

Area of Law	Protective Provisions for the Child Victims
The Policy Point	The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.
The Legislative Solution	Traffickers who are in custody or control of a child often abuse and neglect their victims. However, child protective services may be precluded from intervening because their mandate is limited to cases of custodial abuse and neglect, containing their investigations and intervention to cases in which a parent, guardian, caretaker or other person with legally provided custodial rights caused the abuse or neglect. Non-familial traffickers seldom have legal custody of their victims. The child protective services mandate is derived from the legal definitions of “caregiver” and “abuse and neglect.” It is therefore necessary that state statutory definitions of the term “caregiver” (or similar) include persons acting in a parental role by having possession of a child and controlling a child in order for child protective services to intervene in these cases and bring an abused trafficked child within the protective systems already in place in every state.

Select Statute Highlights

The following state laws broadly define “caregiver” to potentially include a trafficker.

Kentucky

The term “person exercising custodial control or supervision” over the child is defined in Ky. Rev. Stat. Ann. § 600.020(44) for purposes of the Unified Juvenile Code (chapters 600 to 645) as “a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child.” In defining “abused or neglected child,” Ky. Rev. Stat. Ann. § 600.020(1) (a) also refers to a “person in a position of authority or special trust, as defined in KRS 532.045 [Persons prohibited from probation or postincarceration supervision—Procedure when probation or postincarceration supervision not prohibited].” Ky. Rev. Stat. Ann. § 532.045(a) defines “position of authority” to include “the position occupied by . . . a household member” and Ky. Rev. Stat. § 532.045(b) defines “position of special trust” as “a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor.”

Mississippi

Miss. Code Ann. § 43-21-105(g) (Definitions), which provides definitions for Mississippi’s chapter 21 (Youth court), defines “custodian” as “any person having the present care or

custody of a child whether such person be a parent or otherwise.” “Custody” is defined as “the physical possession of the child by any person” at Miss. Code Ann. § 43-21-105(q). Additionally, Miss. Code Ann. § 43-21-105(v) defines “any person responsible for care or support” as “the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.”

New Jersey

N.J. Stat. Ann. §9:6-2 (Parent and custodian defined) defines “the person having care, custody and control of any child” as including “any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed.”

North Carolina

The definition of “custodian” under N.C. Gen. Stat. § 7B-101(8) (Definitions) may be broad enough to cover situations in which a trafficker is in custody or control of a child. “Custodian” is defined as “a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.”

Vermont

Vt. Stat. Ann. tit. 33, § 5102(1) (Definitions and provisions of general application) defines a “care provider” as “a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court” for purposes of Vermont’s laws regarding children in need of care or supervision, Vt. Stat. Ann. tit. 33, part 4 (Juvenile proceedings).

West Virginia

For purposes of West Virginia’s child abuse and neglect provisions, W. Va. Code § 49-1-4(5) (Definitions) defines a “custodian” as “a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings.”

Wisconsin

Wis. Stat. § 48.981(1)(am)(6), (7) (Abused or neglected children and abused unborn children), which establishes the requirements for reporting neglect and abuse at Wis. Stat. § 48.981(2), (2m), (3) and (3m), provides that “[c]aregiver” means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons . . . [including] . . . [a] person who provides or has provided care for the child in or outside of the child’s home . . . [or] . . . [a]ny other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.”