

# ISSUE BRIEF

## COMPONENT 1.1

<b>Area of Law</b>	Criminalization of Domestic Minor Sex Trafficking
<b>The Policy Goal</b>	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.
<b>The Reason</b>	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 buyers, traffickers, and facilitators of commercial sex acts with children.

### Examples of Legislative Solutions

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.

#### District of Columbia

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.”

#### Hawaii

Hawaii specifically criminalizes the sex trafficking of a minor under Haw. Rev. Stat. Ann. § 712-1202 (Sex trafficking), which states, “(1) A person commits the offense of sex trafficking if the person knowingly: (a) Advances prostitution by compelling or inducing a person by force, threat, fraud or intimidation to engage in prostitution, or profits from such conduct by another; or (b) advances or profits from prostitution of a minor; provided that with respect to

the victim’s age, the prosecution shall be required to prove only that the person committing the offense acted negligently.”

#### 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, receive, isolate, entice, 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.”

## Montana

Mont. Code Ann. § 45-5-702(1) (Trafficking of persons) states that “[a] person commits the offense of trafficking of persons if the person purposely or knowingly: (a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or (b) benefits, financially or by receiving anything of value, from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.” Mont. Code Ann. § 45-5-704(1) (Sexual servitude) states, “A person commits the offense of sexual servitude if the person purposely or knowingly: (a) uses coercion or deception to compel an adult to engage in commercial sexual activity; or (b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.”

## Oregon

Or. Rev. Stat. § 163.266(1)(c) (Trafficking in persons) states, “[a] person commits the crime of trafficking in persons if the person knowingly 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 and . . . (c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.”

## South Dakota

S.D. Codified Laws § 22-49-1 (Human trafficking prohibited) states, “No person may recruit, harbor, transport, provide, receive, or obtain,

by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. No person may benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion.”

## Tennessee

Tennessee directly addresses human trafficking through Tenn. Code Ann. § 39-13-309 (Trafficking a person for a commercial sex act), which states, “(a) A person commits the offense of trafficking a person for a commercial sex act who: (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person’s provision of a commercial sex act; or (2) Recruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.” Tenn. Code Ann. § 39-13-301(15) defines “commercial sex act” as (A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.”

## Wisconsin

Wis. Stat. § 948.051 (Trafficking of a child) states, “(1) Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a) 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 act” means 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).