



## POLICY GOAL 2.8

State law should define child abuse to include child sex trafficking committed by the child's legal caregiver to promote access to child welfare services for familial trafficking survivors.

**THE JUSTICE FOR VICTIMS OF TRAFFICKING ACT (THE "JVTA") OF 2015 AMENDED THE FEDERAL** definition of child abuse to include human trafficking, requiring states to recognize child sex trafficking as a form of maltreatment for purposes of intervention and services.<sup>1</sup> Together with the passage of the Preventing Sex Trafficking and Strengthening Families Act (the "PSTSFA") of 2014, states were mandated to: (1) develop policies to identify, document, screen, and determine services for known or suspected child sex trafficking victims who are under the care or supervision of child welfare, (2) require child welfare agencies to report sex trafficking victims to law enforcement, and (3) abide by additional screening and data collection measures.<sup>2</sup> However, what has remained unclear and often debated is child welfare's required role in cases of non-caregiver sex trafficking—or trafficking perpetrated by someone other than the child's parent or legal caregiver.

Since the dual passage of the JVTA and PSTSFA, states across the country have passed legislation expanding child welfare's jurisdiction to include child sex trafficking as a form of maltreatment, regardless of caregiver involvement or fault.<sup>3</sup> The expansion of child welfare's role reflects both an adherence to federal law and a growing departure from punitive practices and systems in response to child sex trafficking victims. As states developed—in both policy and practice—Safe Harbor protections and services,<sup>4</sup> legislatures, advocates, and service providers have pursued alternative mechanisms and systems for connecting impacted young people with services and protections. Federal and state funding sources and structures, combined with the perceived need for formal system involvement, has resulted in child welfare being tasked with developing and leading the delivery of services in most Safe Harbor states. The default to child welfare has supported a relatively efficient departure from juvenile justice-based practices; a child welfare-driven response has allowed states to lean on a well-established infrastructure and pull from federal funding streams, as well as national training and technical assistance opportunities, in the design and implementation of Safe Harbor responses. Further, utilizing child welfare to meet the service needs of all identified child sex trafficking victims sought to ensure statewide access, overcoming the challenge of responding to children in rural and under-resourced communities.

Yet, expanding child welfare's jurisdiction to cover all child sex trafficking cases can result in detrimental, albeit unintended, consequences to non-offending caregivers. Designating child sex trafficking as a form of maltreatment regardless of the perpetrator's relationship to the child may unnecessarily subject some families to the scrutiny and involvement of child welfare, spanning in nature from limited engagements (e.g., differential response) to deeply entrenched dependency with long-lasting and potentially irreparable outcomes (e.g., termination of parental rights).

Some states have taken steps to mitigate against unintended outcomes, including developing alternative processes to center the investigation on the exploitation rather than the family or caregiver(s). These measures attempt to shield non-offending caregivers from the effects of child welfare involvement while simultaneously ensuring children and

families have access to critical services designed to promote healing and protect against future harm. Yet, child welfare's fundamental purpose, structure, and internal processes prevent alternative mechanisms from fully insulating caregivers and families from scrutiny and unintended negative effects.

To ensure child welfare is positioned to effectively respond to caregiver cases of child sex trafficking, state law should be crafted to recognize the unique distinctions between sex trafficking and other forms of child abuse. Modifying pertinent state statutes to expressly identify child sex trafficking as a form of child abuse supports the needed development and provision of specialized processes and services to impacted children, including CSEC-specific screening tools, unique placement considerations, and the coordination of care that is specific to child trafficking survivors.

## DRAFTING CONSIDERATIONS:

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

- ▶ Expressly include child sex trafficking committed by the child's caregiver(s) within the definition of child abuse.
- ▶ Ensure cases of child sex trafficking involving *non-caregivers* are referred to community-based service providers in lieu of being screened in and investigated by child welfare.
- ▶ Ensure measures are taken to insulate child sex trafficking victims and non-offending caregivers from unintended system-involvement (e.g., limit use of temporary protective custody as a mechanism for connecting children to safety and services).

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1 34 U.S.C. § 20302(5).

2 *Preventing Sex Trafficking and Strengthening Families Act of 2014*, NAT'L CONF. STATE LEGISLATURES (Oct. 6 2016), <https://www.ncsl.org/research/human-services/preventing-sex-trafficking-and-strengthening-families-act-of-2014.aspx>.

3 National State Law Survey, Non-Caregiver Trafficking Cases (2023): [https://reportcards.sharedhope.org/wp-content/uploads/2024/02/2023-NSL-Survey\\_2.11.pdf](https://reportcards.sharedhope.org/wp-content/uploads/2024/02/2023-NSL-Survey_2.11.pdf)

4 Safe Harbor Laws, (2024): <https://reportcards.sharedhope.org/safeharbor/>.