

ISSUE BRIEF

COMPONENT 5.8

Area of Law	Protective Provisions for the Child Victims
The Policy Goal	Victim-friendly procedures and protections are provided in the trial process for minors under 18.
The Reason	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 identifying information about the victim; (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 trafficker 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.”

California

Ca. Evidence Code § 1161(b) 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.”

District of Columbia

D.C. Code § 22-1839 (Reputation or opinion evidence) states, “In a criminal case in which a person is accused of trafficking in commercial sex, as prohibited by § 22-1833, sex trafficking of children, as prohibited by § 22-1834, or benefitting financially from human trafficking, as prohibited by § 22-1836, reputation or opinion evidence of the past sexual behavior of the alleged victim is not admissible”

Indiana

Ind. Code Ann. § 35-42-3.5-4(a)(3) (Additional rights of victim) provides that human trafficking victims must be provided protection if their “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.”

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(K)(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 be offered as a defense in prosecutions for sex trafficking. 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.”

Utah

Under Utah R. Crim. P. 15.5(a) (Out of court statement and testimony of child victims or child witness of sexual or physical abuse—Conditions of admissibility), “[i]n any case concerning a charge of child abuse or of a sexual offense against a child, the oral statement of a victim or other witness younger than 14 years of age which was recorded prior to the filing of an information or indictment is, upon motion and good cause shown, admissible as evidence in any court proceeding regarding the offense”

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.”