

CRIMINAL PROVISIONS

POLICY GOAL: Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

In addition to using the child sex trafficking law to prosecute buyers, law enforcement and prosecutors should also be able to investigate and charge a wide range of buyer conduct under state commercial sexual exploitation of children (CSEC) laws. These laws encompass a variety of criminal offenses committed against a child in which the child engages, or promises to engage, in a sex act in exchange for something of value either directly or through a third party. Though states have enacted an array of laws addressing this type of conduct, all CSEC laws have three main elements in common. First, these laws are either specifically protective of children or they provide an enhanced penalty when the victim is a child. Second, there must be a commercial component to the crime. And third, the offense must involve some form of sex act or promise thereof.

These laws address, among other acts, prostitution-related activity, enticement, grooming, and sex tourism. Buyers, however, may not face criminal liability for CSEC when statutes fail to encompass the purchase or solicitation of a child for sex. Failure to include buyer conduct leaves prosecutors with few charging options, including misdemeanor prostitution or general sex offenses, which generally carry significantly lesser penalties than CSEC-related offenses. As such, state CSEC laws should include clear buyer-applicable language (e.g., solicit, purchase, or patronize) in addition to other conduct—such as grooming a minor for commercial sex acts—to acknowledge the wide array of conduct and harm caused by buyers.

Further, state CSEC laws must protect all persons under

the age of 18. Failure to protect older minors dismisses the extreme trauma older minors face from being bought and sold for sex and reinforces the perception that these children are somehow more culpable for their exploitation.¹ While federal law considers all children who have experienced commercial sexual exploitation to be victims, including older minors,² many states still allow children to be charged with prostitution offenses—not recognizing them “as victims of statutory rape once the conduct has been commercialized.”³ Failure to protect older minors under state CSEC laws is also inconsistent with a host of other laws that recognize the vulnerability of children under 18 and the incomplete maturation of their brains, including prohibitions on cigarette and alcohol sales, execution of legally binding contracts, and military enlistment. Widely recognized is the fact that a teenager’s brain is not yet fully developed; this impacts decision-making, impulsivity, risk-taking, and enhanced vulnerability. Additionally, it is equally important to understand that a developing brain is more severely impacted and damaged by trauma, such as sexual violence, than an adult brain.⁴ Damage to brain matter caused by trauma at a young age can further exacerbate impulsivity and increase the chances of substance abuse and depression, which can increase vulnerability to revictimization.⁵ Understanding this, state CSEC laws must include all minors within their definitions of “victim” and avoid placing limitations on protections for older minors.

Notably, without specific buyer-applicable CSEC laws, many child victims may be unable to access specialized services if eligibility is connected to crime victim status.⁶ Further, a state’s capability of effectively

prosecuting instances of online CSEC alongside charges of child sex trafficking is enhanced if a separate law offers

additional prosecutorial provisions and victim service accessibility.⁷

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

- ▶ Ensure CSEC laws specifically address buyer conduct.
- ▶ Ensure CSEC laws protect all persons under the age of 18.
- ▶ Ensure CSEC laws are not restricted by additional requirements, including use of a computer, transportation of the child, etc.
- ▶ Ensure CSEC laws define “anything of value” to encompass the exchange of non-monetary things of value, including, but not limited to, shelter, food, transportation, medical care, gang membership, and illicit substances.

RELATED ISSUES:

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.
- 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors 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](#)
- ▶ [Demanding Justice Arizona](#)
- ▶ [Buyers Beware video](#)

- ¹ Seeking Justice: Legal Approaches to Eliminate Criminal Liability for Juvenile Sex Trafficking Victims, Shared Hope Int'l 9 (2018) https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf [hereinafter Seeking Justice].
- ² Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1243, 127 Stat. 154 (2013), codified at 22 U.S.C. § 7101 note (requiring that model anti-trafficking laws consider individuals under 18 arrested for engaging in prostitution or commercial sex acts to be victims of a severe form of trafficking and prohibit the “charging or prosecution of an individual” describe above).
- ³ Kate Price & Keith Gunnar Bentele, *Voting to End Vulnerability: Understanding the Recent Proliferation of State-Level Child Sex Trafficking Legislation*, 23 William & Mary J. Women & Law 1, 5 (2016); Seeking Justice, supra note 1; and see Christine Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 Wake Forest L. Rev. 435 442 n.45, 455 (2017).
- ⁴ *Serving Teen Survivors: A Manual for Advocates*, NATIONAL SEXUAL VIOLENCE RESOURCE CENTER (2018), <https://www.nsvrc.org/sites/default/files/publications/2018-12/Serving%20Teen%20Survivors%20A%20Manual%20for%20Advocates.txt>. (last visited Nov. 11, 2020); Leonard Holmes. *How Childhood Abuse Changes the Brain*. VERY WILL MIND (2020) <https://www.verywellmind.com/childhood-abuse-changes-the-brain-2330401> (last visited Nov. 11, 2020).
- ⁵ *Id.*
- ⁶ The Se. Reg'l Human Trafficking Advisory Grp. *Guiding Principles for Agencies Serving Survivors of Human Trafficking* (2018) <https://cclou.org/wp-content/uploads/2018/11/Guiding-Principles-for-Agencies-16-FINAL.pdf> (last visited Nov. 11, 2020).
- ⁷ Adams, W., Flynn, A. (2017). *Federal prosecution of commercial sexual exploitation of children cases, 2004-2013*. U.S. Department of Justice, Bureau of Justice Statistics.