



POLICY GOAL

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.

ARRESTING AND PROSECUTING SEX TRAFFICKING victims for sex trafficking offenses is in direct conflict with a victim-centered criminal justice approach and reflects a limited understanding of the complex nature of victim-offender intersectionality (VOI).¹ Prohibiting the criminalization of child sex trafficking victims for sex trafficking offenses accounts 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. Aligning with their underlying victimization, child sex trafficking victims should not be charged as sex trafficking and CSE offenders or as accomplices alongside their exploiters. Accordingly, state non-criminalization laws should apply to sex trafficking and CSE offenders, including accomplice and co-conspirator liability.

To establish a more victim-centered approach to working with child sex trafficking victims, some states have enacted non-criminalization laws, laws designed to prohibit the criminalization of victims for crimes committed pursuant to their victimization.² While all of those states have taken the important step of enacting non-criminalization laws for prostitution offenses, far fewer of these states extend non-criminalization to offenses outside of prostitution. Fewer still extend non-criminalization to sex trafficking and CSE offenders, including accomplice and co-conspirator liability.

Failure to identify sex trafficking VOI and offer alternative responses can create significant barriers in accessing vital services to address a victim-offender's trauma.³ In addition to minimizing re-traumatization associated with a criminal justice response through non-criminalization laws, states can also facilitate access to services through these laws. Importantly, these services should be provided through a non-punitive system, meaning that they are not meant to simply serve as diversion programs or referrals in lieu of arrest.⁴

Successful 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, prosecutors, and judges. In an effort 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 trafficking had also experienced trafficking victimization.⁵ Training for criminal justice stakeholders on identifying and responding to sex trafficking 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. Finally, successful implementation will require the development of alternative responses to arrest and prosecution that can be utilized when sex trafficking VOI is identified.

DRAFTING CONSIDERATIONS:

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

- ▶ Ensure non-criminalization protections apply to sex trafficking offenses, including accomplice and co-conspirator liability.
- ▶ 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 and establishes a services-referral protocol as an alternative to arrest.
- 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.
- 2.8 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.
- 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 eliminate criminal liability for child sex trafficking victims
- ▶ When Difficult News is the Most Important News 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 See 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 SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS, SHARED HOPE INT'L (2018) https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf [hereinafter SEEKING JUSTICE].

3 VOI REPORT, *supra* note 1.

4 SEEKING JUSTICE, *supra* note 2.