

While safe harbor laws are increasingly recognized as critical to a just, trauma-informed response to child sex trafficking, the success of a true safe harbor¹ legal framework hinges on ensuring comprehensive access to specialized services without reliance on systems as the primary access point for those services. However, system-based responses have, nevertheless, been the predominant framing for safe harbor laws, creating barriers for children to access those services due to the incongruity between their needs and the ability of systems to respond appropriately. Meanwhile, in other states that lack a true safe harbor law, the assumption that safe harbor must hinge on system involvement, combined with the legitimate concern that systems in those states may not be equipped to respond appropriately to child sex trafficking survivors, has resulted in ongoing reliance on the status quo approach of arresting and criminalizing child survivors as the primary avenue to access services. As a result of removing children from their families and communities to connect them with systems-based service responses, children are disconnected from the critical support systems they need to support their long-term healing. Additionally, funded access to community-based services can prevent further harms associated with unnecessary system involvement, ultimately using resources more effectively.

Data increasingly demonstrates a correlation between juvenile justice and child welfare involvement and trafficking. For example, research shows that sexual abuse is one of the primary predictors of girls' entry into the juvenile justice system. In a 2006 study of girls involved in Oregon's juvenile justice system, 93 percent had experienced sexual or physical abuse. Additionally, out of 130 identified survivors of sex trafficking in Connecticut in 2014, 98 percent of them were involved in the child welfare system in some manner.² Youth who have been involved in both the juvenile and child welfare systems, often referred to as dually involved children, are disproportionately female with girls comprising about half of dual-system youth.

This link between system-involvement and commercial sexual exploitation should not be surprising. Child survivors are overrepresented in the child serving systems, and the systems can amplify vulnerabilities—trauma, family interruption, community disengagement—for future exploitation.³ In fact, many of the harmful experiences that may warrant system involvement—physical, emotional, and sexual abuse—are the same experiences exploiters target.⁴ Indeed, it is often youths' behavioral responses to sexual abuse and trauma that largely results in their delinquency and criminalization. "Studies suggest that if trauma is not resolved, . . . results may include (a) alcohol and drug use, (b) involvement in violent activity, and (c) the development of mental health problems such as PTSD." Yet, despite this body of research demonstrating how youth who have experienced trauma and abuse are directed into punitive systems due to their trauma, the juvenile justice system typically overlooks—or is not structured to consider—the context of abuse when determining whether to arrest or charge a minor with an offense. Moreover, child welfare systems, while not punitive, may still contribute to or exacerbate vulnerabilities that can lead to exploitation. Beyond the potential harms that can arise from system-involvement, child welfare agencies are often under-resourced and, consequently, ill-equipped to provide child survivors with access to necessary trauma-informed services that could mitigate the harms they have experienced.

¹ For the purposes of this policy paper, "true safe harbor" refers to a non-criminalization approach versus when we refer to "safe harbor" generally, we're referring to the broad range of attempts that states have made to mitigate or reduce the harm of criminalizing children for prostitution that may include non-criminalization but also other approaches, such as diversion, that still rely on a punitive system to respond.

² See Polaris, *Child Trafficking and the Child Welfare System* (2019), <https://polarisproject.org/wp-content/uploads/2019/09/Child-Welfare-Fact-Sheet.pdf>.

³ Kate Walker, J.D. and Fiza Quraishi, J.D., *From Abused and Neglected to Abused and Exploited: The Intersection of the Child Welfare System with the Commercial Exploitation of Children* (2014), <https://www.thorn.org/wp-content/uploads/2015/02/CSEC-Child-Welfare-Report.pdf>.

⁴ *Id.*

Given the broad range of harms that children may experience in systems and the inherent limitations of systems to meet the diverse and individual needs of children and youth who have experienced trafficking, a more comprehensive approach to connecting child and youth trafficking survivors with trauma-responsive services is an essential element of an effective and just safe harbor response. Services need to be available through a range of avenues, ensuring that all young people who have survived trafficking have access to services regardless of their involvement in systems, either before, during, or after their trafficking and the initial intervention to connect them to services.

I. Harms of Punitive Responses and Relying on Juvenile Justice System Involvement

Any system response that permits arrest, detention, or court-ordered conditions and services for minor survivors, even if well intentioned, contradicts both the acknowledgement of victimization and promising practices.⁵ Indeed, the criminalization of survivors produces trauma, impedes healing, and perpetuates injustice. Understanding this, a majority of states have passed legislation requiring alternative responses to child sex trafficking survivors in an attempt to shift away from arresting and prosecuting commercially sexually exploited minors for prostitution and other offenses related to their exploitation. However, twenty-two states allow for a punitive or quasi-punitive⁶ response through juvenile justice and three states provide no statutory protection from criminalization.⁷

Utilizing the juvenile justice system to secure safety and services for child and youth survivors of sex trafficking may band-aid immediate concerns by ensuring a young person's engagement in services, but, ultimately, this coercive approach creates barriers to that young person's successful outcomes and healing. This is because juvenile justice is ill-equipped and unprepared to address the trauma and unique needs of child trafficking survivors. According to a recent nationwide census conducted by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), only approximately half the youth in the juvenile justice system are placed in a facility that provides mental health evaluations to all residents.⁸ Additionally, 88 percent of juvenile justice youth reside in facilities in which mental health counselors are not licensed professionals.⁹ In addition to the insufficient treatment of trauma-related health needs, conditions in juvenile justice systems risk re-traumatizing survivors. Routine procedures, including the use of restraints and strip searches, as well as the isolating, punitive environment itself, can be particularly harmful to survivors of trauma by triggering their traumatic stress symptoms.¹⁰ Simultaneously, directing children and youth into justice systems can create barriers to opportunities that could positively impact a child's trajectory, such as connection with informal support networks in their communities, including supports accessed through education. Research demonstrates that the experience of a single arrest results in increased likelihood of not completing high school, "not as a result of poor student engagement, but as a result of the school's reaction to the arrest."¹¹ This is cause for significant concern given the impact educational attainment has on health, economic, and social outcomes.

⁵ See *JuST Response Council: Protective Response Model*, Shared Hope Int'l (Nov. 2016), http://sharedhope.org/wp-content/uploads/2014/04/JRC_ResponseModel_Spreads_web.pdf.

⁶ For the purposes of this policy paper, an alternative punitive response means a formal diversion program and "quasi-punitive response" means a Child in Need of Services/Supervision ("CHINS") response. CHINS is a civil proceeding used by juvenile courts to get a child to conform their behavior to certain rules.

⁷ Shared Hope International, *Safe Harbor Laws*, last visited Oct. 28, 2022, <https://reportcards.sharedhope.org/safeharbor/>.

⁸ Malika Saada Saar et. al, *Hum. Rts. Project for Girls*, Georgetown L. Ctr. On Poverty and Inequality & Ms. Found. For Women, *The Sexual Abuse to Prison Pipeline: The Girls' Story*, 14 (2015) [hereinafter *Pipeline*].

⁹ *Id.*

¹⁰ *Id.*

¹¹ Kim Gillhuly, et. al, *Hum. Impact Partners, REDUCING YOUTH ARRESTS KEEPS KIDS HEALTHY AND SUCCESSFUL: A HEALTH ANALYSIS OF YOUTH ARREST IN MICHIGAN* 11 (2017), https://humanimpact.org/wp-content/uploads/2017/09/HIP_MichYouthArrests_2017.06.pdf.

Even alternative, services-oriented justice approaches include punitive or coercive measures that are not only incompatible with sexual violence-induced trauma but also result in re-victimization and can compound trauma.¹² Problematically, these alternative responses are contingent upon the successful completion of program requirements and, ultimately, the court's satisfaction. Such requirements are often based on the discretion and determination of the court, regardless of whether the presiding judge or magistrate has a comprehensive understanding of sex trafficking victimization or trauma-informed, specialized service responses. Additionally, diversion requirements are commonly incompatible with the realities of trauma and trafficking victimization, which may interfere with a trafficking survivor's ability to consistently engage in the required services, resulting in child and youth survivors being unable to complete requirements and terms to the satisfaction of the court.

II. Harms of Relying on Child Welfare Involvement

While the primary mission of the child welfare system is to care for children who have experienced abuse, violence, or neglect and is seemingly non-punitive, child welfare often fails to support child and youth survivors of trafficking and can exacerbate vulnerabilities to exploitation. Despite this, child welfare still has an important and unavoidable role in responding to child maltreatment involving commercial sexual exploitation. The passage of federal legislation, including the *Preventing Sex Trafficking and Strengthening Families Act (2015)*, *Justice for Victims of Trafficking Act (2015)*, and the *Families First Prevention Services Act (2018)*, has accelerated state and county child welfare reforms that expand states' traditional role of investigating and intervening in cases of intrafamilial abuse and neglect to include responding in cases of child sex trafficking where there is no familial or caregiver involvement in the abuse. Despite this, few jurisdictions systematically screen children for commercial sexual exploitation, and those systems that do often have difficulty asking the right questions in a way that encourages a youth to disclose exploitation.¹³ Despite a growing body of science about efficacious treatments for child traumatic stress, few child welfare agencies across the nation integrate trauma-informed practices or have evidence-based trauma specific interventions available in their community or their service continuum.¹⁴

In the worst cases, where children are poorly cared for, the child welfare system inadvertently plays a part in making children and youth vulnerable to exploitation. Exploiters strategically target vulnerable youth—particularly those involved in foster care, those who may be disconnected from trusted adults and peers, or those experience regular disruption as a result of multiple placements and are lacking consistent oversight—because they may be easier to manipulate or lure. Furthermore, some youth leave placement, resulting in experiences of homelessness or housing instability while in foster care and are left with minimal resources to meet their basic needs, which may cause the youth to engage in “survival sex” to meet such needs.¹⁵

While it is imperative that child welfare is prepared to provide specialized care, services, and, when appropriate, placement for children who enter the system on a report of child sex trafficking, it is also critical to ensure that these services complement community-based services so that children and their families are not needlessly involved in the system and exposed to unintended harms. When safe harbor responses hinge access to services on a child welfare response, this approach risks children and families experiencing either or both of the following problematic outcomes:

¹² Misty Luminais & Rachel Lovell, Begun Ctr. For Violence Prevention and Educ., Process and Outcome Evaluation of Cuyahoga Country's Safe Harbor Project 5-6 (2018).

¹³ See Covenant House, HOMELINESS, SURVIVAL SEX AND HUMAN TRAFFICKING: AS EXPERIENCED BY THE YOUTH OF COVENANT HOUSE NEW YORK 14-16 (2013), available at <https://www.covenanthouse.org/sites/default/files/inline-files/Covenant-House-trafficking-study.pdf>.

¹⁴ Nat'l Child Traumatic Stress Network, USING TRAUMA-INFORMED CHILD WELFARE PRACTICE TO IMPROVE PLACEMENT STABILITY BREAKTHROUGH SERIES COLLABORATIVE: EXECUTIVE SUMMARY 1 (Jun. 2013) available at http://www.nctsn.org/sites/default/files/assets/pdfs/using_ticwp_bsc_executivesummary.pdf.

¹⁵ *Id.*

(1) child welfare failing to provide access to services to all child trafficking survivors due to its limitations in responding to children who have been trafficked by a non-caregiver, resulting in some children not receiving services and returning to abusive or exploitative situations rather than receiving trauma-informed supports to leave their trafficking situation; and

(2) child welfare agencies unnecessarily—and harmfully—involving non-offending families in child welfare processes to connect a child trafficking survivor with services. Requiring a child to be system-involved to access service can create an incentive for agencies to remove children as a mechanism to connect them with services. This approach is rife with potential harms, ranging from the trauma children experience when removed from their home and family networks to the trauma non-offending families experience when they are unnecessarily pulled into a system that is inherently adversarial to them.¹⁶

III. Community-Based Services Demonstrate Positive Outcomes for At-risk Children and Youth

Survivor’s access to holistic safety and specialized services is essential to breaking the cycle of exploitation and opening pathways to sustainable healing and wellbeing. This cannot be accomplished without reconstructing the systems-level response provided to trafficked children and youth, shifting from rehabilitative, juvenile justice-based and protective responses to healing-oriented responses. While all systems must be prepared to identify and serve trafficked children and youth, solutions based on access to services through non-punitive and community-based systems are the best solution for preventing the criminalization and revictimization of child and youth survivors. These approaches allow exploited children and youth to participate in personalized service plans designed to build trust, confidence, empowerment, and healing on the survivor’s terms and timeline and are critical to ensuring that true non-criminalization for child and youth survivors is attained.

Research demonstrates that community-based services have a greater positive effect than institutional treatment.¹⁷ Studies suggest that a number of programs, particularly those that emphasize family involvement and in-community treatment, have been successful in reducing recidivism in justice-involved youth.¹⁸ This is because removal from the family and the community increases the stress on youth and detaches them from the institutions that usually support children. Indeed, in a study conducted on New York’s Mental Health Juvenile Justice Diversion Project found that there is a difficulty in treating multi-problem youth after they have already had some degree of contact with the juvenile justice system.¹⁹ This emphasizes the importance of ensuring that trafficked and exploited minors have access to community resources *prior* to entering punitive systems rather than being diverted to services through juvenile justice or other quasi-punitive processes.

Importantly, the studies that have evaluated outcomes for at-risk youth have one consistent conclusion: prevention focus is critical when working with at-risk youth: “Most of these youth have come to the attention of some formal system in the past, which suggests missed opportunities for redirection in their pathways to delinquent behavior. Intervention programs of all sorts must develop tools to identify risk factors for later delinquency, substance abuse, and mental disorder.”²⁰ Because commercially sexually exploited and sex trafficked children are identified by service providers at various points of entry, clear statutory mechanisms that direct

¹⁶ Gregory Firestone & Janet Weinstein, *In the Best Interests of Children: A Proposal to Transform the Adversarial System*, 42 FAM. COURT REV. 197 (2004), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.174-1617.2004.tb00644.x>.

¹⁷ Christopher J. Sullivan et al., *Reducing Out-of-Community Placement and Recidivism: Diversion of Delinquent Youth With Mental Health and Substance Use Problems From the Justice System*, 51 Int’l J. Offender Therapy & Compar. Criminology 555, at 558 (2007), <https://journals.sagepub.com/doi/epdf/10.1177/0306624X06296237>.

¹⁸ *Id.*

¹⁹ *Id.* at 571.

²⁰ *Id.* at 573.

survivors to specialized services without reliance on child welfare or juvenile justice systems are critical to ensuring survivors receive the specialized care they need.

IV. Statutory Responses

Legislation can achieve specialized service provision and a coordinated response for commercially sexually exploited children through a variety of means, including requiring multi-disciplinary stakeholder training on appropriate and effective responses and mandating a process for coordinating access to specialized services that does not require involvement in child-serving systems. States can also use legislation to direct law enforcement on where to refer or take commercially sexually exploited children—in lieu of arresting and detaining them—and to ensure these service responses apply to all identified survivors regardless of current system-involvement. Importantly, however, states must couple legislation with significant appropriations and funding reallocations to ensure that the community-based services can actually be developed, provided statewide, and sustained. The following statutory mechanisms provide examples of promising processes for coordinating access to specialized services for child sex trafficking survivors that do not require involvement in child-serving systems.

a. Minnesota

Minnesota law provides sex trafficked children and youth under 25 years of age with access to specialized, community-based services through their safe harbor program. Specifically, the regional navigators grant provisions set out goals for a statewide program meant to ensure that “support services are available, accessible, and adequate for sexually exploited youth.”²¹ Thus, trafficked children and youth are not required to be system-involved in order to receive specialized services.

Under this program, the Commissioner of Health, through its Director of Child Sex Trafficking Prevention,²² provides grants to regional navigators serving six regions of the state. Each regional navigator must develop and annually submit a work plan to the director of child sex trafficking prevention. The work plans must include, but are not limited to, the following information: (1) a needs statement specific to the region, including an examination of the population at risk; (2) regional resources available to sexually exploited youth; (3) grant goals and measurable outcomes; and (4) grant activities including timelines. Minnesota’s safe harbor program works on a “No Wrong Door” model, meaning child and youth survivors can access services through a variety of access points.²³ This model operates under the assumption that both the juvenile justice and child protection systems are not designed—nor are they adequate—to address the needs of sexually exploited youth.²⁴ Additionally, the No Wrong Door model believes that, wherever possible, existing community-based services should be used to provide services to sexually exploited youth.²⁵ Importantly, Minnesota has invested approximately \$13.2 million between FY 2014-19.²⁶ More than 2,500 survivors of sex trafficking and exploitation were served through the safe harbor program between its inception in 2014 through October 2018.²⁷

²¹ Minn. Stat. Ann. § 260C.007(31).

²² Minn. Stat. Ann. § 145.4716(2).

²³ See DEP’T OF PUB. SAFETY OFF. OF JUST. PROGRAMS, No Wrong Door: A Comprehensive Approach to Safe Harbor for Minnesota’s Sexually Exploited youth (Jan. 2013) [https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20\(FINAL\).pdf](https://dps.mn.gov/divisions/ojp/forms-documents/Documents/!2012%20Safe%20Harbor%20Report%20(FINAL).pdf).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See MINN. DEP’T OF HEALTH, Safe Harbor for All: Statewide Sex Trafficking Victim/Survivor Strategic Plain (Jan. 2019), <https://www.health.state.mn.us/communities/safeharbor/documents/mdhSH4ALLreport.pdf>.

²⁷ *Id.*

b. Maryland

Similarly, Maryland law provides sex trafficked children and youth under 24 years of age with access to specialized, community-based services through their Safe Harbor Regional Navigators Grant Program. Under this program, grantees are tasked with creating and sustaining projects to provide services to youth survivors of sex trafficking that are survivor-centered and trauma-informed.²⁸ Grantees under the program include child advocacy centers, sexual assault crisis programs, and qualified community-based survivor service providers. Thus, access to specialized services is available outside of child-serving systems. Additionally, the services provided include wrap-around services such as safety planning, emergency response, basic living needs, not including housing, trauma counseling and mental health services, drug and alcohol abuse treatment, legal services, survivor advocacy, and case management.²⁹

c. South Carolina

South Carolina law provides child sex trafficking survivors with access to specialized, community-based services and establishes a clear process for connecting survivors with those services. A minor survivor may receive specialized services through “certified specialized service providers” and the Human Trafficking Acute Crisis Care and Resource Centers under the auspices of the Office of the Attorney General.³⁰

V. Conclusion

Removing criminal penalties for trafficked and exploited minors is not enough. To ensure true Safe Harbor, removing criminal penalties must be coupled with robust access to specialized services that are informed by and responsive to the unique trauma and harms this population faces. Truly protective responses for addressing the needs of trafficked children and youth cannot be achieved through a single policy, practice, or legislative change. Effective responses for addressing the needs of impacted children and youth requires transformative culture and systems change centered on, and aspiring for, the long-term wellbeing of survivors. Identifying avenues to safety, services, and meaningful opportunities void of collateral roadblocks and obstacles is key for anti-trafficking stakeholders seeking to support sustainable success. As such, states can improve outcomes for survivors and systems by reimagining, redesigning, and reinvesting in non-punitive avenues that deliver both comprehensive safety and services.

²⁸ Md. Code Ann., Fam. Law § 5-704.4(b)–(e).

²⁹ *Id.*

³⁰ S.C. Code Ann. § 16-3-2020(H).