



POLICY GOAL

State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

THE PHENOMENON OF COMMERCIAL SEXUAL exploitation (CSE) victims committing crimes during their victimization is so prevalent that it is largely unavoidable.¹ Child sex traffickers often force their victims to commit a variety of crimes for a variety of reasons. Traffickers may force a child victim to commit a crime knowing that the punishment for the child is likely to be lower if they are caught due to the child's age or that, once a victim has committed a crime, they are less likely to seek help for fear of being punished for the aforementioned crime(s).² Trauma responses resulting from CSEC victimization can impact a victim's susceptibility to coercion to commit crimes.³ Additionally, victims may commit crimes to protect themselves in self-defense, to avoid abuse by their exploiter, or to escape or avoid their own sexual exploitation.⁴ Consequently, in the course of their victimization, trafficking victims may commit or be indirectly involved in violent felonies, such as kidnapping or robbery at the direction of their trafficker and assault or homicide resulting from an act of self-defense.

Just as traditional affirmative defenses allow criminal defendants to demonstrate that they lacked the criminal intent to commit the crime, trafficking victims need an opportunity to demonstrate the nexus between criminal conduct and their trafficking victimization. To accomplish this, state law should provide child sex trafficking victims with a trafficking-specific affirmative defense to violent felonies that were committed as a result of trafficking victimization. If successful, a sex-trafficking-specific affirmative defense would allow sex trafficking victims accused of engaging in criminal conduct as a result of their victimization to avoid unjust criminalization for acts they were coerced to commit. Importantly, a sex-trafficking specific affirmative defense

can account for the actual dynamics of trafficking, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors. In this way, a sex trafficking-specific affirmative defense can account for potential inadequacies of general affirmative defenses that may fail to protect trafficking survivors from unfair criminalization. Additionally, this defense may be rebutted by the prosecution and a child sex trafficking victim would need to establish their victimization and prove the nexus between the violent felony and their own victimization in order to benefit from this protection.

Although the juvenile justice system was created to promote rehabilitation, criminal justice processes are still adversarial; they may involve situations of physical restraint, solitary confinement and other deprivation of liberty and control, limited services to address victimization, and other situations that can retraumatize child sex trafficking victims.⁵ As such, it is absolutely critical to utilize a trauma-informed, victim-centered approach throughout the criminal justice process to address sex trafficking victims' complex needs and support access to services. Importantly, this includes victims who are and are not able to present a successful affirmative defense; regardless of the disposition of the case and resulting punitive measures, it is vital that victims are connected to specialized services that can address the trauma of sex trafficking victimization.

Implementation of this change in law and practice will require training as well as active participation from criminal justice stakeholders, including law enforcement, victim advocates, and prosecutors. Asserting a successful sex trafficking-specific affirmative defense starts with recognition of victim-offender intersectionality

(VOI) by criminal justice stakeholders. In order to improve identification of sex trafficking victim-offenders, criminal justice stakeholders should take proactive steps throughout the criminal justice process to assess whether a person that is suspected of committing a crime was also experiencing trafficking victimization.⁶ Training

for criminal justice stakeholders on identifying and responding to VOI is important. Of equal importance is training that increases understanding of victim-offenders' actions by teaching stakeholders how to view this conduct through a trauma-informed lens.

DRAFTING CONSIDERATIONS:

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

- ▶ Provide child sex trafficking victims with an affirmative defense to all violent felonies.
- ▶ 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.
- 2.6 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.
- 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.
- 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

SUPPORTING RESOURCES:

- ▶ Responding to Sex Trafficking Victim-Offender Intersectionality: A Guide for Criminal Justice Stakeholders
- ▶ Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims

1 SHARED HOPE INT'L, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS (2020), https://spopy1bvira2mldnj1hd926e-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL_updatedApril2020.pdf [hereinafter VOI REPORT].

2 *The Importance of Criminal Record Relief for Human Trafficking Survivors*, POLARIS (March 20, 2019), <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/>.

3 VOI REPORT, *supra* note 1.

4 *Id.*

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

6 VOI REPORT, *supra* note 1.