

ISSUE BRIEF

COMPONENT 5.2

Area of Law	Protective Provisions for the Child Victims
The Policy Goal	The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.
The Reason	Commercial sex acts with a minor are in and of themselves criminal acts. For this reason, a minor’s consent or apparent willingness to engage in the commercial sexual conduct is irrelevant to the prosecution of these offenses. Permitting a defense to prosecution or civil action based on the child’s willingness to engage in commercial sex acts incorrectly implies that a minor, or another person, could authorize criminal sex acts with that child. Sex trafficking laws that do not expressly prohibit a defense based on the child’s willingness to engage in commercial sex acts unfairly shifts the burden to the child to prove she or he did not in fact consent and may result in shielding buyers, traffickers, and facilitators from prosecution and liability while exposing the child to re-traumatizing testimony to counter this defense. Permitting a defense based on a minor’s willingness to engage in commercial sex acts conflicts with the understanding that commercially sexually exploited children are victims of child sexual abuse and perpetuates the damaging perception of these children as willingly delinquent youth. Accordingly, an express prohibition on this defense is critical in the trafficking context to protect child sex trafficking victims from perceived culpability and aid in their identification as victims of child sexual abuse.

Examples of Legislative Solutions

Alabama

Alabama’s human trafficking statute lists evidence which cannot serve as a defense in the prosecution of a human trafficking case. Pursuant to Ala. Code § 13A-6-154(3) (Evidence of certain facts or conditions not deemed a defense), any facts relating to “consent of or permission by a victim of human trafficking or anyone else on the victim’s behalf to any commercial sex act or sexually explicit performance . . .” are excluded from evidence.

Louisiana

Pursuant to La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes), “Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this section.” La. Rev. Stat. Ann. § 14:46.2(A)(1)(b) (Human trafficking) also prohibits this defense, stating, “It shall not be a defense to prosecution . . . that the victim consented to the prohibited activity.”

Minnesota

Minn. Stat. Ann. § 609.325(2) (Defenses) expressly states that “[c]onsent . . . shall be no defense to prosecutions under 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties].” Furthermore, Minn. Stat. Ann. § 609.284(1) (Labor or sex trafficking crimes; defenses, civil liability; corporate liability) and § 609.283(3) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) clarify that “[i]n an action under this section the consent or age of the victim is not a defense.”

Nevada

Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: Definitions; penalties; exceptions) states, “Consent of a victim of pandering or sex trafficking to an act of prostitution is not a defense to a prosecution for any of the acts prohibited in this section.”

North Carolina

N.C. Gen. Stat. § 14-43.11(c1) (Human trafficking), § 14-43.12(c1) (Involuntary servitude), and § 14-43.13(b1) (Sexual servitude) state, in part, that “consent of a minor is not a defense to prosecution under this section.”

South Carolina

S.C. Code Ann. § 16-3-2020(K) (Trafficking in persons) states, “[e]vidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation: . . . (3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section”

Vermont

Vt. Stat. Ann. tit. 13, § 2652(d) (Human trafficking) states, “In a prosecution for a violation of this section, the victim’s alleged consent to the human trafficking is immaterial and shall not be admitted.”

Washington

Washington prohibits a consent defense under its trafficking law and several of its commercial sexual exploitation of children laws:

Wash. Rev. Code § 9A.40.100(5) (Trafficking) states, “If the victim of any offense identified in this section is a minor, force, fraud, or coercion are not necessary elements of an offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.”

Wash. Rev. Code § 9.68A.101(4) (Promoting sexual abuse of a minor – Penalty) states, “Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.”

Wash. Rev. Code § 9.68A.100(4) (Commercial sexual abuse of a minor) states, “Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.”

Wash. Rev. Code § 9.68A.102(3) (Promoting travel for commercial sexual abuse of a minor) states, “Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense to any offense listed in this section.”

Wash. Rev. Code § 9.68A.103(3) (Permitting commercial sexual abuse of a minor) states, “Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.”