



POLICY GOAL

State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest.

TO PREVENT THE HARMFUL AND RE-TRAUMATIZING effects of punishing survivors of child sex trafficking for the crimes committed against them, states should enact comprehensive Safe Harbor—or non-criminalization—laws. “Non-criminalization” reflects the fundamental concept and policy of prohibiting any criminal response—arrest, punitive detention, prosecution—to minors under 18 for prostitution offenses as “charging a child with a crime related to their own rape is not properly enshrined in the criminal code.”¹ In other words, recognizing that all states identify purchasing, trafficking, or facilitating commercial sex with a child as a crime—and ideally as a form of sex trafficking—it is illogical to hold minors criminally liable for the very crimes committed against them.²

It is important that states structure non-criminalization protections in a way that protects all commercially sexually exploited minors without requiring a legal finding of trafficking victimization or third party control.³ While all minors engaged in commercial sex *are* victims of sex trafficking and should be identified as

such, limitations in the structure of sex trafficking laws, lack of stakeholder knowledge, or a child’s own denial of exploitation may result in the child being mis-identified. Further, not all commercially sexually exploited minors have or are able to identify a third party controller, particularly children trading sex to meet basic needs. Crafting state non-criminalization protections that are available to all minors recognizes that children engaged in commercial sex *are* victims of sex trafficking and should be provided access to support, services, and care outside of punitive systems.⁴

Importantly, state non-criminalization laws should also include a protocol to ensure that child sex trafficking victims not only avoid punishment but also are provided a referral and access to services in lieu of arrest and detention.⁵ Requiring law enforcement or other first responders to refer child and youth survivors to specialized services and away from the juvenile or criminal justice systems is critical for interrupting and avoiding traumatizing cycles and experiences.⁶

DRAFTING CONSIDERATIONS:

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

- ▶ Prohibit the criminalization of all minors under 18 for prostitution offenses.
- ▶ Ensure the non-criminalization law prohibits punitive forms of custody, such as arrest.
- ▶ Require law enforcement to direct the child 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 mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.
- 3.3 State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.
- 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

SUPPORTING RESOURCES:

- ▶ Seeking Justice: Legal approaches to eliminated criminal liability for child sex trafficking victims
- ▶ Non-Criminalization of Juvenile Sex Trafficking Victims
- ▶ Justice for Juveniles: Exploring Non-Criminal Response Mechanisms for Child Sex Trafficking
- ▶ JuST Response Council Protective Response Model report
- ▶ States' Laws Say "Kids are Not Prostitutes." So Why are They Still Being Punished?" blog
- ▶ Bendtsen Diedhiou, Roberts, & Raino, Trauma, Coercion, and the Tools of Trafficking Exploitation: Examining the consequences for children and youth in the justice system

1 SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L 4 (2018), https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf [hereinafter SEEKING JUSTICE].

2 Shared Hope Int'l, *Non-Criminalization of Juvenile Sex Trafficking Victims*, JUST RESPONSE POLICY PAPER 1 (2016), <http://sharedhope.org/wp-content/uploads/2014/04/JUSTRESPONSE-POLICY-PAPER-NON-CRIMINALIZATION-OF-JUVENILE-SEX-TRAFFICKING-VICTIMS.pdf>.

3 *Id.* at 12.

4 *See* SEEKING JUSTICE, *supra* note 1.

5 *Id.*

6 *See* Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257-76 (2013).