TO PREVENT THE HARMFUL AND RE-TRAUMA-
tizing effects of arrest and prosecution for crimes com-
mitted pursuant to trafficking victimization, states
should enact comprehensive 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 pro-
hibit the criminalization of minors under 18 for prostitu-
tion offenses, ensuring that they cannot be arrested,
detained, or prosecuted for such offenses.

State sex trafficking laws should simultaneously crimi-
nalize the actions of buyers, traffickers, and facilitators
while protecting victims. It is, therefore, counterpro-
ductive 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 survi-
vor-centered efforts to address CSE, harms victims, and
hinders a needed shift in cultural attitudes,³ state pros-
istution 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. Acknowl-
edgement of victimization further removes barriers
to connecting youth with services to address their
victimization.

Best practices for enacting non-criminalization legisla-
tion include protecting all minors under the age of 18
from arrest, detention, and prosecution, not requiring
legal identification of victimhood or proof of third-par-
ty control, and incorporating access to specialized ser-
vices.⁴ Mechanisms that direct survivors to specialized
services and away from the juvenile or criminal justice
systems are critical for ensuring survivors receive the
specialized care they need. These services should be pro-
vided 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 pro-
cess as this process can also be inherently punitive and
force engagement in services.

To provide a mechanism for connecting victims to spe-
cialized services, states should incorporate services for
trafficked youth into non-criminalization provisions.
This provides law enforcement with an alternative to ar-
resting 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:**

- 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 ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

**SUPPORTING RESOURCES:**

- Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims
- Non-Criminalization of Juvenile Sex Trafficking Victims
- JuST Response Council Protective Response Model report
- States’ Laws Say “Kids are Not Prostitutes.” So Why are They Still Being Punished?” blog

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2. Id.
3. Id. at 12.
5. Id.