



POLICY GOAL

State law allows for child welfare involvement in non-familial child sex trafficking cases without hinging involvement on caregiver fault and provides for an alternative, specialized investigation in those cases.

STATE AND LOCAL CHILD WELFARE AGENCIES

play a lead role in investigating cases of suspected child abuse and neglect, which, as defined by federal law, 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 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.

Historically, child welfare’s jurisdiction to investigate alleged cases of child abuse was limited to reports in which the child’s parent or caregiver was the alleged perpetrator. However, the *Justice for Victims of Trafficking Act of 2015* 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

To support proper identification and the availability of services, state child abuse laws should recognize that child sex trafficking victims are often exploited by people that fall outside the legal definition of “caregiver.”³

Child welfare’s ability to respond in cases of child sex trafficking should not hinge on whether a parent or legal guardian is responsible for the reported harm. Importantly, this allows for both non-familial cases of trafficking to be investigated by child welfare *and* prevents child welfare from making a finding of “neglect” (for failure to prevent exploitation) against non-offending parents solely to open avenues to services and care.

An alternative, specialized assessment and investigation track provided for in state law is one emerging best practice for ensuring *appropriate* responses in cases of non-familial child sex trafficking. Alternative assessments are designed to safeguard the family unit *and* child welfare investigator; this practice allows for the trafficking or exploitation to be investigated and the child’s needs to be assessed without investigating the parents as offenders. Further, it relieves child welfare investigators from the otherwise required task of investigating the third party exploiter, often a pimp or buyer. In developing alternative assessment tracks, it is important that legislation is drafted to clearly make the process 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. This ensures that child survivors have access to child welfare protections, care, and services if beneficial and appropriate without requiring system-involvement, which, in some cases, may result in collateral and harmful consequences for the family.⁴

DRAFTING CONSIDERATIONS:

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

- ▶ Provide jurisdiction to child welfare to investigate child sex trafficking cases regardless of whether the alleged perpetrator meets the definition of a caregiver.
- ▶ Provide for an alternative, specialized investigation in non-familial trafficking cases.

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.
- 3.3 State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.
- 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

SUPPORTING RESOURCES:

- ▶ State Impact Memo
- ▶ Protective Response Model
- ▶ When Systems of Care Can Do Harm: The Need for Specialized Child Welfare Responses to Child Sex Trafficking Survivors blog

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 Bendtsen & Raino, *When Systems of Care Can do Harm: The Need for Specialized Child Welfare Responses to Child Trafficking Survivors*, SHARED HOPE INT'L (Feb. 22, 2022), <https://sharedhope.org/2022/02/22/when-systems-of-care-can-do-harm-the-need-for-specialized-child-welfare-responses-to-child-trafficking-survivors/>.