

## National State Law Survey: Non-Criminalization of Juvenile Sex Trafficking Victims

State <sup>1</sup>	Does state law prohibit the criminalization of minors for prostitution? <sup>2</sup>	Statutory Non-Criminalization Approach	Does state law extend non-criminalization to other offenses?
Alabama	Yes	A sexually exploited child may not be prosecuted for prostitution	No
Alaska	No <sup>3</sup>	N/A	N/A
Arizona	No	N/A	N/A
Arkansas	No	N/A	N/A
California	Yes	Prostitution law does not apply to minors	"Loitering with intent to commit prostitution"
Colorado	No	N/A	N/A
Connecticut	Yes	Prostitution law does not apply to minors	No
Delaware	No	N/A	N/A
DC	Yes	Minors may not be prosecuted for prostitution	No
Florida	Yes	Prostitution law does not apply to minors	No
Georgia	No	N/A	N/A
Hawaii	No	N/A	N/A
Idaho	No	N/A	N/A
Illinois	Yes	Minors may not be prosecuted for prostitution	"Promoting prostitution" ("profiting from" provision) & "Solicitation of a sexual act"
Indiana	Yes	Prostitution law does not apply to minors	No

<sup>1</sup> Responses in the chart are solely based on statutory law as analyzed under component 5.3 of the Protected Innocence Challenge Legislative Framework, and do not reflect regulatory or practice-based responses. Except where otherwise indicated, evaluations of state laws are based on legislation enacted as of August 1, 2018. For related policy goals, background information, and select statute highlights, please visit [http://sharedhope.org/wp-content/uploads/2015/11/Issue\\_Briefs/Issue\\_Briefs\\_5.3.pdf](http://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_5.3.pdf).

<sup>2</sup> An asterisk (\*) denotes a third party control requirement under at least one state non-criminalization provision. For additional information on third party control, please visit [https://sharedhope.org/wp-content/uploads/2016/02/Policy\\_Paper\\_Eliminating\\_Third\\_Party\\_Control\\_Final.pdf](https://sharedhope.org/wp-content/uploads/2016/02/Policy_Paper_Eliminating_Third_Party_Control_Final.pdf).

<sup>3</sup> Alaska Stat. § 11.66.100(c) (Prostitution) provides a narrow basis for avoiding criminal penalties under the prostitution law to a person who "witnessed or was a victim of, and reported to law enforcement in good faith," various offenses including sex trafficking. Pursuant to Alaska Stat. § 11.66.100(c)(2) and (3), this protection from criminal liability for prostitution is only available if the victim or witness provides evidence that leads to prosecution and the victim or witness cooperates with law enforcement.

Iowa	No	N/A	N/A
Kansas	No	N/A	N/A
Kentucky	Yes	Minors may not be prosecuted for prostitution	"Loitering for prostitution purposes" & status offenses
Louisiana	No <sup>4</sup>	N/A	N/A
Maine	No	N/A	N/A
Maryland	No	N/A	N/A
Massachusetts	No	N/A	N/A
Michigan	Yes (under 16 only)	Prostitution law does not apply to minors under 16	No
Minnesota	Yes	Definitions of delinquent child and juvenile petty offender specifically exclude prostitution/loitering offenses	"Loitering with intent to participate in prostitution"
Mississippi	Yes*	<i>Child sex trafficking victims</i> may not be prosecuted for prostitution	"Promoting prostitution" & human trafficking offenses
Missouri	No	N/A	N/A
Montana	Yes	Minors are not criminally liable for prostitution	"Promoting prostitution" & non-violent offenses
Nebraska	Yes	Minors may not be prosecuted for prostitution	No
Nevada	No	N/A	N/A
New Hampshire	Yes	Minors may not be prosecuted for prostitution	"Indecent exposure and lewdness"
New Jersey	No	N/A	N/A
New Mexico	No	N/A	N/A
New York	No	N/A	N/A
North Carolina	Yes	Minors may not be prosecuted for prostitution	"Solicitation of prostitution"
North Dakota	Yes*	Prostitution law does not apply to minors	"Misdemeanor forgery," "Misdemeanor theft" offenses, "Insufficient funds or credit" offenses, "Manufacture or possession of controlled or counterfeit substance," & "Drug paraphernalia" offenses
Ohio	No	N/A	N/A

<sup>4</sup> Despite the specific exclusion in La. Child. Code Ann. art. 804(3) and (5) of prostitution offenses from the definition of "delinquent act" and "felony grade delinquent act" for child sex trafficking victims, La. Child. Code Ann. art. 839(D) sets out a diversion process for minors charged with a delinquent act in violation of the prostitution laws. Thus, the exclusion of prostitution offenses from the definition of delinquent act appears to act as an affirmative defense because it only applies if the child was a victim of trafficking at the time of the offense, shifting the burden to the victim to prove that status in order to avoid prosecution. This interpretation of the Children's Code also appears consistent with the protections provided under the criminal code. La. Rev. Stat. § 14:46.3(E) (Trafficking of children for sexual purposes) states, "No victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked." However, Louisiana's prostitution offenses, La. Rev. Stat. Ann. § 14:82(G)(1) (Prostitution; definition; penalties; enhancement), § 14:83.3(D)(1) (Prostitution by massage), and § 14:83.4(C)(1) (Massage; sexual conduct prohibited), provide an affirmative defense from prosecution for prostitution offenses if "during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes," and further provide that "[a]ny child determined to be a victim pursuant to the provisions of this Paragraph shall be eligible for specialized services for sexually exploited children." Consequently, the prohibition on prosecution in § 14:46.3 when read together with the prostitution statutes also appears to establish an affirmative defense if a juvenile sex trafficking victim is charged with prostitution.

Oklahoma	Yes	<i>Child sex trafficking victims may not be prosecuted for prostitution</i>	Non-violent misdemeanors
Oregon	No	N/A	N/A
Pennsylvania	Yes <sup>5</sup>	<i>Sexually exploited children may not be prosecuted for prostitution</i>	"Relating to obstructing highways and other public passages"
Rhode Island	Yes*	Minors are not criminally liable for prostitution <sup>6</sup>	No
South Carolina	Yes	<i>Child sex trafficking victims may not be prosecuted for prostitution</i>	Human trafficking offenses
South Dakota	Yes (under 16 only)	Prostitution law does not apply to minors under 16	No
Tennessee	Yes	Minors may not be prosecuted for prostitution	No
Texas	No <sup>7</sup>	N/A	N/A
Utah	Yes	Minors may not be prosecuted for prostitution	"Sexual solicitation"
Vermont	Yes	<i>Child sex trafficking victims may not be prosecuted for prostitution</i>	Obscenity offenses
Virginia	No	N/A	N/A
Washington	No	N/A	N/A
West Virginia	Yes*	<i>Child sex trafficking victims are not criminally liable for prostitution</i>	No
Wisconsin	No	N/A	No
Wyoming	Yes*	<i>Child sex trafficking victims are not criminally liable for prostitution</i>	All criminal acts
<b>Totals:</b>	<b>25 states &amp; DC prohibit the criminalization of minors for prostitution.</b>  <b>2 of those states limit that protection to minors under 16.</b>		<b>15 states extend non-criminalization to other offenses.</b>

<sup>5</sup> The enactment of Senate Bill 554 (Act No. 130) during the 2017-2018 legislative session removes criminal liability for any minor under 18 who is identified as a "sexually exploited minor" as defined in Senate Bill 554 (effective December 25, 2018).

<sup>6</sup> R.I. Gen. Laws Ann. § 11-67.1-15 (Immunity of a minor) contains two non-criminalization provisions, one of which applies generally to any minor under 18 years of age; the other hinges on the minor being identified as a trafficking victim. R.I. Gen. Laws § 11-67.1-15(a) states, "An individual is not criminally liable or subject to a delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim." In contrast, R.I. gen. Laws § 11-67.1-15(b) states, "An individual who has engaged in commercial sexual activity is not criminally liable or subject to delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense."

<sup>7</sup> While Texas caselaw prohibits prosecution of minors under 14 for prostitution, this protection is not codified in Texas' prostitution law. See *In re B.W.*, 313 S.W.3d 818, 821 (Tex. 2010) (holding that "a 13 year old child cannot consent to sex as a matter of law" and, therefore, cannot satisfy the knowledge requirement of the prostitution statute).