

ISSUE BRIEF

COMPONENT 1.3

Area of Law	Criminalization of Domestic Minor Sex Trafficking
The Policy Goal	Prostitution statutes refer to the sex trafficking statute to acknowledge the intersection of prostitution with trafficking victimization.
The Reason	Prostitution laws that refer to the state sex trafficking law enable identification of sex trafficking victims and promote access to protections and benefits available under federal and state statutes intended for trafficking victims. Whether through a direct requirement that law enforcement report commercially sexually exploited minors as an incident of sex trafficking, or through an affirmative defense acknowledging that trafficking victims should not be held liable for conduct committed as a result of their victimization, referring to the trafficking statute is necessary to align the treatment of victims under prostitution and sex trafficking laws. Providing this clarity in the prostitution law furthers efforts to track the scope of sex trafficking in the state and identify victim-centered ways in which to counter it. To accomplish these goals, prostitution laws should refer to the trafficking law when the person charged or victimized is a minor or a victim under the state human trafficking law, regardless of whether someone is charged or prosecuted. Ensuring the criminal code is designed to acknowledge the intersection of prostitution with trafficking victimization promotes accurate identification and appropriate responses to the specific needs of this victim population.

Examples of Legislative Solutions

The following state prostitution laws refer to the state or federal human trafficking statute.

Arkansas

Ark. Code Ann. § 5-70-102(c) (Prostitution) and § 5-70-103(c) (Sexual solicitation) state, “It is an affirmative defense to prosecution [under this section] that the person engaged in an act of [prostitution or sexual solicitation] as a result of being a victim of trafficking of persons.”

Connecticut

Conn. Gen. Stat. § 53a-82 (Prostitution: Class A misdemeanor) states, “(a) A person eighteen years of age or older is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee; (b) In any prosecution for an offense under this section [Prostitution: Class A misdemeanor], it shall be an affirmative defense that the actor was a victim of conduct by another person that constitutes (1) a violation of section 53a-192a [Trafficking in persons], as amended by this act, or (2) a criminal violation of 18 U.S.C. Chapter 77 [Peonage, slavery, and trafficking in persons], as amended from time to time.”

Florida

Fla. Stat. Ann. § 796.001 (Offenses by adults involving minors; intent) states, “It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter [Prostitution] be prosecuted under other laws of this state, such as, but not limited to, s. 787.06 [Human trafficking], chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent Exposure], s. 810.145 [Video voyeurism], chapter 827 [Abuse of children], and chapter 847 [Obscenity]. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.”

Georgia

Ga. Code Ann. § 16-3-6(b) (Affirmative defenses to certain sexual crimes) states, “[a] person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed by an accused who was: (1) Less than 18 years of age at the time of the conduct such person was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46 [Trafficking of persons for labor or sexual servitude]; or (2) Acting under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-

5-46.” Pursuant to Ga. Code Ann. § 16-3-6(a)(4), “[s]exual crime” is defined as “prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.”

Illinois

Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14(d) (Prostitution) refers to Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) stating, “Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section [Prostitution] is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987, a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 [Trafficking in persons, involuntary servitude, and related offenses] of this Code to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.” Additionally, 720 Ill. Comp. Stat. Ann. 5/11-14(c-5) refers to the human trafficking law to provide an affirmative defense to prostitution charges, stating, “It is an affirmative defense to a charge under this Section that the accused engaged in or performed prostitution as a result of being a victim of involuntary servitude or trafficking in persons as defined in Section 10-9 [Trafficking in persons, involuntary servitude, and related offenses] of this Code”

Louisiana

La. Rev. Stat. Ann. § 14:82(G)(1) (Prostitution; definition; penalties; enhancement) provides an affirmative defense from prosecution for prostitution offenses if “during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes” as provided in La. Rev. Stat. Ann. § 14:46.3(E) (Trafficking of children for sexual purposes). Additionally, La. Rev. Stat. Ann. § 14:46.2(F)(1) (Human trafficking) establishes an affirmative defense for victims of human trafficking, stating, “(1) A victim of trafficking involving services that include commercial sexual activity or any sexual contact which constitutes a crime pursuant to the laws of this state shall have an affirmative defense to prosecution for any of the following offenses which were committed as a direct result of being trafficked: (a) R.S. 14:82 (Prostitution); (b) R.S. 14:83.3 (Prostitution by massage); (c) R.S. 14:83.4 (Massage; sexual conduct prohibited); (d) R.S.

14:89 (Crime against nature); (e) R.S. 14:89.2 (Crime against nature by solicitation).”

Nebraska

Neb. Rev. Stat. Ann. § 28-801(1) (Prostitution; penalty) states, “[e]xcept as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318 [Terms, defined], with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.” Neb. Rev. Stat. Ann. § 28-801(5)(a), however, states that “[i]f the law enforcement officer determines . . . that a person suspected of or charged with a violation of subsection (1) of this section is . . . a person engaging in those acts as a direct result of being a trafficking victim as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined], such person shall be immune from prosecution for a prostitution offense”

Wyoming

Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) states, “Except as provided in W.S. 6-2-701 through 6-2-710 [including § 6-2-702 (Human trafficking) and § 6-2-706 (Sexual servitude of a minor)], a person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion, as defined by W.S. 6-2-301(a)(vii), for money or other property commits prostitution which is a misdemeanor”