



## Thematic Fact Sheet

### 1) **Can minors be held liable for the crimes committed against them (i.e., can children be charged with committing prostitution offenses?)?**

Purpose: Laws that allow domestic minor sex trafficking victims (DMST) victims to be prosecuted for prostitution offense is retraumatizing and can undermine efforts to combat the crime in several ways: (1) Prosecuting a child for prostitution affirms the threats a trafficker or society has fed to the child (“If you run, you’ll be arrested”, “no one cares about or is looking for you”, “you’re nothing”, etc.), only further bonding the child to the trafficker as the child’s source of reliability. (2) Prosecuting a child and sending them through the criminal justice system is retraumatizing—not only are they prevented from retelling their story on their own terms, they are forced into a system that *punishes*, rather than holistically recognizes victimization, trauma, and a need for specialized services. (3) Prosecuting a child reinforces the child’s belief that they can’t trust law enforcement, often preventing the child from cooperating with investigations and prosecutions of their offenders. (4) Most frequently, the criminal system is not equipped to respond with specialized services that aim to protect and empower a child.

- **31 states** still allow children to be criminalized for prostitution offenses.
  - Examples: Virginia, Washington, Texas, Maine
- **19 states and DC** prohibit the criminalization of minors for prostitution offenses--- seeing all children under 18 engaged in commercial sex as victims in need of protection and services.
  - Examples: Florida, Illinois, Kentucky, Minnesota, California
- **Some states** provide alternative means to prosecution, but still force children to be arrested, enter the criminal justice system, be treated as offenders, and THEN assert an affirmative defense or enter a diversion process.
  - NY requires child to comply with services *or* be treated as a delinquent child (services are then coercive and not victim-centered)
  - MA, OH & NJ have a diversion process that is at the *discretion* of the court
  - Iowa law leaves it to the discretion of the prosecutor to decide whether or not to convert delinquency petition to a dependency petition.

### 2) **Are all commercially sexually exploited children recognized as victims under the human trafficking law?**

Purpose: By narrowing the definition of DSMT to either require force, fraud or coercion (FFC) or 3d party control, such laws limit which children are identified as victims of sex trafficking. Requiring FFC fails to acknowledge the inherent dependency of children on adults and the cognitive ability a child victim has to bond to and comply with the requests of person causing the child harm, even when force, fraud, or coercion are not used. Requiring third party control demands that either a child *has* a trafficker (eliminating instances where this is not the case – i.e “survivor sex”) or that the child *must* identify a trafficker to be recognized as a victim, which unjustly shifts the burden to the child to prove their victimization. Narrowing the definition of child sex trafficking can exclude some of the most vulnerable

victims, including runaway and homeless youth who exchange sex acts to survive and trauma-bonded child victims who are unable or unwilling to identify their trafficker.

- **23 states** have a narrowed definition of child sex trafficking that does not recognize all commercially sexually exploited children as victims of sex trafficking
  - This conflicts with the federal definition of child sex trafficking since federal law does not require: (1) proof of force, fraud or coercion for minors under 18; or (2) a controlling third party or trafficker.
  - **5 states** still require force, fraud or coercion for some child victims of DMST
    - SD, AL, & NY require proof of FFC for all victims of sex trafficking
    - OH requires FFC when the victim is *older* than 15, unless the offender is in a position of authority to the child.
    - OR requires FFC when the victim is 15 or older
  - **19 states** require third party control to establish the crime of child sex trafficking (i.e., a commercially sexually exploited child has to have a trafficker in order to be identified as a victim of sex trafficking).
    - Examples: California, Hawaii, Maine, Minnesota, Nebraska
  - West Virginia limits the definition of child sex trafficking by requiring that the offender traffic two or more victims within a one year period

### 3) Does the trafficking law apply to buyers who purchase sex with children?

Purpose: Trafficking laws that criminalize the act of buying sex with a child recognize the enormous role buyers play in fueling demand and creating a specific market for commercial sex with children. Trafficking laws that fail to criminalize buyers fail to recognize that the actual act of buying and engaging in sex with a child is traumatizing and that buyers can be just as much, if not more, violent than traffickers.

- **40/51** states/DC have trafficking laws that apply to buyers.
- **CA, HI, NY, OH** *expressly* exclude buyers as HT offenders.

### 4) Does state law provide non-punitive avenues to specialized services for child victims?

Purpose: DMST victims require specialized services to address the long-lasting effects of trauma. Offering such services through the criminal justice process is coercive and punitive; offering (NOT REQUIRING) services through non-punitive avenues says “you are a victim that deserves x,y,z on your terms.” Specialized services that differ from services that are appropriate for other forms of child abuse are necessary to address the psychological, physical and emotional effects of commercial sexual exploitation, as well as any possible pre-CSEC trauma.

- **29 states** have laws that provide non-punitive avenues to services
  - **22/29** of those states provide specialized services