

## CRIMINAL PROVISIONS

### **POLICY GOAL:** The trafficking law expressly prohibits financially benefiting from assisting or enabling child sex trafficking.

The term “facilitator,” also known as a “secondary profiteer,”<sup>1</sup> refers to an entity that knowingly or intentionally assists, enables, aids, or financially benefits from participation in a trafficking venture.<sup>2</sup> This includes entities that harbor and transport victims as well as those that organize for a child’s exploitation by placing ads or providing a place for the commercial sexual exploitation to occur. Motels, hotels, taxi companies, restaurants, and massage parlors are common examples of facilitators. While facilitators are often critical to the success of a sex trafficking enterprise, they rarely face prosecution.<sup>3</sup> Only 1.3% of federal sex trafficking charges initiated in 2018 were based solely on a defendant benefitting financially from the trafficking or exploitation.<sup>4</sup> Because the risk of being prosecuted for financially benefitting from child sex trafficking is minimal, facilitators reap the financial benefits of the commercial sex industry oftentimes without being held criminally liable.

Child sex trafficking laws that clearly define and criminalize financially benefitting from trafficking support law enforcement and prosecutors’ abilities to investigate and prosecute offending entities that may not be directly involved in trafficking conduct but, nevertheless, aid, assist, or enable the trafficking enterprise for purposes of financial gain. This is a crucial step toward holding all sex trafficking offenders criminally accountable. Further, clearly defined laws addressing facilitation of child sex trafficking serve as an important tool for obtaining justice for victims; therefore, state child sex trafficking laws should expressly prohibit financially

benefiting, or receiving anything of value, from trafficking.<sup>5</sup>

As noted above, however, of particular importance is whether the entity knowingly or intentionally engaged in the prohibited conduct. The intent behind these laws is to hold facilitators accountable for intentional actions that allowed the entity to financially benefit from child sex trafficking. The same types of entities (e.g., hotels and taxis) that frequently act as facilitators can also be those that unwittingly financially benefit from sex trafficking. For example, a child sex trafficking victim may be transported via a ride-share service to a hotel; although these parties may financially benefit, they may not be aware that they are facilitating child sex trafficking. In drafting this component of child sex trafficking laws, states should include clear language that addresses intentional versus unintentional conduct. States should also include language to address situations of reckless disregard or where facilitators should have reasonably known child sex trafficking was occurring.

Finally, in strengthening sex trafficking laws to include the conduct of facilitators, lawmakers should be mindful of the historical and potential misapplication of trafficking laws to victim-offenders. Specifically, states should couple legislative efforts that include or increase criminal liability for facilitators with clear non-criminalization laws for trafficking victims who engage in acts amounting to sex trafficking conduct as a result of their own victimization.

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

- ▶ Expressly prohibit benefiting *financially* from assisting or enabling child sex trafficking.
- ▶ Ensure the trafficking law clearly defines “financial gain.”
- ▶ Ensure the trafficking law is carefully crafted to avoid criminalizing victim-offenders by including a provision that provides clear non-criminalization protections for sex trafficking victims who offend the sex trafficking law as a result of their own victimization.
- ▶ Incorporate legislative intent to further clarify that the intent of the trafficking law is not to criminalize those who are themselves involved in the commercial sex industry.

## **RELATED ISSUES:**

- 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

## **SUPPORTING RESOURCES:**

- ▶ [A Legislative Framework for Combatting Domestic Minor Sex Trafficking](#)
- ▶ [The National Report on Domestic Minor Sex Trafficking](#)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

<sup>1</sup> SARAH GODOY, ET AL., *SHEDDING LIGHT ON SEX TRAFFICKING: RESEARCH, DATA, AND TECHNOLOGIES WITH THE GREATEST IMPACT* 23 (2016).

<sup>2</sup> *See* 18 U.S.C. § 1591(a)(2) (2018).

<sup>3</sup> ALYSSA CURRIER, ET AL., *THE 2018 FEDERAL HUMAN TRAFFICKING REPORT*, HUMAN TRAFFICKING INST. iv, 21 (2019) (noting that in 2018 only two entities, a farm and a hotel, were defendants in active trafficking cases).

<sup>4</sup> *Id.* at 21. It should be noted that “43.5% (162) [of federal sex trafficking charges were] based on both the prohibited trafficking activities and benefiting financially from the sex trafficking venture.” *Id.*

<sup>5</sup> Jim Ehrman, *Why Prosecution Matters for the Youth We Work With*, LOVE146 (April 11, 2016), <https://love146.org/why-prosecution-matters/>.