



# SEEKING JUSTICE

Legal approaches to eliminate criminal liability for juvenile sex trafficking victims



# ACKNOWLEDGEMENTS

*Seeking Justice: Legal approaches to eliminate criminal liability for juvenile sex trafficking victims* was reviewed by several experts in the anti-trafficking field, and their comments contributed to the final analysis—many thanks to Jayne Bigelsen, Vice President of Advocacy and Director of Anti-Trafficking Initiatives, Covenant House New York, Bethany Gilot, Statewide Human Trafficking Prevention Director, Florida Department of Children and Families, Abigail Kuzma, Non-Director Member of the Governance and Performance and Delivery of Legal Services Committees, Legal Services Corporation, Amy Louttit, Public Policy Associate, National Network for Youth, Nicholas Oakley, Senior Projects Manager, Center for Children and Youth Justice, *Kate Price, PhD. Candidate, University of Massachusetts Boston Sociology Department, Shea Rhodes, Director, Villanova Law Institute to Address Commercial Sexual Exploitation, Yasmin Vafa, Executive Director, Rights4Girls, Kate Walker Brown, Director of Child Trafficking, National Center for Youth Law.*

The legal analysis for *Seeking Justice: Legal approaches to eliminate criminal liability for juvenile sex trafficking victims* was drafted by Shared Hope Policy Counsel Sarah Bendtsen, J.D., and Sarah Breyer, J.D., LL.M., under the direction of Christine M. Raino, Esq., Senior Director of Public Policy and Samantha Vardaman, Vice President and General Counsel. The following Shared Hope law fellows and interns contributed to the report: Aliz Nagyvaradi, Liisa Rettedal, Kaitlin Kinsella, Amanda Lopez, Joseph Woltman, Karen Logsdon, Jackson Grasz.

# TABLE OF CONTENTS

**Timeline of Non-Criminalization Laws, 1969-2017 .....1**

**Analysis of Statutory Approaches to Non-Criminalization .....3**

**Chart - Approaches to Non-Criminalization .....19**

**State Law Summaries..... 24**

**Considerations for drafting.....48**

**Endnotes.....57**

**Non-Criminalization Timeline Data.....63**

# TIMELINE OF NON-CRIMINALIZATION LAWS

(BY ENACTMENT DATE)

*\* Only minors < 16 yrs old*

1969

**MICHIGAN**

Public Acts 1969 No. 243

2002

**MICHIGAN\***

HB 5449

2010

**CONNECTICUT**

HB 153

**ILLINOIS**

HB 6462

2011

**VERMONT**

HB 153

**TENNESSEE**

SB 64

**MINNESOTA**

SF 1

2013

**WYOMING**

HB 133

**KENTUCKY**

HB 3

**MISSISSIPPI**

HB 673

**MINNESOTA**

HF 1233

**NEBRASKA**

LB 255

**N. CAROLINA**

SB 683

2014

**NEW HAMPSHIRE**

SB 317

2015

**WASHINGTON DC**

B20 714

**NORTH DAKOTA**

SB 2250

**MONTANA**

HB 89

**S. CAROLINA**

HB 183

**N. CAROLINA**

HB 134

2016

**FLORIDA**

HB 545

**UTAH**

HB 206

**ALABAMA**

HB 433

**CONNECTICUT**

HB 5621

**CALIFORNIA**

SB 1322

2017

**SOUTH DAKOTA\***

HB 1143

**W. VIRGINIA**

HB 2318

**INDIANA**

HB 1218

**RHODE ISLAND**

HB 5300 / SB 73

# ANALYSIS OF STATUTORY APPROACHES THAT ELIMINATE CRIMINAL LIABILITY FOR MINORS UNDER STATE PROSTITUTION LAWS<sup>1</sup>

## Introduction

Over the past seven years, Shared Hope International has tracked the development of state laws that mitigate or eliminate a child sex trafficking victim's criminal liability for prostitution.<sup>2</sup> Alongside ongoing statutory analysis, Shared Hope monitors promising practices in the implementation of these laws and develops field guidance, with the input and expertise of the JuST Response Council,<sup>3</sup> for jurisdictions seeking to move toward a non-criminal response to child sex trafficking victims and away from charging children with a crime for engaging in commercial sex, an act inherently and intrinsically intertwined with their trafficking victimization. That field guidance informs policy papers<sup>4</sup> that explain the importance of providing a non-criminal, trauma-informed, and survivor-centered response to child sex trafficking victims.

Through in-depth analysis of existing state laws that eliminate criminal liability for minors for prostitution, this report builds on Shared Hope's past research by assessing the success of these laws in achieving the goals underlying non-criminalization legislation. Shared Hope identifies these goals as follows: (1) avoiding re-traumatization by aligning the treatment of child sex trafficking survivors with their status as victims of a serious crime and (2) preventing re-victimization by responding to survivors through an empowering—i.e., trauma-informed, strengths-based, and youth-centered—process that addresses their trauma and provides access to individualized, specialized services.

This report proceeds from the premise that eliminating a minor's criminal liability for prostitution offenses must be the goal for every state, while recognizing that merely eliminating criminal liability, on its own, will not achieve the goals of non-criminalization. Accordingly, this report focuses on how the goals of non-criminalization are being achieved through existing laws that remove criminal liability and provide access to specialized services.<sup>5</sup> To date, 23 states and the District of Columbia have taken the progressive step of eliminating criminal liability,<sup>6</sup> but the statutory approaches in these states vary widely. Some approaches have implications for child sex trafficking victims that may not align with the original goals of non-criminalization, most saliently, preventing re-

traumatization and protecting the child from re-victimization.<sup>7</sup> This report examines the statutory approaches states have taken to eliminate a minor's criminal liability for prostitution in order to identify promising approaches, as well as the gaps in these laws that may undermine the overall shift toward protective rather than punitive responses for all child sex trafficking victims.

## What is non-criminalization?

At the heart of recognizing a trafficked child's victim status lies the acknowledgement that minors are unable to consent to sell sexual services and should not be held responsible for the crimes and violence committed against them.<sup>8</sup> The term "non-criminalization" encapsulates this idea most accurately because it reflects the concept that charging a child with a crime related to their own rape is not properly enshrined in the criminal code. Related terms such as "decriminalization" and "immunity" also reflect the concept of protecting children from criminal consequences for their own victimization, but those terms do not as clearly reflect the idea that a child charged with the crime of prostitution is, in fact, legally untenable.

"Decriminalization" references the process of legalizing an act or removing or reducing criminal penalties or consequences<sup>9</sup> rather than fully recognizing that a child cannot be culpable of engaging in the crime of commercial sexual activity. Similarly, the term "immunity" also indicates protection from criminal penalties or consequences,<sup>10</sup> but this term, on its own, does not distinguish between (1) the protection afforded to a cooperating witness who, despite committing a crime, receives immunity from prosecution and (2) the concept of protecting children from being criminalized for their own rape.

## What is *not* non-criminalization?

Non-criminalization differs from other statutory measures that limit or mitigate criminalization of child sex trafficking victims without fully

## What is child sex trafficking and who is a child sex trafficking victim?

The federal definition of sex trafficking is provided in the Trafficking Victims Protection Act, 22 U.S.C. 7102(9) and (10) (Definitions):

- (9) Severe forms of trafficking in persons  
The term "severe forms of trafficking in persons" means—  
(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or  
....  
(10) Sex trafficking  
The term "sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Consequently, the federal definition of child sex trafficking includes any child who is bought for sex, regardless of whether force, fraud, or coercion was used, regardless of whether a buyer exploited the youth without a trafficker's involvement, and regardless of whether the victim identifies a trafficker. Accordingly, all commercially sexually exploited children are identified as victims of sex trafficking under this law.

eliminating criminal liability. These approaches often include affirmative defenses, diversion, or referrals in lieu of arrest.<sup>11</sup>

- **Affirmative defenses.** Affirmative defenses allow a minor to assert a defense to prosecution and potentially avoid criminal liability if the minor is successful in asserting the defense. However, if the defense is not successful, the minor faces delinquency adjudication and the collateral consequences that go along with delinquency charges, including possible detention. As a result, affirmative defenses shift the burden to the victim to prove his or her victimization and may compound traumatization by forcing victims to testify about their exploitation.
- **Diversion.** Diversion allows a minor who has been charged with prostitution to avoid a delinquency adjudication upon successful completion of a designated program. However, “[s]ince diversion is not mandatory in every case, the opportunity for victims to avoid being adjudicated delinquent . . . depends largely on implementation of the law through local protocols, as well as strong judicial involvement and understanding of the issues involved in working with child sex trafficking victims,”<sup>12</sup> which leads to disparate outcomes among survivors.

Even when diversion is mandatory for all commercially sexually exploited children, relying on a juvenile justice response to child sex trafficking victims risks re-traumatizing youth who are still arrested, detained, and directed into an adversarial court process in order to participate in a diversion process. Relying on the juvenile justice system as the primary avenue for child sex trafficking victims to be identified and connected to services leaves major gaps in a state’s response since it fails to identify youth through other child serving systems. This could allow particularly vulnerable children, including victims of familial trafficking and runaway and homeless youth who exchange sex acts for food and shelter, to fall through the cracks.

- **Referral in lieu of arrest.** States that require or allow law enforcement to refer a minor to child welfare in lieu of arresting the minor allow a minor who is suspected of engaging in commercial sex to initially avoid the criminal justice system; however, in some jurisdictions “prosecutors retain the ability to file delinquency charges for prostitution offenses as they deem appropriate or necessary.”<sup>13</sup> This approach fails to avoid the potentially re-traumatizing impact of (1) charging a child sex trafficking survivor with a crime for conduct that is intrinsically connected to his or her victimization and (2) allowing the threat of possible charges to be used as a tool to coerce survivors into providing information or testifying in a criminal prosecution. Similarly, laws that allow prosecutors discretion in charging and adjudicating a child for prostitution violations also fail to protect child victims from criminalization and potentially re-traumatize exploited youth.

In contrast, the goal of non-criminalization is to allow every child sex trafficking victim to avoid a punitive,

criminal response without placing an added burden on those victims to testify about their exploitation, to identify a trafficker, or to complete burdensome program requirements that are oftentimes incompatible with the trauma that many child sex trafficking victims endure.

## Core Principles of Non-Criminalization

A holistic, victim-centered response to child sex trafficking survivors reflects two core principles: (1) the elimination of criminal liability for all minors and (2) the accompaniment of specialized, trauma-informed services.

### Protection for all minors under 18

Federal and most state child sex trafficking laws identify commercially sexually exploited children as trafficking victims regardless of age. To align prostitution laws with the definition of a child sex trafficking victim and to ensure that minors are not being criminalized for the very same conduct that victimized them, state prostitution laws must eliminate criminal liability for all minors under 18.

Drawing this bright line consistent with trafficking laws also aligns with the recognition that children are particularly susceptible to certain types of exploitation due to their minority and accordingly require special protection. This concern is the basis for a range of laws that distinguish minors and adults, a need that continues to be re-affirmed by scientific studies on the adolescent brain.<sup>14</sup>

Although older minors may appear less vulnerable and seemingly independent, “these are often coping mechanisms developed from suffering various types of abuse.”<sup>15</sup> Defiance of authority, glamourizing “the life,” and not self-identifying as a victim of exploitation are types of behavior that may outwardly suggest autonomy and choice but actually reflect the underlying trauma caused by trafficking victimization, particularly for older minors who may have years of prior abuse or trafficking history. Treating older minors as criminals who choose to stay in exploitative situations leaves them to suffer the unjust, traumatizing consequences associated with a criminal justice response rather than ensuring their protection from further abuse.<sup>16</sup>

### Avoiding third party control requirements

State law must also protect all minors engaged in commercial sex from prosecution regardless of whether a controlling third party—a trafficker—is involved or identified in addition to a purchaser. Non-criminalization laws that retain a third party control requirement ignore the reality that many child sex trafficking victims do not



have a trafficker and are engaging in commercial sex for survival purposes.<sup>17</sup> For minors who do have a trafficker, requiring them to identify their trafficker in order to avoid prosecution fails to acknowledge the psychological trauma and fear suffered by children who engage in commercial sex, as well as the methods of control that traffickers use to exploit child victims. Extreme trauma-bonding, denial of their victimization, and fear of reprisal may leave survivors unable or unwilling to identify their exploiters.<sup>18</sup> Accordingly, “these victims would be unable to establish third party control, shifting them from victims to criminals who contributed to their own victimization.”<sup>19</sup>

### Removing force, fraud or coercion requirements

State law must prohibit the criminalization of all minors for prostitution regardless of whether force, fraud, or coercion caused the minor to engage in the commercial sex act in order to “preclud[e] interpretations that a child victim can choose to be exploited.”<sup>20</sup> Removing a force, fraud, or coercion requirement further acknowledges the reality of subtle luring tactics employed by buyers and traffickers,<sup>21</sup> such as promises of love and caring, which often result in trauma bonding. By including all commercially sexually exploited children, regardless of the minor’s age, regardless of whether a controlling third party is identified, and regardless of whether force, fraud, or coercion was used, non-criminalization laws will ensure consistent protection for all minors. In addition, force, fraud, and coercion requirements preclude protection of youth who engage in sex to meet their basic necessities.

### Provision of specialized, trauma-informed services

Eliminating criminal liability for all minors under 18 would further allow for the development of a consistent, trauma-informed service response.<sup>22</sup> “Without access to services, victims remain at risk of re-exploitation . . . .”<sup>23</sup> Accordingly, state non-criminalization laws should direct survivors to comprehensive, specialized services designed to alleviate the adverse effects of trafficking victimization and to aid in the child’s healing including, but not limited to, assistance with job placement, housing, access to education and legal services as well as trauma-based mental health services..

In enacting a specialized, trauma-informed service response, it is critical to make those services available regardless of the system through which a child is identified; detention or juvenile justice involvement should not be required in order for services to be accessed.

Detention, itself, involves . . . restraint, deprivation of liberty and may involve strip searches and solitary confinement, which often further intensifies trauma already endured by [exploited children]. Moreover, detention facilities generally lack the resources to provide [these] minor[s] . . . with trauma-informed specialized services, and when training and awareness are lacking among detention

facility staff, detention facilities could even pose safety risks for detained victims.<sup>24</sup>

Accordingly, unlike statutory measures that simply mitigate or limit a minor’s exposure to the criminal justice system, the ideal approach seeks to direct minors to services without them having to endure the potentially traumatizing consequences associated with detention, arrest, and adjudication.

## Approaches to Non-Criminalization

While states have taken a range of approaches to eliminate a minor’s criminal liability for prostitution, these approaches fall into certain broad categories. This section identifies those categories and examines the features that make some more victim-centered and, therefore, more aligned with the goals of non-criminalization.<sup>25</sup>

AGE

### Hinges on age

Seventeen states and the District of Columbia eliminate criminal liability for individuals under a certain age.<sup>26</sup> This approach draws a bright line based on the age of the individual, akin to federal and most state trafficking laws that also draw a bright line based on age in defining the crime of child sex trafficking. Notably, however, not all non-criminalization laws that hinge on age fully or effectively prevent arrest or detention; in fact, some specifically contemplate it.

#### I. Eliminates criminal liability for all minors

Drawing a bright line at 18<sup>27</sup> aligns with the federal definition of a child sex trafficking victim as well as the requirements of the Trafficking Victims Protection Act.<sup>28</sup> Criminalizing minors under state prostitution laws “cannot be coherently reconciled with the federal sex trafficking law or the majority of state sex trafficking laws . . . because the conduct that makes the minor a victim of sex trafficking—engaging in commercial sex—is the same conduct that subjects that minor to prosecution under the prostitution law.”<sup>29</sup> Therefore, a non-criminalization approach that protects all minors under 18 from criminalization for prostitution aligns with the federal sex trafficking definition even if the state definition does not protect all commercially sexually exploited children as victims of sex trafficking.<sup>30</sup>

### State Examples

Indiana and Connecticut’s laws exemplify non-criminalization laws that align with federal law even though

state sex trafficking definitions do not. These states extend non-criminalization protections to all minors, not just those legally identified as victims of human trafficking under state law. In 2010,<sup>31</sup> Connecticut passed legislation amending the prostitution statute to apply to persons 16 years of age and older; returning to the legislature in 2016,<sup>32</sup> advocates successfully extended non-criminalization to all minors under 18. Indiana followed suit in 2017,<sup>33</sup> passing legislation that amended the prostitution statute to restrict applicability to adults 18 years of age and older. Since both of these states have gaps in their trafficking laws that would have excluded some exploited youth from being identified as trafficking victims, hinging non-criminalization on age of majority ensured that, regardless of whether the minor meets the state's legal definition of a trafficking victim, the minor is still insulated from being charged with prostitution.

## II. *Excludes Older Minors*

The majority of non-criminalization states eliminate criminal liability for all minors—Connecticut and Minnesota being the most recent to remove age limitations that did not protect older minors from being criminalized for prostitution. The remaining two, Michigan and South Dakota, exclude 16 and 17 year olds from the full protection of the non-criminalization law, drawing the line based on age of consent rather than age of majority.<sup>34</sup> In failing to recognize the unique and serious harm of commodifying sex with a child, hinging liability for prostitution on the age of consent draws no distinction between consent in the context of non-commercial sex and the inherently non-consensual context of being bought and sold for commercial sex.

The term “consent” connotes “choice,” but a minor’s consent or apparent willingness to engage in commercial sex ignores the reality of subtle coercive tactics employed by traffickers and other vulnerabilities that cause minors to engage in these exploitive relationships. Further, states oftentimes fail to recognize minors as victims of statutory rape once the conduct has been commercialized.<sup>35</sup> Instead, the exchange of money seemingly sanitizes the underlying crime of child rape by creating the perception that these victims are willing participants in their own exploitation. Drawing a line consistent with trafficking laws rather than the age of consent recognizes that older minors also face extreme trauma from being bought and sold for sex. In fact, studies of the adolescent brain confirm the need for a host of laws that distinguish between older youth and adults.<sup>36</sup>

For this reason, a consistent, trauma-informed approach requires that the driving factor in drawing the line for non-criminalization of child sex trafficking victims be the victim’s minority status, not the amorphous concept of consent, which is not a factor in proving the crime of sex trafficking and consequently is an inappropriate factor for determining which child victims should be protected from criminalization.



## Hinges on identification as a child sex trafficking victim

Five states restrict non-criminalization solely to minors who are legally identified as trafficking victims.<sup>37</sup> Contrary to federal law, several states mandate identification of a controlling third party in order for a commercially sexually exploited child to be identified as a trafficking victim.<sup>38</sup> When these definitional requirements intersect, protections for child victims are narrowed:

This means if a buyer directly pays a minor or offers food or shelter in return for sex acts, then this child may not be identified as a victim. Alternatively, even when a trafficker is involved, if the minor does not identify the trafficker, the exploitation will not be identified as an instance of sex trafficking. This is problematic since victims often deny the extent of their own exploitation and often experience trauma-bonding making it difficult or impossible for children to disclose their trafficker. Instead of being identified and provided protections as a trafficking victim, the child could be prosecuted for prostitution in [those] jurisdictions.<sup>39</sup>

Accordingly, these definitional hurdles exclude some of the most vulnerable minors from protection under state non-criminalization laws. For example, states that have adopted the Uniform Act on Prevention of and Remedies for Human Trafficking (the “Uniform Act”), an alternative to the federal trafficking model, are particularly susceptible to this type of definitional hurdle. Under the Uniform Act, human trafficking occurs when an offender “recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices” a minor in furtherance of sexual servitude.<sup>40</sup> However, “sexual servitude” is defined as “maintain[ing] or mak[ing] available a minor for the purpose of engaging the minor in commercial sexual activity.”<sup>41</sup> This narrow definition excludes buyers, thus establishing a third party control requirement. Since non-criminalization under the Uniform Act “generally depends on the victim establishing that the offenses were committed ‘as a result of being a victim of human trafficking,’ the definition of ‘victim’

## What is the Uniform Act?

Despite its comprehensiveness, some features of the Uniform Act make it a challenging model for states to adopt in a manner that protects all commercially sexually exploited youth. In addition to establishing a third party control requirement, the Act’s “Immunity for Minors” section fails to unambiguously protect all children from facing criminal liability for prostitution offenses. Subsection (b) of the Act provides immunity for prostitution offenses to all minors who engage in commercial sex; however, Subsection (a) provides a similar, but potentially conflicting, provision that limits immunity to minors who commit a prostitution offense as a “direct result” of being a victim of sex trafficking. As such, it can be argued that minors who engage in behaviors constituting prostitution, including soliciting or offering to engage in commercial sex, but do not actually engage in the sex act itself, would be required to prove trafficking victimization. Consequently, states that have modeled their trafficking laws after the Uniform Act are left with little clarity as to whether non-criminalization is hinged on victimization and age, age alone, or actual engagement in commercial sex. One of the adopting states, North Dakota, found the need to introduce clarifying legislation to supplement the state’s adoption of the Uniform Act and ultimately amended the prostitution statute to restrict its applicability to individuals who are 18 or older.

is paramount to accessing this important protection.”<sup>42</sup> As such, the third party control requirement creates loopholes that prevent consistent application of protection for commercially sexually exploited youth.<sup>43</sup>

In addition to definitional hurdles, proving victimization is an unnecessary hurdle that shifts the burden to the victim, potentially operating more like an affirmative defense. As a result, requiring proof of victimization may not insulate minors from the trauma of being directed into the juvenile system until a finding of victimization can be made, oftentimes during a pre-trial conference. Additionally, requiring a finding of victimization may necessitate that the minor identify him or herself as a victim of sex trafficking; because “trafficked girls often do not initially self-identify as victims,” such legal requirements are problematic in practice.<sup>44</sup> Resultantly, minors could still face arrest, detention, and a potential delinquency hearing before victimization is established.

Lack of training on identifying risk factors and vulnerabilities, and on defining victimization oftentimes impedes a judge or prosecutor’s ability to accurately identify victims and drop charges. Even if charges are eventually dropped, this approach still requires the child victim to go through the arrest and charging process, which itself can be difficult and traumatizing, especially with the uncertainty of whether the charges will be dropped. As such, enacting strong, clear laws that prohibit the criminalization of all minors for prostitution alleviates confusion about victim definitions and ensures that any minor who is bought or sold for sex, regardless of trafficker-involvement, is protected from prosecution and ideally connected with services instead of facing arrest and detention.

## State Examples

By adopting a modified version of the Uniform Act in 2017,<sup>45</sup> West Virginia amended its human trafficking statute and progressed towards a non-criminal response to child sex trafficking victims. However, such protections are designed to rest on a court’s formal determination that the minor engaged in commercial sex as a result of being a trafficking victim.<sup>46</sup> As such, not all minors are insulated from prosecution for the offense of prostitution as West Virginia’s definition of human trafficking requires third party control, thus excluding youth survivors who do not have or do not disclose the identity of a trafficker.

Several states, however, have successfully adopted the Uniform Act in a manner that removes criminal liability for minors who engage in commercial sex acts, regardless of whether the minor meets the state’s legal definition of sex trafficking victim. Enacting the Uniform Act in 2015,<sup>47</sup> Montana revised the Act’s “Immunity of Minor” section<sup>48</sup> to prevent minors from being charged and prosecuted for “prostitution” and “promoting prostitution,” while minors identified as victims of sex trafficking are provided the additional protection of immunity for nonviolent offenses. North Dakota pursued a similar approach in adopting the Uniform Act in 2015;<sup>49</sup> in drafting the “Immunity for Minor” section, legislators protected minors from being charged and prosecuted for prostitution offenses. However, due to the Act’s ambiguity, the State passed clarifying legislation<sup>50</sup> during the same session, amending the prostitution statute to limit its applicability to adults alone.



## Incorporates a service response

Alone, removing criminal penalties for prostitution for minors is not enough. In order to avoid re-traumatization and prevent re-victimization, removing criminal penalties must be coupled with access to specialized services. Similarly, a simple mandate that law enforcement refer exploited youth to child serving agencies is not enough; the referral must be to services that are informed by and responsive to the unique trauma and harms this population faces. Otherwise, “lack of training or implementable protocols within child serving agencies or a lack of appropriately equipped service providers may still leave victims vulnerable to re-traumatization and exploitation.”<sup>51</sup> Together, these express mandates help ensure that survivors are not underserved or disconnected from a specialized service response.

Further, enacting a mandated, specialized service response in conjunction with non-criminalization helps alleviate concerns that “youth may still be charged with status offenses that mask the intent to arrest victims for prostitution,” a concern “especially prevalent in areas where law enforcement feel there is a lack of safe placement alternatives or particularly high risk of re-exploitation.”<sup>52</sup> Authorizing law enforcement to refer youth to specialized services and ensuring availability of appropriate services may remove the perceived need to arrest these children for their own protection and lower the risk of re-exploitation.

Some states’ non-criminalization laws have also gravitated towards providing law enforcement with express authority to take a child sex trafficking victim into temporary or emergency protective custody. In removing criminal liability for minors under the state’s prostitution statute in 2016, the California legislature simultaneously amended the dependency law to provide law enforcement with the ability to take a commercially sexually exploited minor “into temporary protective custody” as a “dependent child of the court” if there is a reasonable basis for believing they are in immediate danger and cannot be released to a caregiver. Similarly, Illinois’ prostitution law allows law enforcement to take a minor into temporary protective custody and requires an investigation into child abuse or neglect.

Several states require law enforcement to refer commercially sexually exploited youth for services, but many states do not require those services to be specialized to the unique needs of these children. Illinois, for example, requires only a general referral to child welfare.

720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution): “[A] law enforcement officer who takes a person under 18 years of age into [temporary protective] custody under this Section shall immediately report an allegation of a violation of [trafficking in persons] to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours . . . .”

In contrast, the District of Columbia requires law enforcement to refer exploited youth to specialized services.

D.C. Code § 22-2701(d)(2) (Engaging in prostitution or soliciting for prostitution): “The Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under § 22-1834.”



## State Examples

Regardless of the state's approach to incorporating a service response, one of the lessons learned from implementation of non-criminalization laws<sup>53</sup> is that developing an effective, comprehensive response outside of the juvenile justice system requires a long-term commitment to dedicating the appropriate resources, personnel, and efforts necessary for delivering holistic services and care. States that have successfully developed a statewide, survivor-centered service response share a common tactic; contrary to shifting a state's entire response through a single piece of legislation or policy change, success has been attained through years of advocacy, collaboration, evaluation, and active program enhancement.

In 2016, Florida became the first state to achieve a perfect score on the "Protective Provisions" section of the Protected Innocence Challenge Legislative Framework.<sup>54</sup> This success, however, reflected years of multi-agency efforts and collaboration, including the creation of a Statewide Human Trafficking Council, the introduction and enactment of three noteworthy bills,<sup>55</sup> and the development of sustainable funding streams. Florida's approach proved successful; following six years of continued advocacy, monitoring, and evaluation, the state had developed and implemented a robust response that: (1) removed criminal liability for all minors under the prostitution law; (2) created a specialized service response available to all commercially sexually exploited children through the Department of Children and Families; (3) developed a screening tool to assess all system-involved youth; and (4) designed and made available specialized placement options for commercially sexually exploited youth.

A multi-year approach to eliminating criminal liability for child sex trafficking survivors was also successfully implemented in Minnesota. Commencing in 2011,<sup>56</sup> Minnesota embarked on a five-year journey of designing, legislating, and implementing their "Safe Harbor for Sexually Exploited Youth," a comprehensive statewide service model to holistically address the commercial sexual exploitation of children. Within that five-year period, Minnesota stakeholders, under the direction of the Commissioner of Public Safety, ultimately removed criminal liability for minors under the prostitution law, created the "No Wrong Door" model, and became the first state to expand services to commercially sexually exploited youth under the age of 25. However, such success was achieved incrementally; in 2011, Minnesota lawmakers passed legislation<sup>57</sup> that initially (1) removed criminal liability for commercially sexually exploited children under 16; (2) created a mandatory diversion program for older minors; and (3) tasked the Commissioner of Public Safety to create a statewide service response model.

One of the most notable features of Minnesota's approach was the delayed implementation of the non-criminalization provisions. To ensure that the relevant state agencies were prepared to deliver a trauma-informed, individualized response to exploited youth, the 2011 bill extended the effective date of the non-criminalization provisions to August 2014. During the intervening time between enactment and the effective

date, stakeholders returned to the legislature<sup>58</sup> to address outstanding gaps and obstacles to appropriately serving all commercially sexually exploited youth, including expanding the state's non-criminalization provision to include 16 and 17 year olds since older minors were not originally protected under the 2011 bill. Advocates were also able to advance legislation with dedicated funds that established the position of Statewide Safe Harbor Coordinator in the Department of Health and a grant program that funds Regional Navigators across the state. These Regional Navigators coordinate access to specialized services and trauma-informed approaches for child sex trafficking victims in their assigned region.

Following the full implementation of the non-criminalization provisions in 2014, stakeholders were able to advance legislation that expanded the provision of "Safe Harbor" services to youth age 24 years and younger. In addition to establishing a statutory framework for a statewide response, Minnesota advocates have secured annual appropriations, totaling \$13 million, to continue funding state agencies and Regional Navigators to ensure full implementation and continual evaluation of the "No Wrong Door" model.<sup>59</sup>

Meanwhile, states such as Florida and California took a scaffolded approach that involved several years of legislative and non-legislative steps to ensure that comprehensive, funded services would be available to trafficked youth prior to removing criminal liability for child sex trafficking victims. Like Florida, California passed legislation in 2016<sup>60</sup> to prohibit the prosecution of minors for prostitution and prostitution-related offenses, after advocates had laid important groundwork in the state over several years prior. In 2013, the state's Child Welfare Council created a multi-disciplinary Commercially Sexually Exploited Children (CSEC) Action Team to identify promising practices, drive state policy and capacity to serve exploited children, and provide guidance to counties and community partners, including sample protocols and memoranda of understanding for meeting state and federal requirements. In addition the CSEC Action Team convened the CSEC Advisory Board, an advisory body comprised of adult survivors of commercial sexual exploitation to ensure that survivors' voices help to inform policy and advocacy across the state. In 2014, at the urging of advocates, the California legislature passed legislation making clear that commercial sexual exploitation of children is child abuse, and that exploited and at-risk children may be served through the child welfare system as victims of abuse, rather than the juvenile justice system. That law also created the statewide CSEC Program, which provides a dedicated funding stream of nearly \$20 million annually to support counties in developing and implementing protocols to prevent exploitation, and identify and serve exploited and at-risk children.<sup>61</sup> In 2015, California codified the Federal Preventing Sex Trafficking and Strengthening Families Act in a law requiring counties to proactively identify, report, document and serve CSEC, as well as take steps to locate runaway and missing children and conduct debriefs with recovered children to inform future services and placements. Developing and refining a statewide service response over the course of several years, and supporting counties to build their capacity to serve youth through multidisciplinary collaborations prepared California to shift its response to child sex trafficking away from the juvenile justice system and towards a more trauma-informed, strengths-based, and youth-centered approach through child welfare and other child serving agencies.<sup>62</sup>



## Procedure

### *I. Prohibiting a minor from being charged v. prohibiting prosecution, adjudication, or conviction*

State non-criminalization laws generally conform to one of two procedural models.

Under the first model, the non-criminalization law is designed to prohibit a minor from being charged with prostitution; this includes states with prostitution laws that are limited in application to adults and those that otherwise provide an exception that in effect makes the prostitution law inapplicable to minors. By contrast, the other procedural model provides that a child cannot be adjudicated delinquent or criminally prosecuted for prostitution.

Currently, 12 states and the District of Columbia prohibit prosecution only,<sup>63</sup> an approach that may fail to fully protect commercially sexually exploited youth from an initial adversarial response, depending on interpretation of the state law. Merely prohibiting prosecution could be interpreted as leaving open the possibility that a minor may be detained, arrested, interrogated, and confined before ultimately being released, leading to confusion among law enforcement regarding how they should initially respond to and interact with exploited children.

In contrast, 11 states have structured their non-criminalization laws to prevent a minor from being charged with and prosecuted for prostitution.<sup>64</sup>

### *II. Prohibiting arrest*

However, statutory construction alone does not necessarily guarantee that a minor will not be detained and/or arrested for prostitution. In fact, of the 11 state laws that are drafted in a way that should prevent a minor from being charged with prostitution, three nonetheless contemplate the detention and/or arrest of a minor on prostitution charges.<sup>65</sup>

Eliminating criminal liability in a manner that prevents not only the prosecution and adjudication of child sex trafficking victims, but also prevents the arrest and detention of minors engaged in commercial sex, protects these children from the direct and collateral harms associated with a criminal justice response.<sup>66</sup> “Arrest involves the trauma of physical restraint, which can be stigmatizing, especially when administered in public. Victims may also be subjected to interrogation conducted by individuals who have not been trained in the trauma dynamics associated with child sex trafficking.”<sup>67</sup> Similarly, detaining a minor, even for investigative purposes, may involve restraint and interrogation. Accordingly, detention and arrest can be as traumatizing as the adjudication process.

Further, arresting minors for prostitution negatively impacts the overall fight against child sex trafficking by reinforcing a victim’s belief that he or she is a criminal and uncared for by society, a belief instilled by traffickers as a form of control. Accordingly, a punitive criminal justice response is likely to enhance victims’ distrust of the criminal justice system.<sup>68</sup> Allowing for arrest, therefore, “risks undermining relationships with those who seek to help and protect survivors, such as law enforcement, prosecutors, child welfare, and even service providers,” which “may thwart the rapport necessary to support a victim’s adherence to a service plan designed to keep vulnerable minors from being re-exploited and may inhibit victims’ ready cooperation in investigations and prosecutions of perpetrators.”<sup>69</sup>

Lack of training surrounding the dynamics of child sex trafficking may further leave law enforcement more willing to arrest a child for prostitution. Further, officers may be left with little choice, particularly in states that hinge non-criminalization on identification as a child sex trafficking victim. If the finding of victimization is technically made during a pre-trial conference or preliminary hearing, minors could face arrest, detention, and a potential delinquency hearing before victimization is established.

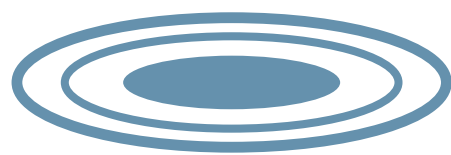
One of the arguments in support of retaining the ability to arrest exploited youth suggests that intervention through arrest is the best—or perhaps the only—way to separate a victim from his or her trafficker.<sup>70</sup> The concern with separating a child victim from his or her trafficker is often driven by one or both of the following goals: (1) trying to break the trauma-bond a victim may have with his or her trafficker and/or (2) compelling the child to testify against his or her exploiter. However, this argument ignores the inherent consequences of arrest, the potential use of temporary protective custody,<sup>71</sup> and the role of a specialized service response in breaking the trauma bond, which connects these children to the resources necessary for healing.

## State Examples

Despite the adverse impact of arrest, state non-criminalization laws do not expressly prohibit a child from being arrested. In fact, states such as West Virginia and Alabama<sup>72</sup> expressly permit minors to be charged with prostitution prior to a court’s formal finding of victimization. Resultantly, child sex trafficking victims would likely experience arrest, detention, and the commencement of delinquency proceedings before benefiting from the state’s non-criminalization protections.

Other states such as Illinois, Kentucky, and Nebraska expressly allow law enforcement to detain a commercially sexually exploited minor for “investigative purposes” despite protecting the minor from criminal liability for prostitution offenses. Such detention provisions run the risk of exposing a child sex trafficking victim to arrest and detention, even if limited to a “reasonable period,” since none of these states define “reasonable period” or “investigative purposes” to limit the scope of the detention to the purpose or time necessary to determine that the detained individual is, in fact, a minor.





## Extension of non-criminalization to other offenses

Prohibiting the criminalization of minors for prostitution offenses does not necessarily insulate a child sex trafficking victim from experiencing the direct and collateral consequences of arrest, detention, or adjudication.<sup>73</sup> In fact, “[t]he most common crimes for which girls are arrested—including running away, substance abuse, and truancy—are also the most common symptoms of abuse.”<sup>74</sup> Exploited youth may also be arrested for crimes that are seemingly unrelated to exploitation but in fact are intimately tied to it. For example, some exploiters force victims to carry drugs or commit theft on the exploiter’s behalf. Therefore, even minors who are afforded protections from prostitution charges are oftentimes prosecuted for other crimes. For this reason, state non-criminalization laws are increasingly expanding protection beyond prostitution offenses to include other offenses that are often associated with trafficking victimization.

Currently, seven states have non-criminalization laws that include offenses beyond prostitution and prostitution-related offenses, ranging in severity levels from juvenile status offenses to felony crimes.<sup>75</sup> The diversity of offenses that are included under state non-criminalization laws seems to reflect states’ varying policy positions on what can be attributed to trafficking victimization as well as the different offenses that minor victims are most susceptible to committing and, therefore, face punishment for in each particular state.

### State Examples

The shift towards expanded non-criminalization laws commenced in 2013 when Kentucky, Mississippi, and Wyoming passed legislation that protected minor victims of sex trafficking from being prosecuted for prostitution, as well as other offenses. Wyoming enacted House Bill 133<sup>76</sup> in early 2013 which provided broad immunity to sex trafficking victims for all crimes committed “as a direct result of, or incidental to, being a victim of human trafficking . . . .” Similarly, Mississippi passed House Bill 673,<sup>77</sup> which removed criminal liability for all sex trafficking victims for both prostitution and human trafficking offenses while affording immunity to minor victims for the crime of “promoting prostitution.” With the enactment of House Bill 3,<sup>78</sup> Kentucky adopted a child-specific approach, amending the state’s prostitution laws to remove criminal liability for minors and creating an additional provision that insulated child sex trafficking victims from being charged or prosecuted for juvenile status offenses that were committed as a result of trafficking victimization.

The following year, Montana, North Dakota, and South Carolina enacted legislation that prohibited the criminalization of child sex trafficking victims for prostitution offenses and certain other crimes. Passing a modified version of the Uniform Act<sup>79</sup> and accompanying legislation,<sup>80</sup> North Dakota amended the prostitution law to restrict its applicability to adults and to provide child sex trafficking victims immunity

for misdemeanor forgery, misdemeanor theft offenses, insufficient funds or credit offenses, manufacture or possession of a controlled substance or counterfeit substance offenses, and drug paraphernalia offenses. Montana also adopted a tailored version of the Uniform Act that provided immunity to child sex trafficking victims who, as a direct result of their trafficking victimization, commit prostitution, promoting prostitution, or other non-violent offenses.<sup>81</sup> Soon after, South Carolina enacted Senate Bill 183,<sup>82</sup> which prohibited the criminalization of child sex trafficking victims for prostitution and human trafficking offenses if such offenses were “committed as a direct result of, or incidental to or related to, trafficking.”<sup>83</sup>

## Overview

States have adopted varying statutory approaches to prevent the criminalization of commercially sexually exploited youth; resultantly, the outcomes of such legislation, oftentimes referred to as “Safe Harbor” laws, have created diverse consequences for minor survivors. While 23 states and the District of Columbia prohibit the criminalization of minors for prostitution offenses, not all prevent child sex trafficking victims from enduring arrest, detention, interrogation, adversarial investigative practices, and, ultimately, proving their own victimization. As such, not all “Safe Harbor” laws are necessarily safe for all exploited youth.

Even states that have made great strides in enacting protective responses for youth may fail to ensure full protection from punitive measures. Although nearly half the states in the nation have enacted non-criminalization laws, 12 of those states’ laws specifically contemplate detaining or arresting a minor for prostitution. Five states solely require a finding of trafficking victimization to prevent the criminalization of the minor for prostitution offenses, suggesting that some minors engage in commercial sex acts out of choice. Further, only eight states and the District of Columbia couple non-criminalization laws with statutory avenues to specialized services. As such, only four states, California, Connecticut,<sup>84</sup> Florida, and Minnesota, have enacted non-criminalization laws that are designed to prevent the arrest and detention, as well as prosecution, of minors for prostitution offenses in addition to connecting child sex trafficking victims with holistic, specialized care and services.<sup>85</sup>

Developing and enacting comprehensive non-criminalization laws requires a multi-year and multi-agency commitment, inclusive of input, buy-in, and contribution from a variety of stakeholders. Importantly, through expansive training and cultural changes, states should simultaneously seek policy, practice, and culture reform, ultimately shifting away from viewing and responding to commercially sexually exploited children as delinquent youth rather than as survivors of child sex trafficking.

*For state-specific information regarding the issues examined above, review the chart and accompanying materials below.*

# APPROACHES TO NON-CRIMINALIZATION

| <div><div><div>Hinges on age of minority<sup>[2]</sup></div><div>AGE</div></div><div><div>Hinges on identification as a child sex trafficking victim<sup>[3]</sup></div><div>ID</div></div><div><div>Incorporates a Service Response<sup>[4]</sup></div><div></div></div><div><div>Procedure</div><div></div></div><div><div>Extension of non-criminalization</div><div></div></div></div> |   |   |                       |  |   |  |  |   |  |   |   |   |  |   |
|--|---|---|-----------------------|--|---|--|--|---|--|---|---|---|--|---|
| STATE  | Eliminates criminal liability within the prostitution law | Eliminates criminal liability through a separate non-crim provision | Excludes older minors | Identifies all commercially sexually exploited youth as victims <sup>[3]</sup> | Requires third party control <sup>[4]</sup> | Provides for a specialized service response <sup>[5]</sup> | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody <sup>[6]</sup> | Prohibits a minor from being charged with prostitution <sup>[7]</sup> | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest <sup>[8]</sup> | Extends protection to other prostitution-related offenses <sup>[9]</sup> | Extends protection to non-prostitution offenses <sup>[10]</sup> |
| ALABAMA  |   |   |                       | ✓ <sup>[11]</sup>  |   | ✓  |  |   |  | ✓   | ✓   |   |  |   |
| CALIFORNIA   | ✓   |   |                       |  |   | ✓*   |  |   | ✓  | ✓   |   |   | ✓  |   |
| CONNECTICUT <sup>[12]</sup>  | ✓   |   |                       |  |   | ✓*   |  |   |  | ✓   |   |   |  |   |
| DC   | ✓   |   |                       |  |   | ✓  |  | ✓   | ✓  |   | ✓   |   |  |   |
| FLORIDA  | ✓   |   |                       |  |   | ✓  |  | ✓   | ✓  | ✓   |   |   |  |   |
| ILLINOIS   | ✓   |   |                       |  |   | ✓  |  | ✓   | ✓  |   | ✓   | ✓   | ✓  |   |
| INDIANA  | ✓   |   |                       |  |   | ✓  |  | ✓   |  | ✓   |   | ✓   |  |   |
| KENTUCKY   |   | ✓   |                       |  |   | ✓  |  | ✓   | ✓  |   | ✓   | ✓   | ✓  | ✓   |
| MICHIGAN   | ✓   |   | ✓                     |  |   | ✓  |  | ✓   |  | ✓   |   | ✓   |  |   |
| MINNESOTA  |   | ✓   |                       |  |   | ✓*   |  |   |  | ✓   |   |   | ✓  |   |
| MISSISSIPPI  |   |   |                       |  | ✓   |  |  | ✓   |  |   | ✓   | ✓   | ✓  | ✓   |
| MONTANA*   |   | ✓   |                       | ✓  |   | ✓  |  |   | ✓  |   |   |   | ✓  | ✓   |
| NEBRASKA   | ✓   |   |                       |  |   | ✓  |  | ✓   | ✓  |   | ✓   | ✓   |  |   |
| NEW HAMPSHIRE*   | ✓   |   |                       | ✓  |   |  |  |   |  |   | ✓   |   | ✓  |   |
| NORTH CAROLINA   | ✓   |   |                       |  |   | ✓  |  | ✓   | ✓  |   | ✓   | ✓   | ✓  |   |



| STATE          | Hinges on age of minority <sup>[2]</sup>                    |   | Hinges on identification as a child sex trafficking victim <sup>[3]</sup> |  | Incorporates a Service Response <sup>[4]</sup> |  |   |   |  |   | Procedure   |   | Extends criminalization  |   |
|----------------|---|---|---|--|--|--|---|---|--|---|---|---|--|---|
|                | Eliminates criminal liability within the prostitution law   | Eliminates criminal liability through a separate non-crim provision | Excludes older minors   | Identifies all commercially sexually exploited youth as victims <sup>[3]</sup>             | Requires third party control <sup>[4]</sup>    | Provides for a specialized service response <sup>[5]</sup>   | Provides for a general service response only  | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody <sup>[6]</sup> | Prohibits a minor from being charged with prostitution <sup>[7]</sup>                           | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest <sup>[8]</sup> | Extends protection to other prostitution-related offenses <sup>[9]</sup> | Extends protection to non-prostitution offenses |
| NORTH DAKOTA   | ✓   | ✓   |   |  | ✓  |  | ✓   |   |  | ✓   |   |   |  | ✓   |
| RHODE ISLAND*  |   | ✓   |   |  | ✓  |  | ✓   |   |  | ✓   |   | ✓   |  |   |
| SOUTH CAROLINA |   |   |   | ✓ <sup>[13]</sup>  |  | ✓ <sup>[14]</sup>  |   |   |  |   | ✓   |   |  | ✓   |
| SOUTH DAKOTA   | ✓   |   | ✓   |  |  |  |   |   |  | ✓   |   |   |  |   |
| TENNESSEE      | ✓   |   |   |  |  |  |   |   |  |   | ✓   | ✓   |  |   |
| UTAH           | ✓   |   |   |  |  | ✓  |   | ✓   |  |   | ✓   | ✓   | ✓  |   |
| VERMONT        |   |   |   | ✓  |  |  | ✓   |   |  |   | ✓   |   |  | ✓   |
| WEST VIRGINIA  |   |   |   |  | ✓  |  | ✓   | ✓   |  |   | ✓   | ✓   |  |   |
| WYOMING        |   |   |   |  | ✓  |  | ✓   | ✓   |  | ✓   |   |   |  | ✓   |
| TOTALS:        | 13 STATES & DC  | 5 STATES  | 2 STATES  | 5 STATES   | 5 STATES                                       | 8 STATES & DC  | 12 STATES                                     | 11 STATES & DC  | 6 STATES & DC  | 11 STATES   | 12 STATES & DC  | 12 STATES   | 9 STATES   | 7 STATES  |
|                | eliminate criminal liability within the prostitution law.   | eliminate criminal liability within a separate immunity provision.  | exclude older minors.   | identify all commercially sexually exploited youth as victims.                             | require third party control.                   | provide for a specialized service response.  | provide for a general services response only. | mandate law enforcement referral to a child serving agency. | expressly allow for temporary protective custody.                | prohibit a minor from being charged with prostitution.  | prohibit prosecution, adjudication, or conviction only. | contemplate detention and/or arrest.                | extend protection to other prostitution-related offenses.                | extend protection to non-prostitution offenses. |
|                | 15 STATES & DC<br>remove criminal liability for all minors. |   |   | 10 STATES<br>hinge criminal liability on identification as a child sex trafficking victim. |  | 3 STATES'<br>non-criminalization laws provide neither a service response nor referral to a child-serving agency or protective custody. |   |   |  | 3 of the 11 STATES<br>that prohibit prostitution charges still contemplate arrest or detention. |   |   | In all, 13 STATES<br>extend non-criminalization beyond prostitution.     |   |
|                | 2 STATES<br>limit protections to minors under 16.           |   |   |  |  |  |   |   |  |   |   |   |  |   |

NOTES

<sup>1</sup> Responses in the chart are solely based on statutory law as analyzed under the Protected Innocence Challenge Legislative Framework, and do not reflect regulatory or practice-based responses. Except where otherwise indicated, evaluations of state laws are based on legislation enacted as of August 1, 2017. An asterisk (\*) in this column indicates Uniform Act adopting states with more than one immunity provision.

<sup>2</sup> Notably, several states have enacted two or more immunity provisions, each of which may follow a different approach to non-criminalization. Accordingly, a state may be included under more than one approach.

<sup>3</sup> Currently, none of the states that hinge non-criminalization on identification as a child sex trafficking victim require the use of force, fraud, or coercion—Alabama being the latest to remove this requirement.

<sup>4</sup> For additional information on third party control, please visit [https://sharedhope.org/wp-content/uploads/2016/02/Policy\\_Paper\\_Eliminating\\_Third\\_Party\\_Control\\_Final.pdf](https://sharedhope.org/wp-content/uploads/2016/02/Policy_Paper_Eliminating_Third_Party_Control_Final.pdf).

<sup>5</sup> An asterisk (\*) indicates a definitional barrier to all commercially sexually exploited children being identified as trafficking victims. Resultantly, specialized service responses that restrict access to children identified as trafficking victims may be unavailable to all exploited children.

<sup>6</sup> A check mark (✓) refers to state laws that allow a commercially sexually exploited child to be taken into custody on protective, rather than punitive, grounds.

<sup>7</sup> Although the statutory construction in these states is designed to prohibit a minor from being charged with prostitution, this construction does not necessarily guarantee that a minor will not be detained and/or arrested for prostitution. In fact, some state laws contemplate this outcome. Specifically, 5 states (CA, CT, IN, MI, and RI) have statutes contemplating the potential detention and/or arrest of a minor for prostitution despite structuring their non-criminalization laws to prohibit a minor from being charged with the offense.

<sup>8</sup> A check mark (✓) indicates that state law contains a specific, statutory reference to the detention and/or arrest of a minor for prostitution. House Bill 5041 (enacted June 1, 2018) repealed the provision of Conn. Gen. Stat. § 53a-82 (Prostitution) that expressly permitted a minor to be arrested for prostitution.

<sup>9</sup> “Other prostitution-related offenses” include offenses that go beyond the core prostitution law, such as loitering or promoting prostitution.

<sup>10</sup> “Non-prostitution offenses” include offenses related to other conduct that a child sex trafficking may be charged with, such as human trafficking or credit and substance abuse offenses.

<sup>11</sup> House Bill 305 (enacted April 4, 2018) removes the requirement to prove coercion or deception under the trafficking law when the victim is a minor.

<sup>12</sup> House Bill 5041 (enacted June 1, 2018) repealed Conn. Gen. Stat. § 46b-133(d)(2) (Arrest of child. Release or detention of arrested child), which required law enforcement to report suspected abuse to child welfare upon the arrest of a child for prostitution and expressly contemplated arresting a minor for prostitution.

<sup>13</sup> House Concurrent Resolution (HCR) 3329 and Senate Concurrent Resolution (SCR) 3329 (enacted May 17, 2018) removed the third party control barrier under South Carolina’s trafficking offense.

<sup>14</sup> HCR 3329 and SCR 3329 (enacted May 17, 2018) provides a method for connecting exploited youth with specialized services.

SEEKING JUSTICE:STATE LAW SUMMARIES

STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



ALABAMA

Alabama law prohibits minors from facing prosecution for prostitution offenses, but state law allows a child to be arrested for prostitution and hinges non-criminalization on a finding of victimization, potentially subjecting a commercially sexually exploited youth to re-victimizing investigative practices and trial-like processes while they await identification as a “sexual exploited child.”

| Hinges on identification as a child sex trafficking victim      | Incorporates a Service Response              | Procedure   |                                      |
|---|--|---|--------------------------------------|
| Identifies all commercially sexually exploited youth as victims | Provides for a general service response only | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest |
| ✓   | ✓  | ✓   | ✓                                    |

Alabama prohibits a “sexually exploited child” from being adjudicated delinquent for prostitution. Although a child who engages in commercial sex is presumed to satisfy the definition of a “sexually exploited child,” requiring legal identification in this way essentially hinges non-criminalization on a finding of victimization rather than on age of majority.

The definition of “sexually exploited child” further includes victims of child sex trafficking. House Bill 305—enacted April 4, 2018—removed the requirement to prove coercion or deception under the trafficking law when the victim is a minor. Because the trafficking law now identifies all commercially sexually exploited youth as victims, these children should be consistently protected from criminalization for prostitution based on a finding of trafficking victimization.

Although a “sexually exploited child” cannot be adjudicated delinquent for prostitution, Alabama law specifically contemplates their arrest, an inherent conflict in the law. Further, non-criminalization does not extend beyond prostitution.

Finally, under the Alabama Human Trafficking Safe Harbor Act, sexually exploited children will be identified as dependent or in need of supervision, rather than as delinquent, and provided a range of community-based services; however, these services are not required to be specialized to the unique needs of these children.

**Ala. Code §§ 12-15-701, 13A-12-123.**



# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### CALIFORNIA

California’s prostitution and loitering offenses are expressly inapplicable to minors, thereby ensuring consistent protection for all commercially sexually exploited youth; further, state law provides for a comprehensive response designed to connect these children with holistic, specialized care and services.

| Hinges on age   | Incorporates a Service Response             |   | Procedure  | Extension of non-criminalization                          |
|---|---|---|--|---|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Expressly allows for temporary protective custody | Prohibits a minor from being charged with prostitution | Extends protection to other prostitution-related offenses |
| ✓   | ✓   | ✓   | ✓  | ✓   |

California’s prostitution and “loitering with intent to commit prostitution” offenses do not apply to minors, thereby eliminating criminal liability based on age. Instead, a commercially sexually exploited child may be adjudicated as dependent and receive services through the child welfare system or other child-serving, community-based agencies. These children receive multidisciplinary, specialized services, which can include access to family justice centers, specialized advocates and case managers, specialized medical and mental health care, and therapeutic programs run by staff trained on best practices for providing care and support to exploited children. The statewide Commercially Sexually Exploited Children Program provides dedicated funding to counties to develop multidisciplinary responses to identify and serve trafficked youth, rather than arresting and processing these

children through the juvenile justice system.

In some cases, where a law enforcement officer has reasonable cause for believing that a child is in immediate danger and cannot be released to a parent or guardian, a commercially sexually exploited child be taken into temporary protective. In deciding whether to take a child into protective custody, the officer must consider serving the youth in the least restrictive environment, minimizing interference with the custody of the parent or guardian, the youth’s safety, and the needs of the community..

**Cal. Penal Code §§ 647, 11165.1, 13750; Cal. Welf. & Inst. Code §§ 300, 305, 307, 11462.01, 16524.7, 18259; Cal. Health & Safety Code § 1562.01.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### CONNECTICUT

Connecticut’s prostitution law does not apply to minors, thereby ensuring consistent protection for all commercially sexually exploited youth. Further, Connecticut law provides child sex trafficking victims with a comprehensive service response.

| Hinges on age   | Incorporates a Service Response             | Procedure  |
|---|---|--|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Prohibits a minor from being charged with prostitution |
| ✓   | ✓   | ✓  |

Connecticut’s prostitution law applies only to adults and creates a statutory avenue to specialized services for children identified as child sex trafficking victims. Further, the Commissioner of Children and Families may establish multidisciplinary teams to review cases involving child sex trafficking victims and to coordinate prevention, intervention, and treatment. Problematically, Connecticut’s trafficking law does not include

the act of buying sex with a minor, thereby requiring third party control. Accordingly, minors who are unwilling or unable to identify a trafficker may be excluded from a specialized service response.

**Conn. Gen. Stat. § 53a-82, 46b-133, 17a-106f, 17a-106a.**

SEEKING JUSTICE:STATE LAW SUMMARIES

STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



Rather than criminalize commercially sexually exploited youth for the crimes committed against them, D.C. provides for a specialized response that connects survivors with resources that are necessary to promote healing.

| Hinges on age   | Incorporates a Service Response             |   |   | Procedure  |
|---|---|---|---|--|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody | Prohibits prosecution, adjudication, or conviction <i>only</i> |
| ✓   | ✓   | ✓   | ✓   | ✓  |

D.C.’s prostitution law protects children from prosecution and requires the Metropolitan Police Department to refer any child who has engaged in—or has offered to engage in—a commercial sex act to organizations that provide housing, treatment, or services appropriate for child sex trafficking victims. Further, a law enforcement officer who has “knowledge, information, or suspicion of a child engaging in or offering to engage in a [commercial] sexual act” must report to the Child Family Services Agency.

Based on these reports and other available information, state law authorizes these children to be taken into custody “by

any employee of the Agency authorized to do so, or a law enforcement officer, when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary, including when he or she has reasonable grounds to believe that the child is engaging in or offering to engage in a [commercial] sex act.” Unlike temporary protective custody, this also applies in punitive situations where an officer takes a child into custody for committing a delinquent act.

**D.C. Code §§ 22-2701, 4-1321.02, 16-2309.**

SEEKING JUSTICE:STATE LAW SUMMARIES

STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



Florida’s prostitution law applies strictly to adults, thereby ensuring consistent protection for all minors. Rather than criminalize these children for the crimes committed against them, Florida law provides for a comprehensive response designed to connect child sex trafficking victims with holistic, specialized care and services.

| Hinges on age   | Incorporates a Service Response             |   |   | Procedure  |
|---|---|---|---|--|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody | Prohibits a minor from being charged with prostitution |
| ✓   | ✓   | ✓   | ✓   | ✓  |

Florida’s prostitution law applies only to those who are 18 years of age or older, thereby eliminating criminal liability based on age of majority. Further, if a law enforcement officer has probable cause to believe that a child has been sexually exploited through prostitution or human trafficking, the officer must take the child into temporary protective custody and deliver him or her to child welfare. As part of a specialized response, these children will be assessed for services, which may include

counseling, enrollment in a commercial sexual exploitation treatment program, or placement in a safe house or safe foster home. Cases will also be “assigned to child protective investigators and case managers who have specialized intensive training in handling cases involving a sexually exploited child.”

**Fla. Stat. Ann. §§ 796.07, 39.01, 39.401, 39.524, 409.1754.**



# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### ILLINOIS

Illinois’ prostitution law protects minors from prosecution for prostitution; however, the state’s non-criminalization provision allows law enforcement to detain a minor for investigative purposes. Rather than eliminating criminal liability at the outset by preventing the detention and arrest of a minor for prostitution, Illinois law fails to fully protect commercially sexually exploited children from adversarial practices.

| Hinges on age   | Incorporates a Service Response              |   |   | Procedure   |                                      | Extension of non-criminalization                          |
|---|--|---|---|---|--------------------------------------|---|
| Eliminates criminal liability within the prostitution law | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest | Extends protection to other prostitution-related offenses |
| ✓   | ✓  | ✓   | ✓   | ✓   | ✓                                    | ✓   |

Although Illinois’ prostitution law protects minors from prosecution, the statute expressly permits the minor to be detained, albeit for investigative purposes. The prostitution law also provides for temporary protective custody and requires law enforcement to report an allegation of human trafficking to the Illinois Department of Children and Family Services State Central Register, which will commence an investigation of child abuse or neglect. If “there is credible evidence that the child is abused or neglected, the Department shall assess the family’s need for services, and, as necessary, develop, with the family, an appropriate service plan for the family’s voluntary acceptance or

refusal.” However, services are not required to be specialized to the needs of commercially sexually exploited youth.

In addition to non-criminalization for prostitution, a minor cannot be held criminally liable for profiting from prostitution under Illinois’s promoting prostitution offense or for soliciting a sexual act, as those laws are expressly inapplicable to minors.

720 Ill. Comp. Stat. Ann. 5/11-14, 325 Ill. Comp. Stat. Ann. 5/8.2.

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### INDIANA

Indiana’s prostitution law applies strictly to adults, thereby ensuring consistent protection for all minors. However, the lack of a specialized service response may leave some survivors underserved or disconnected from resources that are necessary to promote healing.

| Hinges on age   | Incorporates a Service Response              |   | Procedure  |                                      |
|---|--|---|--|--------------------------------------|
| Eliminates criminal liability within the prostitution law | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Prohibits a minor from being charged with prostitution | Contemplates detention and/or arrest |
| ✓   | ✓  | ✓   | ✓  | ✓                                    |

Indiana’s prostitution law applies only to those who are 18 years of age or older, thereby eliminating criminal liability based on age of majority. However, law enforcement may still detain commercially sexually exploited children. Interestingly—or perhaps contradictorily—statutory authority for this form of detention is found within Indiana’s “rights of alleged victims” statute despite the traumatizing consequences associated with detention.

Upon detaining an alleged victim of child sex trafficking, a law enforcement officer must “immediately notify the department of child services that the alleged victim (1) has been detained and (2) may be a victim of child abuse or neglect.” Even if the child is identified as abused or neglect, however, Indiana law provides only for a general service response, rather than mandating the provision of specialized services.

Ind. Code Ann. §§ 35-45-4-2, 35-42-3.5-4.

SEEKING JUSTICE:STATE LAW SUMMARIES

STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



KENTUCKY

Kentucky law prohibits a minor from being prosecuted for prostitution and prevents a child sex trafficking victim from being charged or prosecuted for a status offense related to trafficking victimization. Rather than facing a punitive response, commercially sexually exploited youth will receive specialized services designed to alleviate the unique trauma associated with trafficking victimization.

| Hinges on age   | Incorporates a Service Response             |   |   | Procedure   |                                      | Extension of non-criminalization                          |   |
|---|---|---|---|---|--------------------------------------|---|---|
| Eliminates criminal liability through a separate non-crim provision | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest | Extends protection to other prostitution-related offenses | Extends protection to non-prostitution offenses |
| ✓   | ✓   | ✓   | ✓   | ✓   | ✓                                    | ✓   | ✓   |

Kentucky law prevents a minor from being prosecuted for prostitution or loitering for prostitution purposes through a separate non-criminalization provision. Under this separate provision, a law enforcement officer may take a minor suspected of prostitution into temporary protective custody; further, the law enforcement officer must refer the child to the Cabinet for Health and Family Services (CHFS). However, this provision also allows a minor to be detained for investigative purposes.

Upon referral to CHFS, the cabinet must initiate a specialized protective response, which includes the provision of treatment, housing, and services that are consistent with the child’s trafficking victim status. The cabinet will proceed with the case under statutes governing dependency, abuse, and neglect.

Kentucky law extends non-criminalization to status offenses committed as a result of trafficking victimization. However, Kentucky’s human trafficking offense includes all commercially sexually exploited children regardless of whether force, fraud, or coercion was used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identified the trafficker. Accordingly, all commercially sexually exploited children should be protected from prosecution for those offenses.

Ky. Rev. Stat. Ann. §§ 529.020, 529.120, 630.125, 609.029.

SEEKING JUSTICE:STATE LAW SUMMARIES

STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



MICHIGAN

Michigan’s non-criminalization law only protects minors under 16 years of age, leaving older minors to suffer the unjust, traumatizing consequences of an adversarial court process rather than connecting the minor to services.

| Hinges on age   |                       | Incorporates a Service Response             |   | Procedure  |                                      |
|---|-----------------------|---|---|--|--------------------------------------|
| Eliminates criminal liability within the prostitution law | Excludes older minors | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Prohibits a minor from being charged with prostitution | Contemplates detention and/or arrest |
| ✓   | ✓                     | ✓   | ✓   | ✓  | ✓                                    |

Michigan’s prostitution law applies only to those who are 16 years of age or older, thereby establishing non-criminalization for younger minors while excluding older minors from that protection. A separate provision creates a rebuttable presumption that an older minor was coerced into committing the commercial sex act, but minors who are 16–17 remain subject to arrest and conviction or adjudication for prostitution if that presumption is rebutted or if they are unwilling or unable to participate in court-ordered services. Regardless of the child’s age, non-criminalization does not extend beyond prostitution.

A law enforcement officer who encounters a minor engaging in prostitution or related conduct may detain that child, albeit only for investigative purposes. The officer then must file a report of suspected human trafficking with the department of health and human services (DHHS). In turn, DHHS will launch an investigation. As part of a specialized protective response, child serving agencies must: (1) consider a child’s status as a human trafficking victim while making placement decisions and (2) ensure access to trauma-informed services.

Mich. Comp. Laws Ann. §§ 750.448, 750.451, 722.954e.

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



*In re-defining who qualifies as a delinquent child and crafting a comprehensive service response model, Minnesota ensures that commercially sexually exploited youth are directed away from a re-victimizing, punitive process and provided with services that reflect the unique needs of trafficking survivors.*

| Hinges on age   | Incorporates a Service Response             | Procedure  | Extension of non-criminalization                          |
|---|---|--|---|
| Eliminates criminal liability through a separate non-crim provision | Provides for a specialized service response | Prohibits a minor from being charged with prostitution | Extends protection to other prostitution-related offenses |
| ✓   | ✓   | ✓  | ✓   |

Minnesota’s prostitution and loitering offenses are inapplicable to minors based upon the definitions of “delinquent child” and “juvenile petty offender.” Both exclude “a child 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.”

Further, Minnesota established a comprehensive service model that provides funded services to child sex trafficking victims. Although referral to services is not mandated under the system, the regional navigators grant provisions and evaluation requirements set goals for a statewide program meant to ensure that “support services are available, accessible, and adequate for sexually exploited youth.”

**Minn. Stat. Ann. §§ 260B.007, 145.4716, 145.4717, 145.4718.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



*Mississippi extended non-criminalization beyond prostitution to human trafficking offenses, a progressive step toward a survivor-centered, non-adversarial response; however, the state hinges non-criminalization on identification as a child sex trafficking victim. Resultantly, definitional hurdles within the trafficking law leave some commercially sexually exploited children vulnerable to prosecution for the crimes committed against them.*

| Hinges on identification as a child sex trafficking victim | Incorporates a Service Response              |   | Procedure   |   | Extension of non-criminalization                          |   |
|--|--|---|---|---|---|---|
| Requires third party control                               | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Expressly allows for temporary protective custody | Prohibits prosecution, adjudication, or conviction only | Extends protection to other prostitution-related offenses | Extends protection to non-prostitution offenses |
| ✓  | ✓  | ✓   | ✓   | ✓   | ✓   | ✓   |

Mississippi’s prostitution law protects trafficking victims from prosecution for prostitution offenses; however, the definition of “trafficked person” requires third party control. Resultantly, some commercially sexually exploited minors may not be identified as victims and, therefore, may be excluded from protection.

Further, the prostitution law authorizes law enforcement to take a minor into custody for suspected prostitution and allows charges to be filed. However, the officer must also file a report of suspected abuse or neglect with the Department of Human Services. Unfortunately, the resulting service response is not

required to be specialized to the needs of commercially sexually exploited youth.

Mississippi extends non-criminalization to minors charged with promoting prostitution or a violation of the Human Trafficking Act; however, the minor must be identified as a trafficking victim. For the reasons noted above, some child victims may be excluded from this protection.

**Miss. Code Ann. §§ 97-29-49, 97-3-54.1, 97-3-54.4.**



# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### MONTANA

Montana prohibits the criminalization of commercially sexually exploited children for prostitution, promoting prostitution, and non-violent offenses, thereby ensuring that commercially sexually exploited youth are not re-victimized by an adversarial trial process. However, one of the state’s immunity provisions requires a finding of trafficking victimization.

| Hinges on age   | Hinges on identification as a child sex trafficking victim      | Incorporates a Service Response              | Procedure  | Extension of non-criminalization                          |   |
|---|---|--|--|---|---|
| Eliminates criminal liability through a separate non-crim provision | Identifies all commercially sexually exploited youth as victims | Provides for a general service response only | Prohibits a minor from being charged with prostitution | Extends protection to other prostitution-related offenses | Extends protection to non-prostitution offenses |
| ✓   | ✓   | ✓  | ✓  | ✓   | ✓   |

Montana eliminates criminal liability for minors under a separate immunity statute but distinguishes between acts committed by child sex trafficking victims and those committed by minors generally. Under this law, “[a] person is not criminally liable or subject to proceedings under [the Youth Court Act] for prostitution, promoting prostitution, or other non-violent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.”

A separate subsection applies to all minors, stating, “[a] person who has engaged in commercial sexual activity is not criminally liable or subjected to proceedings under [the Youth Court Act] for prostitution or promoting prostitution if the person was a child at the time of the offense.” Although widely applicable to all minors, this subsection requires the child to physically engage

in a commercial sex act, meaning non-criminalization would not extend to offenses that fall short of the completed act.

Because Montana’s trafficking law includes any child that is bought for sex regardless of whether force, fraud, or coercion was used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies the trafficker, there’s little practical difference to distinguish these two provisions.

Under either non-criminalization provision, the child will be presumed to be a youth in need of care. Unfortunately, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth.

**Mont. Code Ann. § 45-5-709.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### NEBRASKA

Nebraska’s prostitution law protects minors from prosecution; however, state law allows law enforcement to take a child into custody for investigative purposes. This conflict undermines the intended purpose of non-criminalization by potentially subjecting the child to a criminal justice response.

| Hinges on age   | Incorporates a Service Response              |   | Procedure   |                                      |
|---|--|---|---|--------------------------------------|
| Eliminates criminal liability within the prostitution law | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest |
| ✓   | ✓  | ✓   | ✓   | ✓                                    |

Although Nebraska’s prostitution law protects minors from prosecution, the statute expressly permits the minor to be detained, albeit for investigative purposes. Law enforcement may take the child into custody following this initial encounter; however, the officer must report an allegation of child sex trafficking to the Department of Health and Human

Services (DHHS). In turn, DHHS can authorize necessary emergency treatment and services. However, services are not required to be specialized to the needs of commercially sexually exploited youth.

**Neb. Rev. Stat. Ann. §§ 28-801, 43-248.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### NEW HAMPSHIRE

New Hampshire prohibits a child from being prosecuted for prostitution, but prohibiting prosecution without providing for a specialized service response leaves commercially sexually exploited youth disconnected from critical resources that promote healing.

| Hinges on age   | Hinges on identification as a child sex trafficking victim      | Procedure   | Extension of non-criminalization                          |
|---|---|---|---|
| Eliminates criminal liability within the prostitution law | Identifies all commercially sexually exploited youth as victims | Prohibits prosecution, adjudication, or conviction only | Extends protection to other prostitution-related offenses |
| ✓   | ✓   | ✓   | ✓   |

New Hampshire’s prostitution law protects minors from delinquency proceedings and criminal prosecution. Further, New Hampshire’s trafficking law extends non-criminalization to other prostitution-related offenses when the minor has been identified as a trafficking victim, stating, “[a] victim under this section who was under 18 years of age at the time of the offense shall not be subject to a juvenile delinquency proceeding under RSA 169-B, or prosecuted for conduct chargeable as indecent exposure and lewdness under RSA 645:1 or prostitution under RSA 645:2, where the conduct was

committed as a direct result of being trafficked.” Because New Hampshire’s trafficking law includes any child that is bought for sex regardless of whether force, fraud, or coercion was used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies the trafficker, all minors should be protected from prosecution for these prostitution-related offenses. However, neither non-criminalization provision provides for a specialized service response.  
**N.H. Rev. Stat. Ann. §§ 645:2, 633:7.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### NORTH CAROLINA

North Carolina prohibits a child from facing prosecution for prostitution; however, state law allows law enforcement to take that child into custody; although referred to as “temporary protective custody,” this arrest-like process undermines the intended purpose of non-criminalization by potentially subjecting the child to a criminal justice response.

| Hinges on age   | Incorporates a Service Response             |   | Procedure   |                                      | Extension of non-criminalization                          |
|---|---|---|---|--------------------------------------|---|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest | Extends protection to other prostitution-related offenses |
| ✓   | ✓   | ✓   | ✓   | ✓                                    | ✓   |

Although North Carolina’s prostitution and solicitation of prostitution offenses protect minors from prosecution, both permit minors to be detained for investigative purposes. Further, both mandate that the minor be “taken into temporary protective custody as an undisciplined juvenile.” Although referred to as protective custody, this process seems akin to arrest.

Upon taking a minor into custody, a law enforcement officer

must report an allegation of human trafficking and sexual servitude to the director of the department of social services (DSS). In turn, DSS will commence and investigation into child abuse or neglect and conduct an assessment to determine whether protective services are necessary. However, the service response need not be specialized to the needs of commercially sexually exploited youth.

**N.C. Gen. Stat. §§ 14-204, 14-205.1, 7B-302.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### NORTH DAKOTA

North Dakota extends non-criminalization to a host of offenses committed as a result of trafficking victimization, a progressive step toward ensuring that commercially sexually exploited youth are not re-victimized by an adversarial trial process. However, the lack of a specialized service response may leave some survivors underserved or disconnected from resources that are necessary to promote healing.

| Hinges on age   |   | Hinges on identification as a child sex trafficking victim | Incorporates a service response              | Procedure  | Extension of non-criminalization                |
|---|---|--|--|--|---|
| Eliminates criminal liability within the prostitution law | Eliminates criminal liability through a separate non-crim provision | Requires third party control                               | Provides for a general service response only | Prohibits a minor from being charged with prostitution | Extends protection to non-prostitution offenses |
| ✓   | ✓   | ✓  | ✓  | ✓  | ✓   |

North Dakota’s prostitution law applies only to adults, thereby eliminating criminal liability based on age of majority. Further, North Dakota eliminates criminal liability for minors under a separate immunity statute but distinguishes between acts committed by child sex trafficking victims and those committed by minors generally. Under this law, a child sex trafficking victim is not criminally liable for prostitution, misdemeanor forgery, misdemeanor theft, insufficient funds or credit offenses, manufacture or possession of a controlled or counterfeit substance offenses, or drug paraphernalia offenses. However, North Dakota’s core sex trafficking law requires that a trafficker or controlling third party be identified. Resultantly, some commercially sexually exploited minors may not be identified as victims and, therefore, may be excluded from this protection.

A separate subsection applies to all minors, stating, “an individual who has engaged in commercial sexual activity is not

criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.” Although widely applicable to all minors, this subsection requires the child to physically engage in a commercial sex act, meaning non-criminalization would not extend to offenses that fall short of the completed act. Because North Dakota’s prostitution law only applies to adults, however, minors who solicit or agree to engage in a commercial sex act will be protected from criminalization under that law.

A child who is not subject to criminal liability under the separate immunity statute will be presumed to be a child in need of services. Unfortunately, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth.

N.D. Cent. Code §§ 12.1-29-03, 12.1-41-12, 12.1-41-02.

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### RHODE ISLAND

Rhode Island enacted two non-criminalization provisions; however, state law permits law enforcement to seize, detain, and hold an exploited child as a trial witness, a practice that risks re-victimizing a youth survivor.

| Hinges on age   | Hinges on identification as a child sex trafficking victim | Incorporates a Service Response                             | Procedure  |                                      |
|---|--|---|--|--------------------------------------|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response                | Mandates law enforcement referral to a child serving agency | Prohibits a minor from being charged with prostitution | Contemplates detention and/or arrest |
| ✓   | ✓  | ✓   | ✓  | ✓                                    |

Rhode Island eliminates criminal liability for minors under a separate immunity statute but distinguishes between acts committed by child sex trafficking victims and those committed by minors generally. Under this law, “[a]n individual is not criminally liable or subject to a delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.” However, Rhode Island’s core sex trafficking law requires that a trafficker or controlling third party be identified. Resultantly, some commercially sexually exploited minors may not be identified as victims and, therefore, may be excluded from this protection.

A separate subsection applies to all minors, stating, “[a]n individual who has engaged in commercial sexual activity is not criminally liable or subject to delinquency proceeding in the family court for prostitution or solicitation to commit a sexual

act if the individual was a minor at the time of the offense.” Although widely applicable to all minors, this subsection requires the child to physically engage in a commercial sex act, meaning non-criminalization would not extend to offenses that fall short of the completed act.

Under either non-criminalization provision, the child is presumed to be an abused and/or neglected child. Unfortunately, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth. Further, Rhode Island law specially allows an exploited child to be seized, detained, and held as a witness in a proceeding against the child’s perpetrator. This practice conflicts with the non-criminalization provisions noted above and risks re-traumatizing a youth survivor.

R.I. Gen. Laws Ann. §§ 11-34.1-2, 11-67.1-15, 11-67.1-3, 11-9-3.



# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



South Carolina extended non-criminalization beyond prostitution to include huamn trafficking offenses, a progressive step toward a survivor-centered, non-adversarial response. However, state law hinges non-criminalization on identification as a child sex trafficking victim. Resultantly, definitional hurdles within the trafficking law leave some commercially sexually exploited children vulnerable to prosecution for the crimes committed against them.

| Hinges on identification as a child sex trafficking victim | Procedure   | Extension of non-criminalization                |
|--|---|---|
| Requires third party control                               | Prohibits prosecution, adjudication, or conviction only | Extends protection to non-prostitution offenses |
| ✓  | ✓   | ✓   |

South Carolina’s human trafficking law protects victims from prosecution for prostitution and trafficking offenses. However, the definition of “sex trafficking” limits criminal liability for buyers of sex with minors to those buyers who purchase or attempt to purchase sex with a child who is under the control of a third party trafficker. Consequently, commercially sexually exploited children who are exploited directly by buyers without the involvement of a third party trafficker would not fall within the definition of a child sex trafficking victim, thereby excluding them from protection under the non-criminalization law.

Further, state law does not require law enforcement to refer commercially sexually exploited youth to a child serving agency, nor does it create a specialized service response or allow for temporary protective custody.

**S.C. Code Ann. §§ 16-15-90, 16-3-2010, 16-3-2020.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



South Dakota’s non-criminalization law only protects minors under 16 years of age, leaving older minors to suffer the unjust, traumatizing consequences of an adversarial court process rather than connecting the minor to services.

| Hinges on identification as a child sex trafficking victim |                       | Procedure  |
|--|-----------------------|--|
| Eliminates criminal liability within the prostitution law  | Excludes older minors | Prohibits a minor from being charged with prostitution |
| ✓  | ✓                     | ✓  |

South Dakota’s prostitution law applies only to those who are 16 years of age or older, thereby establishing non-criminalization for younger minors while excluding older minors from that protection. Regardless of the child’s age, non-criminalization does not extend beyond prostitution. Further,

state law does not mandate law enforcement referral to a child serving agency, create a general or specialized service response, or allow for temporary protective custody.

**S.D. Codified Laws § 22-23-1.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### TENNESSEE

Tennessee law prohibits minors from being prosecuted for prostitution; however, law enforcement may take a minor into custody for investigative purposes, which risks subjecting the child to an adversarial process. Additionally, state law fails to provide for a specialized service response. Prohibiting prosecution without addressing these gaps leaves some commercially sexually exploited youth re-victimized by an adversarial process, disconnected from resources that are necessary to promote healing.

| Hinges on age   | Procedure  |                                      |
|---|--|--------------------------------------|
| Eliminates criminal liability within the prostitution law | Prohibits prosecution, adjudication, or conviction <i>only</i> | Contemplates detention and/or arrest |
| ✓   | ✓  | ✓                                    |

Although Tennessee’s prostitution law protects minors from prosecution, the statute expressly permits the minor to be detained, albeit for investigative purposes. Further, state law does not require a law enforcement officer to refer a commercially sexually exploited child to a child serving agency, nor does it provide for a general or specialized service response. Rather, a law enforcement officer who takes custody of a minor for a suspected violation of the prostitution law

need only “provide the minor with the telephone number for the Tennessee human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.”

**Tenn. Code Ann. § 39-13-513.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS

### UTAH

Utah’s prostitution law protects minors from prosecution; however, law enforcement may detain and arrest a child for prostitution. This conflict undermines the intended purpose of non-criminalization by subjecting the child to a criminal justice response.

| Hinges on age   | Incorporates a Service Response             |   | Procedure  |                                      | Extension of non-criminalization                          |
|---|---|---|--|--------------------------------------|---|
| Eliminates criminal liability within the prostitution law | Provides for a specialized service response | Mandates law enforcement referral to a child serving agency | Prohibits prosecution, adjudication, or conviction <i>only</i> | Contemplates detention and/or arrest | Extends protection to other prostitution-related offenses |
| ✓   | ✓   | ✓   | ✓  | ✓                                    | ✓   |

Although age-neutral, Utah’s prostitution law creates an alternative to prosecution following the arrest of a minor for prostitution or sexual solicitation. Upon initial encounter, a law enforcement officer must conduct an investigation, refer the child to the Division of Child and Family Services (DCFS), and bring the child to a receiving center. A child who has been referred to DCFS will not be subject to delinquency proceedings.

Upon referral, DCFS will initiate a specialized service response based on an “evidence-informed and evidence-based safety and risks assessment” that guides “decisions concerning the child throughout the child protection investigation or proceeding.” The assessment will examine a child’s particular vulnerabilities, determine whether an intervention is required to protect the child, and assess the likelihood of future harm to the child.

**Utah Code Ann. §§ 76-10-1302, 62A-4a-105, 62A-4a-203.1.**

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### VERMONT

Although Vermont’s non-criminalization provision should apply to all commercially sexually exploited youth, it contemplates two different categories of victims: (1) children who are identified as trafficking victims and cannot be charged with prostitution and (2) children who are not identified as trafficking victims and can be adjudicated delinquent. Based on this distinction, it appears as though Vermont does not view all commercially sexually exploited children as victims of trafficking despite contrary provisions within the trafficking law.

| Hinges on identification as a child sex trafficking victim      | Incorporates a Service Response              | Procedure   | Extension of non-criminalization                |
|---|--|---|---|
| Identifies all commercially sexually exploited youth as victims | Provides for a general service response only | Prohibits prosecution, adjudication, or conviction only | Extends protection to non-prostitution offenses |
| ✓   | ✓  | ✓   | ✓   |

Vermont’s human trafficking law protects victims from prosecution for prostitution and obscenity offenses. Because Vermont’s trafficking law includes all commercially sexually exploited youth without specifying use of force, fraud, or coercion or requiring third party control, all minors should be protected from criminalization for prostitution and obscenity offenses despite a conflicting provision within the trafficking law that allows a minor to be treated as a “juvenile” under the delinquency chapter based on prostitution charges.

If the child is identified as a trafficking victim, he or she may be treated “as the subject of a child in need of care or supervision proceeding.” If the child is not identified as a trafficking victim, Vermont law allows for non-mandatory referral to the department for children and families. Regardless, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth.

Vt. Stat. Ann. tit. 13, § 2652.

# SEEKING JUSTICE:STATE LAW SUMMARIES

## STATE LAWS ELIMINATING CRIMINAL LIABILITY FOR CHILD SEX TRAFFICKING VICTIMS



### WEST VIRGINIA

West Virginia prohibits the prosecution of child sex trafficking victims for prostitution; however, definitional hurdles within the trafficking law may prevent some commercially sexually exploited youth from being identified as victims, leaving those children vulnerable to prosecution for the crimes committed against them.

| Hinges on identification as a child sex trafficking victim | Incorporates a Service Response              |   | Procedure   |                                      |
|--|--|---|---|--------------------------------------|
| Requires third party control                               | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Prohibits prosecution, adjudication, or conviction only | Contemplates detention and/or arrest |
| ✓  | ✓  | ✓   | ✓   | ✓                                    |

West Virginia’s human trafficking law protects victims from prosecution for prostitution offenses. Although a minor so charged is rebuttably presumed to be a victim, the Court makes the final determination regarding victim status. Further, West Virginia’s trafficking law requires third party control. Resultantly, some commercially sexually exploited children may not be identified as victims and, therefore, may be excluded from protection.

Under West Virginia law, a minor who is protected from criminal liability under this provision is presumed to be an abused child. Further, state law requires law enforcement to report suspected cases of child sex trafficking to the

Department of Health and Human Resources. Unfortunately, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth.

Non-criminalization may extend to other prostitution-related offenses, “including soliciting, inducing, enticing or procuring another to commit an act or offense of prostitution,” if the minor can prove he or she was coerced into the criminal behavior. However, placing the burden on the victim in this way causes the provision to function more like an affirmative defense, rather than non-criminalization.

W. Va. Code Ann. §§ 61-14-8, 61-14-7.



WYOMING

Wyoming’s non-criminalization provision removes criminal liability for any criminal act committed as a result of trafficking victimization, a progressive step toward ensuring that commercially sexually exploited youth are not re-victimized by an adversarial trial process. However, the lack of a specialized service response may leave some survivors underserved or disconnected from resources that are necessary to promote healing.

| Hinges on identification as a child sex trafficking victim | Incorporates a Service Response              |   | Procedure  | Extension of non-criminalization                |
|--|--|---|--|---|
| Requires third party control                               | Provides for a general service response only | Mandates law enforcement referral to a child serving agency | Prohibits a minor from being charged with prostitution | Extends protection to non-prostitution offenses |
| ✓  | ✓  | ✓   | ✓  | ✓   |

Wyoming’s prostitution law incorporates a separate provision that removes criminal liability for “any commercial sex act or other criminal act[] committed as a direct result of, or incident to, being a victim of human trafficking.” However, Wyoming’s trafficking law requires third party control. Resultantly, some commercially sexually exploited children may not be identified as victims and, therefore, may be excluded from protection.

State law requires a law enforcement officer to report suspected cases of child sex trafficking to the victim services division within the office of the attorney general and the department of family services. However, any resulting service response is not required to be specialized to the needs of commercially sexually exploited youth.

Wyo. Stat. Ann. §§ 6-4-101, 6-2-708.

CONSIDERATIONS FOR DRAFTING  
NON-CRIMINALIZATION LAWS

AGE versus ID

At the heart of recognizing a child sex trafficking survivor’s status as a victim of a serious crime is recognizing the need to address the trauma associated with that victimization. This includes avoiding use of coercive tools, such as arresting, detaining and charging youth with related crimes to force participation in services, since these tools can re-traumatize exploited youth and further undermine their ability to trust service providers. For this reason, an ideal statutory response eliminates criminal liability at the outset by prohibiting a minor from being detained, charged, and arrested for prostitution and provides victims with access to specialized, trauma-informed services in a non-restrictive setting.

Conversely, hinging criminal liability on identification as a child sex trafficking victim fails to account for definitional hurdles, burden shifting, and lack of mandated training, which leave commercially sexually exploited youth vulnerable to prosecution for the crimes committed against them. Prohibiting the criminalization of all minors for prostitution offenses alleviates the burden of having to prove trafficking victimization. Some child sex trafficking victims do not have a trafficker, and for those that do, trauma-bonding, denial, and fear often leave survivors unable or unwilling to identify their exploiters.<sup>86</sup> In this way, extending non-criminalization to all minors, rather than hinging non-criminalization on identification as a child sex trafficking victim, encourages consistent implementation and identification of victims.

Sample State Statutes:

*Non-criminalization statute that hinges on age:*

N.H. Rev. Stat. Ann. § 645:2(V) (Prostitution and related offenses) states, “[a] person under 18 years of age shall not be subject to a juvenile delinquency proceeding under RSA 169-B or criminal prosecution for the

commission of an offense under subparagraph I(a).”

*Non-criminalization statute that hinges on identification as victim of trafficking:*

S.C. Code Ann. § 16-3-2020(G) (Trafficking in persons; penalties; defenses) states, “[i]f the victim was a minor at the time of the offense, the victim of human trafficking in persons may not be prosecuted in court pursuant to this article [Trafficking in Persons] or a prostitution offense, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.”

## Requiring a Specialized Service Response

A victim-centered approach to non-criminalization must eliminate a punitive response for all minors and direct exploited youth to services specifically designed to alleviate the adverse effects of trafficking victimization.<sup>87</sup> This involves a strengths-based approach that centers the youth voice in decision making. Indeed, putting the voices of exploited youth at the center of the process is inherent to a trauma-informed response and is a key component of providing youth with an individualized response. States can also facilitate the development of specialized and multidisciplinary services by providing dedicated, ongoing funding streams that support an array of services for child sex trafficking survivors.

States that enact immunity laws in absence of a statutory procedure to ensure youth receive a specialized service response may face a situation where child serving agencies are unable to adequately respond to a trafficking situation, leaving exploited youth with limited service options. First line responders such as law enforcement and social workers are thus faced with the heart wrenching decision to return a victim to a situation where there is risk of re-exploitation.<sup>88</sup>

Despite its necessity however, enacting a service response can raise a host of complexities that are unlikely to be addressed in a single bill or even legislative session. Implementation of non-criminalization laws will likely inform later legislation, as well as the development of protocols and implementation of system changes necessary to build a comprehensive, coordinated, consistent statewide response to child sex trafficking victims. For this reason, a common thread among states that provide a non-punitive, survivor-oriented service response is a commitment to regular program evaluation and improvement, suggesting that effective responses are built through consistent progression in law and practice. States should consider including ongoing evaluation of implementation of the non-criminalization law a requirement within the legislation that removes criminal liability for minors.

### Sample State Statutes:

Fla. Stat. Ann. § 39.01(15)(g) (Proceedings related to children) defines “[c]hild who is found to be dependent” as “a child who, pursuant to this chapter, is found by the court . . . [t]o have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.” For purposes of finding a child to be dependent, Fla. Stat. Ann. § 39.01(71) defines “[s]exual abuse of a child” as “one or more of the following acts . . . (g) [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. [s]olicit for or engage in prostitution; 2. [e]ngage in a sexual performance, as defined by chapter 827; or 3. [p]articipate in the trade of human trafficking as provided in s. 787.06(3)(g) [Human trafficking].”

Under Fla. Stat. Ann. § 39.401(2)(b) (Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department), when a law enforcement officer takes a child into custody and has probable cause to believe that the child has been sexually exploited, “the law enforcement officer shall deliver the child to the department [of Children and Families].” Minors who are suspected of or found to be commercially sexually exploited must be assessed for services and placement in a safe house or safe foster home pursuant to Fla. Stat. Ann. § 39.524 (Safe harbor placement). Fla. Stat. Ann. § 409.1678(2)(c)(5), (e) (Specialized residential options for children who are victims of commercial sexual exploitation) requires that safe houses are secure with staff awake 24 hours a day and that certain staff or contract personnel receive special training to work with sexually exploited youth. Short-term safe houses must also “provide services tailored to the needs of child victims of commercial sexual exploitation and . . . conduct a comprehensive assessment of the service needs of each resident.” Fla. Stat. Ann. § 409.1678(2)(d). Under, Fla. Stat. Ann. § 796.07(2)(e) (Prohibiting prostitution and related acts), minors may not be prosecuted for prostitution offenses. Fla. Sta. Ann. § 985.125 (Prearrest or postarrest diversion programs) provides an opportunity for a child arrested for another delinquent act to participate in a diversion program. Pursuant to Fla. Stat. Ann. § 409.1678(5), specialized services “may be available to all sexually exploited children whether such services are accessed voluntarily, as a condition of probation, through a diversion program, through a [dependency] proceeding . . . , or through a referral from a local community-based care or social service agency.”

Connecting exploited youth with services is another important component of a specialized service response and should not rely on the arrest and detention of child sex trafficking victims to provide access to trauma-informed services. Indeed, the arrest and detention of child sex trafficking victims can further traumatize survivors and limit their access to supportive services. Even when detention is used as a tool to attempt to sever the trauma-bond between exploited minors and their trafficker, the impact of criminalizing children may undermine this effort

because it fails to address underlying trauma and the child may still return to his or her trafficker when released from custody. For this reason, states with non-criminalization laws have increasingly incorporated mandatory law enforcement referrals to service-based responses and some states have amended existing custody statutes to ensure the availability of temporary protective custody as an alternative to punitive arrests when a child cannot be safely returned home and/or needs an emergency service response. To the extent that temporary protective custody statutes are used to allow law enforcement to take sex trafficked youth into protective custody, the decision about whether to take the youth into custody and hold the child in protective custody should be guided by certain considerations: serving the youth in an appropriate (and least restrictive) environment, minimizing interference with the custody of the parent or guardian, and identifying and responding appropriately to factors impacting the youth's safety and the needs of the community.

### Sample State Statutes:

*Establishing mandatory law enforcement referral to specialized services:*

D.C. Code § 22-2701(d)(2) (Engaging in prostitution or soliciting for prostitution) states, “[t]he Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under § 22-1834 [Sex trafficking of children].”

*Permitting temporary protective custody of child sex trafficking victims:*

Cal. Penal Code § 647(b)(5) (Disorderly conduct; restrictions on probation) states, “Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially sexually exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code [Persons subject to jurisdiction of juvenile court] and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code [Peace officer's taking minor into temporary custody without warrant], if the conditions allowing temporary custody without warrant are met.”

## Prohibiting versus Contemplating Arrest and Detention

Arrest and delinquency adjudication further reinforces a victim's belief that he or she is a criminal, a belief instilled by many traffickers,<sup>89</sup> which may lead to distrust of law enforcement and defiance when offered services.<sup>90</sup> Additionally, a host of collateral consequences follow arrest, even if the charges are later dropped; these may include expulsion from school, denial of professional licenses, and ineligibility to work with children or to serve in the armed forces; a delinquency-related arrest or charges may also affect driver's license privileges or result in eviction from public housing.<sup>91</sup> A response through the juvenile justice system not only causes “significant psychological and physical harms . . . access to adequate services . . . is severely limited.”<sup>92</sup> Each of these collateral consequences further impacts a survivor's healing process.

Regardless of the reason, permitting arrest condemns a child twice by compounding the trauma of trafficking victimization with a process that is inconsistent with the needs of these children.<sup>93</sup> Meanwhile, existing non-criminalization laws provide examples of alternative non-punitive approaches for taking a child into custody for safety reasons that do not penalize or stigmatize the child in the process.<sup>94</sup>

### Sample State Statutes:

*Statute designed to prohibit prostitution charges against minors:*

Ind. Code Ann. § 35-45-4-2(a) (Prostitution) states, “[a] person at least eighteen (18) years of age who knowingly or intentionally: (1) performs, or offers or agrees to perform, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5); or (2) fondles, or offers to fondle the genitals of another person; for money or other property commits prostitution . . . .”

*Statute contemplates arrest and detention of minor pending determination of victimization:*

Ala. Code § 12-15-701(c) (Protection of sexually exploited child) states, “[i]n any proceeding based upon a child's arrest for an act of prostitution, there is a presumption that the child satisfies the definition of a sexually exploited child as provided in this section.” Ala. Code § 12-15-701(a) defines “sexually exploited child” as “an individual under the age of 18 years who is under the jurisdiction of the juvenile court and who has been subjected to sexual exploitation because he or she is any of the following: (1) A victim of the crime of human trafficking sexual servitude as provided in Section 13A-6-150, et seq., Code of Alabama 1975. (2) Engaged in prostitution as provided in Section [Prostitution defined] or 13A-12-121 [Prohibited activity], Code of Alabama 1975. (3) A victim of the crime of promoting prostitution as provided in Section 13A-12-111, 13A-12-112, or 13A-12-113, Code of Alabama 1975.”



# Protection Beyond Prostitution

Enacting non-criminalization laws that encompass offenses beyond prostitution is one solution states have created to promote access to survivor-centered, non-adversarial responses. The fact is that minor victims remain vulnerable to prosecution regardless of how far states expand their non-criminalization laws. Without reforming the lens in which youth survivors are viewed, even states that have enacted non-criminalization laws risk funneling minor victims through the juvenile justice system on other charges, commonly referred to as “masking charges.”<sup>95</sup> The use of “masking charges” reflects lingering misperceptions of sex trafficking and victimization, as well as the lack of viable options in removing victims from exploitative situations and connecting survivors to services. States that have successfully shifted away from penalizing child sex trafficking victims have coupled comprehensive non-criminalization laws with expansive training, education, awareness, and policy efforts to ensure practical change. As such, pairing clear statutory alternatives to arrest and prosecution with training<sup>96</sup> for law enforcement, judicial personnel, and child welfare agencies best equips states with the ability to identify and appropriately respond to behaviors and conduct originating from a child’s exploitation outside of the juvenile justice system.

Consequently, without clear statutory protections directing commercially sexually exploited youth away from the juvenile or criminal justice system, some minors may be excluded from receiving a comprehensive service response.

## Sample State Statutes:

*Extends non-criminalization to any non-violent offense committed as a result of trafficking victimization:*

Mont. Code Ann. § 45-5-709(1) (Immunity of child) states, “[a] person is not criminally liable or subject to proceedings under Title 41, chapter 5 [Youth Court Act], for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.”

*Extends non-criminalization to status offenses committed as a result of trafficking victimization:*

Ky. Rev. Stat. Ann. § 630.125 (Child not to be charged with or found guilty of status offense related to human trafficking) states, “[i]f reasonable cause exists to believe the child is a victim of human trafficking, as defined in [Ky. Rev. Stat. Ann. § 529.010 (Definitions)], the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.”

# Implementation-informed Considerations in Drafting Non-Criminalization Laws

The JuST Response Council Protective Response Model field guidance report sets out the following ten premises of a protective response for child sex trafficking victims.<sup>97</sup> Because these premises are informed by implementation and the expertise of JuST Response Council members, they are important considerations when drafting non-criminalization laws:

1. **Non-criminalization.** The criminal justice and delinquency systems are not the right place to respond to juvenile sex trafficking victims. Minors cannot commit the crime of prostitution and must not be held culpable for non-violent offenses committed as a direct result of their being trafficked. Federal law clearly defines any commercial sex act with a young person who has not reached the age of 18 as human trafficking and all corresponding language should reflect this definition. The term “prostitute” and associated terms are stigmatizing and harmful labels that have no place in the response to sex trafficking.
2. **Trauma-informed.** All victims of crimes, including juvenile sex trafficking victims, should be met with a trauma-informed approach. When creating a response plan for juvenile sex trafficking, a thorough understanding of the specific trauma associated with it is required. Training on trauma dynamics and the involvement of survivor leadership in bringing trauma-informed responses are critical to ensuring that decision makers and responding professionals understand these unique dynamics and account for them in the shaping of their response model. It is critical that professionals working with juvenile sex trafficking victims recognize “delinquent behavior” as a symptom of trafficking-related trauma or earlier abuse. While this is true for many children in care, it is especially relevant for the youth who may not be “asking for help” and may be resistant to initial service interventions.
3. **Empowerment approach.** Juveniles that are victims of sex trafficking are strong, intelligent and resilient people. Services must be shaped with this in mind and must be centered in what the child needs and wants and may change over time as the child responds to services. Although it is not the priority, an empowerment approach coupled with trauma informed services may ultimately encourage the victim to participate in prosecution of the exploiter. An essential element of the empowerment approach is provision of a funded advocate who will support him or her in any system response and at any point in the services continuum.
4. **Safety concerns addressed.** Safety concerns present a particular challenge when creating a service plan for victims of juvenile sex trafficking. State licensing and mental health procedures for young people who present as harmful to themselves or others should always be considered when connecting youth

to services. Traditional government requirements for contracted providers should be re-examined for potential safety gaps. Safety gaps can include restrictions on readmission of a victim who leaves a placement, or placing other youth in care with a victim who may recruit them into sex trafficking. There is a lack of consensus on when restrictive or forced services should be provided to keep young people with severe trauma bonding safe from re-exploitation. Some victim advocates maintain that certain behaviors related to trauma-bonding, such as running away or recruitment of other young people, warrant higher security, while others worry that restrictive services grounded in these concerns will lead to system structures that may not empower survivors and may in fact re-traumatize them. Youth involvement in their individual service plans can help mitigate these concerns and should be a priority.

5. **Proactive identification efforts.** The number one reason victims of juvenile sex trafficking do not receive appropriate services is that they are simply not recognized as such. Mandatory, high quality, tailored training focused on victim identification is essential. Also essential are proactive identification protocols that recognize identification may happen in a variety of ways and places, such as through screening tools or a first responder emergency response, and may happen long after a victim is system-involved or in treatment for physical or mental health. A validated screening tool should be used to identify victims of trafficking. Without such validation, there will be inconsistencies that impact the ability to evaluate outcomes.
6. **Flexible.** An effective protective response model must be flexible to allow for a range of services responsive to the unique needs of each victim. State and tribal agencies and community- based nonprofit service providers both play a role in any protective response model. The model must permit individual service plans to be rooted in the victim's preferences—and when available and if appropriate, their family/ caregiver—and should be informed by a host of considerations including gender, culture, prior trauma, mental health needs and safety concerns. While formal protocols are necessary for access to services, rigidity must not prevent consideration of these other factors.
7. **Accessible array of funded, specialized services.** Given the wide range of victim responses to exploitation and trauma, and the many doors a victim could come through, an array of funded and accessible services is required. Laws must ensure access to federal, state, tribal and local services, such as child welfare, child advocacy centers, and Medicaid for all juvenile sex trafficking victims regardless of whether there is an identified trafficker, and whether they are in state or home custody. If emergency assessments are needed, safe, youth- friendly environments should be available 24/7 with an advocate available to support a juvenile through assessment and throughout time in care.

8. **Established protocols.** Formal protocols defining professional and agency roles and responsibilities are essential. Every professional identified in a protective response model should be equipped with a clear understanding of the protocols to provide the most streamlined, coordinated response. Training should not just focus on impact of victimization but should also prepare first responders for the challenges associated with the healing process. To achieve this, agencies must identify uniform definitions to ensure clear coordination and collaboration. Whenever possible, priority should be placed on incorporating leadership from sex trafficking survivors who have attained the professional/academic standing and healing supports to effectively create, implement and evaluate these protocols.
9. **Continuity and consistency in support.** Scope and scalability of existing infrastructures across wide geographical areas are needed to allow for youth to transition through programs without losing the continuity of care in their community. Throughout the process there should be a primary advocate for the victim who is able to support the child regardless of what system(s) are involved or where the child is in the continuum of care. When possible, the child should be included in the decision as to whom that advocate should be.
10. **Ongoing monitoring and evaluation.** While the field strives to identify sustainable solutions, there must be transparency and understanding about the expense and duration of needed services. Evaluation and continuous quality improvement (CQI) for trainings, tools, protocols and provided services is critical to make sure that immediate resources can continue to improve while best practices are still being identified.

For more information about the Protective Response Model premises, read the full report at [http://sharedhope.org/wp-content/uploads/2014/04/JRC\\_ResponseModel\\_Spreads\\_web.pdf](http://sharedhope.org/wp-content/uploads/2014/04/JRC_ResponseModel_Spreads_web.pdf).

# ENDNOTES

<sup>1</sup> Except as otherwise indicated, this report includes legislation enacted as of August 1, 2017.

<sup>2</sup> In November 2017, Shared Hope International released its 7th annual Protected Innocence Challenge report based on the Protected Innocence Challenge Legislative Framework, which sets out the basic policy principles required to create a safer environment for children. The steps to create a safer environment include the following: preventing child sex trafficking through reducing demand, rescuing and restoring victims through improved training on identification, establishing protocols and facilities for victim placement, mandating appropriate services and shelter, and incorporating trauma-reducing mechanisms into the justice system. This report focuses on protective responses.

<sup>3</sup> The JuST Response Council (the “JRC”) is a group of over 30 experts from around the country who come from a variety of backgrounds, including policy development, survivor leadership, federal and state child serving agencies, and law enforcement. Together, this group examines the nuanced and complex challenges advocates encounter when working to connect exploited youth with services.

<sup>4</sup> See e.g., SHARED HOPE INT’L, NON-CRIMINALIZATION OF JUVENILE SEX TRAFFICKING VICTIMS (2016) [hereinafter NON-CRIM POLICY PAPER], available at <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf> (last visited May 17, 2018); SHARED HOPE INT’L, ELIMINATING THE THIRD PARTY CONTROL BARRIER TO IDENTIFYING JUVENILE SEX TRAFFICKING VICTIMS 3, 7 (2015) [hereinafter THIRD PARTY CONTROL POLICY PAPER], available at [https://sharedhope.org/wp-content/uploads/2016/02/Policy\\_Paper\\_Eliminating\\_Third\\_Party\\_Control\\_Final.pdf](https://sharedhope.org/wp-content/uploads/2016/02/Policy_Paper_Eliminating_Third_Party_Control_Final.pdf) (last visited May 17, 2018).

<sup>5</sup> See generally NON-CRIM POLICY PAPER, supra note 4.

<sup>6</sup> See National State Law Survey: Non-Criminalization of Child Sex Trafficking Victims, SHARED HOPE INT’L, [http://sharedhope.org/wp-content/uploads/2016/03/NSL\\_Survey\\_Non-Criminalization-of-Juvenile-Sex-Trafficking-Victims.pdf](http://sharedhope.org/wp-content/uploads/2016/03/NSL_Survey_Non-Criminalization-of-Juvenile-Sex-Trafficking-Victims.pdf) (last visited May 16, 2018).

<sup>7</sup> NON-CRIM POLICY PAPER, supra note 4, at 5.

<sup>8</sup> Id. at 4.

<sup>9</sup> Merriam Webster defines “decriminalize” as “to remove or reduce the criminal classification or status of; especially : to repeal a strict ban on while keeping under some form of regulation.” MERRIAM-WEBSTER ONLINE DICTIONARY (2018), available at <https://www.merriam-webster.com/dictionary/decriminalize> (last visited July 6, 2018). Further, Black’s Law Dictionary defines “decriminalization” as “[t]he legislative act or process of legalizing an illegal act.” BLACK’S LAW DICTIONARY 473 (9th ed. 2009).

<sup>10</sup> Black’s Law Dictionary defines “immunity” as “[a]ny exemption from a duty, liability, or service of process . . . .” BLACK’S LAW DICTIONARY 817–818 (9th ed. 2009).

<sup>11</sup> See SHARED HOPE INT’L, JUST RESPONSE STATE SYSTEM MAPPING REPORT: A REVIEW OF CURRENT STATUTES, SYSTEMS, AND SERVICES RESPONSES TO JUVENILE SEX TRAFFICKING 13–14 (2015) [hereinafter MAPPING REPORT], available at [http://sharedhope.org/wp-content/uploads/2015/03/JuST-Response-Mapping-Report\\_Digital.pdf](http://sharedhope.org/wp-content/uploads/2015/03/JuST-Response-Mapping-Report_Digital.pdf) (last visited May 17, 2018).

<sup>12</sup> Id. at 14.

<sup>13</sup> Id. at 13.

<sup>14</sup> NON-CRIM POLICY PAPER, supra note 4, at 5.

<sup>15</sup> Id. at 3.

<sup>16</sup> Id. at 1, 3.

<sup>17</sup> According to research conducted by the Field Center for Children’s Policy, Practice & Research, 14 percent of the homeless youth who were interviewed had engaged in survival sex as a way to meet their basic needs. THE FIELD CTR FOR CHILDREN’S POLICY, PRACTICE & RESEARCH, HUMAN TRAFFICKING PREVALENCE AND CHILD WELFARE RISK FACTORS AMONG HOMELESS YOUTH 23 (2018) [hereinafter HUMAN TRAFFICKING PREVALENCE AMONG HOMELESS YOUTH], available at <https://fieldcenteratpenn.org/wp-content/uploads/2013/05/6230-R10-Field-Center-Full-Report-Web.pdf> (last visited: May 18, 2018).

<sup>18</sup> THIRD PARTY CONTROL POLICY PAPER, supra note 4, at 3, 7.

<sup>19</sup> Id. at 7.

<sup>20</sup> Id. at 11.

<sup>21</sup> Id. at 4.

<sup>22</sup> NON-CRIM POLICY PAPER, supra note 4, at 5.

<sup>23</sup> Id.; see also ECPAT, STEPS TO SAFETY: A GUIDE TO DRAFTING SAFE HARBOR LEGISLATION TO PROTECT SEX-TRAFFICKED CHILDREN 5 (2015) [hereinafter ECPAT], available at [https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5977af9a2e69cfa18f34c54/1501015971553/ECPAT-USA\\_StepsToSafety.pdf](https://static1.squarespace.com/static/594970e91b631b3571be12e2/t/5977af9a2e69cfa18f34c54/1501015971553/ECPAT-USA_StepsToSafety.pdf) (last visited May 18, 2018) (stating, “It is not enough to just identify and divert victims away from the criminal justice system. Non-prosecution, standing alone, would likely result in the victim’s return to the commercial sex trafficker, because victims of commercial sex trafficking lack a support system and the means of escape. Traffickers are known for their ability to target vulnerable youth and prey on their lack of options. ‘Youth, once in ‘the life’ of exploitation, have very few methods of exiting without risking their lives of safety.’”).

<sup>24</sup> NON-CRIM POLICY PAPER, supra note 4, at 1–2.

<sup>25</sup> Notably, several states have enacted two or more non-criminalization provisions, each of which may follow a different approach to non-criminalization. Resultantly, any totals discussed within this report may include a state that has been included elsewhere. For a complete breakdown of the approaches and where each state falls, see infra National State Law Survey: Approaches to Non-Criminalization at page 19. Further, some states have eliminated criminal liability within the prostitution law while others have done so through a separate immunity provision; this report analyzes each.

<sup>26</sup> See infra National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>27</sup> For examples of state trafficking laws that set the age limit above the age of majority, see Alaska Stat. § 11.66.110 (under 20) and La. Rev. Stat. Ann. § 14:46.2 (under 21). See also, NON-CRIM POLICY PAPER, supra note 4, at 5 (citing the role of research on the adolescent brain in determining where to draw the line for protection from commercial sexual exploitation).

<sup>28</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1481 (stating, “[t]he following factors should be considered as indicia for serious and sustained efforts to eliminate severe forms of trafficking in persons: . . . (2) [w]hether the government of the country . . . ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficking.”).

<sup>29</sup> NON-CRIM POLICY PAPER, supra note 4, at 3.

<sup>30</sup> This could have important implications for states in the implementation of the federal Preventing Sex Trafficking and Strengthening Families Act (2013) and the Justice for Victims of Trafficking Act’s (2015) amendments to the Child Abuse Prevention and Treatment Act. See generally SHARED HOPE INT’L, STATE IMPACT (2016), available at [http://sharedhope.org/wp-content/uploads/2017/01/State\\_Impact\\_Memo\\_PIC\\_Fed\\_Legislation.pdf](http://sharedhope.org/wp-content/uploads/2017/01/State_Impact_Memo_PIC_Fed_Legislation.pdf) (last visited July 6, 2018).



<sup>31</sup> S.B. 153, 2010 Leg., Reg. Sess. (Conn. 2010).

<sup>32</sup> H.B. 5621, 2016 Leg., Reg. Sess. (Conn. 2016).

<sup>33</sup> H.B. 1218, 2017 Leg., Reg. Session (Ind. 2017).

<sup>34</sup> See *infra* National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>35</sup> NON-CRIM POLICY PAPER, *supra* note 4, at 3.

<sup>36</sup> Such laws include prohibitions on purchasing cigarettes or alcohol, voting in elections, executing a legally binding contract, enlisting in the military, or consenting to medical services. *Id.* at n.20.

<sup>37</sup> See *infra* National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>38</sup> *Id.*

<sup>39</sup> THIRD PARTY CONTROL POLICY PAPER, *supra* note 4, at 2; see also Christine M. Raino, Criminalizing Buyers under Child Sex-Trafficking Laws as Critical Protection for Child Victims, 52 WAKE FOREST L. REV. 450 (2017) (discussing California cases where the court ruled that despite evidence of past control by a trafficker, the child was an “independent contractor” at the time of arrest).

<sup>40</sup> THIRD PARTY CONTROL POLICY PAPER, *supra* note 4, at 15.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> CTR ON POVERTY AND INEQUALITY, GEORGETOWN LAW, BLUEPRINT: A MULTIDISCIPLINARY APPROACH TO THE DOMESTIC SEX TRAFFICKING OF GIRLS (2014), available at <http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/loader.cfm?csModule=security/getfile&pageid=169026> (last visited May 18, 2018).

<sup>45</sup> H.B. 2318, 2017 Leg., Reg. Session (W.VA. 2017).

<sup>46</sup> W. VA. Code Ann. 61-14-8(a) states, “In a prosecution or juvenile prosecution for an offense of prostitution . . . a minor shall not be held criminally liable if the Court determines that the minor was a victim of an offense under this article [Human Trafficking]: Provided, that subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.”

<sup>47</sup> H.B. 89, 64th Leg., Reg. Sess. (Mont. 2015).

<sup>48</sup> National Conference of Commissioners on Uniform State Laws, “Uniform Act on Prevention of and Remedies for Human Trafficking” (2013), available at [http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013\\_UPRHT\\_Final%20Act.pdf](http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013_UPRHT_Final%20Act.pdf) (last visited May 18, 2018).

<sup>49</sup> S.B. 2107, 65th Leg., Reg. Sess. (N.D. 2015).

<sup>50</sup> S.B. 2250, 65th Leg., Reg. Sess. (N.D. 2015).

<sup>51</sup> MAPPING REPORT, *supra* note 11, at 11.

<sup>52</sup> *Id.*

<sup>53</sup> See generally *id.*

<sup>54</sup> See SHARED HOPE INT’L, PROTECTIVE INNOCENCE CHALLENGE LEGISLATIVE FRAMEWORK (2017), available at <https://sharedhope.org/wp-content/uploads/2017/11/2017-Methodology.pdf> (last visited May 18, 2018).

<sup>55</sup> HB 99, 2012 Leg., Reg. Sess. (Fla. 2012); H.B. 7141, 2014 Leg., Reg. Sess. (Fla. 2014); S.B. 1666, Leg., Reg. Sess. (Fla. 2014).

<sup>56</sup> Safe Harbor Legislative Timeline, MINN. DEP’T OF HEALTH, available at: <http://www.health.state.mn.us/injury/topic/safeharbor/#timeline> (last visited July 6, 2018).

<sup>57</sup> S.F. 1, 87th Leg., 1st Special Session (Minn. 2011).

<sup>58</sup> H.F. 1233, 88th Leg., Reg. Sess. (Minn. 2013); H.F. 2749, 89th Leg., Reg. Sess. (Minn. 2016).

<sup>59</sup> WILDER RESEARCH, SAFE HARBOR: EVALUATION REPORT 1 (2017), available at [https://www.wilder.org/sites/default/files/imports/SafeHarbor\\_EvaluationReport\\_10-17.pdf](https://www.wilder.org/sites/default/files/imports/SafeHarbor_EvaluationReport_10-17.pdf) (last visited July 6, 2018).

<sup>60</sup> S.B. 1322, 2015-2016 Leg., Reg. Sess. (Cal. 2016); see also California CSEC Policy Compendium, NAT’L CTR FOR YOUTH LAW (2018) [hereinafter CA CSEC Policy Compendium], available at [https://youthlaw.org/publication/california-csec-policy-compedium/?sf\\_paged=2](https://youthlaw.org/publication/california-csec-policy-compedium/?sf_paged=2) (last visited July 6, 2018) (discussing California’s commitment to ensuring that commercially sexually exploited youth are identified and served rather than re-victimized by a punitive response).

<sup>61</sup> A.B. 1140, 2015-2016 Leg., Reg. Sess. (Cal. 2015); see also California CSEC Policy Compendium, *supra* note 60.

<sup>62</sup> Prior to the enactment of SB 1322, Los Angeles County had witnessed success in ending the practice of arresting minors for prostitution. See generally LOS ANGELES CITY LAW ENFORCEMENT FIRST RESPONDER PROTOCOL FOR COMMERCIAL SEXUALLY EXPLOITED CHILDREN (2015), available at <http://ceo.lacounty.gov/pdf/LA%20CountyFRP150611.pdf> (last visited July 6, 2018).

<sup>63</sup> See *infra* National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> NON-CRIM POLICY PAPER, *supra* note 4, at 1.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 2.

<sup>69</sup> *Id.*; see also CSE INST., VILLANOVA UNIV. SCHOOL OF LAW, WHY “SAFE HARBOR” FULL-IMMUNITY IS THE BEST POLICY FOR DECRIMINALIZING CHILD VICTIMS OF SEX TRAFFICKING 4–5 (2015), available at <http://cseinstitute.org/wp-content/uploads/2015/06/Policy-Paper-Why-%E2%80%9CSafe-Harbor%E2%80%9D-Full-Immunity-is-the-Best-Policy-for-Decriminalizing-Child-Victims-of-Sex-Trafficking-.pdf> (last visited May 18, 2018) (explaining that “[v]ictims of child sex trafficking should be immune from arrest and prosecution because criminalizing them risks further traumatizing this vulnerable population. Many victims of sex trafficking have . . . reframed their situations to make them believe they are in control, leaving them feeling responsible for the crimes committed against them. Criminalizing these victims would risk re-traumatizing them because it would potentially reinforce these false beliefs and increase their mistrust of those who seek to help them.”).

<sup>70</sup> For information on other tactics used to compel a child to testify against his or her exploiter, such as the use of material witness orders, see LESLIE BRINER, CTR FOR CHILDREN & YOUTH JUSTICE, & YOUTH CARE, SEXUAL EXPLOITATION AND TRAFFICKING YOUTH (2015), available at <https://www.kingcounty.gov/-/media/depts/executive/performance-strategy-budget/documents/pdf/RLSJC/2016/2016-01-28-Sexual-Exploitation-and-Trafficking-of-Youth-Presentation.ashx?la=en> (last visited July 6, 2018).

<sup>71</sup> See *supra* “Incorporates a Service Response” for discussion of non-criminalization laws that incorporate amendments to temporary protective response statutes.

<sup>72</sup> W. Va. Code Ann. § 61-14-8(a); Ala. Code § 12-15-701(c).

<sup>73</sup> See Vacatur of Delinquency Adjudications Arising from Trafficking Victimization and Expungement of Related Records, SHARED HOPE INT’L, <https://sharedhope.org/wp-content/uploads/2017/11/Expungement-and-Vacatur-Law-Policy-Brief.pdf> (last visited May 16, 2018) [hereinafter Vacatur and Expungement Policy Brief].

<sup>74</sup> See generally HUMAN RIGHTS PROJECT FOR GIRLS, GEORGETOWN LAW CTR ON POVERTY AND INEQUALITY, & MS. FOUND. FOR WOMAN, THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS’ STORY (2015), available at: [https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf) (last visited July 6, 2018) [hereinafter SEXUAL ABUSE TO PRISON PIPELINE].

<sup>75</sup> See infra National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>76</sup> H.B. 133, 62nd Leg., Reg. Sess. (Wyo. 2013).

<sup>77</sup> H.B. 673, 2013 Leg., Reg. Sess. (Miss. 2013).

<sup>78</sup> H.B. 3, 2013 Leg., Reg. Sess. (Ky. 2013).

<sup>79</sup> S.B. 2107, 65th Leg., Reg. Sess. (N.D. 2015).

<sup>80</sup> S.B. 2250, 65th Leg., Reg. Sess. (N.D. 2015).

<sup>81</sup> H.B. 89, 64th Leg., Reg. Sess. (Mont. 2015).

<sup>82</sup> S.B. 183, 121st Leg., Reg. Sess. (S.C. 2015).

<sup>83</sup> S.C. Code. Ann. § 16-3-2020(J).

<sup>84</sup> H.B. 5041, 2018 Leg., Reg. Sess. (Conn. 2018) (enacted June 1, 2018) repealed Conn. Gen. Stat. § 46b-133(d) (2) (Arrest of child. Release or detention of arrested child), which expressly contemplated arresting a minor for prostitution.

<sup>85</sup> See infra National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>86</sup> THIRD PARTY CONTROL POLICY PAPER, *supra* note 4, at 3, 7.

<sup>87</sup> See ECPAT, *supra* note 23, at 5 (discussing the need for specialized services that aid in a victim’s recovery process).

<sup>88</sup> MAPPING REPORT, *supra* note 11, at 11.

<sup>89</sup> See ECPAT, *supra* note 23, at 3.

<sup>90</sup> NON-CRIM POLICY PAPER, *supra* note 4, at 2.

<sup>91</sup> Vacatur and Expungement Policy Brief, *supra* note 73.

<sup>92</sup> SEXUAL ABUSE TO PRISON PIPELINE, *supra* note 74.

<sup>93</sup> In addition, states that allow a minor to be arrested for prostitution despite laws prohibiting prosecution for the same may raise concerns about the legality and fairness of such procedures.

<sup>94</sup> See infra National State Law Survey: Approaches to Non-Criminalization at page 19.

<sup>95</sup> See SHARED HOPE INT’L, JUSTICE FOR JUVENILES (2015), available at <http://sharedhope.org/wp-content/uploads/2014/04/NonCriminal-Response-Mechanisms-Field-Guidance.pdf> (last visited May 17, 2018).

<sup>96</sup> See generally LESLIE BRINER, *supra* note 70 (providing an example of supplemental training necessary for serving commercially sexually exploited youth and for building supportive relationships).

<sup>97</sup> “These core principles were developed by Shared Hope International and the JuST Response Council to assist in the establishment of protective response models. The list is not exhaustive and will likely develop further as longitudinal data becomes available and the field continues to refine its understanding and response

methods. The core principles frame the development of protective models; however, political will, funding, and socioeconomic and geographical diversity may not allow all recommendations to be achieved immediately. In the following pages we identify examples of current programs that exemplify components of these principles, along with tools or resources available to help communities as we all strive to build a response that allows young survivors access to the support and care they deserve.” SHARED HOPE INT’L, JUST RESPONSE COUNCIL: PROTECTIVE RESPONSE MODEL (2016), available at [http://sharedhope.org/wp-content/uploads/2014/04/JRC\\_ResponseModel\\_Spreads\\_web.pdf](http://sharedhope.org/wp-content/uploads/2014/04/JRC_ResponseModel_Spreads_web.pdf) (last visited July 10, 2018).

See also, page 4, (“Note on Language: Victim/Survivor: A person who has been victimized/survived victimization. This report uses victim and survivor interchangeably to provide consistency with statutory language and cross-agency terminology. We recognize that individuals who have experienced trafficking are survivors at all stages of their abuse and recover and are not defined by their victimization.

Juvenile: Refers to a person who has not reached the age of 18. Juvenile should not be a bad word. The issue of juvenile sex trafficking is not a new phenomenon, but the way it is perceived has been changing rapidly due to the advocacy of leaders and advocates across the country. We have a chance to reform systems broadly because of this shift in perception. With this goal in mind, we also have the opportunity to shift public perception of the word “juvenile” from its negative connotation to what it actually means—a young person whom we as a society have a responsibility to care for and about.\*

\*The JuST Response Council recognizes that victimization and service needs extend beyond the age of 17; however, this field guidance document is targeted to minors.”)

# NON-CRIMINALIZATION TIMELINE DATA

| STATE          | BILL<br>NUMBER           | ENACTMENT<br>DATE(S) | EFFECTIVE<br>DATE(S) | BILL SPONSORS   |
|----------------|--------------------------|----------------------|----------------------|---|
| ALABAMA        | HB 433                   | May 10, 2016         | August 1, 2016       | Reps. Jack Williams (R) (primary); Merika Coleman (D), Barbara Boyd (D), and Mike Ball (R)  |
| CALIFORNIA     | SB 1322                  | September 26, 2016   | January 1, 2017      | Sen. Holly Mitchell (D) (primary)   |
| CONNECTICUT    | HB 153                   | June 7, 2010         | October 1, 2010      | Joint Select Committee on Children  |
|                | HB 5621                  | June 1, 2016         | October 1, 2016      | Judiciary Committee   |
| D.C.           | B20 714                  | January 6, 2015      | May 7, 2015          |   |
| FLORIDA        | HB 545                   | March 8, 2016        | October 1, 2016      | Justice Appropriations Subcommittee; Rep. Ross Spano (R) (primary) and 32 others  |
| ILLINOIS       | HB 6462                  | August 20, 2010      | August 20, 2010      | Rep. Michael Madigan (D)  |
| INDIANA        | HB 1218                  | April 20, 2017       | July 1, 2017         | Reps. Wendy McNamara (R) (primary), Gregory Porter (D), Gregory Steuerwald (R), and Mara Candelaria Reardon (D)   |
| KENTUCKY       | HB 3                     | March 19, 2013       | March 19, 2013       | Rep. Sannie Overly (D) (primary) and 89 others  |
| MICHIGAN       | Public Acts 1969 No. 243 | August 11, 1969      | March 20, 1970       |   |
|                | HB 5449                  | June 1, 2002         | June 1, 2002         | Rep. Judson Gilbert II (R)  |
| MINNESOTA      | SF 1                     | July 20, 2011        | August 1, 2014       | Sen. Warren Limmer (R)  |
|                | HF 1233                  | May 23, 2013         | August 1, 2014       | Reps. Thomas Huntley (D) (primary), Diane Loeffler (D), Jason Isaacson (D), and Rena Moran (D); Sen. Tony Lourey (D)  |
| MISSISSIPPI    | HB 673                   | April 25, 2013       | July 1, 2013         | Rep. Larry Byrd (R) (primary) and 11 others   |
| MONTANA        | HB 89                    | April 24, 2015       | July 1, 2015         | Rep. Kimberly Dudik (D)   |
| NEBRASKA       | LB 255                   | June 5, 2013         | October 1, 2013      | Sen. Amanda McGill (D)  |
| NEW HAMPSHIRE  | SB 317                   | July 25, 2014        | October 23, 2014     | Sens. Donna Soucy (D) (primary), Andrew Hosmer (D), David Boutin (R), David Watters (D), Molly Kelly (D), Sam Cataldo (R), and Sharon Carson (R); Reps. Gene Chandler (R), Robert Cushing (D), and Stephen Shurtleff (D)            |
| NORTH CAROLINA | SB 683                   | July 29, 2013        | October 1, 2013      | Sen. Thom Goolsby (R) (primary) and 16 others   |
|                | HB 134                   | August 5, 2015       | August 5, 2015       | Rep. Richard Glazier (D)  |
| NORTH DAKOTA   | SB 2250                  | April 13, 2015       | August 1, 2015       | Sens. Judy Lee (R (primary), Bill Bowman (R), and Larry Robinson (D); Reps. Jason Dockter (R), Jessica Haak (D), and Mary Johnson (R)   |
| RHODE ISLAND   | HB 5300                  | July 18, 2017        | July 18, 2017        | Reps. Shelby Maldonado (D) (primary), Carol Hagan McEntee (D), Gregg Amore (D), Jason Knight (D), and Joy Hearn (D)   |
|                | SB 73                    | July 19, 2017        | July 19, 2017        | Sens. Cynthia Coyne (D) (primary), Elaine Morgan (R), Frank Lombardi (D), Paul Jabour (D), and Stephen Archambault (D)  |
| SOUTH CAROLINA | SB 183                   | June 8, 2015         | June 8, 2015         | Sens. Robert Hayes, Jr. (R) (primary) and Kevin Bryant (R)  |
| SOUTH DAKOTA   | HB 1143                  | March 10, 2017       | July 1 2017          | Rep. Lynne DiSanto (R) (primary) and 16 others  |
| TENNESSEE      | SB 64                    | June 1, 2011         | June 1, 2011         | Sen. Doug Overby (R) (primary) and 9 others   |
| UTAH           | HB 206                   | March 21, 2016       | May 20, 2016         | Rep. Angela Romero (D) and Sen. Wayne Harper (R)  |
| VERMONT        | HB 153                   | May 31, 2011         | July 1, 2011         | Rep. Maxine Grad (D) and 6 others   |
| WEST VIRGINIA  | HB 2318                  | March 31, 2017       | June 15, 2017        | Reps. John Shott (R) (primary), Amy Summers (R), Barbara Evans Fleischauer (D), Carol Miller (R), Joe Canestraro (D), Kayla Kessinger (R), Kelly Sobonya (R), Linda Longstreth (D), Mike Pushkin (D), and Roger Hanshaw (R)         |
| WYOMING        | HB 133                   | February 27, 2013    | July 1, 2013         | Sen. Paul Barnard (R) (primary); Reps. Catherine Connolly (D), Kathleen Davison (R), Keith Ginery (R), Ken Esquibel (D), Rosie Berger (R), and Ruth Petroff (R); Sens. Bernadine Craft (D), John Hastert (D), and John Schiffer (R) |





P.O. BOX 65337 VANCOUVER, WASHINGTON 98665  
[WWW.SHAREDHOPES.ORG](http://WWW.SHAREDHOPES.ORG)