



POLICY GOAL 2.2

State law should provide policy guidance to facilitate access to services and assistance for trafficked foreign national children.

STATE CHILD SEX TRAFFICKING LAWS SHOULD EXTEND PROTECTIONS AND SERVICES TO ALL victims, regardless of immigration status; however, some foreign national victims of child trafficking may be barred from accessing critical services, benefits, and protections provided for under state law. Children who are undocumented or without legal immigration status, particularly those who have recently arrived or arrived unaccompanied, are especially vulnerable to harm, including human trafficking and commercial sexual exploitation (CSE);¹ this includes children who entered the United States as a result of their trafficking, or who face victimization after their arrival. Federal law provides several forms of immigration relief to trafficked children; however, federal immigration law provides only limited guidance on what types of services should be made available to children who are undocumented, without legal immigration status, or have a foreign nationality. Further, protections and services provided by federal agencies are often siloed and limited to children with certain immigration statuses. For example, only children who are identified as unaccompanied² are transferred out of the Department of Homeland Security to the custody of the U.S. Department of Health and Human Services to access services, care, and shelter through the Office of Refugee Resettlement (“ORR”).³ Similarly, children with refugee or asylum status are eligible for certain protections, services, and care provided through ORR. However, children without legal immigration status who reside in the U.S. with their parents or caregivers may be precluded from accessing federal protections and care.⁴ Further, children without legal immigration status will often encounter state agencies and systems before the federal immigration system. It is, therefore, imperative that state law affords all children, regardless of immigration status or nationality, access to all services and benefits available for survivors of child sex trafficking and CSE. It is especially important that state-provided services and care are equipped to meet the needs of child trafficking victims without legal immigration status through the development and provision of culturally-specific, accessible, and trauma-informed responses.

To ensure that child welfare and other state agencies can provide necessary services to this vulnerable population, state law should provide policy guidance for stakeholders who interact with and serve foreign national children. The goal of this mandate is to facilitate access to care and benefits and mitigate the collateral consequences (e.g., under-identification, punitive immigration proceedings). Policy guidance should inform child protective services workers that there is no mandate to report immigration status of a child or family and that a referral to CPS should not trigger immigration proceedings. Policy guidance should also include information on relief options and how to access relief, including coordinating with local refugee services agencies and state refugee coordinators to apply for Eligibility Letters through ORR. Finally, policy guidance should consider addressing the inclusion of refugee service organizations in multidisciplinary team responses.

DRAFTING CONSIDERATIONS:

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

- ▶ Develop policy guidance on responding to foreign national children.
- ▶ Explicitly state that a child's immigration status should not be considered when providing services and benefits to child sex trafficking victims.
- ▶ Ensure these laws will not be used to target foreign nationals and their families for detention or deportation.
- ▶ Ensure youth are provided access to legal representation on immigration issues.

¹ Meaghan Fitzpatrick & Leslye E. Orloff, *Abused, Abandoned, or Neglected: Legal Options for Recent Immigrant Women and Girls*, 4 PENN STATE J.L. & INT'L AFF. 614, 615 (2016).

² An unaccompanied child is one who has no lawful immigration status in the U.S., is under the age of 18, and there is no parent or legal guardian in the U.S. or no parent or legal guardian in the U.S. can provide care and physical custody. 6 U.S.C. § 279(g) (2018).

³ Olga Byrne, *Promoting a Child Rights-Based Approach to Immigration in the United States*, 32 GEO. IMMIGR. L.J. 59, 81 (2017).

⁴ *Id.*