

# ISSUE BRIEF

## COMPONENT 5.5

<b>Area of Law</b>	Protective Provisions for the Child Victims
<b>The Policy Goal</b>	Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.
<b>The Reason</b>	Child protective services are often unable to respond to or investigate cases of child sex trafficking or commercial sexual exploitation when such victimization is not included in the definition of “abuse and neglect.” Broadening the definition of “abuse and neglect” in child protection statutes to include sex trafficking and commercial sexual exploitation will permit child protective services to investigate and intervene in situations of domestic minor sex trafficking. Further, states that include child sex trafficking in their statutory definitions of “abuse and neglect” can offer domestic minor sex trafficking victims services through child welfare rather than involving the victims in the criminal justice process and burdening law enforcement with child welfare matters.

### Examples of Legislative Solutions

#### Florida

Fla. Stat. Ann. § 39.01(2) (Definitions) defines “abuse” as “any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired . . . .” Fla. Stat. Ann. § 39.01(71)(g) defines “sexual abuse of a child” for purposes of finding a child to be dependent” to include “[t]he sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; 2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or 3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g) [Human trafficking].” Additionally, under Fla. Stat. Ann. § 39.01(30), “‘Harm’ to a child’s health or welfare can occur when any person: . . . . (c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; or 2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children] . . . .”

#### Georgia

Under Ga. Code Ann. § 49-5-40(a)(3) (Definitions; confidentiality of records; restricted access to records), the offense of child abuse includes, “(D) sexual exploitation of child . . . .” “Sexual exploitation of a child” is further defined

under Ga. Code Ann. § 49-5-40(a)(11) to include, “Conduct by any individual who allows, permits, encourages, or requires a child to engage in: (A) Trafficking of persons for . . . sexual servitude, in violation of Code Section 16-5-46; (B) Prostitution in violation of Code Section 16-6-9; (C) Obscene depiction of a minor, in violation of Code Section 16-11-40.1; (D) Nude or sexually explicit electronic transmission, in violation of Code Section 16-11-90; or (E) Sexually explicit conduct for the purpose of producing any visual of print medium depicting conduct, in violation of Code Section 16-12-100.”

Additionally, under the child abuse mandatory reporting statute, Ga. Code Ann. § 19-7-5(b)(4)(E) (Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report), “child abuse” includes “Sexual exploitation of a child.”

#### Hawaii

Haw. Rev. Stat. Ann. § 350-1 (Definitions) defines “child abuse or neglect” as “(1) The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child’s care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to . . . (B) When

the child has been the victim of sexual contact or conduct, including, but not limited to, sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation[; or], including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b) [Sex trafficking] . . . .” Haw. Rev. Stat. Ann. § 350-1 further defines “child abuse or neglect” as “(2) The acts or omission of any person that resulted in sex trafficking or severe forms of trafficking in persons . . . .” Haw. Rev. Stat. Ann. § 587A-4 (Definitions) defines “harm” as “damage or injury to a child’s physical or psychological health or welfare, where: (1) The child exhibits evidence of injury . . . . (2) The child has been the victim of sexual contact or conduct, including . . . . prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b) [Sex trafficking].”

### Illinois

Ill. Comp. Stat. Ann. § 705 ILCS 405/2-3(2)(vi) (Neglected or abused minor) and § 325 ILCS 5/3(h) (Definitions) define “abused child,” in part, as “any minor under 18 years of age whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent . . . commits or allows to be committed the offense of . . . involuntary sexual servitude of a minor, or trafficking in persons as defined in [720 ILCS 5/10-9] against the child.” Ill. Comp. Stat. Ann. § 705 ILCS 405/2- 3(2)(vii) adds that an “abused” child includes a minor encouraged or required to “commit any act of prostitution . . . and extending those definitions to include minors under 18 years of age.”

### Indiana

Ind. Code Ann. § 31-34-1-3.5(a) (Victim of human sexual trafficking offense) states, “A child is in need of services if, before the child becomes eighteen (18) years of age; (1) the child is the victim of: (A) human or sexual trafficking (as defined in IC 31-9-2-133.1); or (B) a human or sex trafficking offense under the law of another jurisdiction . . . that is substantially equivalent to the act described in clause (A); and (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.”

### Maryland

Although Md. Code Ann., Fam. Law § 5-701(k) (Definitions) does not define “household member” broadly enough to

include all third party offenders in CSEC cases, the definition of “sexual abuse” includes “sex trafficking of a child by any individual.” Md. Code Ann., Fam. Law § 5-701(y)(2).

Pursuant to Md. Code Ann., Fam. Law § 5-701(y) (Definitions) and Md. Code Ann., Cts. & Jud. Proc. § 3-801(y) (Definitions), “‘Sexual abuse’ means any act that involves: . . . (2) Sex trafficking of a child by any individual . . . .”

### Minnesota

Minn. Stat. Ann. § 260C.007(5) (Definitions) defines “child abuse,” in part, as “an act that involves a minor victim that constitutes a violation of section . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking], 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], . . . 617.246 [Use of minors in sexual performance prohibited].” Minn. Stat. Ann. § 260C.007(31), defines “sexually exploited youth” as “an individual who: (1) is 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; (2) is a victim of a crime described in section . . . 617.246 [Use of minors in sexual performance prohibited]; . . . (4) is a sex trafficking victim as defined in section 609.321 [Prostitution and sex trafficking; definitions], subdivision 7b.”

### Mississippi

Miss. Code Ann. § 43-21-105(m) (Definitions) defines “abused child” as “a child whose parent, guardian or custodian or anyone responsible for this care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation . . . . ‘Abused child’ also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.” “Sexual abuse” is further defined under Miss. Code Ann. § 43-21-105(n) as “obscene or pornographic photographing, filming or depiction of children for commercial purposes, or . . . prostitution or other forms of sexual exploitation of children under circumstances which indicate that the child’s health or welfare is harmed or threatened.”

### Tennessee

Tenn. Code Ann. § 37-1-102(b)(22)(C) (Chapter and part definitions) defines “severe child abuse” in part as, “[t]he commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act], §§ 39-13-502 – 39-13-504 [Aggravated rape – Aggravated sexual battery], § 39-13-515 [Promoting prostitution], § 39-13-522 [Rape of

a child], § 39-15-302 [Incest], § 39-15-402 [Haley’s Law—Aggravated child abuse and aggravated child neglect or endangerment—Definitions], or § 39-17-1005 [Offense of especially aggravated sexual exploitation of a minor] or the knowing failure to protect the child from the commission of any such act towards the child . . . .” Additionally, Tenn. Code Ann. § 37-1-602(a)(3)(C) (Part definitions—Harm to child’s health or welfare) defines “child sexual abuse” in part as “(vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: (a) Solicit for or engage in prostitution; or (b) Engage in an act prohibited by § 39-17-1003; and (vii) The commission of any act towards the child prohibited by § 39-13-309 . . . .”

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## Utah

Utah Code Ann. § 78A-6-105(1)(a)(i) (Definitions) states, “‘Abuse’ means . . . (C) sexual exploitation; (D) sexual abuse; or (E) human trafficking of a child in violation of section 76-5-308.5 . . . .” Utah Code Ann. § 78A-6-105(48) defines “sexual exploitation” as “(a) employing, using, persuading, inducing, enticing, or coercing any child to: (i) pose in the nude for the purpose of sexual arousal of any person; or (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording or displaying in any way sexual or simulated sexual conduct; (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child: (i) in the nude, for the purpose of sexual arousal of a person; or (ii) engaging in sexual or simulated sexual conduct; or (c) engaging in any conduct that would constitute an offense under Section 76-5b-201 [Sexual exploitation of a minor—Offenses], regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.”

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## Wisconsin

Wis. Stat. § 48.02(1)(c)–(d) (Definitions) of the Children’s Code defines “abuse” to include “(c) A violation of s. 948.05 [Sexual exploitation of a child]. (cm) A violation of s. 938.05 [Trafficking of a child]. (d) Permitting, allowing or encouraging a child to violate s. 944.30 [Prostitution] . . . .”