

POLICY GOAL: The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Demand for commercial sex with a child is a significant driving force behind the phenomenon of child sex trafficking. Yet, many states fail to recognize buyers as sex trafficking offenders and, as such, fail to impose meaningful penalties to address and stifle demand as many buyers of commercial sex with minors are not sanctioned or will face lesser charges.¹ States that do not penalize buyers as sex trafficking offenders also face barriers to prosecuting child sex trafficking cases because buyers are often the primary, if not the only, offender involved—particularly in cases in which minors do not have, or are unable to identify, a third-party controller.² Some states, in line with federal statutory language prior to the Justice for Victims of Trafficking Act (JVTA), include the word “obtains” in their child sex trafficking law to address buyer conduct. However, broad terminology such as “obtains” has resulted in very few buyers being charged with trafficking offenses. Therefore, child sex trafficking laws that unambiguously target the actions of buyers are critical for combatting demand.³ As such, other states, motivated by the federal statutory changes resulting from the JVTA, have added the terms “patronizes,” “purchases, and/or “hires” to the range of actions addressed within the definition of sex trafficking.

Further, enacting child sex trafficking laws that explicitly include the conduct of buyers could lessen the burden experienced by survivors to prove their status as sex trafficking victims.⁴ Under the federal

anti-trafficking law, prosecutors must only show that the buyer solicited the minor for sex acts in exchange for money (or something of value).⁵ However, at the state level, states may require proof that the child was under the control of a trafficker/third party. Eliminating prosecutors’ needs to determine whether a victim was under the control of a trafficker is crucial to obtaining justice for a broader scope of trafficking victims, including some of the most vulnerable and underserved populations such as boys, homeless and runaway youth, and LGBTQ+ youth.⁶ These populations are disproportionately vulnerable to engaging in a form of commercial sex known as transactional, or survival, sex in order to meet basic needs—often without the participation of a third party controller.⁷ Buyer-specific child sex trafficking laws allow criminal justice actors to prioritize the drivers of demand while better protecting commercially sexually exploited children.

Criminalization of buyers also promotes positive survivor outcomes. The successful criminalization of buyers is directly related to a survivor’s experience of justice, and survivors consider buyer accountability to be essential in creating a victim-centered approach to combating sex trafficking.⁸ Additionally, the opportunity to bring a case against a buyer may be the first form of legal justice in which a survivor is ready to engage as many still struggle with complicated relationships with their traffickers due to trauma bonding or fear.⁹

DRAFTING CONSIDERATIONS: *To accomplish this policy goal, state law should...*

- ▶ Explicitly identify buyers who provide something of value in exchange for commercial sex with a child as sex trafficking offenders; this can be accomplished by adding "purchasing" or "patronizing" as prohibited conduct under the sex trafficking law.
- ▶ Define "anything of value" to address the exchange of non-monetary things of value, including, but not limited to, shelter, food, transportation, hormone replacement therapy medication, medical care, gang membership, and illicit substances.
- ▶ Ensure all minors under the age of 18 are protected under the child sex trafficking law, avoiding differentiations in offenses and baseline penalties for buying younger children versus older children.

RELATED ISSUES:

- 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.
- 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

SUPPORTING RESOURCES:

- ▶ DEMAND.
- ▶ Demanding Justice report
- ▶ Prosecuting Demand as a Crime of Human Trafficking
- ▶ Demanding Justice Arizona
- ▶ Buyers Beware video
- ▶ The Problem of Demand in Combating Sex Trafficking

¹ See Daniel Michael Criswell, *Mens Rea Reform as a Demand-Side Solution to the Problem of Sex Trafficking*, 51 CASE W. RES. J. INT'L L. 327, 339 (2019) (noting how few sex trafficking cases have been brought against buyers since 2013); Ann Wagner & Rachel Wagley McCann, *Prostitutes or Prey: The Evolution of Congressional Intent in Combating Sex Trafficking*, 54 HARV. J ON LEGIS. 17, 66-67, 95 (2017) (discussing a lack of prioritization of prosecuting buyers and how the JVTa explicitly stated that buyers should be prosecuted as sex traffickers; describing how some states penalizes adults sexually abusing minors outside of the commercial sex industry more harshly than adults who pay to have sex with children).

² Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 443-44 (2017); DEMANDING JUSTICE REPORT, SHARED HOPE INT'L 4-5 (2014).

³ DEMANDING JUSTICE REPORT, SHARED HOPE INT'L 15 (2014).

⁴ Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 438, 447-48 (2017).

⁵ *Id.*

⁶ See *id.* at 443-44.

⁷ LAURA T. MURPHY, LABOR AND SEX TRAFFICKING AMONG HOMELESS YOUTH 8 (2016).

⁸ *How Do We Reduce Demand?* DEMAND ABOLITION. <https://www.demandabolition.org/cease/how-do-we-reduce-demand/> (last visited Nov. 11 2020).

⁹ Chitra Raghavan, Ph.D. & Kendra Doychak, B.A., *Trauma-Coerced Bonding and Victims of Sex Trafficking: Where Do We Go From Here?* 17 INT'L J. OF EMERGENCY MENTAL HEALTH & HUM. RESILIENCE. 583-87(2015).