



# FRAMEWORK BRIEF

## SECTION 1

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

#### LEGAL COMPONENTS

- 1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.
- 1.2 Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.
- 1.3 Prostitution statutes refer to the sex trafficking statute to acknowledge the intersection of prostitution with trafficking victimization.
- 1.4 The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.

#### POLICY BACKGROUND:

Domestic minor sex trafficking (DMST) is the commercial sexual exploitation of American children within U.S. borders and is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children (CSEC). Federal law 18 U.S.C. § 1591(a)(1) makes it a crime when a person “recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means” a minor for the purpose of a commercial sex act. There is no requirement to prove that force, fraud, or coercion was used to secure the victim’s actions if the victim is a minor. This foundational law has been refined and strengthened since its enactment in 2000 and reflects the best approach to criminalizing child sex trafficking. State laws that address this crime specifically and separately from other criminal sex offenses avoid the confusion of relying on a patchwork of laws that were not crafted specifically to apply in these cases, and help law enforcement identify, investigate and prosecute these crimes.

Child sex trafficking cannot, and should not, be addressed solely at the federal level. States must engage their law enforcement and prosecutors to fight this crime at the state level with laws providing comparable penalties for offenders and protections for victims to those provided under federal law. The lack of a child sex trafficking law creates gaps that allow victims to slip through unidentified and unprotected, and allow their exploiters to continue their crimes unimpeded. Child sex trafficking offenses may violate a broad range of state laws, but clearly making the purchase and sale of children for sex acts a separate crime is essential to effectively combat child sex trafficking. When laws do not clearly criminalize the commercial exchange for sex with children, the victims are more likely to be misidentified and consequently denied important protections under the law.

## **KEY GOALS:**

Section 1 of the Protected Innocence Challenge Legislative Framework requires states to have enacted child sex trafficking and related acts of commercial sexual exploitation of a child crimes. These criminal offenses will clarify that the purchase and sale of children for sexual activity is a serious crime requiring a coordinated response. This section seeks to promote accurate identification of victims and successful prosecutions by requiring that trafficking laws protect all minors under 18 regardless of whether force, fraud or coercion was used to cause the minor to engage in commercial sexual activity. Additionally, this section seeks to ensure that appropriate tools are available to dismantle criminal enterprises that engage in child sex trafficking by examining whether state racketeering laws may be used to prosecute sex trafficking. To promote a victim-centered approach to investigating and prosecuting these crimes, this section also examines whether prostitution laws acknowledge the intersection of prostitution with trafficking victimization.

## **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 1
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- National State Law Survey: Force, Fraud or Coercion
- National State Law Survey: Racketeering

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# FRAMEWORK BRIEF

## SECTION 2

### CRIMINAL PROVISIONS ADDRESSING DEMAND

#### LEGAL COMPONENTS

- 2.1 The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.
- 2.2 Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.
- 2.3 Solicitation laws differentiate buying sex acts with an adult and buying sex acts with a minor under 18.
- 2.4 Penalties for buyers of commercial sex acts with minors are as high as federal penalties.
- 2.5 Using the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.
- 2.6 No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.
- 2.7 Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.
- 2.8 Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.
- 2.9 Buying and possessing child pornography carries penalties as high as similar federal offenses.
- 2.10 Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.

#### POLICY BACKGROUND:

America's youth are at risk because of a simple economic principle—demand for sex acts with children drives the market of exploitation. Despite the fact that demand is the ultimate cause of the commercial sexual exploitation of children, buyers frequently are overlooked as offenders in the crime of domestic minor sex trafficking. Federally and internationally, demand has been recognized as a critical component of the sex trafficking crime. Comprehensive state laws that address demand are equally critical to combatting child sex trafficking and ensuring protections for victims.

Leaving buyers out of the child sex trafficking law as offenders, or setting them apart as lesser offenders, creates additional challenges in fighting this crime and identifying the victims. Lower penalties for buying sex acts with a minor discourage law enforcement from aggressively investigating the buyer. Lower penalties imply lesser offenses and deflate the interest of media and impacts public perception that trafficking is only the sale of the child for sex. Prioritizing the investigation, arrest and prosecution of buyers of sex acts with children is essential to reaching the whole scope of this crime and deterring it effectively. It also ensures child victims who will not or are unable to identify a trafficker are still given the protections of the trafficking laws.

Without comprehensive child sex trafficking and commercial sexual exploitation of children laws prosecutors are faced with difficult options. They may be left with general solicitation of prostitution offenses to prosecute a buyer of commercial sex acts, even though the person prostituted is a child. Alternatively, a prosecutor may try to use one

of the sex offense statutes, the elements of which often do not fit those of a sex trafficking case. Statutory rape is the offense most often referred to in such a situation; however, statutory rape laws were not intended to apply to sex trafficking crimes where the means and victimization are based in commercial exploitation.

### **KEY GOALS:**

A primary goal of Section 2 of the Framework is to ensure that state laws criminalizing child sex trafficking and commercial sexual exploitation of children specifically include the conduct of those who buy sex acts with minors. Without these laws, prosecutors are left with incomplete or inappropriate options. This section also seeks to ensure that direct and collateral consequences for buying sex with a child reflect the seriousness of the offense, helping to shift the historical culture of tolerance for this crime to one of zero tolerance. Part of changing this cultural attitude is clarifying that older minors are also in need of protection from commercial sexual exploitation, so this section seeks to ensure that buyer penalties protect all minors under 18 and do not give less severe penalties when the minor is closer to the age of majority. Finally, this section promotes a child protective purpose to both sex trafficking laws and commercial sexual exploitation of children laws by eliminating mistake of age as a defense.

### **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 2
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- National State Law Survey: Buyer-Applicable Laws
- National State Law Survey: Mistake of Age Defense
- National State Law Survey: Base Penalties for Offenses Involving Older Minors
- National State Law Survey: Sex Offender Registration
- National State Law Survey: Internet Offenses
- Demanding Justice Report
- Law Review Article: Prosecuting Demand as a Crime of Human Trafficking

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# FRAMEWORK BRIEF

## SECTION 3

### CRIMINAL PROVISIONS FOR TRAFFICKERS

#### LEGAL COMPONENTS

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.
- 3.2 Creating and distributing child pornography carries penalties as high as similar federal offenses.
- 3.3 Using the Internet or electronic communications to lure, entice, recruit or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.
- 3.4 Financial penalties for traffickers, including asset forfeiture, are sufficiently high.
- 3.5 Convicted traffickers are required to register as sex offenders.
- 3.6 Laws relating to termination of parental rights for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control.

#### POLICY BACKGROUND:

Traffickers prey on the inherent vulnerability of child victims, feigning love and then manipulating their victims' emotions to coerce and cajole their victims into commercial sexual activity, the proceeds of which go to the trafficker. The control exerted over child victims is rarely visible and these young people often appear to be acting independently. Even child sex trafficking victims who are controlled by violence and fear of harm to themselves and their families may appear to be acting on their own. The hidden nature of this crime requires substantial investigative efforts, and as traffickers quickly adapt to new investigative techniques, law enforcement must continuously adapt, especially with the increasing use of the Internet to lure, recruit and sell child victims for sex.

Under federal law, a person convicted of sex trafficking a minor faces serious penalties, including mandatory minimum sentences starting at 10 years imprisonment. These penalties are necessary to counter the overwhelming profit motive driving child sex traffickers, and to bring justice to the victims who have been exploited through sex trafficking. According to the National Center for Missing and Exploited Children, 1 in 5 reported runaways in 2015 were likely sex trafficking victims. That number is up from 1 in 6 in 2014, and 1 in 7 in 2013, reflecting the growing nature of this crime against children in America. With the growth of this crime and the limited federal resources, states cannot rely on federal trafficking laws. Children in every state are depending on state laws to provide them the same protection as that provided under federal law.

#### KEY GOALS:

Establishing serious criminal penalties for sex trafficking a child and protecting trafficking victims are the key goals of Section 3. This section looks at sentencing provisions and the range of financial penalties—from fines to restitution to asset forfeiture—that stop traffickers from enjoying the profits of their criminal enterprise. This section also addresses the need to put the community on notice by ensuring those convicted of child sex trafficking are required to register as sex offenders, and promoting protections for victims by preventing traffickers from controlling their victims by asserting parental rights. Combatting traffickers' use of the Internet to perpetrate sex trafficking is also a critical goal of this section.

## **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 3
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- National State Law Survey: Sex Offender Registration
- National State Law Survey: Mandatory Restitution/Civil Remedies
- National State Law Survey: Internet Offenses

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# FRAMEWORK BRIEF

## SECTION 4

### CRIMINAL PROVISIONS FOR FACILITATORS

#### LEGAL COMPONENTS

- 4.1 The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.
- 4.2 Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.
- 4.3 Promoting and selling child sex tourism is illegal.
- 4.4 Promoting and selling child pornography is illegal.

#### POLICY BACKGROUND:

Facilitators are the individuals and businesses that assist, enable, or financially benefit from domestic minor sex trafficking. Facilitators are often the essential enablers to the crime of child sex trafficking, actively participating in the growth and survival of the criminal enterprise, while rarely facing punishment for their paramount role. Many states do not have the statutory tools to hold facilitators accountable, lacking provisions in human trafficking laws that directly reach those who financially benefit from aiding, assisting or enabling child sex trafficking.

Failing to address the criminal actions of facilitators prevents states from fully tackling domestic child sex trafficking. Under federal law 18 U.S.C. § 1591, a person is guilty of sex trafficking when he or she, “knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in [child sex trafficking].” State laws that hold persons and entities that aid in or profit from child sex trafficking and commercial sexual exploitation of children liable for their financial benefit enable states to approach child sex trafficking cases as an enterprise and avoid the need to rely on a patchwork of laws, such as general racketeering laws, that do not expressly apply in these cases. Serious punishments, including imprisonment, high fines, and asset forfeiture deter facilitators and ensure that child victims receive restitution to fund their often long recovery. Targeting those who facilitate the crime of child sex trafficking is a necessary step towards dismantling the enterprise and a useful tool in confiscating and using the criminal assets to fund rehabilitation services and criminal justice endeavors.

#### KEY GOALS:

Section 4 of the Protected Innocence Challenge Legislative Framework encourages states to enact laws that reach and punish persons and businesses that facilitate the crime of domestic minor sex trafficking. This section seeks to ensure that facilitators are held accountable, through fines and terms of imprisonment, for the key role they play in causing horrific psychological, physical, emotional, and financial harm to child victims of sex trafficking. This section also addresses the specific role of facilitators who profit from the exploitation of child sex trafficking victims through the sale and distribution of images of child sexual abuse and through child sex tourism.

## **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 4
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- National State Law Survey: Facilitator Culpability Under Trafficking Law
- National State Law Survey: Sex Tourism Laws
- White Paper—Online Facilitation
- Arizona Governor’s Task Force Testimony

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# FRAMEWORK BRIEF

## SECTION 5

### PROTECTIVE PROVISIONS FOR CHILD VICTIMS

#### LEGAL COMPONENTS

- 5.1 Victims under the core child sex trafficking offense include all commercially sexually exploited children.
- 5.2 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.
- 5.3 State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 5.4 State law provides a non-punitive avenue to specialized services through one or more points of entry.
- 5.5 Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.
- 5.6 The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.
- 5.7 Crime victims’ compensation is specifically available to a child victim of sex trafficking of CSEC.
- 5.8 Victim-friendly procedures and protections are provided in the trial process for minors under 18.
- 5.9 Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.
- 5.10 Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.
- 5.11 Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

#### POLICY BACKGROUND:

Misidentification—the failure to recognize a child bought or sold for sex acts as a victim of domestic minor sex trafficking—continues to be a barrier to a protective response for these victims. Misidentification causes a chain reaction of negative outcomes, including skewing data, failing to investigate all of the criminals in a child sex trafficking case, and failing to provide services and justice.

To ensure accurate identification of juvenile sex trafficking victims, the crime must be accurately defined. Under federal law, any child who is sold or bought for sex acts is entitled to the protections, services and benefits provided to victims of sex trafficking. However, some state laws have not tracked with the federal definition of a child sex trafficking victim. States that require proof of force, fraud or coercion when the victim is a minor, or restrict the definition of child sex trafficking to the selling but exclude the purchase of sex with a child as a crime under the sex trafficking law risk misidentifying some of the most vulnerable and at-risk victims of juvenile sex trafficking.

Even when definitions in the sex trafficking law are clear, accessing specialized services may be hindered by involving the victim in the juvenile justice process. Law enforcement sometimes feel compelled to charge a juvenile sex trafficking victim with a delinquent offense, including prostitution, in order to detain the child in an effort to keep the child safe, even though detention does not provide specialized services, is often not safe, and detention implies that the child is responsible for his or her own victimization. With this approach and the unique trauma bonding that occurs between victims and their traffickers, these children often return to the person who exploited them. Protective responses in the law establish comprehensive, collaborative, statewide systems to break the cycle and bring justice, contributing to better investigations and prosecution as well. Finally, access to justice must be improved and facilitated through the laws addressing legal claims, rights, and courtroom procedures. This will bring victims into the fight against child sex trafficking and provide them with the psychological and financial means to move beyond the victimization.

## **KEY GOALS:**

The main goals of Section 5 are to promote access to services and establish victim-centered prosecutions and access to justice. At the core of this section is the need to eliminate for minors criminal liability for prostitution and offenses related to the trafficking victimization. This criminal liability is a primary barrier to accessing specialized, trauma-informed services and justice. Identification of victims through definitional clarity under criminal laws is critical to achieving these goals. However, even when victims are identified and provided services, victims may still face barriers to seeking justice against their exploiters. The arrest and prosecution of traffickers and buyers is often based solely on the victim's cooperation in the investigation and testimony at trial; however, requiring victim cooperation can place a heavy burden on a juvenile sex trafficking victim who typically requires more time to disclose the facts of the victimization. Therefore, innovative investigation techniques that reduce the need to rely on victim testimony are an important consideration in protection child sex trafficking victims.

## **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 5
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- Eliminating the Third Party Control Barrier Policy Paper and National State Law Survey
- National State Law Survey: Child Sex Trafficking Definitions
- Non-Criminalization of Juvenile Sex Trafficking Victims Policy Paper
- National State Law Survey: Non-Criminalization of Juvenile Sex Trafficking Victims
- National State Law Survey: Barriers to Child Welfare Involvement
- National State Law Survey: Victim-Witness Protections
- National State Law Survey: Statute of Limitations
- JuST Response State System Mapping Report
- Justice for Juveniles Field Guidance Report

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# FRAMEWORK BRIEF

## SECTION 6

### CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

#### LEGAL COMPONENTS

- 6.1 Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.
- 6.2 Single party consent to audio-taping is permitted in law enforcement investigations.
- 6.3 Wiretapping is an available tool to investigate domestic minor sex trafficking.
- 6.4 Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or sex with a minor.
- 6.5 Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.
- 6.6 Law enforcement agencies are mandated to promptly report missing and recovered children.

#### POLICY BACKGROUND:

As states strengthen criminal laws to better combat domestic minor sex trafficking and protect child victims, law enforcement officers and prosecutors are at the forefront of enforcing those laws, making the development of specialized training and investigative tools important. Law enforcement officers are often the first responders to suspected or known cases of child sex trafficking. They need to be equipped with the knowledge, skills, tools, and support to successfully investigate and arrest offenders, safely protect children, and find missing and recovered children. Through victim-centered, trafficking-specific training, law enforcement will be better positioned to identify children engaged in commercial sex acts as victims of sex trafficking and provide a protective response, directing the criminal enforcement efforts at the buyers and sellers of sex with children. This can reduce the incidences of children being arrested for engaging in commercial sex acts. Law enforcement officers who receive specific training on domestic minor sex trafficking have an increased ability and likelihood to share intelligence, coordinate effective investigations, and increase prosecutions of traffickers and buyers.

To ensure successful investigations and prosecutions of domestic minor sex trafficking offenders, law enforcement requires statutorily authorized investigative tools that also support effective prosecutions. Statutes permitting a variety of investigatory techniques, including single party consent to audiotaping, wiretapping, and decoys, increase the probability of effective arrests and provide the evidence necessary for successful prosecutions. The evidence obtained during such investigations also can be used as corroborative evidence that can protect children who face difficulty testifying in court.

#### KEY GOALS:

Section 6 of the Protected Innocence Challenge Legislative Framework encourages states to enact laws that mandate or authorize appropriate law enforcement trainings, tools, and responses when confronting domestic minor sex trafficking. This section seeks to ensure that law enforcement have the tools necessary to identify children

involved in commercial sex as victims of sex trafficking, and effectively investigate, arrest and prosecute their exploiters. This section addresses the need for specialized investigative tools, such as wiretapping and the use of the Internet and law enforcement decoys which can be used to identify perpetrators and provide evidence for prosecutions, reducing the need to rely on victim testimony. By maintaining updated records of missing and recovered children, who are extremely susceptible to and often exploited through sex trafficking, law enforcement officers are better able to identify and promptly recover child sex trafficking victims.

### **RELATED RESEARCH MATERIALS:**

- Protected Innocence Challenge Component Issue Briefs for Section 6
- Protected Innocence Challenge State Report Cards
- Protected Innocence Challenge State Analysis & Recommendations
- National State Law Survey: Law Enforcement Officer Human Trafficking Training
- National State Law Survey: Missing Child Reporting
- National State Law Survey: Wiretap Laws
- National State Law Survey: Internet Laws

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