

IDENTIFICATION OF AND RESPONSE TO VICTIMS

POLICY GOAL: 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.

A complicated history of adjudications, convictions, and/or arrests creates numerous tangible obstacles in the lives of survivors as they attempt to regain control of their lives and strive toward becoming independent.¹ Criminal and delinquency records hinder survivors from obtaining employment, securing safe housing, taking out loans, accessing education, traveling, and obtaining visas.² Limiting access to benefits and services perpetuates the categorization of survivors as criminals for the crimes they were induced to commit in the context of their victimization. This can be debilitating to the mental health of survivors as many of them struggle to view their experiences through a trauma-informed lens.³

As advocates and legislators have become aware of the problems caused by criminalizing commercially sexually exploited (CSE) children, they have begun to shift away from criminalization and toward a more victim-centered approach.⁴ To prevent the harmful effects of arrests and convictions for crimes committed pursuant to their trafficking victimization, some states have enacted non-criminalization laws, laws designed to prohibit the criminalization of survivors for crimes committed pursuant to their victimization. Although many states have taken the important step of enacting non-criminalization laws for prostitution offenses, CSE children may still interact with juvenile or criminal justice systems due to other crimes resulting from their victimization. Oftentimes these are petty offenses, such as theft or drug possession, or status offenses, such as truancy,⁵ but could also include conduct related to commercial sex, such as

promoting prostitution. Recognizing that many child sex trafficking victims are forced or compelled to engage in other criminal conduct as a result of their victimization, state non-criminalization laws should extend to offenses beyond prostitution, including status, misdemeanor, and non-violent felony offenses committed pursuant to trafficking victimization.

When state non-criminalization provisions do not extend to offenses outside of prostitution, many child sex trafficking victims will likely be subjected to unnecessary re-traumatization through interactions with the criminal justice system.⁶ Traffickers often force their victims to commit crimes because (1) they know that the punishment for the child is likely to be lower if they are caught due to the child's age and (2) once a victim has committed a crime, they are less likely to seek help for fear of being punished for the crime(s).⁷ Trauma responses resulting from CSE victimization can impact a victim's susceptibility to coercion to commit crimes.⁸ Additionally, victims may commit other crimes to protect themselves in self-defense, to avoid abuse by their exploiter, or to escape or avoid their own sexual exploitation.⁹ Expanding non-criminalization to all status, misdemeanor, and non-violent felony offenses—in addition to prostitution-related offenses—recognizes that numerous offenses can be connected to sex trafficking victimization and offers a vital alternative to the harmful practice of arresting and prosecuting minors for crimes resulting from their victimization and the traumatizing impact of juvenile justice involvement.¹⁰

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

- ▶ Ensure non-criminalization protections apply to status, misdemeanor, and non-violent felony offenses related to trafficking victimization.
- ▶ Provide survivors of child sex trafficking with access to specialized services.

RELATED ISSUES:

- 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.
- 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](#)
- ▶ [Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders](#)

- 1 Polaris. *Victims of human trafficking aren't criminals* (Sept. 29, 2016) <https://polarisproject.org/blog/2016/09/victims-of-human-trafficking-arent-criminals/> (last visited Nov. 11, 2020).
- 2 *Id.*
- 3 Williamson, E., Dutch, N., Clawson, H. (2008). *Evidence-based mental health treatment for victims of human trafficking*. U.S. Department of Health and Human Services. <https://aspe.hhs.gov/system/files/pdf/76116/index.pdf>.
- 4 Cheryl Nelson Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1284-85; SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L (2018) https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf (last visited Nov. 11, 2020).
- 5 Eraka P. Bath et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 2 (2020).
- 6 *Seeking Justice*, *supra* note 4, at 18.
- 7 Polaris. *The importance of criminal record relief for human trafficking survivors* (Mar. 20, 2019) <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/> (last visited Nov. 11, 2020).
- 8 See SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING: VICTIM-OFFENDER INTERSECTIONALITY (2020) https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf (last visited Nov. 11, 2020).
- 9 *Id.* at 51.
- 10 Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257-276 (2013).