



POLICY GOAL

State law clearly defines child welfare's role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

STATE AND LOCAL CHILD WELFARE AGENCIES

play a lead role in investigating cases of suspected child abuse and neglect, which, per federal definition, includes “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”¹ Child welfare’s jurisdiction to investigate suspected cases of child abuse is often limited to cases in which a caregiver/caretaker (as defined in state statute) is the alleged perpetrator. However, in 2015, the Justice for Victims of Trafficking Act (JVTA) expanded the federal definition of “child abuse and neglect” to include sex trafficking as defined by the Trafficking Victims Protection Act (TVPA), regardless of the relationship between the alleged perpetrator and the victim.²

In an effort to identify and serve all child sex trafficking and CSEC victims, state law should recognize that children are often trafficked or commercially sexually exploited by people that fall outside of the definition of caregiver.³ Child welfare’s ability to respond in child sex trafficking cases should not hinge on whether a parent, guardian, or other person responsible for the child’s welfare is responsible for the child’s harm. Accordingly, state law should provide for an alternative response in non-familial trafficking cases based on a trafficking-specific risks and services assessment, ensuring access to appropriate services for the child and their family. In outlining this alternative response in statute, it is important to include language that ensures the process is mandatory for child welfare but optional for the child survivor and their family unless the parents

or caregivers are determined to have committed other forms of child abuse.

As laws designed to protect child sex trafficking victims increasingly rely on child welfare to provide services to exploited youth, and as child welfare increasingly encounters children under its care who have been commercially sexually exploited, statutory restrictions on child welfare’s jurisdiction undermine its ability to respond appropriately. However, it is also important that removing these barriers does not detrimentally impact non-offending parents and caregivers. Additionally, laws should not limit services to situations where a commercially sexually exploited child is exploited by a third party or readily-identifiable trafficker.⁴ Limiting services to those cases in which a child is exploited by a third party excludes the most vulnerable populations, including homeless and runaway youth and LGBTQ youth,⁵ who are disproportionately vulnerable to engaging in a form of commercial sex directly with a buyer known as transactional, or survival, sex in order to have basic needs met.⁶

Furthermore, the JVTA also required that states develop procedures for providing training on the sex trafficking and CSE of children to child protective services workers, including areas such as identification, assessment, provision of comprehensive services, and multi-disciplinary service responses with other child-serving agencies and service providers.⁷ Any section of state law that addresses child welfare’s response to sex trafficking should include statewide training initiatives addressing victim identification and response protocols as well as adequate funding to ensure that the alternative response can be implemented.

DRAFTING CONSIDERATIONS:

TO ACCOMPLISH THIS POLICY GOAL, STATE LAW SHOULD...

- ▶ Provide an alternative specialized response to non-familial child sex trafficking that does not hinge on caregiver fault AND requires a trafficking-specific risks and services assessment.
- ▶ Provide jurisdiction to child welfare to investigate child sex trafficking cases regardless of whether the alleged perpetrator meets the definition of a caregiver.

RELATED ISSUES:

- 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.
- 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.
- 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

SUPPORTING RESOURCES:

- ▶ State Impact Memo
- ▶ Defining a JuST Response Webinar: Policy & Practice
- ▶ Protective Response Model

1 Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No 93-247 (most recently amended on Jan. 7, 2019 by the Victims of Child Abuse Act Reauthorization Act of 2018, Pub. L. No. 115-424).

2 Justice for Victims of Trafficking Act (JVTA) of 2015, Pub. L. No: 114-22, 129 Stat 227 (2015).

3 Dr. Dominique Roe-Sepowitz et al., *A Six-Year Analysis of Sex Traffickers of Minors*, ARIZ. STATE U. OFF. OF SEX TRAFFICKING INTERVENTION RSCH. iii-iv (2017).

4 See Christine M. Raino, *Criminalizing Buyers under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 438, 448 (2017) (arguing that requiring third-party control places the burden on the child to prove his or her victimization).

5 See *id.* at 443–44.

6 *Justice for Victims of Trafficking Act: Section-By-Section Analysis*, SHARED HOPE INT’L, http://sharedhope.org/wp-content/uploads/2015/03/Justice-for-Victims-of-Trafficking-Act-2015_Section-by-Section_Reported-....pdf (last visited Nov. 12, 2021).

7 *Id.*