



POLICY GOAL 5.4

State law should provide for privileged communications between caseworkers and child sex trafficking victims.

THE PROCESS TOWARDS ACHIEVING JUSTICE THROUGH A SUCCESSFUL PROSECUTION CAN BE empowering to a child sex trafficking victim, but it risks the child being retraumatized.¹ Victim-centered prosecutions can mitigate the impact of fear and minimize re-traumatization by providing collaborative supports and empowering survivors as engaged participants in the process.² To achieve a victim-centered approach, child witness experts recommend instituting policies that can minimize the risk or re-traumatization and emotional distress.³ Such protections are often afforded to child victims of similar types of violence and abuse, but it is critical that they also specifically apply to child sex trafficking victims. To facilitate a victim-centered criminal justice process that prioritizes the well-being of the child victim-witness, states should enact a robust set of laws that offer protections for child sex trafficking victims.

One important way in which states can institute victim-friendly processes is to ensure communication between a child sex trafficking victim and their caseworker are protected through privilege laws. Trust is an essential component of a productive child-caseworker relationship. When trust is established, child victims often disclose aspects of their victimization that, if made available to others, could adversely impact the child, including disclosure of criminal conduct. However, that trust can be broken when caseworkers are compelled to divulge to criminal justice stakeholders sensitive and/or potentially incriminating statements made by the child. It is vital that states enact policies that protect the child, foster productive child-caseworker relationships, and ultimately promote healing. To that end, state law should provide for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with a caseworker from being disclosed during the prosecution related to the child's trafficking victimization.

Additionally, states should consider utilizing a broad definition for "caseworker" in an effort to protect the relationship between the child victims and a broad range of people providing support and assistance. Child sex trafficking caseworkers can be both employees and volunteers (e.g., mentors) of programs for victims of human trafficking and both specialized human trafficking service providers and other community providers who offer specialized human trafficking services. They include employees and volunteers within those programs who have received specialized training to work with child sex trafficking victims and provide services such as counseling, advising, support, and assistance. Providing for privileged communications between these caseworkers and child sex trafficking victims will ensure a victim-centered approach that allows victims to determine when confidential communications should or should not be disclosed.

Notably, this protection would not supersede any requirements that a state has previously enacted regarding mandatory reporting situations that are intended to prioritize the safety and best interest of the child. For example, a child may disclose a situation of abuse or neglect to a caseworker that must be reported to child welfare. This privilege protects a child sex trafficking victim's communications with a caseworker from being disclosed during the prosecution related to the child's trafficking victimization but should not negate a requirement to report any suspected child abuse or neglect.

DRAFTING CONSIDERATIONS:

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

- ▶ Provide for privileged communications between caseworkers and child sex trafficking victims.
- ▶ Clarify that the privileged communication law does not supersede any state mandated reporting requirements for caseworkers (e.g., child abuse or threats to self or others).

1 See Yasmin Vafa & Cherice Hopkins, *Child Sex Trafficking Victim Witnesses Must be Protected*, THOMSON REUTERS FOUND. 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>.

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.*