

# ISSUE BRIEF

## COMPONENT 5.4

<b>Area of Law</b>	Protective Provisions for the Child Victims
<b>The Policy Goal</b>	State law provides a non-punitive avenue to specialized services through one or more points of entry.
<b>The Reason</b>	Juvenile sex trafficking victims may come to the attention of service providers through various points of entry. Without clear statutory mechanisms to direct juvenile sex trafficking victims away from the delinquency system and into specialized services, victims may face an adversarial juvenile justice process that is inherently inappropriate and ineffective for addressing the holistic needs of survivors. Alternatively, relying solely on child serving agencies, such as child welfare, without providing a statutory method for connecting victims to specialized services may result in such victims' needs being left unattended or the juveniles remaining in vulnerable environments, which may result in re-victimization. Accordingly, one or more statutory, non-punitive avenues to specialized services is necessary to protect juvenile sex trafficking victims and promote access to comprehensive services that help alleviate the effects of trafficking victimization and aid in the child's healing.

### Examples of Legislative Solutions

The following statutes establish non-punitive avenues to specialized services for juvenile sex trafficking victims.

#### Florida

Pursuant to Fla. Stat. Ann. § 39.01(15)(g) (Proceedings related to children), “‘Child who is found to be dependent’ means a child who, pursuant to this chapter, is found by the court . . . [t]o have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.” Fla. Stat. Ann. § 39.01(71) provides that “‘Sexual abuse of a child’ for purposes of finding a child to be dependent means one or more of the following acts . . . (g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; 2. Engage in a sexual performance, as defined by chapter 827; or 3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g) [Human trafficking].”

Under Fla. Stat. Ann. § 39.401(2)(b) (Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department), when a law enforcement officer takes a child into custody and has probable cause to believe that the child has been sexually exploited, “the law

enforcement officer shall deliver the child to the department [of Children and Families].” Minors who are suspected of or found to be commercially sexually exploited must be assessed for services and placement in a safe house or safe foster home pursuant to Fla. Stat. Ann. § 39.524 (Safe harbor placement).

Fla. Stat. Ann. § 409.1678(2)(c)(5), (e) (Specialized residential options for children who are victims of commercial sexual exploitation) requires that safe houses are secure with staff awake 24 hours a day and that certain staff or contract personnel receive special training to work with sexually exploited youth. Short-term safe houses must also “provide services tailored to the needs of child victims of commercial sexual exploitation and . . . conduct a comprehensive assessment of the service needs of each resident.” Fla. Stat. Ann. § 409.1678(2)(d).

Under, Fla. Stat. Ann. § 796.07(2)(e) (Prohibiting prostitution and related acts), minors may not be prosecuted for prostitution offenses. Fla. Sta. Ann. § 985.125 (Prearrest or postarrest diversion programs) provides an opportunity for a child arrested for another delinquent act to participate in a diversion program. Pursuant to Fla. Stat. Ann. § 409.1678(5), specialized services “may be available to all sexually exploited children whether such services are accessed voluntarily, as a condition of probation, through a diversion program, through a [dependency] proceeding . . . , or through a referral from a local community-based care or social service agency.”

## Kansas

Kan. Stat. Ann. § 38-2231(b)(3) (Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway) states, “[a] law enforcement officer shall take a child under 18 years of age into custody when the officer: reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.” When a child has been taken into custody pursuant to this provision, Kan. Stat. Ann. § 38-2232(b)(2) states, “the law enforcement officer shall place the child in protective custody and may deliver the child to a staff secure facility. The law enforcement officer shall contact the department of children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a juvenile detention facility or other secure facility . . . .”

Kan. Stat. Ann. § 65-535(b), (c) (Staff secure facility; requirements; services; rules and regulations) provides that “(b) A staff secure facility shall provide the following services to children placed in such facility, as appropriate, for the duration of the placement: (1) Case management; (2) life skills training; (3) health care; (4) mental health counseling; (5) substance abuse screening and treatment; and (6) any other appropriate services. (c) Service providers in a staff secure facility shall be trained to counsel and assist victims of human trafficking and sexual exploitation.”

Pursuant to Kan. Stat. Ann. § 38-2287(a) (Child in custody, victim of certain conduct), “[w]henver a child is in custody, as defined in K.S.A. 2016 Supp. 38-2202 [Definitions], and amendments thereto, and there is reason to believe such child has been subjected to an act which would constitute human trafficking or aggravated human trafficking . . . or commercial sexual exploitation of a child, . . . or the child committed an act which, if committed by an adult, would constitute selling of sexual relations, . . . the court shall refer the child to the secretary for children and families for an assessment to determine safety, placement, treatment and service needs for the child. The secretary shall use a validated, evidence-based assessment tool or instrument to assess such needs and shall make appropriate recommendations to the court . . . .”

## Kentucky

Ky. Rev. Stat. Ann. § 529.120 provides, “(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 – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions – Penalties]. Pursuant to KRS 620.040 [Duties of prosecutor, police, and cabinet – Prohibitions as to school personnel – Multidisciplinary teams], 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].”

Ky. Rev. Stat. Ann. § 620.029(1) (Duties of cabinet relating to children who are victims of human trafficking) states that “[i]n order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010, the cabinet shall: (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3) [Duties to report dependency, neglect, abuse, or human trafficking]; (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.”

Ky. Rev. Stat. Ann. § 15A.068(1) (Duties of department if child may be victim of human trafficking; administrative regulations) specifies that “[i]f, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in KRS 529.010 [Definitions], the department shall: (a) File a report with the Cabinet for Health and Family Services pursuant to KRS 620.030 [Duty to report dependency, neglect, abuse, or human trafficking]; (b) Notify the child’s attorney that the child may be a victim of human trafficking; and (c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services. (2) After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c) of this section. The administrative regulations shall include provisions for

appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.”

separate and distinct service needs according to gender and appropriate services shall be made available while ensuring that an appropriate continuum of services exists.”

## Massachusetts

Mass. Gen. Laws ch. 119, § 21 defines “child requiring assistance,” in part, as “a child between the ages of 6 and 18 who . . . is a sexually exploited child.” Mass. Gen. Laws ch. 119, § 21 defines a “sexually exploited child” as “any person under the age of 18 who has been subjected to sexual exploitation because such person: (1) is the victim of the crime of sexual servitude pursuant to section 50 of chapter 265 or is the victim of the crime of sex trafficking as defined in 22 United States Code 7105; (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, in violation of subsection (a) of section 53A of chapter 272, or in exchange for food, shelter, clothing, education or care; (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution under by section 4A of chapter 272; or (4) engages in common night walking or common streetwalking under section 53 of chapter 272.”

Mass. Gen. Laws ch. 119, § 39K(a)–(c) (Sexually exploited children – child welfare services) states, “(a) Notwithstanding any general or special law to the contrary, the department of children and families, in collaboration with the department of mental health and other appropriate state agencies, shall: (i) provide for the child welfare services needs of sexually exploited children including, but not limited to, services for sexually-exploited children residing in the commonwealth at the time they are taken into custody by law enforcement or are identified by the department as sexually-exploited children, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and (ii) provide appropriate services to a child reasonably believed to be a sexually exploited child in order to safeguard the child’s welfare. If a child reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the department or any person may file a care and protection petition under section 24. Sexually exploited children shall have access to an advocate. The advocate or a member of the multidisciplinary service team established under section 51D shall accompany the child to all court appearances and may serve as a liaison between the service providers and the court. (b) The services that shall be provided under this section shall be available to all sexually exploited children, whether they are accessed voluntarily, through a court proceeding under this section or through a referral, which may be made by any person. (c) In determining the need for and capacity of the services that may be provided under this section, the department of children and families shall recognize that sexually exploited youth have

## Nevada

Nev. Rev. Stat. Ann. § 62C.240 (Court referral for court supervisions pursuant to supervision and consent decree of child alleged to have engaged in prostitution or solicitation of prostitution; violation of supervision and consent decree or order’ dismissal of petition) states, “1.(a) If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court . . . shall: (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive . . . . 2. If a child is placed under a supervision and consent decree pursuant to this section, the juvenile court may issue any order authorized by chapter 62E of NRS [Disposition of cases by juvenile court], including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest . . . .”

## Washington

Wash. Rev. Code Ann. § 13.32A.030(17) (Definitions—Regulating leave from semi secure facility) defines “sexually exploited child” as “any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.” Sexually exploited children may be taken into custody and ultimately transported to a crisis residential center. Wash. Rev. Code Ann. §§ 43.185C.260(1), 43.185C.265. Wash. Rev. Code Ann. § 74.15.255(2) (Licenses for secure or semi-secure crisis residential centers or HOPE centers—Requirement—Access to person trained to work with needs of sexually exploited children) requires each crisis residential center to have on staff, or otherwise provide “access to, a person who has been trained to work with the needs of sexually exploited children.”

Further, Washington law provides a juvenile sex trafficking victim with a mandatory avenue to specialized services in conjunction with diversion for a prostitution or prostitution loitering offense. Pursuant to Wash. Rev. Code Ann. §

13.40.070(7)(a) (Complaints—screening—filing information—diversion), “[w]here a case is legally sufficient to charge an alleged offender with: (a) [e]ither prostitution or prostitution loitering and the alleged offense is the offender’s first prostitution or prostitution loitering offense, the prosecutor shall divert the case . . . .” Further, Wash. Rev. Code Ann. § 13.40.087 (Youth who have been diverted—Alleged prostitution or prostitution loitering offenses—Services and treatment) states, “[w]ithin available funding, when a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that youth with the services and treatment specified in RCW . . . 74.14B.070.”

In turn, Wash. Rev. Code Ann. § 74.14B.070 (Child victims of sexual assault or sexual abuse—Early identification, treatment) provides, “[t]he department of [children, youth, and families] shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents . . . .”

For subsequent prostitution or prostitution loitering offenses, Wash. Rev. Code Ann. § 13.40.213(1) (Juveniles alleged to have committed offenses of prostitution or prostitution loitering—diversion) states, “[w]hen a juvenile is alleged to have committed the offense of prostitution or prostitution loitering, and the allegation, if proved, would not be the juvenile’s first offense, a prosecutor may divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program that provides: (a) Safe and stable housing; (b) Comprehensive on-site case management; (c) Integrated mental health and chemical dependency services, including specialized trauma recovery services; (d) Education and employment training delivered on-site; and (e) Referrals to off-site specialized services, as appropriate.”