

Policy Goal

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

State sex trafficking laws should simultaneously criminalize the actions of buyers, traffickers, and facilitators while protecting victims. It is, therefore, counterproductive and harmful to hold minors criminally liable for the crimes committed against them by charging and prosecuting them for prostitution. By amending the prostitution law to be inapplicable to minors, state law can acknowledge that domestic minor sex trafficking victims and children engaged in commercial sex are the same persons and, as such, should consistently be treated as victims under every state law. Properly crafted non-criminalization laws serve another important function; they protect victims from the inherent traumatizing effects that accompany any juvenile justice response. Notably, exploited youth may be arrested for other crimes committed as a result of their exploitation, so 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)(1) 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.”

GEORGIA

Ga. Code Ann. § 16-6-9 (Prostitution) states, “A person, 18 years of age or older, commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including, but not limited to, sexual intercourse or sodomy, for money or other items of value.”

KENTUCKY

Ky. Rev. Stat. Ann. § 529.120(1) (Treatment of minor suspected of prostitution offense) provides, “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.” 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.”

MISSISSIPPI

Miss. Code Ann. § 97-29-49(1) (Prostitution) states, “A person who is eighteen (18) years of age or older commits the misdemeanor of prostitution if the person knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or sexual conduct for money or other property” Miss. Code Ann. § 97-29-51(3) (Prostitution; misdemeanor procuring services of prostitution; felony promoting prostitution; penalties) states, “If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97-3-54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97-3-54.1(4) shall be applicable.” Miss. Code Ann. § 97-3-54.1(4) (Human Trafficking Act; prohibited conduct) states in part, “A minor who has been identified as a victim of trafficking shall not be liable for criminal activity in violation of this section.”

NEVADA

Enacted Senate Bill 293, § 16(1) states, “A child must not be adjudicated as delinquent or in need of supervision for engaging in prostitution or solicitation for prostitution pursuant to NRS 201.354 [Engaging in prostitution or solicitation for prostitution: Penalty; exception] or paragraph (b) of subsection 1 of NRS 207.030 [Prohibited acts; penalty].” Enacted Senate Bill 293, § 16(2), (3) states, “(2) A child must not be placed in a state or local facility for the detention of children if: (a) The child is alleged to have violated: (1) The provisions of NRS 197.190 [Obstructing public officer], 207.200 [Unlawful trespass upon land; warning against trespassing] or 463.350 [Gaming or employment in gaming prohibited for persons under 21]; or (2) A county or municipal ordinance imposing a curfew on a child or prohibiting jaywalking or loitering for the purpose of solicitation for prostitution; and (b) There is reasonable cause to believe that the child is a commercially sexually exploited child. (3) If a court finds that a child committed an act described in subsection 2 and that clear and convincing evidence exists that the child committed the act in connection with commercial sexual exploitation, the court shall not adjudicate the child as a delinquent child or a child in need of supervision based on that act. Upon such a finding, the court shall report the commercial sexual exploitation of the child to an agency which provides child welfare services.”

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).” N.H. Rev. Stat. Ann. § 633:7(VI)(a) (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 a juvenile delinquency proceeding under RSA 169-B, or prosecuted for conduct chargeable as indecent exposure and lewdness under RSA 645:1, prostitution under RSA 645:2, or any other misdemeanor or class B felony, where the conduct was committed as a direct result of being trafficked, provided that the conduct chargeable did not involve an act of violence as defined in RSA 625:9, VII.”

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”