

SECTION 1.1

Area of Law	Criminalization of Domestic Minor Sex Trafficking
The Policy Point	The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.
The Legislative Solution	The vast majority of states have human trafficking laws; however, within these statutes there are variations in coverage. States must enact human trafficking laws that are consistent with each other and federal law in scope and penalty so as to prevent migration of trafficking crimes to more lenient states or onto tribal lands. First, human trafficking laws must clearly address the crime of sex trafficking for the purposes of prosecution and victim identification. To ensure identification of sexually exploited children as victims and to prevent traffickers from escaping criminal liability through manufactured evidence of consent, all minors under the age of 18 should be deemed unable to consent to involvement in commercial sex acts, thus rendering the element of force, fraud or coercion irrelevant in domestic minor sex trafficking cases. Many state statutes accomplish this goal through the use of the words “any means” when addressing sex trafficking of minors under 18. Enacting laws that specifically criminalize trafficking of minors for commercial sexual exploitation without requiring proof of force, fraud or coercion is necessary to facilitate the prosecution of purchasers, traffickers and facilitators of commercial sex acts with children.

Select Statute Highlights

The following are excerpts from statutes with the following: (1) language specifically criminalizing the commercial sexual exploitation of children or prostitution of children; (2) definition of a “minor” as a child under the age of 18; and (3) absence of any required elements of force, fraud or coercion to accomplish the trafficking of a minor.

Delaware

Del. Code Ann. tit. 11, § 787 (Trafficking of persons and involuntary servitude) makes sexual servitude of a minor a crime. Del. Code Ann. tit. 11, § 787(b)(2) provides, “[a] person is guilty of sexual servitude of a minor when the person knowingly: a. Recruits, entices, harbors, transports, provides or obtains by any means, a minor under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually explicit performance, or the production of pornography; or b. Causes a minor to engage in commercial sexual activity or a sexually explicit performance.”

D.C.

D.C. Code § 22-1834(a) (Sex trafficking of children) states, “It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.”

Louisiana

A separate statute makes sex trafficking of children a crime without regard to use of force, fraud, or coercion when a minor under 18 is used in a commercial sex act. La. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) states, “A. It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions

of this Section. (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person. (5) For any person to knowingly advertise any of the activities prohibited by this Section. (6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section. B. For purposes of this Section, (1) “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

Massachusetts

Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) provides that “[w]hoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000.” Pursuant to Mass. Gen. Laws ch. 265, § 50(b) “Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years.”

Nebraska

Neb. Rev. Stat. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) provides, “No person shall engage in . . . sex trafficking of a minor.” Pursuant to Neb. Rev. Stat. § 28-830(13), “Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.” A minor is defined as “a person younger than 18 years of age.” Neb. Rev. Stat. § 28-830(7). Commercial sexual activity is “any sex act on account of which anything of value is given, promised to, or received by any person.” Neb. Rev. Stat. § 28-830(2).

Wisconsin

Wis. Stat. § 948.051 (Trafficking of a child) states, “(1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), or sexually explicit performance is guilty of a Class C felony. (2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1). (3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.” For the purpose of this law, a child is defined as “a person who has not attained the age of 18 years.” Wis. Stat. § 948.01(1). Commercial sex acts are “sexual contact for which anything of value is given to, promised, or received, directly or indirectly by any person.” Wis. Stat. § 940.302(1)(a).