



POLICY GOAL

The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

THE TERM “FACILITATOR,” ALSO KNOWN AS A “secondary profiteer,”¹ refers to an entity that knowingly or intentionally assists, enables, aids, or financially benefits from participation in a trafficking venture.² This includes entities that harbor and transport victims as well as those that organize for a child’s exploitation by 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.³ Only 1.3% of federal sex trafficking charges initiated in 2018 were based solely on a defendant benefitting financially from the trafficking or exploitation.⁴ Because the risk of being prosecuted for financially benefitting from child sex trafficking is minimal, facilitators reap the financial benefits of others’ illegal and exploitative actions oftentimes without the risk of being held criminally liable.

Child sex trafficking laws that clearly allow for business entity liability, and provide a specific penalty scheme for business entities, can reverse the risk-reward scenario for these actors. Clearly establishing this type of liability can 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 exploiters criminally accountable. Further, clearly defined laws addressing business entity facilitation of child sex trafficking serve as an important tool for obtaining justice for victims; therefore, state child sex trafficking laws should expressly

allow for business entity liability under the trafficking law and provide a specific penalty scheme for business entities that violate the trafficking law.⁵

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 business entity 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 provide for business entity liability under the trafficking law.
- ▶ Establish a specific penalty scheme for business entities that violate the trafficking law.
- ▶ Incorporate clear language that addresses intentional versus unintentional conduct as well as language to address situations of reckless disregard or where facilitators should have reasonably known child sex trafficking was occurring.

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

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

2 See 18 U.S.C. § 1591(a)(2) (2018).

3 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).

4 *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.”

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