

IDENTIFICATION OF AND RESPONSE TO VICTIMS

POLICY GOAL: State law requires child welfare to develop policy guidance on responding to foreign national children.

State child abuse laws should protect all child sex trafficking victims, regardless of immigration status; however, foreign national victims of child trafficking may be barred from accessing critical services, benefits, and protections provided for under state law. Noncitizen immigrant children, particularly those who have recently arrived or have arrived unaccompanied, are particularly vulnerable to human trafficking and commercial sexual exploitation (CSE).¹ Children may enter the United States as a result of their trafficking, or they may face victimization after their arrival. Federal law provides several forms of immigration relief to trafficked children, but federal immigration law provides only limited guidance on what types of services should be made available to noncitizen trafficked and exploited children. For example, only youth who are identified as unaccompanied² are transferred out of the Department of Homeland Security to the custody of the U.S. Department of Health and Human Services.³ States must, therefore, ensure that all children, regardless of immigration status or nationality, are afforded access to all services and benefits available for survivors of child sex trafficking and CSE.

Under federal immigration law, child trafficking victims can access relief by filing for Special Immigrant Juvenile Status (SIJS), a T-visa (for trafficking victims), or a U-visa (for crime victims). Despite these federal immigration law protections in place for sex trafficked and commercially sexually exploited children, state protections and benefits for survivors need to encompass noncitizen and

undocumented children as they will often encounter state agencies before the federal immigration system. Federal law also does not equally cover all exploited children; federal immigration law provides more robust protections to *unaccompanied* children, therefore excluding noncitizen children who enter with their traffickers or parents or other legal guardians.⁴ State law must therefore be equipped to address the needs of noncitizen child trafficking victims through specific language pertaining to this population within state laws addressing child welfare's response to identifying and serving sex trafficking and CSE victims.

State child welfare agencies play a key role identifying and serving child sex trafficking victims regardless of immigration status. However, they also play a specific and important role in serving unaccompanied minors and other foreign national children. As an example, child welfare agencies assist in coordinating individualized services for children (i.e. refugee services) involved in a child protective services investigation for suspected trafficking victimization. They also may house the state refugee coordinators that serve as a liaison between the state and the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR), the federal office responsible for issuing Eligibility Letters verifying that a child is a trafficking victim and is, therefore, eligible for benefits.⁵ Recognizing the important role of child welfare in serving this population, state law should require state child welfare agencies to develop policy guidance for stakeholders who interact with and serve foreign

national children. The goal of this mandate is to facilitate access to care and benefits and mitigate the collateral consequences (e.g., under-identification, punitive immigration proceedings). Policy guidance should inform child protective services workers that there is no mandate to report immigration status of a child or family and that a referral to CPS should not trigger immigration

proceedings. Policy guidance should also include information on relief options and how to access relief, including coordinating with local refugee services agencies and state refugee coordinators to apply for Eligibility Letters through ORR. Finally, policy guidance should consider addressing the inclusion of refugee service organizations in multidisciplinary team responses.

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

- ▶ Require child welfare to develop policy guidance on responding to foreign national children.
- ▶ Explicitly state that a child's immigration status should not be considered when providing services and benefits to child sex trafficking victims.
- ▶ Ensure these laws will not be used to target foreign nationals and their families for detention or deportation.
- ▶ Ensure youth are provided access to legal representation on immigration issues.

RELATED ISSUES:

3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

SUPPORTING RESOURCES:

- ▶ [State Impact Memo](#)

- 1 Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 PENN STATE J.L. & INT'L AFF. 614, 615 (2016).
- 2 An unaccompanied child is one who has no lawful immigration status in the U.S., is under the age of 18, and there is no parent or legal guardian in the U.S. or no parent or legal guardian in the U.S. can provide care and physical custody. 6 U.S.C. § 279(g) (2018).
- 3 Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United States*, 32 GEO. IMMIGR. L.J. 59, 81 (2017).
- 4 Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United States*, 32 GEO. IMMIGR. L.J. 59, 81 (2017).
- 5 *Fact Sheet: Victims of Human Trafficking*, ADMINISTRATION FOR CHILDREN AND FAMILIES https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_victim_of_trafficking.pdf?nocache=1358884320 (last visited Nov. 9 2020).