

ISSUE BRIEF

COMPONENT 5.6

Area of Law	Protective Provisions for the Child Victims
The Policy Goal	The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.
The Reason	Juvenile sex trafficking victims are regularly subjected to abuse at the hands of their traffickers and buyers, but child welfare may be unable to intervene and provide ongoing services to juvenile sex trafficking victims if the definition of “caregiver” or a similar term limits child welfare’s jurisdiction to cases in which a parent, guardian, caretaker, or other person with legally provided custodial rights caused the abuse or neglect. As laws designed to protect juvenile sex trafficking victims increasingly rely on child welfare to provide services to exploited youth, and as child welfare increasingly encounters children under its care who have been commercially sexually exploited, statutory restrictions on child welfare’s jurisdiction undermine its ability to respond appropriately. To avoid this result, state statutory definitions of the term “caregiver” (or similar term) need to be designed to avoid creating barriers to services and protection of child welfare for juvenile sex trafficking victims who are exploited by non-family members. It is also important that removing these barriers does not detrimentally impact non-offending parents and caregivers. The key is to remove statutory barriers that could prevent child welfare involvement and/or the provision of services through child welfare for child sex trafficking victims who are exploited through no fault of their parents or who are not identified as a ward of the state.

Examples of Legislative Solutions

The definition of “caregiver” (or similar term) under the following state laws does not limit child welfare’s ability to intervene on behalf of juvenile sex trafficking victims who are exploited by a non-family member.

Connecticut

Pursuant to Conn. Gen. Stat. § 17a-106f(a), “The Commissioner of Children and Families may: (1) Provide child welfare services for any minor child residing in the state who is identified by the Department of Children and Families as a victim of trafficking, as defined in section 46a-170 of the general statutes; and (2) provide appropriate services to a minor child residing in the state who the Department of Children and Families reasonably believes may be a victim of trafficking in order to safeguard the welfare of such minor child. For purposes of this section and section 17a-106a of the general statutes, ‘minor child’ means any person under eighteen years of age.”

Florida

The definition of “caregiver” is a barrier to child sex trafficking victims receiving specialized services under Fla. Stat. Ann.

§ 39.01(10) (Definitions). However, under Fla. Stat. Ann. § 39.001(5)(b), (c) (Purposes and intent; personnel standards and screening), “(b) [t]he Legislature establishes the following goals for the state related to the status and treatment of sexually exploited children in the dependency process: (1) to ensure the safety of children; (2) To provide for the treatment of such children as dependent children rather than as delinquents; (3) To sever the bond between exploited children and traffickers and to reunite these children with their families or provide them with appropriate guardians; (4) To enable such children to willing and reliable witnesses in the prosecution of traffickers. (c) The Legislature finds that sexually exploited children need special care and services in the dependency process, including counseling, health care, substance abuse treatment, educational opportunities, and a safe environment secure from traffickers.”

Kentucky

Pursuant to Ky. Rev. Stat. § 620.029(1)(c) (Duties of cabinet relating to children who are victims of human trafficking), “the cabinet shall . . . [p]roceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.”

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).

Michigan

Mich. Comp. Laws Ann. § 712A.2 (Authority and jurisdiction of court) states, “The court has the following authority and jurisdiction: . . . (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county: . . . (3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be dependent when any of the following occurs: . . . (C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code [Human trafficking] . . . or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.”

Mississippi

Pursuant to Miss. Code Ann. § 43-21-105(m) (Definitions), the definition of “abused child” includes “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.”

Tennessee

The definition of “caregiver” under Tenn. Code Ann. § 37-1-102 (b)(4) (Chapter and part definitions) includes “a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor or trafficking a minor for a commercial sex act, including but not limited to, as a trafficker”

Utah

Pursuant to Utah Code Ann. § 62A-4a-105(1)(b) (Division responsibilities), “The division shall . . . (b) provide the following services: . . . (ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and (x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter. . . .”