

Policy Goal

State law prohibits the criminalization of minors under 18 for prostitution offenses.

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. Recognizing that exploited youth may also be arrested for crimes that they commit as a result of their exploitation, states should consider expanding protections to crimes beyond prostitution that are often associated with trafficking victimization.

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 (3) For the purposes of this subsection, the term ‘child’ means a person who has not attained the age of 18 years.”

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” 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” Similarly, 720 Ill. Comp. Stat. Ann. 5/11.14.1(c) (Solicitation of a sexual act) states, “This Section does not apply to a person engaged in prostitution who is under 18 years of age.”

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(1) (Treatment of minor suspected of prostitution offense) provides that “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.” Additionally, Ky. Rev. Stat. Ann. § 630.125 (Child not to be charged

with or found guilty of status offense related to human trafficking) states, “If reasonable cause exists to believe the child is a victim of human trafficking, as defined in [Ky. Rev. Stat. Ann. § 529.010 (Definitions)], the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.”

MINNESOTA

Pursuant to Minn. Stat. Ann. § 260B.007(6)(c) (Definitions), “The term delinquent child does 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.” Pursuant to Minn. Stat. Ann. § 260B.007(16)(d), “The term juvenile petty offender does 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.”

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”

NEW HAMPSHIRE

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 DAKOTA

N.D. Cent. Code § 12.1-29-03 (Prostitution) states, “An adult is guilty of prostitution, a class B misdemeanor, if the adult: 1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business; 2. Solicits another person with the intention

of being hired to engage in sexual activity; or 3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.” Pursuant to N.D. Cent. Code § 12.1-41-12(1) (Immunity of minor), “If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for: a. Prostitution under section 12.1-29-03; b. Misdemeanor forgery under section 12.1-24.01; c. Misdemeanor theft offenses under chapter 12.1-23; d. Insufficient funds or credit offenses under section 6-08-16; e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and f. Drug paraphernalia offenses under chapter 19-03.4.” N.D. Cent. Code § 12.1.-41-12(3) further states that “an individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.”

TENNESSEE

Tenn. Code Ann. § 39-13-513(d) states, “Notwithstanding 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”