

ISSUE BRIEF

COMPONENT 5.1

Area of Law	Protective Provisions for the Child Victims
The Policy Goal	Victims under the core child sex trafficking offense include all commercially sexually exploited children.
The Reason	<p>The federal Trafficking Victims Protection Act (TVPA) recognizes all commercially sexually exploited minors as victims of child sex trafficking. However, some states have a narrowed statutory definition of sex trafficking, excluding child victims of commercial sexual exploitation who are not trafficked by the means of force, fraud, or coercion or who do not have an identified controlling third party or trafficker. Rather than providing a protective response, such requirements place the evidentiary burden on the child to prove the factors leading to his or her own exploitation. Oftentimes, even when a controlling third party is involved, child victims may have neither the ability to understand their victimization nor the capacity to identify their trafficker. Additionally, by requiring the involvement of a controlling third party, state trafficking laws minimize the role buyers play in fueling demand and engaging in the exploitation that trafficking laws are designed to punish. Third party control requirements may also prevent the successful prosecution of buyers when a trafficker is unable to be identified. Enacting state laws that allow all commercially sexually exploited children to be identified as sex trafficking victims ultimately affords child victims the protection and services necessary for rehabilitation, empowerment, and protection from future harm.</p>

Examples of states that narrow the definition of child sex trafficking:

Alabama

Ala. Code § 13A-6-152 (Human trafficking in the first degree) requires that the person “knowingly subjects another person to . . . sexual servitude through the use of coercion or deception.”

Iowa

The human trafficking law is only applicable to buyers in a few, limited circumstances. Under Iowa Code § 710A.2(4) (Human trafficking), “[a] person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of class ‘D’ felony, except that if the victim is under the age of eighteen, the person is guilty of class ‘C’ felony.” However, the term “services” is limited under Iowa Code § 710A.1(10) (Definitions) to “an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor, including commercial sexual activity and sexually explicit performances.”

New York

Under N.Y. Penal Law § 230.34 (Sex trafficking), “A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by: . . . (5) using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one of the following: (a) cause physical injury, serious physical injury, or death to the person . . . ” N.Y. Penal Law § 230.15(1) (Promoting prostitution; definitions of terms) defines “advance[s] prostitution” to mean, “when acting other than as a person in prostitution or as a patron thereof, he or she knowingly causes or aids a person to commit or engage in prostitution, procures, or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house for prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise or prostitution.” N.Y. Penal Law § 230.15(2) further defines “profit[s] from prostitution” as, “when, acting other than as a person in prostitution, receiving compensation for personally rendered prostitution services, he or she accepts or

receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.”

Ohio

Ohio Rev. Code Ann. § 2905.32(A)(1)–(3) (Trafficking in persons) states, “No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if any of the following applies: (1) The offender knows that the other person will be . . . compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented. (2) The other person is less than sixteen years of age . . . and the offender’s knowing [or attempted] recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance is for any of the following purposes: (a) [t]o engage in sexual activity for hire; (b) [t]o engage in a performance for hire that is obscene, sexually oriented, or nudity oriented; (c) [t]o be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented. (3) The other person is sixteen or seventeen years of age . . . [and] the offender’s knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any purpose described in . . . section 2907.03 [Sexual battery] of the Revised Code . . . with respect to the offender and the other person.” Additionally, Ohio Rev. Code Ann. § 2905.32(B) states, “In a prosecution under division (A)(1) of this section, the element ‘compelled’ does not require that the compulsion be openly displayed or physically exerted. The element ‘compelled’ has to be established if the state proves that the victim’s will was overcome by force, fear, duress, intimidation, or fraud.” Ohio Rev. Code Ann. § 2905.32(C) (Trafficking in persons) clarifies that, [i]n a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.”

West Virginia

Although W. Va. Code Ann. § 61-14-1(6) (Definitions), which defines “trafficking” for purposes of W. Va. Code Ann. § 61-14-2(b) (Human trafficking of an individual; penalties), includes language that is applicable to buyers (“obtains”), a minor must be obtained to engage in sexual servitude. “Sexual servitude” is defined as “maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity

. . .” W. Va. Code Ann. § 61-14-1(14). Accordingly, an offender must “obtain” a minor for the purpose of making him or her available for commercial sexual activity, rather than for directly engaging in a commercial sex act. As such, W. Va. Code Ann. § 61-14-1(6) seemingly requires involvement by a trafficker or controlling third party.

Examples of legislative solutions that:

1. Eliminate force, fraud, or coercion requirement for minors under 18; and
2. Apply to buyers without requiring third party control:

New Hampshire

N.H. Rev. Stat. Ann. § 633:7 (Trafficking in persons) makes clear that force, fraud, or coercion are not required to commit the offense of domestic minor sex trafficking, stating, “II. A person shall be guilty of a class A felony if such person maintains or makes available an individual under 18 years of age for the purpose of engaging the individual in a commercial sex act or sexually-explicit performance for the benefit of another person III. It is a class A felony to recruit, entice, harbor, transport, provide, obtain, or otherwise make available a person, knowing or believing it likely that the person will be subjected to trafficking as defined in Paragraph I or II”

Further, N.H. Rev. Stat. Ann. § 633:7(III-a) states, “A person is guilty of class B felony if the person pays, agrees to pay or offers to pay to engage in sexual contact, as defined in RSA 632-A:1 or sexual penetration, as defined in RSA 632-A:1, V with a person under the age of 18, or to observe a sexually explicit performance involving a person under the age of 18. The payment or offer or agreement to pay may be made to the person under the age of 18 or a third party”

Tennessee

Tenn. Code Ann. § 39-13-309 (Trafficking a person for a commercial sex act) states, “(a) A person commits the offense of trafficking a person for a commercial sex act who: (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person’s provision of a commercial sex act; or (2) Recruits, entices, harbors, transports, provides, purchases, or obtains by any means another person for the purpose of providing a commercial sex act.” Tenn. Code Ann. § 39-13-301(15) (Definitions), clarifies that force, fraud, or coercion are not required to commit the offense of human trafficking, defining “commercial sex act” to mean, “(A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion

or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.”

Utah

Utah Code Ann. § 76-5-308.5 (Human trafficking of a child—Penalties) does not require that the means of force, fraud, or coercion are required to commit the offense of child sex trafficking, stating, “(1) ‘Commercial sexual activity with a child’ means any sexual activity with a child, on account of which anything of value is given to or received by any person; (2) An actor commits human trafficking of a child if the actor recruits, harbors, transports, obtains, patronizes, or solicits a child for sexual exploitation; . . . (3)(b) Human trafficking of a child for sexual exploitation includes all forms of commercial sexual activity with a child, including sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, and exotic dancing or display.”

Washington

The use of force, fraud, or coercion is not required to commit an offense under Wash. Rev. Code Ann. § 9A.40.100 (Trafficking), which states, “(1) A person is guilty of trafficking in the first degree when: (a) Such person: (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact . . . (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act . . . ”

Wisconsin

Wis. Stat. § 948.051 (Trafficking of a child) does not require the use of force, fraud, or coercion to commit child sex trafficking, stating, “(1) Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302(1)(a) is guilty of a Class C felony.” “Commercial sex acts” is defined under Wis. Stat. § 940.302(1)(a) (Human trafficking) as “any of the following for which anything of value is given to, promised, or received, directly or indirectly, by any person: (1) Sexual contact. (2) Sexual intercourse. (3) Except as provided in sub. (2)(c), any of the following: (a) Sexually explicit performance. (b) Any other conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification.”