

<b>Area of Law</b>	Protective Provisions for the Child Victims
<b>The Policy Point</b>	Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.
<b>The Legislative Solution</b>	Establishing a child protection response is critical to ending the arrest and detention of domestic minor sex trafficking victims and ensuring instead that they are provided crime victim protections, services, and benefits. These victims come to the attention of service providers in various venues and under a variety of circumstances. Without clear statutory mechanisms for ensuring prompt identification of victims followed by appropriate placement and provision of specialized services for sexually exploited youth, victims could face either a punitive response through the criminal justice system that fails to connect them with needed services, or an inadequate child protection response that may allow victims to return to their trafficker or to the conditions which led to their trafficking. A specialized protective response addresses both of these concerns by establishing a process that identifies child sex trafficking victims and directs them into multidisciplinary services and residential placement options that are designed to work in conjunction to break the trauma bond and concomitant cycle of victims returning to their traffickers. Specialized services for child sex trafficking victims should include protective shelters, physical and mental health care, education, and recovery programs. Services should be delivered by trained trauma responders and health care providers. Laws are required to establish and financially support these programs and to treat domestic minor sex trafficking victims at all stages from intervention to restoration.

**Select Statute Highlights**

The following statutes establish non-punitive, protective processes that identify victims and direct them into multidisciplinary services and residential placement options through a variety of mechanisms, including specific child protective designations that provide an alternative to a punitive response which is separate from or in addition to abuse, neglect, or dependency proceedings.

**Florida**

Pursuant to Fla. Stat. Ann. § 39.01(15)(g), “Child who is found to be dependent’ means a child who, pursuant to this chapter, is found by the court . . . [t]o have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.” Pursuant to Fla. Stat. Ann. § 39.01(67)(g) provides that “sexual abuse of a child for purposes of finding a child to be dependent means one or more of the following acts . . . The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or

criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; or 2. Engage in a sexual performance, as defined by chapter 827; or 3. Participate in the trade of sex trafficking as provided in s. 796.035 [Buying and selling minors into prostitution].

Under Fla. Stat. Ann. § 39.401(2)(b), when there is probable cause that a child taken into custody and alleged to be dependent has been sexually exploited, “the law enforcement officer shall deliver the child to the department [of Children and Family Services]. The department may place the child in an appropriate short term safe house.” Similarly, pursuant to Fla. Stat. Ann. § 39.401(3), a sexually exploited child may be placed in a short term safe house pending adjudication as a dependent child, and if a child adjudicated dependent is found to be a victim of sexual exploitation, § 39.524 (Safe harbor placement) provides that the child must be assessed for placement in a safe house. Fla. Stat. Ann. § 409.1678(1) (b) (Safe harbor for children who are victims of sexual exploitation) requires that safe houses are secure with staff awake 24 hours a day and some staff or contract personnel specially trained to work with sexually exploited youth. Short-term safe houses must also provide food, clothing, medical care,

counseling, and crisis intervention services. Fla. Stat. Ann. § 409.1678(1)(e). Under Fla. Stat. Ann. § 985.115 (2)(b), if a DMST victim is arrested for a delinquent act, law enforcement has the option of releasing the minor to a safe house as follows: “Unless otherwise ordered by the court . . . a person taking a child into custody shall attempt to release the child . . . to a shelter approved by the department or to an authorized agent or short-term safe house under s. 39.401(2)(b).” Pursuant to Fla. Stat. Ann. § 409.1678(2)(e) (Safe harbor for children who are victims of sexual exploitation), “All of the services in this section may . . . be available to all sexually exploited children whether they are accessed voluntarily, as a condition of probation, through a diversion program, through a [dependency] proceeding . . . or through a referral from a local community-based care or social service agency.”

### Kansas

Kan. Stat. Ann. § 38-2231(b) provides that “A law enforcement officer shall take a child under 18 years of age into custody when the officer: . . . (3) reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.” Pursuant to Kan. Stat. Ann. § 38-2232(b)(2), “When any law enforcement officer takes into custody any child as provided in subsection (b)(3) of K.S.A. 2012 Supp. 38-2231, and amendments thereto, the law enforcement officer shall place the child in protective custody and may deliver the child to a staff secure facility. The law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a juvenile detention facility or other secure facility . . . .”

Section 6(a)–(c) of Enacted House Bill 2034 provides that “A staff secure facility shall: (1) Not include construction features designed to physically restrict the movements and activities of residents, but shall have a design, structure, interior and exterior environment, and furnishings to promote a safe, comfortable and therapeutic environment for the residents . . . A staff secure facility shall provide the following services to children placed in such facility: (1) Case management; (2) life skills training; (3) health care; (4) mental health counseling; (5) substance abuse screening and treatment; and (6) any other appropriate services . . . Service providers in a staff secure facility shall be trained to counsel and assist victims of human trafficking and sexual exploitation.”

Pursuant to Enacted House Bill 2034, section 5, “[w]henver a child is in custody, as defined in K.S.A. 38–2202 [Definitions], and amendments thereto, and such child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 21–5426 [Human trafficking; aggravated human trafficking], and amendments thereto, or

commercial sexual exploitation of a child, as defined by section 4, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 21–6419 [Selling sexual relations], and amendments thereto, the court shall refer the child to the secretary of the department for children and families for an assessment to determine safety, placement and treatment needs for the child. The secretary shall use a research-based assessment tool to assess such needs and shall make appropriate recommendations to the court.”

### Kentucky

Enacted House Bill 3, Section 11 provides, “(1) Notwithstanding Section 12 [Prostitution] or 13 [Loitering for prostitution purposes] of this Act, if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under Section 12 or 13 of this Act. (2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to Section 2 of this Act. Pursuant to Section 3 of this Act, the officer may take the minor into protective custody. (3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to Section 1 of this Act.”

Ky. Rev. Stat. Ann. § 620.029(1)(a) (Duties of cabinet relating to children who are victims of human trafficking) states that “[i]n order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010, the cabinet shall: (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3) [Duties to report dependency, neglect, abuse, or human trafficking]; (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.”

Ky. Rev. Stat. Ann. § 15A.068(1) (Duties of department if child may be victim of human trafficking; administrative regulations) specifies that “[i]f If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in KRS 529.010 [Definitions], the department shall: (a) File a report with the Cabinet for Health and Family Services pursuant to KRS 620.030 [Duty to report dependency,

neglect, abuse, or human trafficking]; (b) Notify the child's attorney that the child may be a victim of human trafficking; and (c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services. (2) After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers."

#### Massachusetts

Mass. Gen. Laws ch. 119 § 21 defines "child in need of services" in part, as "a child between the ages of 6 and 17 who . . . is a sexually exploited child." Mass. Gen. Laws ch. 119 § 21 defines a "sexually exploited child" as "any person under the age of 18 who has been subjected to sexual exploitation because such person: (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105; (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or (4) engages in common night walking or common streetwalking under section 53 of chapter 272."

Mass. Gen. Laws ch. 119 § 39K(a)–(c) (Sexually exploited children – child welfare services) states, "(a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child's welfare. If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24. Sexually exploited children shall

have access to an advocate. The advocate or a member of the multidisciplinary service team established under section 51D shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court. (b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person. (c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have separate and distinct service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists."

#### New York

Under the Safe Harbor Act, sexually exploited children can be placed in a "short-term safe house" or "safe house" both of which are defined in part as "a residential facility operated by an authorized agency . . . including a residential facility operating as part of an approved runaway program . . . or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter, services and care to sexually exploited children . . ." N.Y. Soc. Serv. Law § 447-a(2), (4). Also in both short term and long term safe housing sexually exploited children will receive services "including food, shelter, clothing, medical care, counseling, crisis intervention" and for long term housing, services will either be provided through "direct provision of services, or through written agreements with other community and public agencies . . ." N.Y. Soc. Serv. Law § 447-a(2),(4).

Pursuant to N.Y. Fam. Ct. Act § 739(a) (Release or detention after filing of petition and prior to order of disposition), upon an initial appearance at a juvenile delinquency proceeding, if the child is a sexually exploited child, "the court may direct the respondent to an available short-term safe house as an alternative to detention." Moreover, N.Y. Fam. Ct. Act §739(a) notes "the court shall not direct detention [of a sexually exploited minor] unless it finds and states the facts and reasons for so finding that unless the respondent is detained there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to detention have been exhausted." If the victim is unwilling "to cooperate with specialized services for sexually exploited youth" or has a prior prostitution conviction, the minor will be subject to the delinquency proceedings and could be detained. N.Y. Fam. Ct. Act § 311.4(3).

## Vermont

Vt. Stat. Ann. tit.13, § 2652(e) (Human trafficking) states, “If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision [CHINS] proceeding.” Vt. Stat. Ann. tit. 33, § 5301 (Taking into custody) allows law enforcement to take a CHINS into custody “(1) Pursuant to an order of the family division of the superior court under the provisions of this chapter, (2) By an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child’s current home is necessary for the child’s protection, (3) By an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.”

## Washington

Wash. Rev. Code § 13.32A.030(5)(d) (Definitions—Regulating leave from semi secure facility) defines “child in need of services” (CHINS) as a juvenile who is “sexually exploited.” A “sexually exploited child” is defined as “any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.” Wash. Rev. Code § 13.32A.030(17). A sexually exploited child may be “(1) . . . taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 [Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities] or may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed fifteen consecutive days from the point of intake as provided in RCW 13.32A.130.” Wash. Rev. Code. § 74.15.255 (Licenses for secure or semi-secure crisis residential centers or HOPE centers—Requirement—Access to person trained to work with needs of sexually exploited children) requires each crisis residential center to have a staff member, or “access to a person, who has been trained to work with the needs of sexually exploited children.” Wash. Rev. Code § 74.13.034.

Wash. Rev. Code § 13.32A.179(2) (Out-of-home placement — Disposition hearing — Court order—Dispositional plan—Child subject to contempt proceedings—Dismissal of order at request of department or parent) provides that at a post disposition hearing, “the court may: . . . (d) order an out-of-home placement at the request of the child or the department not to exceed ninety days. (3) The court may only enter an order under subsection (2)(d) of this section if it finds by clear, cogent, and convincing evidence that: . . . (b)(i) the order is in the best interest of the child; and (ii) the parents are unavailable; or (c) the parent’s actions cause an imminent threat to the child’s health or safety.” Wash. Rev. Code §13.32A.180(2) states in part: “[n]o placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974.”