

IDENTIFICATION OF AND RESPONSE TO VICTIMS

POLICY GOAL: State law prohibits the criminalization of minors under 18 for prostitution offenses.

To prevent the harmful and re-traumatizing effects of arrest and prosecution for crimes committed pursuant to trafficking victimization, states should enact non-criminalization laws.

“Non-criminalization” reflects the concept that “charging a child with a crime related to their own rape is not properly enshrined in the criminal code.”¹ A key first step in enacting non-criminalization laws is to prohibit the criminalization of minors under 18 for prostitution offenses, ensuring that they cannot be arrested and prosecuted for such offenses.

State sex trafficking laws should simultaneously criminalize the actions of buyers, traffickers, and facilitators while protecting victims. It is, therefore, counterproductive and harmful to hold minors criminally liable for the crimes committed against them by charging and prosecuting them for prostitution. Doing so creates a legal contradiction between sex trafficking laws, which identify a child who experiences commercial sex as a victim, and prostitution laws, which seek to criminalize that same child.²

Because punishing CSE minors undermines survivor-centered efforts to address CSE, harms victims, and hinders a needed shift in cultural attitudes,³ state prostitution statutes should be clearly inapplicable to persons under 18 years of age, regardless of whether a finding of trafficking victimization is made. This acknowledges that child sex trafficking victims and children engaged in commercial sex are the same persons and,

as such, should consistently be offered non-punitive responses as well as protection from criminalization. Acknowledgement of victimization further removes barriers to connecting youth with services to address their victimization.

Best practices for enacting non-criminalization legislation include protecting all minors under the age of 18, not requiring legal identification of victimhood or proof of third-party control, and incorporating access to specialized services.⁴ Mechanisms that direct survivors to specialized services and away from the juvenile or criminal justice systems are critical to ensure survivors receive the specialized care they need. These services should be provided through a non-punitive system, meaning that they are not meant to simply serve as diversion programs or referrals in lieu of arrest.⁵ Furthermore, services should not be connected to a child-in-need-of-supervision process as this process can also be inherently punitive and force engagement in services.

To provide a mechanism for connecting victims to specialized services, states should incorporate services for trafficked youth into non-criminalization provisions. This provides law enforcement with an alternative to arresting a child for the child’s own protection and will, instead, allow them to refer the child to social services.⁶ This offers a vital alternative to the harmful practice of arresting and prosecuting minors for crimes resulting from their victimization and the traumatizing impact of punitive processes.⁷

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

- ▶ Prohibit the criminalization of all minors under 18 for prostitution offenses.
- ▶ Ensure the non-criminalization law prohibits arrest and detention while providing access to specialized services.

RELATED ISSUES:

- 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- 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.
- 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.
- 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.3** State law mandates trafficking-specific training on victim-centered investigations for law enforcement.

SUPPORTING RESOURCES:

- ▶ [Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims](#)
- ▶ [Non-Criminalization of Juvenile Sex Trafficking Victims](#)
- ▶ [Justice for Juveniles: Exploring Non-Criminal Response Mechanisms for Child Sex Trafficking](#)
- ▶ [JuST Response Council Protective Response Model report](#)
- ▶ [States' Laws Say "Kids are Not Prostitutes." So Why are They Still Being Punished?" blog](#)

¹ SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L 4 (2018) https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf (last visited Nov. 11, 2020) [hereinafter SEEKING JUSTICE].

² Shared Hope Int'l, *Non-Criminalization of Juvenile Sex Trafficking Victims*, JUST RESPONSE POLICY PAPER 1 (2016) <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf> (last visited Nov. 11, 2020).

³ *Id.*

⁴ *Id.* at 12.

⁵ See SEEKING JUSTICE, *supra* note 1.

⁶ *Id.*

⁷ See Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257-276 (2013).