

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

STATE IMPACT

PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (PSTSFA) JUSTICE FOR VICTIMS OF TRAFFICKING ACT (JVTA)

JVTA Provisions Relating to Demand for Sex Trafficking Victims and the Federal Definition of Child Sex Trafficking

This State Impact memo summarizes provisions of the Justice for Victims of Trafficking Act and the Preventing Sex Trafficking and Strengthening Families Act that impact state laws and/or require or encourage implementation at the state level. This memo does not analyze all of the provisions in these federal bills, but specifically focuses on the provisions that impact state laws analyzed under the [Protected Innocence Challenge](#).

Justice for Victims of Trafficking Act – Demand Provisions at a Glance:

- > Clarified the role of buyers in the offense of sex trafficking
- > Clarified that the definition of a child sex trafficking victim under federal law includes any commercially sexually exploited child.

Relevant Changes: Section 108 (Reducing demand for sex trafficking) of the Justice for Victims of Trafficking Act, enacted May 29, 2015, adds “patronizes” and “solicits” as prohibited conduct under the federal sex trafficking law. Section 109 (Sense of Congress) expressly states that this language was added to clarify Congress’ intent that the trafficking law apply to buyers, and that the new language resolves conflicting interpretations in recent court decisions to ensure that courts do not depart from Congress’ intent.

Impact on Demand: With the addition of “patronizes” and “solicits” the conduct of buyers is clearly and specifically criminalized as a crime of sex trafficking. Moreover, section 109 confirms that the federal sex trafficking law already applied to buyers and that specifically prohibiting patronizing and soliciting served to clarify the law, not establish a new penalty.

Consequently, state trafficking laws that include the actions listed in the federal sex trafficking law have persuasive authority to apply to buyers of sex with minors in state cases, and not just traffickers or those who profit from trafficking.

Impact on State Child Sex Trafficking Definitions: Federal law does not require that a child be under the control of a third party trafficker or be subjected to force, fraud or coercion in order to come within the definition of a child sex trafficking victim. Therefore, any state sex trafficking law that tracks the federal law would also identify a commercially sexually exploited child as a victim of sex trafficking. To the extent that state laws differ from federal law by requiring third party control or otherwise limiting the definition of a victim to exclude some commercially sexually exploited children, those states’ definitions of a child sex trafficking victim will be inconsistent with federal law.

Impact on the Definition of a Child Sex Trafficking Victim:

Clarifying that the federal sex trafficking law applies to the conduct of buyers also confirms and clarifies that any commercially sexually exploited child is a victim of sex trafficking under federal law. Since buyers are specifically included as offenders in the federal sex trafficking law, a child who is commercially sexually exploited by a buyer but does not have (or will not identify) a trafficker, will still be identified as a victim of sex trafficking under federal law.

Legislative Implementation by the States:**State Stats at a Glance:**

- > 19 states require third party control to establish the crime of child sex trafficking
- > 23 states have a narrow definition of child sex trafficking that is inconsistent with the federal definition
- > 4 states do not require third party control but otherwise limit the definition of child sex trafficking.

Currently, 19 states have enacted sex trafficking laws requiring third party control to establish the crime of child sex trafficking. Another four states do not require third party control because buyers of sex with minors are criminalized under the core sex trafficking law, but otherwise limit the definition of a child sex trafficking victims, making the state sex trafficking law inconsistent with the federal definition in a total of 23 states.

In the 2016 legislative session, Wisconsin and Utah amended their sex trafficking laws to align with the federal sex trafficking law, as amended by the JVTa to clarify the application to buyers of sex acts. Also in the 2016 session, New Hampshire enacted legislation that eliminated the third party control requirement in its sex trafficking law by expressly criminalizing the purchase of sex with a minor under the human trafficking law.

See Shared Hope's *National State Law Survey on Child Sex Trafficking Definitions*, and Fact Sheet, Policy Paper and Executive Summary on *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*.

JVTA Amendments to Child Abuse Prevention and Treatment Act (CAPTA)

Justice for Victims of Trafficking Act – CAPTA Amendments at a Glance:

- > Directs child welfare agencies to identify and provide services to child sex trafficking victims.
- > Directs child welfare agencies to train case workers on identifying and providing services to child sex trafficking victims.
- > Amends the definition of an abused and neglected child to include child sex trafficking victims regardless of parent or caregiver fault.
- > States receiving federal CAPTA funding must be in compliance with the CAPTA amendments enacted in the JVTA.

Relevant changes: Section 802 of the JVTA (effective May 29, 2017) amends the Child Abuse Prevention and Treatment Act (CAPTA) to add as a requirement for CAPTA funding that the state train child welfare case workers to identify, assess and provide comprehensive services to child sex trafficking victims, as well as identify and track all reports of child abuse that involve child sex trafficking. Additionally, Section 802 amends the definition of an abused or neglected child for purposes of CAPTA to include child sex trafficking victims without regard to the perpetrator of abuse. Since this eliminates the jurisdictional barrier that prevents child welfare agencies from serving child sex trafficking victims who were not subjected to abuse by a parent or caregiver, all child sex trafficking victims—which includes all commercially sexually exploited children consistent with the federal definition of child sex trafficking—are entitled to comprehensive services through child welfare.

Impact: In order to comply with the requirement to track, report and train caseworkers to respond to child sex trafficking victims, states may have to address statutory barriers that limit the definition of a child sex trafficking victims under state law, as well as barriers to responding to child victims as abused children. See Shared Hope’s *National State Law Survey on Barriers to Child Welfare Involvement*. With these CAPTA amendments, it is important for states to note that the requirement to identify, track and provide services to child sex trafficking victims under CAPTA apply to all commercially sexually exploited children since the federal definition of a child sex trafficking victim, as clarified by the JVTA, includes any commercially sexually exploited child. Since the definition of a commercial sex act includes any exchange of sex acts for something of value, children who exchange sex acts for housing or other basic necessities are also included in this definition.

Legislative Implementation by the States:

As of August 1, 2016, 31 states and the District of Columbia include CSEC or sex trafficking within the definitions of abuse, and 32 states and the District of Columbia do not statutorily limit child welfare’s ability to intervene when the perpetrator of abuse is a parent or caregiver. However 23 states have statutory barriers to child welfare involvement on behalf of child sex trafficking victims. In the 2016 legislative session, 10 states—Colorado, Georgia, Hawaii, Indiana, Iowa, Mississippi, Tennessee, Utah, Virginia and Wisconsin—removed statutory barriers to child welfare involvement in child sex trafficking cases.

Preventing Sex Trafficking and Strengthening Families Act

Preventing Sex Trafficking and Strengthening Families Act: Child Sex Trafficking Amendments at a Glance:

> Directs child welfare agencies (and probation departments when a child is receiving child welfare services) to implement policies and procedures to identify exploited children and those at risk, determine appropriate services and document information in relevant case management systems.

> Federal Title IV-E funding, which is the largest federal funding stream for child welfare services, reimburses state child welfare agencies for, among other things, the cost of providing foster care. This funding is dependent on compliance with PSTSFA.

Relevant changes: Sections 101-105 of PSTSFA amend Title IV-E of the Social Security Administration Act to add state plan requirements related to child sex trafficking. States must comply with these requirements to be eligible to receive federal foster care funds under Title IV-E. Section 101 requires state agencies to show that they have “policies and procedures (including relevant training for caseworkers) for identifying, documenting in agency records, and determining appropriate services” for any child under care or supervision of child welfare “who the State has reasonable cause to believe is, or is at risk of being, a victim of sex trafficking or a severe form of trafficking in persons.” Sections 102-103, PSTSFA. The PSTSFA was enacted September 29, 2014.

Impact: In light of the CAPTA amendments that define an abused and neglected child to include child sex trafficking victims, and the JvTA’s clarification of the definition of a child sex trafficking victim as including any commercially sexually exploited child, compliance with PSTSFA requires state child welfare agencies to identify, document, report and provide services to any child believed to be commercially sexually exploited or believed to be at risk of commercial sexual exploitation, and “over whom the State agency has responsibility for placement, care or supervision.”

Training and guidance for caseworkers on identification of child sex trafficking victims under current federal law, as well as how to identify risk factors and conduct strength-based assessments to determine risk factors will be critical to successful implementation efforts. Training and resources on best practices for serving child sex trafficking victims will also be critical components of effective state plans. The training and guidance was to be developed by the state in conjunction with state and local law enforcement no later than September 29, 2015. By September 29, 2016, the states were to demonstrate to the Secretary of Health and Human Services that they are implemented. See *JuST Response State Systems Mapping Report*.

Preventing Sex Trafficking and Strengthening Families Act, continued...

Preventing Sex Trafficking and Strengthening Families Act: Child Sex Trafficking Amendments at a Glance (continued):

> Directs state child welfare agencies (and probation departments when a child is receiving child welfare services) to promptly report when a child in care runs away or goes missing.

> Directs state child welfare agencies (and probation departments when a child is receiving child welfare services) to assess recovered children for possible sex trafficking victimization.

Relevant changes: States must also be prepared to comply with the enhanced requirements for reporting when a child in care has gone missing and for conducting targeted, trauma-informed assessments when a child is recovered. No later than September 29, 2015, the states were to implement specific protocols to carry out the enhanced requirements. The state is tasked by the protocol to expeditiously locate any child missing from foster care. When the child is located, they are to be screened to determine their experiences and to see if they were a possible victim of sex trafficking. The primary factors that contributed to the child running away or otherwise being absent from care are determined and addressed in the child's current and subsequent placement. As of September 29, 2016 the state agency shall report within 24 hours of receiving information on missing or abducted children or youth to law enforcement authorities for entry into the National Crime Information Center (NCIC) and the National Center for Missing and Exploited Children (NCMEC). No later than September 29, 2017 and annually thereafter, the state will report to the Secretary of Health and Human Services the total number of children and youth who are sex trafficking victims.

Impact: Since some state sex trafficking laws do not align with the federal definition, tracking, reporting and training policies should be mindful to include all CSEC, regardless of whether the state trafficking law has a more limited definition of child sex trafficking. See Shared Hope's *National State Law Survey on Child Sex Trafficking Definitions*.

Legislative Implementation by the States:

In addition to the advancements made by some states in the 2016 legislative session by eliminating statutory barriers to child welfare involvement in child sex trafficking cases (see above), Virginia now requires training for child welfare caseworkers, Colorado law specifically directs child welfare to respond to child sex trafficking victims and Wisconsin mandated that child welfare report when a child in care is missing.

The Stopping Exploitation Through Trafficking (SETT) Act, as enacted in the JVT A

Stop Exploitation Through Trafficking (SETT) Act Amendments at a Glance:

- > Creates an incentive for states to enact a statutory protective response to limit criminalization of child sex trafficking victims.
- > Compliance with SETT Act increases preference for federal community policing funding.

Relevant Changes: The SETT Act was enacted as Section 601 of the JVT A (Safe Harbor Incentives) authorizing the Department of Justice to give preference to state applications for public safety and community-oriented policing funds when the state has enacted a law to limit criminalization of child sex trafficking victims. To qualify for the preference, the state's laws must:

- (A) treat a minor who has engaged in, or has attempted to engage in, a commercial sex act as a victim of a severe form of trafficking in persons;
- (B) discourage or prohibit the charging or prosecution of an individual described in subparagraph (A) for a prostitution or sex trafficking offense, based on the conduct described in subparagraph (A); and
- (C) encourage the diversion of an individual described in subparagraph (A) to appropriate service providers, including child welfare services, victim treatment programs, child advocacy centers, rape crisis centers, or other social services.

The SETT Act also requires that all minors who have been commercially sexually exploited be treated as victims of sex trafficking. Consequently, states that have a narrowed definition of child sex trafficking under state law must provide protections for all commercially sexually exploited children to comply with the definition of child sex trafficking under federal law.

Legislative Implementation by the States:

In the 2016 legislative session, 19 states and the District of Columbia eliminated criminal liability for minors for prostitution offenses, and 29 states statutorily provide an avenue to services, 22 of which provide access to specialized services. See Shared Hope's *National State Law Survey on Protective Responses for Child Sex Trafficking Victims*. During the 2016 session, Shared Hope tracked bills in 12 states that included non-criminalization for some or all child sex trafficking victims for prostitution offenses. Five of those states enacted bills this session that eliminate criminal liability for minors for prostitution or expand existing non-criminalization provisions.