

# ISSUE BRIEF

## COMPONENT 5.3

<b>Area of Law</b>	Protective Provisions for the Child Victims
<b>The Policy Goal</b>	State law prohibits the criminalization of minors under 18 for prostitution offenses.
<b>The Reason</b>	State human trafficking laws serve the purpose of making the actions of traffickers, buyers, and facilitators criminal while protecting the victims. Therefore, it is counterproductive and confusing to retain state statutes that permit prostituted children—trafficking victims—to also be charged and prosecuted for prostitution. Criminal prostitution statutes should be amended to remove any criminal responsibility from child victims of commercial sexual exploitation under the age of 18. Domestic minor sex trafficking victims and prostituted children are the same persons and, as such, they should consistently be treated as victims under every state law.

### Examples of Legislative Solutions

The following state laws eliminate criminal liability for minors for prostitution:

#### District of Columbia

D.C. Code § 22-2701(d) states, “(1) A child who engages in or offers to engage in a sexual act or sexual contact in return for receiving anything of value shall be immune from prosecution for a violation of subsection (a) of this section. (2) The Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under § 22-1834.”

#### Illinois

Pursuant to 720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution) “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section 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 [705 ILCS 405/2-5 and 705 ILCS 405/2-6]. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987 [705 ILCS 405/2-6], 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

of this Code [720 ILCS 5/10-9] 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 [325 ILCS 5/7.4 et seq.].” Furthermore, 720 Ill. Comp. Stat. Ann. 5/11-14.3(a) (2)(C) (Promoting prostitution) clarifies that an offense for profiting from prostitution by “any means . . . including from a person who patronizes a prostitute . . . does not apply to a person engaged in prostitution who is under 18 years of age. A person cannot be convicted of promoting prostitution under this paragraph (C) if the practice of prostitution underlying the offense consists exclusively of the accused’s own acts of prostitution under Section 11-14 of this Code [720 ILCS 5/11-14 [Prostitution]].”

#### Indiana

Ind. Code Ann. § 35-45-4-2(a) (Prostitution) states, “[a] person at least eighteen (18) years of age who knowingly or intentionally: (1) performs, or offers or agrees to perform, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5); or (2) fondles, or offers or agrees to fondle, the genitals of another person; for money or other property commits prostitution, a Class A misdemeanor . . . .”

#### Kentucky

Ky. Rev. Stat. Ann. § 529.120 (Treatment of minor suspected of prostitution offense) provides that “(1) Notwithstanding KRS 529.020 [Prostitution] or 529.080 [Loitering for prostitution purposes], if it is determined after a reasonable period of

custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080. (2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to KRS 620.030 [Duty to report dependency, neglect, abuse, or human trafficking]. Pursuant to KRS 620.040 [Duties of prosecutor, police, and cabinet], the officer may take the minor into protective custody. (3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to KRS 620.029 [Duties of cabinet relating to children who are victims of human trafficking].”

### Minnesota

A child whose conduct would violate Minn. Stat. Ann. § 609.324(6) (Patrons; Prostitutes; Housing Individuals engaged in prostitution; Penalties) or § 609.3243 (Loitering with intent to participate in prostitution) if the child were an adult cannot be considered a delinquent child. “Delinquent child” is expressly defined to “not include a child alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct.” Minn. Stat. Ann. § 260B.007(6)(c). Additionally, Minn. Stat. Ann. § 260B.007(16)(d) (Juvenile petty offender; juvenile petty offense), clarifies that a “juvenile petty offense” will not include: “a child alleged to have violated any law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.” These provisions effectively make it impossible for minors to be treated as delinquent children for engaging in commercial sex acts. Instead, pursuant to Minn. Stat. Ann. § 260C.007(6) (11), commercially sexually exploited minors can be treated as a “child in need of protection or services” which will be defined to include “sexually exploited youth.”

### Mississippi

Miss. Code Ann. § 97-29-49(4) (Prostitution) provides that “[i]f it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4, that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4) shall be applicable.” Pursuant to Miss. Code Ann. § 97-3-54.4(q) (Human Trafficking Act; definitions), “[t]rafficked person” means a person subjected to the practices prohibited by this act regardless of whether

a perpetrator is identified, apprehended, prosecuted or convicted, and is a term used interchangeably with the terms ‘victim,’ ‘victim of trafficking’ and ‘trafficking victim.’” Since anyone who “causes or attempts to cause a minor to engage in commercial sexual activity . . .” commits an offense under § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), any minor who engages in prostitution would qualify as a victim of trafficking and immunity under Miss. Code Ann. § 97-29-49(4).

### Nebraska

Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty) states, “If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is (a) 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 or (b) a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subjected to temporary custody under section 43-248 [Temporary custody of juvenile without warrant] and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 [Human trafficking] to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.”

### New Hampshire

N.H. Rev. Stat. Ann. § 633:7(VI) (Trafficking in persons) states, “A victim under this section who was under 18 years of age at the time of the offense shall not be subject to juvenile delinquency proceeding . . . or prosecuted for conduct chargeable as indecent exposure and lewdness under RSA 645:1 or prostitution under RSA 645:2, where the conduct was committed as a direct result of being trafficked.” Further, N.H. Rev. Stat. Ann. § 645:2(V) (Prostitution and related offenses) states, “a person under 18 years of age shall not be subject to a juvenile delinquency proceeding . . . or criminal prosecution for the commission of an offense under subparagraph I(a).”

### North Carolina

N.C. Gen. Stat. § 14-204(c) (Prostitution) states that “[n]otwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a

violation of this section is a minor, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301 [Duty to report abuse, neglect, dependency, or death due to maltreatment], a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 [Human Trafficking] and G.S. 14-43.13 [Sexual servitude] to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 [Duty to report abuse, neglect, dependency, or death due to maltreatment], and G.S. 7B-302 [Assessment by director].”

### Tennessee

Tenn. Code Ann. § 39-13-513(d) states, “[n]otwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the National Human Trafficking Resource Center hotline and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.”

### Vermont

Vt. Stat. Ann. tit. 13, § 2652(c)(1)(B), (Human trafficking) states, “Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the Criminal Division of the Superior Court for a violation of section 2632 of this title [Prostitution], but may be treated as a juvenile under 33 V.S.A. chapter 52 [delinquency proceedings] or referred to the department for children and families for treatment under 33 V.S.A. chapter 53 [Children in need of supervision].” Subsection (c)(2) states, “If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)-(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion

by a sex trafficker.” Pursuant to subsection (e) “If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.”

### Wyoming

Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) provides an exception to criminalization for commercially sexually exploited minors, stating, “Except as provided in W.S. 6-2-701 through 6-2-710, [Wyo. Stat. Ann. § 6-2-701 (Definitions), § 6-2-702 (Human trafficking in the first degree; penalty), § 6-2-703 (Human trafficking in the second degree; penalty), § 6-2-705 (Sexual servitude of a minor), § 6-2-707 (Patronizing a victim of sexual servitude), § 6-2-708 (Victim defenses; vacating convictions)] a person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion . . . for money or other property commits prostitution . . . .”