

Policy Goal

Victim-friendly procedures and protections are provided in the trial process for minors under 18.

States should enact laws that provide protections for domestic minor sex trafficking victims in the trial process. A victim-friendly justice system will reduce the trauma experienced by commercially sexually exploited children and will foster successful participation of the victim in the justice system. Examples of such victim-friendly procedures include: (1) court appointed attorneys; (2) victim witness coordinators; (3) security and confidentiality of the victim's identifying information; (4) closed courtrooms for minor victim testimony; (5) closed circuit testimony; (6) application of the "rape shield" law to reduce the trauma of cross-examination related to prior sexual conduct; (7) access to a victim advocate for all pre-trial and trial procedures, including the right to protect all communications between the advocate and child victim from disclosure; (8) child appropriate courtroom procedures; and (9) admission out of court oral statements made by a child victim. The statutes enacted by states must have an adequate focus on all victims of sexual exploitation or abuse to ensure equal protection for those minors who pursue prosecution of their perpetrator under a range of criminal laws.

EXAMPLES OF LEGISLATIVE SOLUTIONS

ALASKA

Under Alaska Stat. § 12.45.046(a) (Testimony of children in criminal proceedings), a court "may order that the testimony of the child be taken by close circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate." However, under Alaska Stat. § 12.45.046(f), if normal courtroom procedures are employed, the court may, "(1) allow the child to testify while sitting on the floor or on an appropriately sized chair; (2) schedule the procedure in a room that provides adequate privacy, freedom from distraction, informality, and comfort appropriate to the child's developmental age; and (3) order a recess when the energy, comfort, or attention span of the child warrants." Additionally, under Alaska Stat. § 11.66.140 (Corroboration of certain testimony not required), "it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence."

ARKANSAS

Ark. Code Ann. § 16-42-101(b) (Admissibility of evidence of victim's prior sexual conduct) states, "In a criminal prosecution under . . . the Human Trafficking Act of 2013, § 5-18-101 et seq., . . . or for criminal attempt to commit, criminal solicitation to commit, or criminal conspiracy to commit an offense defined in any of those sections, opinion evidence, reputation evidence, or evidence of specific instances of the victim's prior sexual conduct with the defendant or any other person, evidence of a victim's prior allegations of sexual conduct with the defendant or any other person, evidence of a person's prior sexual conduct when the person was a victim of human trafficking, which allegations the victim asserts to be true, or evidence offered by the defendant concerning prior allegations of sexual conduct by the victim with the defendant or any other person if the victim denies making the allegations is not admissible by the defendant, either through direct examination of any defense witness or through cross-examination of the victim or other prosecution witness, to attack the credibility of the victim, to prove consent or any other defense, or for any other purpose."

CALIFORNIA

Cal. Evid. Code § 1161(b) (Admissibility of evidence relating to

victim of human trafficking) states, “Evidence of sexual history or history of any commercial sexual act of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.”

INDIANA

Ind. Code Ann. § 35-42-3.5-4(a)(3) (Additional rights of victim) provides protection to a child sex trafficking victim whose “safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense” Protections include “ensuring that the names and identifying information of the alleged victim and the victim’s family members are not disclosed to the public.” Ind. Code Ann. § 35-42-3.5-4(a)(3)(B).

MINNESOTA

Pursuant to Minn. Stat. Ann. § 631.045 (Excluding spectators from courtroom) and § 631.046(1) (Authorizing presence of support person for minor prosecuting witness), the judge may exclude the public from the courtroom at “trial of a complaint or indictment for a violation of sections . . . 617.246, subdivision 2 [Use of minor in sexual performance prohibited] . . . when a minor under 18 years of age is the person upon, with, or against whom the crime is alleged to have been committed” and may also authorize the presence of any supportive person in the courtroom for prosecuting witnesses who are minors in cases involving child abuse defined to include Minn. Stat. Ann. § 609.321 (Prostitution and sex trafficking; definitions), § 609.322 (Solicitation, inducement and promotion of prostitution; sex trafficking), and § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

SOUTH CAROLINA

South Carolina provides rape shield protection to victims of sex trafficking. Pursuant to S.C. Code Ann. § 16-3-2020(l)(1) (Trafficking in persons; penalties; defenses), “the victim’s sexual history or history of commercial sexual activity, the specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct” may not constitute a defense. S.C. Code Ann. § 16-3-2070(B) (Compensation for victims of trafficking; identity of victim and victim’s family confidential) provides that “in a prosecution for violations of the criminal provisions of [trafficking in persons], the identity of the victim and the victim’s family must be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant.”

WASHINGTON

Wash. Rev. Code Ann. § 9A.44.120(1) (Admissibility of child’s statement—Conditions) states, “A statement not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if: (a) . . . (ii) It is made by a child when under the age of sixteen describing any of the following acts or attempted acts performed with or on the child: Trafficking under RCW 9A.40.100; commercial sexual 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; (b) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and (c) The child either: (i) Testifies at the proceeding; or (ii) Is unavailable as a witness, except that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.”

WISCONSIN

Under Wis. Stat. § 950.045(1) (Accompaniment of a victim advocate), victims of human trafficking, child sexual abuse, and sexual assault may have a victim advocate present in various pre-trial and trial procedures, including “law enforcement interviews prosecution interviews, department proceedings, court proceedings” Additionally, Wis. Stat. § 905.045(2) (Domestic violence or sexual assault advocate-victim privilege), which applies to victims of human trafficking and commercial sexual exploitation, states, “A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, a victim advocate who is acting in the scope of his or her duties as a victim advocate, and person who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.” Under Wis. Stat. 165.68 (Address confidentiality program), child victims of human trafficking are eligible to participate in an address confidentiality program, which mandates that “the [D]epartment [of Justice] may not disclose a program participant’s actual address to any person except pursuant to a court order . . . ,” and even then, “the department shall request the court to keep any record containing the program participant’s actual address sealed and confidential.”