING* (2018).

## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates child sex trafficking training for school personnel.

**School personnel, including teachers, school counselors, bus drivers, school resource officers, and administrators, are well positioned to identify child sex trafficking victims, report the suspected abuse to child welfare and/or law enforcement agencies, and support a connection to services.** With an average of 180 school days in a year averaging 6.64 hours per day, students can spend nearly 1200 hours in school each year.<sup>1</sup> This does not include additional time that may be spent in school-based extracurricular activities or traveling to and from school on a school bus. As a result, school personnel are interacting with youth on a regular basis over a long period of time. Therefore, it is imperative that school personnel understand the dynamics of child sex trafficking so they can identify trafficking and provide a victim-centered response.

Additionally, school personnel are particularly well positioned to identify and respond to child sex trafficking victimization because child sex trafficking victims often continue attending school during the period in which they are being exploited, and that may be a time when they are away from their trafficker.<sup>2</sup> During interviews, survivors have outlined instances in which educators were unable to identify their exploitation or properly intervene and noted the importance of training for educators on sex trafficking and available resources.<sup>3</sup> Further, schools may serve as a place of recruitment for traffickers, which further outlines the importance of school personnel's ability to recognize and report suspected trafficking.<sup>4</sup> Finally, in addition to being a key point of intervention, school personnel can

also play an important role in engaging in direct prevention work or implementing prevention education with students,<sup>5</sup> equipping students with an understanding of risk factors, recruitment tactics, and avenues for help.

While some schools do this voluntarily, codifying these training requirements in state law is important for many reasons. Mandating this effort through state law recognizes and emphasizes the important role that school personnel have in identifying and supporting child sex trafficking victims. Mandated training can equip school personnel with the ability to actively participate in multidisciplinary team responses to child sex trafficking victims aimed at addressing the holistic needs of survivors. Moreover, it ensures that these efforts will continue as priorities as needs change. Training of school personnel on child sex trafficking is also a key prerequisite to mandating trafficking prevention education for students. Therefore, it is important to mandate training of school personnel on child sex trafficking within state law and to ensure that training is provided on an on-going basis utilizing up-to-date information from the anti-trafficking field.

To guide the implementation, states should consider including additional language on training requirements within the law. For example, state law should ensure that the training content is survivor-informed by a group of survivors with a diverse set of experiences. Survivors of sex trafficking can provide valuable first-hand knowledge related to traffickers, buyers, grooming and recruitment tactics, and victim vulnerabilities as

well as successful methods for identifying, engaging, and serving this population.<sup>6</sup> State law may also provide direction related to content such as requiring that the training address definitions, recruitment tactics, common venues, vulnerabilities, trauma associated with

victimization, and how to report suspected trafficking involving minors and adults. With the breadth of survivor-informed training resources available, schools could utilize existing resources to fulfill training requirements.

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

- ▶ Mandate child sex trafficking training for school personnel.

## **RELATED ISSUES:**

- 6.6** State law mandates child sex trafficking prevention education in schools.

## **SUPPORTING RESOURCES:**

- ▶ [Chosen](#)

- 1 *School and Staffing Survey*, NATIONAL CENTER FOR EDUCATION STATISTICS (2008) [https://nces.ed.gov/surveys/sass/tables/sass0708\\_035\\_s1s.asp](https://nces.ed.gov/surveys/sass/tables/sass0708_035_s1s.asp) (last visited Nov. 16, 2020).
- 2 Nat'l Human Trafficking Res. Ctr, *Educators and Human Trafficking: In-Depth-Review*, POLARIS PROJECT (2011) <https://humantraffickinghotline.org/sites/default/files/In%20Depth%20Review%20for%20Educators.pdf> (last visited Nov. 16, 2020).
- 3 Tamara E. Hurst, *Prevention of Child Sexual Exploitation: Insights from Adult Survivors*, J. Interpersonal Violence 1 (2019) <https://journals-sagepub-com.proxy.wcl.american.edu/doi/pdf/10.1177/0886260519825881> (last visited Oct. 16, 2020).
- 4 *Introduction to Human Trafficking: A Guide for Texas Education Professionals*, Texas Human Trafficking Prevention Task Force (2014) <https://humantraffickinghotline.org/sites/default/files/Intro%20to%20HT%20for%20Educational%20Professionals%20-%20TX%20Depr%20of%20Ed.pdf> (last visited Nov. 16, 2020).
- 5 Nat'l Human Trafficking Res. Ctr, *supra* note 2.
- 6 MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING (2018).

## PREVENTION AND TRAINING

**POLICY GOAL:** State law mandates child sex trafficking prevention education in schools.

**Schools play a key role in addressing child sex trafficking and commercial sexual exploitation of children (CSEC), both in prevention and intervention.** With approximately 180 school days in a year averaging 6.64 hours per day, students can spend nearly 1200 hours in school each year.<sup>1</sup> Even during the period in which they are being exploited, child sex trafficking victims often continue attending school.<sup>2</sup> Further, children, in general, are a vulnerable population that have increased susceptibility to trafficking.<sup>3</sup> Therefore, trained school personnel can play an important role in engaging in direct prevention work or implementing prevention education with students.<sup>4</sup> Developmentally- and age-appropriate child sex trafficking curriculum can serve as a valuable tool for supporting students' ability to recognize and safely report suspected or known personal exploitative experiences or the experiences of their peers. As such, state law should require the provision of prevention education in all public schools.

To increase the impact of prevention efforts, states should consider mandating an age and culturally appropriate, gender-neutral curriculum for all grade levels (i.e. kindergarten through 12<sup>th</sup> grade). While the average age of entry into CSEC has been difficult to determine, some studies have shown that it could be around ages 12-14.<sup>5</sup> Additionally, most children have access to smartphones or other Internet-connected devices, which increases their vulnerability to CSEC. According to a Pew Research report, 80% of parents stated that their child age 5 to 11 uses a tablet computer and 63%

use a smartphone.<sup>6</sup> Moreover, this same study showed that 73% of parents believe that age 12 is an appropriate age for a child to have their own phone.<sup>7</sup> Studies have shown that technology is playing an increasing role in recruitment and grooming for sex trafficking.<sup>8</sup> This information, coupled with identified cases of child sex trafficking involving young children, highlight the importance of initiating prevention efforts with elementary age children and continuing it through grade 12.

To guide the implementation, states should consider including additional language on training requirements within the law. For example, state law should ensure that the prevention education curriculum is survivor-informed by a group of survivors with a diverse set of experiences. Survivors of CSEC and sex trafficking can provide valuable first-hand knowledge related to traffickers, buyers, grooming and recruitment tactics, and victim vulnerabilities as well as successful methods for identifying, engaging, and serving this population.<sup>9</sup> The National Center on Safe Supportive Learning Environments also recommends that schools partner with community partners such as school boards, service providers, governmental agencies, and local law enforcement in the development and implementation of a comprehensive prevention program for students that can offer insight in trafficking trends in the local community as well as local response and supports.<sup>10</sup> With the breadth of survivor-informed resources available, schools could utilize existing resources to fulfill prevention curriculum requirements.

To facilitate implementation, supplemental information addressing CSEC prevention, could be added to existing age-appropriate health/sexual health education curriculums. States may also consider utilizing a holistic prevention approach by adopting a K-12 curriculum guide that addresses healthy relationships, Internet safety, social justice, self-esteem/self-determination, history of

slavery and exploitation, and other related topics. Importantly, all CSEC prevention education efforts should provide not only a thorough understanding of the issue but also tools and resources related to disclosure and accessing safety if a child feels like they or someone they know are at risk of, or currently being, commercially sexually exploited.

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

- ▶ Require child sex trafficking prevention education in schools.
- ▶ Ensure the prevention education curriculum is developmentally- and age-appropriate.

## **RELATED ISSUES:**

**6.5** State law mandates child sex trafficking training for school personnel.

## **SUPPORTING RESOURCES:**

- ▶ Chosen

- 1 *School and Staffing Survey*, NATIONAL CENTER FOR EDUCATION STATISTICS (2008) [https://nces.ed.gov/surveys/sass/tables/sass0708\\_035\\_s1s.asp](https://nces.ed.gov/surveys/sass/tables/sass0708_035_s1s.asp) (last visited Nov. 16, 2020).
- 2 Nat'l Human Trafficking Res. Ctr, *Educators and Human Trafficking: In-Depth-Review*, POLARIS PROJECT (2011) <https://humantraffickinghotline.org/sites/default/files/In%20Depth%20Review%20for%20Educators.pdf> (last visited Nov. 16, 2020).
- 3 *Introduction to Human Trafficking: A Guide for Texas Education Professionals*, Texas Human Trafficking Prevention Task Force (2014) <https://humantraffickinghotline.org/sites/default/files/Intro%20to%20HT%20for%20Educational%20Professionals%20-%20TX%20Depr%20of%20Ed.pdf> (last visited Nov. 16, 2020).
- 4 Nat'l Human Trafficking Res. Ctr, *supra* note 2.
- 5 Tamara E. Hurst, *Prevention of Child Sexual Exploitation: Insights from Adult Survivors*, J. Interpersonal Violence 1 (2019) <https://journals-sagepub-com.proxy.wcl.american.edu/doi/pdf/10.1177/0886260519825881> (last visited Oct. 16, 2020).
- 6 Brooke Auxier, *Parting Children in the Age of Screens*, PEW RESEARCH CTR. (2020) <https://www.pewresearch.org/internet/2020/07/28/parenting-children-in-the-age-of-screens/> (last visited Nov. 16, 2020).
- 7 *Id.*
- 8 *Survivor Insights: The Role of Technology in Domestic Minor Sex Trafficking*, THORN (2018) [http://www.thorn.org/wp-content/uploads/2018/06/Thorn\\_Survivor\\_Insights\\_061118.pdf](http://www.thorn.org/wp-content/uploads/2018/06/Thorn_Survivor_Insights_061118.pdf) (last visited Nov. 16, 2020).
- 9 MARISSA CASTELLANOS, M.S.W., GRETCHEN HUNT, J.D., BETHANY GILOT, M.S., AMY NACE-DEGONDA, B.A., MELODY WRAY, THE SOUTHEAST REGIONAL HUMAN TRAFFICKING ADVISORY GROUP, *GUIDING PRINCIPLES: FOR AGENCIES SERVING SURVIVORS OF HUMAN TRAFFICKING* (2018).
- 10 Nat'l Ctr on Safe Supportive Learning Environments, *Community Involvement*, AIR (2020) <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/community-involvement> (last visited Nov. 16, 2020).

# ADVANCED LEGISLATIVE FRAMEWORK

## EXTRA CREDIT

In recognition of the impact that specific policies have on youth age 18+ and/or on minors who experience sex and labor trafficking polyvictimization, several components are eligible for receiving extra credit if state law extends the same protection to youth age 18+ and/or child victims of labor trafficking.

After receiving full credit for achieving the policy goal set out in an applicable component, states will be eligible for extra credit if that same protective policy is extended to youth age 18+ and/or child labor trafficking victims. Extra credit only applies to the components listed below. States can earn up to 1 point of extra credit per component with a max of 5 points for components extended to youth age 18+ and a max of 5 points for components extended to child labor trafficking victims (i.e. a max of 10 points total).

### Extension to youth age 18+

In its landmark decision in *Roper v. Simmons*, the United States Supreme Court recognized that “[t]he qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”<sup>1</sup> This statement shows an important acknowledgment that the transition into adulthood is not an immediate and singular moment that occurs at the point of turning 18 but, instead, a gradual transition that can take place over many years. This is supported by neurobiology, which has revealed that a person’s brain does not fully develop until their early to mid-twenties.<sup>2</sup> It is also supported by a growing body of research showing that 18 to 24-year-olds share many developmental characteristics with those under 18.<sup>3</sup> Moreover, according to a Congressional Research Service Report, youth up to age 24 are still transitioning to adulthood due to cultural and economic trends that have extended adolescence.<sup>4</sup>

In recognition that youth, and in particular vulnerable youth, face barriers and continued vulnerability beyond the age of 18, federal anti-trafficking legislation and programming have created mechanisms for response to youth age 18+. The Preventing Sex Trafficking and Strengthening Families Act (2014) provided states with the option of including any young person up to age 26 within child welfare’s policies and procedures addressing screening, documentation, and service response for child sex trafficking victims or those at risk of victimization.<sup>5</sup> The Justice for Victims of Trafficking Act (2015) also allowed states to define the term “child” to include persons under the age of 24, allowing states to receive funding for child abuse prevention and treatment programs for youth of that age.<sup>6</sup> Therefore, the importance of policy that specifically addresses youth age 18+ and offers support and protections to this population is acknowledged not only in federal law but also by the U.S. Supreme Court and is supported by neurobiology and

research on developmental characteristics.

Further, it is particularly important for state lawmakers to consider the close connection between commercially sexually exploited children and youth. The commercial sexual exploitation of children is inherently linked with the sex trade at large.<sup>7</sup> According to a national survey of survivors of child commercial sexual exploitation conducted by THORN, the majority of participants entered the commercial sex industry at age 15; one in six entered before the age of 12.<sup>8</sup> Therefore, many adults active in the commercial sex industry entered as children.<sup>9</sup>

Vulnerabilities that increase risk of initial victimization and revictimization do not disappear at 18, and, in fact, these vulnerabilities could be exacerbated by a decrease in supports and protections for those over 18 years of age. Importantly, the trauma resulting from sex trafficking and commercial sexual exploitation also does not stop at age 18. As a result, supports and protections that are offered to child sex trafficking and commercially sexually exploited children in state law, including screening and identification efforts, non-criminalization responses, funding, non-punitive service responses, and victim protections, should be extended to youth age 18+.

### Eligible components:

<b>2.3</b>	State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.
<b>2.4</b>	State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.
<b>2.5</b>	State law prohibits the criminalization of minors under 18 for prostitution offenses.
<b>2.6</b>	State law prohibits the criminalization of child sex trafficking victims for status, misdemeanor, and non-violent felony offenses.
<b>2.8</b>	State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
<b>2.9</b>	Juvenile court jurisdiction extends to all minors under 18 charged with a law violation.
<b>3.1</b>	State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
<b>3.2</b>	State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.
<b>3.5</b>	State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.
<b>3.6</b>	State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.
<b>4.2</b>	Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
<b>4.5</b>	State law provides child sex trafficking victims with a trafficking-specific civil remedy.
<b>4.6</b>	Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.



<b>5.1</b>	State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
<b>5.2</b>	State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.
<b>5.3</b>	Child sex trafficking victims have the right to a victim advocate at all stages of the investigation and prosecution of the perpetrator(s).
<b>5.4</b>	State law provides for privileged communications between caseworkers and child sex trafficking victims.

## Extension to Child Labor Trafficking Victims

The intersection of sex trafficking and labor trafficking victimization is important for state lawmakers to understand and consider as they develop mechanisms for protecting and supporting vulnerable populations. One direct intersection, as multiple studies have shown, is that some minors and young adults experience sex and labor trafficking polyvictimization. Commercially sexually exploited (CSE) children have also been forced and coerced into various forms of labor, such as drug dealing, working in flea markets, commission-based sales jobs, driving other youth, and other sex-trade related labor.<sup>10</sup> This polyvictimization often occurs simultaneously but also may occur at different points in time. A study completed on children with sex and labor trafficking allegations investigated through child welfare revealed that 14.7% of children with a history of labor or sex trafficking allegations had subsequent investigations for alleged sex trafficking victimization.<sup>11</sup> The frequent intersection between child sex and child labor trafficking highlights the importance of implementing state-level responses for both of these vulnerable populations.

States should also consider affording many of the same protections to child labor trafficking victims based on the similar dynamics between sex and labor trafficking. Factors that create vulnerability to victimization as well as trauma and the psychological impact of child labor trafficking victimization can resemble those for child sex trafficking. Labor and sex traffickers often target people “who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities.”<sup>12</sup> Individual risk factors such as a history of sex abuse and mental health issues also increase risk for both forms of trafficking.<sup>13</sup> In the aforementioned study on children with human trafficking allegations, data showed that, similar to CSE, children with labor trafficking allegations had extensive abuse histories but actually had higher rates of additional forms of abuse or neglect co-occurring with their trafficking victimization.<sup>14</sup>

Additionally, coercive and fraudulent recruitment tactics often look similar for both sex and labor trafficking; coercive tactics by the trafficker may also continue throughout the trafficking and victims of both labor and sex trafficking may bond with their traffickers.<sup>15</sup> As with sex trafficking, love, community, family, and well-being can be used as mechanisms for control in some forms of labor trafficking; these coercive tactics can result in trauma and serious psychological harm.<sup>16</sup>

Accordingly, supports and protections that are offered to child sex trafficking and CSE children in state law, including non-criminalization responses, funding, non-punitive service responses, victim protections,

and access to justice, should be extended to child labor trafficking victims.

### Eligible components:

<b>2.6</b>	State law prohibits the criminalization of child sex trafficking victims for status, misdemeanor, and non-violent felony offenses.
<b>2.8</b>	State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
<b>3.1</b>	State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
<b>3.5</b>	State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.
<b>4.1</b>	Civil orders of protection are specifically available to trafficking victims.
<b>4.2</b>	Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking or commercial sexual exploitation of children (CSEC) from accessing compensation.
<b>4.3</b>	Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for offenses arising from trafficking victimization without a waiting period.
<b>4.4</b>	State law mandates restitution for child sex trafficking, commercial sexual exploitation of children (CSEC), and child sexual abuse material (CSAM) offenses.
<b>4.5</b>	State law provides child sex trafficking victims with a trafficking-specific civil remedy.
<b>4.6</b>	Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.
<b>5.1</b>	State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.
<b>5.2</b>	State law allows child sex trafficking victims to testify by closed circuit television regardless of the prosecuted offense.
<b>5.3</b>	Child sex trafficking victims have the right to a victim advocate at all stages of the investigation and prosecution of the perpetrator(s).
<b>5.4</b>	State law provides for privileged communications between caseworkers and child sex trafficking victims.

- 1 Roper v. Simmons, 543 U.S. 551, 574 (2005).
- 2 Frances E. Jensen, MD & Amy E. Nutt, *The Teenage Brain: A Neuroscientist's Survival Guide to Raising Adolescents and Young Adults* (1st ed. 2015).
- 3 Karen U. Lindell, Esq. & Katrina L. Goodjoint, Esq., RETHINKING JUSTICE FOR EMERGING ADULTS: SPOTLIGHT ON THE GREAT LAKES REGION (2020) <https://jlc.org/sites/default/files/attachments/2020-09/JLC-Emerging-Adults-9-2.pdf> (last visited Nov. 11, 2020).
- 4 Vulnerable Youth: Background and Policies, Cong. Res. Serv., RL33975 (updated Jan. 30, 2018).
- 5 Preventing Sex Trafficking and Strengthening Families Act (PSTSEA) of 2014, Pub. L. No. 183, 128 Stat. 1919 (2014).
- 6 Justice for Victims of Trafficking Act (JVTA) of 2015, Pub. L. No. 114-22, 129 Stat. 227 (2015).
- 7 Debra Haak, *Re(de)fining Prostitution and Sex Work: Conceptual Clarity for Legal Thinking*, 40 Windsor Rev. Legal & Soc. Issues 67, 97 (2019).
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- 9 Maureen O'Hara, *Making Pimps and Sex Buyers Visible: Recognising the Commercial Nexus in Child Sexual Exploitation*, 39 Critical Soc. Pol'y 108, 115 (2019). A review of recent studies reveals that globally, nearly half of study participants were minors when they entered the commercial sex industry. In the UK, anywhere from 32%-64% of adults had entered the commercial sex industry as minors. Maddy Coy, *Joining the Dots on Sexual Exploitation of Children and Women: A Way Forward for UK Policy Responses*, 36 Critical Soc. Pol'y 572, 574 (2016).
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Youth 4-8 (2016).

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