

JuST Response Policy Paper

Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims

This paper evaluates the fundamental importance of defining sex trafficking to include all instances of commercial sexual exploitation of minors. Beyond the question of whether force, fraud or coercion was used by the offender, this discussion addresses the impact of requiring that a third party, in particular a trafficker, has caused a minor victim to engage in commercial sexual activity in order for a minor to be recognized as a sex trafficking victim.

While any commercially sexually exploited minor is a victim of sex trafficking under federal law, some state statutory schemes mandate identification of a trafficker in order for instances of commercial sexual exploitation of children to be identified as sex trafficking. At its core, requiring the presence of third party control ignores the fact that buyers are committing the very exploitation that trafficking laws were enacted to punish. Failing to recognize the conduct of buyers as acts of sex trafficking ignores the definition of trafficking and seriously undermines other positive provisions in sex trafficking statutes for several reasons:

Requiring third party control dramatically diminishes the opportunity to hold buyers of sex with minors accountable as serious offenders. Proving that a buyer knew the child was under third party control is hampered by many realities ranging from the effects of trauma bonding which prevent children from identifying a trafficker to the shield of technology, used to keep the trafficker out of sight and unidentifiable.

From a victim's perspective, it is irrelevant who sells and who buys the sexual performance of a child. All commercially sexually exploited children should equally be identified as sex trafficking victims and rendered eligible for related services. Structuring criminal penalties to create a hierarchy of offenders fails to recognize the role of all exploiters—buyers and sellers alike—in the exploitation of commercially sexually exploited youth. This variable and inconsistent identification of offenders perpetuates victim-blaming and sends the harmful message to the juveniles most at risk that they are somehow responsible for their own victimization.

In the fight against sex trafficking there must be a single standard for defining a sex trafficking victim. To ensure the greatest protection for victims, that definition cannot include third party control as this requirement is inherently in conflict with the concept, design and intent of sex trafficking laws.

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Failure to identify buyers as sex trafficking offenders has a direct correlation to the failure to identify all commercially sexually exploited juveniles as victims of sex trafficking. Even where states have made efforts to ensure that buyers are identified as trafficking-related offenders, these laws may still fail to protect all victims if the conduct of buyers is not intrinsically tied to the basic crime of sex trafficking. If penalties for buyers are merely included as a related crime and not part of the crime of sex trafficking, vulnerable victims could be excluded and denied access to services that would be available if their buyers were recognized as sex trafficking offenders.

Third party control is conceptually mired in the force, fraud or coercion narrative that states are systematically eliminating from their sex trafficking laws. As the force, fraud and coercion gap closes, the state laws that require third party control stand in stark contrast to those that do not include this requirement, as it presents the primary remaining barrier to identifying all commercially sexually exploited juveniles as victims of sex trafficking.