

## IDENTIFICATION OF AND RESPONSE TO VICTIMS

**POLICY GOAL:** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

State child sex trafficking laws should protect all persons under the age of 18. Federal law does not require evidence of force, fraud, or coercion when the victim of trafficking is a person under the age of 18.<sup>1</sup> State laws should similarly exclude the requirement of demonstrating force, fraud, or coercion as this is consistent with the legal concept that an underage child cannot legally consent to sex. Relatedly, under the Trafficking Victims Protection Act (TVPA) of 2000, any minor who engages in commercial sex is identified as a trafficking victim regardless of whether a trafficker or controlling third party is involved or identified.<sup>2</sup> In contrast, some state statutory schemes still create third party control requirements; in fact, requiring identification of a trafficker to qualify a child as a victim of sex trafficking is one of the most common limitations within state definitions of child sex trafficking.<sup>3</sup> This limitation is extremely problematic as it not only minimizes the role buyers play in fueling demand and engaging in the exploitation that trafficking laws are designed to punish, but it also prevents child victims from being identified as victims and accessing related relief and services.

In addition to under-identification of child victims, third party control requirements can result in the prosecution requiring the child to serve as a victim-witness to prove the factors leading to his or her own exploitation, a process that is often re-traumatizing. Additionally, even when a

controlling third party is involved, child victims may be unable to understand their victimization or safely identify their trafficker. Further, requiring a child to demonstrate the control of a trafficker may exclude some of the most vulnerable children from legal protection, including children who have bonds with their traffickers, male victims, homeless and runaway youth, and LGBTQ youth.<sup>4</sup> These vulnerable groups are less likely to identify themselves as victims, less likely to actively seek help, and more likely to interact with buyers directly.<sup>5</sup>

Survivors may also be more hesitant to holistically outline the nature of their trauma if they fear culpability and a punitive response due to a lack of third party control. When child victims of commercial exploitation are forced to prove their victimhood, it reinforces the perception that the criminal justice system is against them.<sup>6</sup> The process of detailing their experience can be incredibly retraumatizing for many adults and is often even more difficult for children, youth, and adolescents.<sup>7</sup> Survivors have cited this requirement as a distinct reason that has kept them from pursuing legal relief.<sup>8</sup> There are still likely to be cases in which victim testimony is requested and/or exceedingly beneficial to the outcome of litigation; however, the added burden of proof for establishing victimhood for access to services and opportunity to pursue legal relief is unnecessary and harmful to victims.

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

- ▶ Expressly identify buyers as sex trafficking offenders; this can be accomplished by including “purchasing” or “patronizing” as prohibited conduct under the core child sex trafficking law.
- ▶ Remove language that requires third party control in order for buyers to be held liable under the core child sex trafficking law.

## **RELATED ISSUES:**

- 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

## **SUPPORTING RESOURCES:**

- ▶ [Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims](#)
- ▶ Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 450 (2017)

1 Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

2 *Id.*

3 Christine M. Raino, *Criminalizing Buyers under Child Sex Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 436 (2017).

4 *Id.* at 439, 443-44.

5 *Id.*

6 Peters, A. (2016) *Reconsidering federal and state obstacles to human trafficking and entitlements victim status*. Utah Law Review (2016, 3),(538-554). <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1013&context=ulr>

7 Jones, A. (2009). *Post-traumatic stress disorder and victims of human sex trafficking: a perpetuation of chronic indignity*. Intercultural Human Rights Law Review. (4)(330-331). <https://www.stu.edu/wp-content/uploads/sites/5/2019/04/4-17Jones.pdf> (last visited Nov. 11, 2020).

8 U.S. Immigration and Customs Enforcement (n.d.) *Her story*. <https://www.ice.gov/features/human-trafficking-victim-shares-story> (last visited Nov. 11, 2020).