

ISSUE BRIEF

5.1



POLICY GOAL

State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

REPORTING A CRIME AND PARTICIPATING IN A

resulting investigation and prosecution can be daunting for any crime victim; however, it is particularly intimidating for child victims of sexual violence, including child sex trafficking. While the prosecution of a child's trafficker can be one mechanism for formally recognizing victimization and harm,¹ participating in the criminal justice process as a victim-witness can result in the child being re-traumatized. Providing testimony may necessitate discussing sometimes vivid and "deeply personal and violent experiences of abuse" to the court.² As such, child witness experts recommend creating policies that can minimize the risk of re-traumatization and emotional distress.³ In order to facilitate a victim-centered criminal justice process, it is important that states enact a robust set of laws that offer protections for child sex trafficking victims in the trial process.

One way in which legislation can create more victim-friendly, child-appropriate court procedures is to provide hearsay exceptions for non-testimonial evidence, including texts, emails, and other records created by the child regarding their exploitation. Child sex trafficking cases present an array of evidentiary challenges, including the difficulty of corroborating allegations of a crime that is oftentimes hidden. While child victims often make out-of-court statements or document their abuse to trusted persons in their lives, states' evidentiary rules often bar the evidence from being admitted in

proceedings against their offenders. To overcome this challenge, states should enact hearsay exceptions, allowing a victim's non-testimonial, out-of-court statements to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony. This will reduce the reliance on victim testimony, which will mitigate the risk of re-traumatization while still sustaining the defendants' Sixth Amendment right to confront witnesses.

Notably, a strong state law will ensure the child sex trafficking-specific hearsay exception applies to all victims up to age 18. Testifying can be a severely traumatic process for commercially sexually exploited minors regardless of their age at the time of testifying, and victims of child abuse often experience severe forms of trauma and stress when providing testimony in court.⁴

While the hearsay exception should be specific to child sex trafficking, states may also consider applying it to CSEC victim-witnesses as well. States should also clearly address that this hearsay exception applies only to non-testimonial evidence to avoid any concerns with the Sixth Amendment's Confrontation Clause. Finally, to facilitate prosecutors' use of this hearsay exception, states should have a complementary law requiring prosecutors to be trained on child sex trafficking and victim-centered prosecutions.

DRAFTING CONSIDERATIONS:

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

- ▶ Provide a hearsay exception specifically for child sex trafficking and CSEC victims.
- ▶ Ensure the child sex trafficking-specific hearsay exception applies to all victims up to age 18 rather than limiting this protection to younger minors.
- ▶ Clarify that the hearsay exception only applies to non-testimonial evidence to avoid constitutional challenges.

RELATED ISSUES:

- 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.
- 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

SUPPORTING RESOURCES:

- ▶ Protected Innocence Challenge Framework Brief (Section 5)

1 Jim Ehrman, *Why Prosecution Matters for the Youth We Work With*, LOVE146 (Apr. 11, 2016) <https://love146.org/why-prosecution-matters/>.

2 SURVIVOR PROTECTION: REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS, RIGHTS4GIRLS (Jan. 2018) <https://rights4girls.org/wp/wp-content/uploads/r4g/2018/01/Survivor-Protection.pdf>.

3 *Id.*

4 Yasmin Vafa & Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUNDATION News (Feb. 21, 2018, 14:54 GMT), <https://news.trust.org/item/20180221145440-fkal6>; see also Jazmine Ulloa, *California Bill Would Make Testifying in Court Easier for Young Victims of Human Trafficking*, L.A. TIMES (Aug. 7, 2016, 12:05 AM), <https://www.latimes.com/politics/la-pol-sac-human-trafficking-young-witnesses-20160806-snap-story.html>.