

# Steps to Safety

A Guide to Drafting  
Safe Harbor Legislation to  
Protect Sex-Trafficked Children







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**ECPAT-USA's Mission** is to protect every child's human right to grow up free from commercial sexual exploitation.

ECPAT-USA advocates for federal and state legislation that prevents exploitation, protects children, and guarantees that any child who is subjected to sexual slavery or sex trafficking will not be prosecuted in the courts for prostitution; promotes corporate responsibility with a focus on the tourism sector; educates first responders and ordinary citizens so that they can identify victims and join us in the fight to better protect children; empowers youth to take the lead against human trafficking by equipping them with the knowledge and tools necessary to help them become activists against this terrible trade.



# Introduction

The Federal Trafficking Victims Protection Act of 2000 and its reauthorizations unequivocally state that anyone under the age of eighteen who is induced to perform a commercial sex act is the victim of a “severe form of trafficking,” and should be “protect[ed] rather than punish[ed].”<sup>1</sup> This sentiment is echoed in the recommendations of the American Bar Association, in 2010, and the National Council of Juvenile and Family Court Judges, in 2013, that governments revise their laws, policies, and practices to assist commercially sexually exploited children by treating them as victims rather than arresting them.<sup>2</sup>

In addition, the National Academy of Sciences recently published a report on a comprehensive study conducted by the Institute of Medicine and the National Research Council entitled, “Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States.”<sup>3</sup> The report concluded that commercial sexual exploitation of children is a grave problem in the United States that is “commonly overlooked, misunderstood, and unaddressed” and that “few professionals and systems responsible for protecting and serving children and adolescents are adequately prepared to prevent, identify, and respond to [the] problem.”<sup>4</sup> Commercial sexual exploitation of children is “[a]t its core” “organized sexual abuse of young children and adolescents,” whose “complex needs” “are not being met by either criminal justice or child protection systems.”<sup>5</sup>

Furthermore, the report specifically recommended that every jurisdiction “without delay” enact a Safe Harbor Law to protect young victims of commercial sexual exploitation from criminal or juvenile prosecution.<sup>6</sup> While recognizing the need for additional time and research to “assess the effectiveness of specific state laws,” the report confirmed the soundness of the “core principle underlying” Safe Harbor Laws “that children and adolescents who are survivors of sexual exploitation and sex trafficking must be treated as victims, not criminals.”<sup>7</sup> Thus, the need for effective Safe Harbor Laws is beyond dispute.

While studies and experts have endorsed the adoption of Safe Harbor Laws,<sup>8</sup> there is no consensus about the provisions that should be included in such a law. Therefore, this report promotes the enactment of legislation that will consistently recognize and unequivocally classify minors engaged in commercial sex as victims of abuse, not criminals, and most completely protect and help those victims escape from their traffickers and find brighter futures. At a minimum, a Safe Harbor Law must recognize the coercive nature of child commercial sex and protect exploited children from criminal prosecution.

This report presents a detailed analysis of existing Safe Harbor Laws. Each law is reviewed within

the categories deemed most important to devising an effective statute: 1) correct identification and classification of commercially sexually exploited (hereinafter CSE) children; 2) provision of needed services and protections; and 3) funding the required training programs and services. This analysis allows for an understanding of the approaches that have been pursued to address the plight of CSE children, but it should not serve to limit thoughtful consideration of other possible solutions.

This report includes a checklist for Safe Harbor legislation. The checklist was created as a tool to design laws that most thoroughly address the problem of CSE children and promote the end of child sex slavery.

## Overview

This report contains an analysis of the Safe Harbor Laws that were in effect by March 1, 2015 — a total of 19 states and Washington D.C. These statutes have been dissected by identifying the sections relevant to: 1) identifying commercially sex trafficked minors and classifying them as such; 2) providing protection and rehabilitative services to help CSE children escape commercial sex trafficking and re-build their lives; and 3) funding the training programs needed to aid identification of CSE children and services for victims. Penal provisions, which address the prosecution and punishment of sex traffickers or buyers, are sometimes included in Safe Harbor Laws, but are not the focus here. Similarly, funding included in general appropriations bills are beyond the scope of this report. Only sources that are specifically created to fund the programs and services established by the Safe Harbor Law are identified here. Finally, this Project looked at the various State Commissions and Task Forces created to investigate and report on the problem of human trafficking.

From that starting point, this report has undertaken to create a Checklist for Safe Harbor Legislation taking into consideration the strengths and weaknesses of the existing statutes in fulfilling the goals of non-criminal treatment of CSE children and their rehabilitation. The Checklist is not, however, limited by the existing statutes and some of the suggested provisions are new. Careful consideration of the problem, viewed from the victim’s perspective, will generate many possible provisions of law that could help rescue, protect, and secure the victims’ futures.

There is, of course, no such thing as a perfect statute, nor is there necessarily a one-size-fits-all-states law. Consequently, alternative variations will be suggested. But all such variations will seek to satisfy the goals of the concept of “safe harbor” for sexually exploited minors—non-criminal treatment, a safe environment, and the provision of services needed to re-enter a mainstream life.

# Executive Summary

The need for state legislation that ensures minors who have engaged in commercial sex activity will be treated as trafficking victims, rather than criminals or juvenile delinquents, is now well recognized.<sup>9</sup> This need is evidenced by the Safe Harbor Laws that have been enacted in nineteen states and Washington D.C., as well as the federal Justice for Victims of Trafficking Act of 2015, which includes incentives for states to enact Safe Harbor legislation.<sup>10</sup> The laws of many states, however, are not in line with the federal anti-trafficking statute or the recommendations of the bar and judicial organizations.

As a step toward formulating the criteria for writing and enacting state legislation that satisfies the principles and goals of sound Safe Harbor legislation, ECPAT-USA has undertaken an analysis of the Safe Harbor Laws currently in effect. The current laws cover a broad spectrum from minimalistic (Connecticut, Tennessee), to highly detailed (Michigan, Massachusetts, Minnesota, Delaware). The following is a brief summary of the major provisions found in those laws, with examples. A more detailed summary, including statutory citations, as well as a narrative summary of each state's law, is also included in this report. In some instances, the concerns addressed in the provisions under study here may be covered in other state legislation, but such analysis is beyond the scope of this report.

## State Safe Harbor Provisions

### **I. Commissions or Task Forces to Study the Problem of Commercially Sexually Exploited Children**

Most of the enacted Safe Harbor Laws established a temporary or permanent commission or task force to study and report on the problem of human trafficking. Some of the task forces are specifically mandated to investigate the problem of child sex trafficking, while others are tasked to study the more general problem of human trafficking.

The membership of most of the commissions is specified and encompasses a broad spectrum of interested governmental entities and stakeholders. The commissions generally include representatives of law enforcement, prosecutors, the judiciary, child welfare agencies, the Legislature, NGOs that provide services to CSE children, and survivors of sex trafficking. The members of these commissions are not compensated.

While establishing a Commission or Task Force is generally positive, it can have a negative impact on the goal of enacting a statute that satisfies the important criteria of an effective Safe Harbor Law. That negative impact is delay. In most instances, the task force was given a year to investigate the problem of child sex trafficking and make recommendations. Such delay can result in ongoing unwarranted criminal treatment of CSE children and continued victimization of children who might otherwise be rescued.

However, in some instances, such as in Arkansas, the creation of a commission did not delay the enactment of a Safe Harbor Law. There, the provisions diverting CSE children away from the criminal justice system took effect immediately, while the Senate Interim Committee on Children and Youth, created by the Safe Harbor Law, was given a year to propose a plan for providing services to CSE children and recommend changes in state laws and procedures.

Similarly, in Michigan, the Safe Harbor Law, which grew out of an investigation and report by the Attorney General's Commission on Human Trafficking, established another Human Trafficking Commission and assigned to it tasks facilitating the dictates of the Law, such as seeking grant money, collecting data, reviewing available services, and establishing a program to promote public awareness. Thus, the creation of a commission can be compatible with quick enactment of a Safe Harbor Law.

On the positive side, a state task force can take into account the special circumstances and needs of that state. For example, in Minnesota, a task force consisting of the Commission of Public Safety and representatives of NGOs familiar with the problem of CSE children worked together as the Safe Harbor for Sexually Exploited Youth Pilot Project to create a comprehensive report, entitled "No Wrong Door." Among other things, the task force took into account such state-specific circumstances as the problem of vulnerable youth on Indian reservations and large geographic areas with small populations.

In addition, a task force can be required to collect data related to CSE children, such as was done in Delaware, Kentucky, Massachusetts, Michigan, Ohio, and Washington, and the collection of such data can facilitate formulation of the most appropriate responses to the problem.

### **II. Identification and Classification of CSE children**

The inclusion of provisions that promote the accurate identification and correct classification of CSE children is an important first step toward passing laws that recognize CSE children as victims of child

abuse, and not criminals. “[W]hen authorities misclassify or fail to identify victims the victims lose access to justice.”<sup>11</sup> The failure to correctly classify trafficking victims as such reinforces a common fear, induced by traffickers: that efforts to escape or seek help will result in incarceration and deportation. “Even worse, when authorities misidentify trafficking victims as illegal immigrants or criminals deserving of punishment, those victims can be subjected to additional harm, trauma, and even punishment such as arrest, detention, deportation, or prosecution.”<sup>12</sup>

### A. TRAINING

An effective Safe Harbor Law should include training for law enforcement, school authorities, health care providers, social workers, the judiciary, and anyone likely to come into contact with trafficked or at-risk minors. It is essential that people who come into contact with sexually exploited children recognize the signs of trafficking and understand methods to promote disclosure.

Approximately one-half of the current Safe Harbor Laws have addressed the need for adequate training of authorities, professionals, and other individuals who come into contact with young victims of commercial sex trafficking. The training provisions of some state laws are limited to law enforcement officers (Kansas, Massachusetts), or a variety of governmental employees (Arkansas, Delaware, Kentucky, Nebraska, Washington, D.C.). A few Safe Harbor Laws provide for training programs that reach non-governmental personnel who may come into contact with CSE children (Louisiana, Minnesota, Ohio). New Jersey’s training provisions are primarily directed toward law enforcement and the judiciary, but include a mandatory one-time training for employees of health care facilities, hotels and motels.

In some states, the need for training was recognized but not dealt with in the Safe Harbor Law. For example, in Michigan, the responsibility to provide training to a broad range of people, including health care providers, was delegated to the Human Trafficking Commission created by the Safe Harbor Law. North Carolina also assigned the issue of training to a task force. Some training provisions are merely permissive, not mandatory (Arkansas, Florida, Massachusetts).

### B. PROMOTING PUBLIC AWARENESS AND SELF-IDENTIFICATION

Beyond training individuals who come into contact with CSE children to recognize them as such, the issue of identifying CSE children can be addressed in provisions that focus on raising public awareness and promoting victim self-identification. Tactics that

encourage victims of sex trafficking to come forward and promote public awareness include posters advertising a hotline phone number (Ohio, New Jersey, Washington, D.C.). Some states have chosen to focus their campaigns on locations where trafficked persons or at-risk persons are more likely to be found. For example, in Nebraska, posters advertising the number of the National Human Trafficking Resource Center Hotline must be displayed in sex-focused businesses, all businesses with a liquor license, high schools, hospitals, clinics and job recruitment centers.

Some public awareness campaigns include a provision making the display of posters a requirement of a license and imposing fines for failure to comply (Delaware, Washington, D.C.). By contrast, in Vermont, the posting of notices offering assistance to victims of human trafficking is required only on the Vermont Department of Labor’s website. With respect to all other employers, such posting is discretionary. The statute does, however, include the exact wording of such a notice and a suggestion that it be posted in different languages.

Thus far, Safe Harbor Laws have overlooked a promising strategy for advancing public awareness and encouraging victims to come forward—bringing education about trafficking directly to the potentially vulnerable population of middle and high school students. In-school education programs, such as ECPAT-USA’s *Empowering Youth to Take the Lead* tool kit for empowering youth, can educate them and thereby facilitate their ability to protect themselves and their peers.

Recently, the U.S. Department of Education recognized the problem of school-aged trafficking victims in a report entitled, *Human Trafficking in America’s Schools* (Jan. 2015), noting that some victims continue to attend school while they are being trafficked.<sup>13</sup> The report highlights the importance of training school personnel to identify trafficking victims. Such training is undeniably essential. In addition to such training, the report advocates for community involvement and partnering with organizations familiar with the problem of child trafficking. Therefore, drafters of Safe Harbor legislation should consider a provision requiring the inclusion of informational programs addressed directly to the students in the school curriculum.

### C. AGE VERIFICATION

Traffickers use violence and threats to control the minds of their victims and coach them to lie about

“ When authorities misclassify or fail to identify victims, the victims lose access to justice ”

Sources: U.S. Dept of State, *Trafficking in Person Report 11* (1213)

their identities and ages. They also provide their victims with false documentation identifying them as over the age of eighteen. This is a perennial problem that creates barriers for police, courts and others to determining the true age of a young person suspected of engaging in commercial sex.

“*In general, the label of “abused child” is a term of art in the law, which triggers specific responses from the responsible authorities. So far, nine states have expressly classified CSE children as abused, but two of those states, Illinois and New York, limit this classification to children who are commercially sexually exploited by a family member or legal guardian.*”

Kentucky is the only state to recognize this persistent problem in its Safe Harbor Law. That state enacted a new penal provision making it a crime to forge a written instrument in the commission of a human trafficking offense. This provision can punish the trafficker’s actions, but does not affirmatively assist in correctly determining the age of a youth detained for commercial sex activity.

Future Safe Harbor Laws, or amendments of current laws, could include

an age determining provision, such as permitting judges to demand production of a birth certificate or similar identification instrument if there is doubt concerning the detained person’s age or the validity of their identity documentation. Thoughtful consideration of this issue, in conjunction with consultation of practitioners who face the problem every day, such as judges, law enforcement, prosecutors, and legal aid attorneys, could help formulate a provision to aid in identifying children engaged in commercial sex.

### **III. Classifying CSE Children as Abused Children**

In the 2013 report “Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States”, the Institute of Medicine adopted as their first guiding principle that “[c]ommercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against children and adolescents.”<sup>14</sup> In general, the label of “abused child” is a term of art in the law, which triggers specific responses from the responsible authorities. So far, nine states have expressly classified CSE children as abused, but two of those states, Illinois and New York, limit this classification to children who are commercially sexually exploited by a family member or legal guardian. One of the remaining seven states, Michigan, leaves open the possibility that

CSE children may qualify as abused children, and entrusts that determination to the child welfare agency.

Delaware, Florida, Kansas, Kentucky, Nebraska, and Washington all clearly include CSE children in their definitions of abused child. Other Safe Harbor Laws include less clear language that is subject to interpretation. For example, Arkansas included legislative findings as an introduction to their Safe Harbor Law that emphasized the need to assist CSE children. That law also included anyone under the age of eighteen who had engaged in an act of prostitution in the definition of a sexually exploited child, and mandated the development of statewide protocol to deliver services to sexually exploited children, but did not explicitly classify CSE children as abused.

### **IV. Diverting CSE Children From the Criminal Justice System to the Child Welfare System**

Nine states and the District of Columbia provide complete immunity from criminal prosecution for prostitution offenses to anyone under the age of eighteen. Some states went further by allowing adult offenders to assert their status as a trafficking victim as a defense to a charge of prostitution. In Kansas, for example, the law established complete immunity for anyone under the age eighteen and also created an affirmative defense for adults. An adult charged with prostitution can assert that their commission of the offense was a result of their commercial sexual exploitation during their childhood.

An additional state, Connecticut, provides immunity to anyone under the age of sixteen. The remaining states, with the exception of Arkansas, establish some type of deferred prosecution or discretionary diversion away from the criminal justice system.

The diversion arrangements take many different forms. In some states, avoidance of criminal charges requires participation in court-ordered treatment or services (Delaware, Florida, Massachusetts, Michigan, Washington). In Louisiana, however, avoidance of criminal charges by participation in specialized services is only available for a minor’s first offense. There, if the child has previously been adjudicated a delinquent for prostitution-related activities or if the child is deemed uncooperative, the prosecutor can elect to proceed with criminal charges.

In New York, moving a charge of prostitution out of the criminal courts into the Family Court pursuant to a person-in-need-of-services petition requires the express consent of the accused. There is no mechanism in New York, or in any other state requiring the accused’s consent or cooperation, to overcome resistance by the minor. This gap in the



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as a victim of trafficking. Experience demonstrates that victims often do not view themselves as such due to traumatic bonding with their traffickers. It is also possible that a victim may be unable to overcome the social stigma associated with prostitution. Ohio’s law does not contain an override provision to deal with those contingencies. This requirement, like the consent requirement in New York’s law, leaves CSE children susceptible to manipulation by traffickers and the trafficker’s attorneys.

To date, most Safe Harbor Laws only provide immunity or diversion for the offense of prostitution or the related crimes of soliciting to engage in prostitution or loitering for the purpose of prostitution. Experience, however, teaches that CSE children are often charged with other offenses as a result of their victimization. For example, instead of prostitution, a CSE child might be charged with trespassing for being in a location where prostitution is taking place. Similarly, CSE children might be found in possession of drugs that were forced upon them by their trafficker or a weapon possessed to protect themselves from violent purchasers. In addition, law enforcement, in a misguided exercise of mercy, might charge a CSE child with an offense other than prostitution, such as disorderly conduct, to spare them the stigma of a prostitution charge.

Two states, Kentucky and Vermont, have recognized that CSE children should be protected from criminal prosecution for offenses other than prostitution arising out of their victimization. In Kentucky, children may not be charged with prostitution or any status offense if the conduct underlying the offense arose due to their status as a victim of human trafficking. In Vermont, the Safe Harbor Law includes an affirmative defense for any offense that arose out of sex trafficking and was a result of force, fraud or coercion by the sex trafficker.

Future Safe Harbor legislation should take this issue into account and extend immunity and diversion provisions to other offenses arising out the victim’s status as a sexually exploited child.<sup>15</sup>

## V. Providing Services

It is not enough to just identify and divert victims away from the criminal justice system. Non-pros-

legislation leaves open the possibility that CSE children will decline a pathway out of prostitution due to pressure exerted by the trafficker.

In Ohio, diversion is at the discretion of the court, but is contingent on the minor self-identifying

as a victim of trafficking. Experience demonstrates that victims often do not view themselves as such due to traumatic bonding with their traffickers. It is also possible that a victim may be unable to overcome the social stigma associated with prostitution. Ohio’s law does not contain an override provision to deal with those contingencies. This requirement, like the consent requirement in New York’s law, leaves CSE children susceptible to manipulation by traffickers and the trafficker’s attorneys.

ecution, standing alone, would likely result in the victim’s return to the commercial sex trafficker, because victims of commercial sex trafficking lack a support system and the means of escape. Traffickers are known for their ability to target vulnerable youth and prey on their lack of options. “Youth, once in ‘the life’ of exploitation, have very few methods of exiting without risking their lives or safety.”<sup>16</sup>

Accordingly, once a victim is removed from the control of the trafficker it is important to ensure that he or she does not fall back under the trafficker’s control. This goal can only be met if the victim has a safe place to live and is provided services specially designed to assist sex trafficking victims. Most child victims of sex traffickers have no familial support system and, if faced with homelessness, could fall back under the control of the trafficker. Therefore, an effective Safe Harbor Law must provide for safe housing alternatives that protect the victim from continuing threats from the trafficker and create a sense of physical security necessary to fostering healing.

A wide spectrum of services is needed to ensure sufficient recovery to allow the victims of sex trafficking to return to a mainstream life. Certain services are often urgently needed, indeed necessary to survival. For example, traffickers often deny medical care to CSE children because contact with medical personnel could result in detection and the arrest of the trafficker. Obviously, the need for such care is great because of the victims’ heightened risk of contracting sexually transmitted diseases as well as the serious injuries frequently inflicted by traffickers or buyers.

Similarly, treatment for drug and alcohol dependency is essential because CSE children are often induced to abuse addictive substances to facilitate the trafficker’s ability to control them. In addition, the victims might suffer from nutritional deficiencies because food deprivation is a tool used by traffickers to punish or weaken their victims, and ensure compliance. Furthermore, victims might only possess the clothing designed to attract buyers forced upon them by the trafficker. Thus, provision must be made to supply these basic necessities of life.

Beyond basic survival needs, it is important to provide the counseling, education, and employment training required for the victim’s recovery from the trauma of being commercially sexually exploited and to increase the odds that she or he will go on to live productive law-abiding lives. Designing appropriate services requires awareness of the vulnerabilities of and trauma suffered by commercially sexually exploited minors. Thus, the services available for other juveniles will likely prove inadequate for this population of in-need youth.

“ Some states, have devised thoughtful and appropriate methods of financing expenses such as training and victim services. ”

Some Safe Harbor Laws mandate specific special services for CSE children, while others include a general mandate to investigate their needs and establish protocols or make recommendations. Overall, ten states have addressed the need for specialized services. Six states include CSE children within the general population of in-need children entitled to services. Ohio’s approach to providing services is to appoint a guardian who is responsible for making placement and service related recommendation to the court. In North Carolina, the provision of emergency services to CSE children is contingent on the availability of funds. Three states’ laws, Tennessee, Connecticut and New Jersey, are silent on the question of services.

Examples of express mandates include the following areas of service:

#### A. HOUSING

The Safe Harbor Laws of Arkansas, Florida, Kansas, Michigan, Minnesota, New York, and Washington call for the establishment of safe housing for CSE children. Florida and New York both established short- and long-term safe houses for CSE children. By contrast, Minnesota’s law does not specify or establish a separate facility for CSE children, but generally calls for an expansion of shelters and programs to meet the needs of homeless minors statewide.

Kansas’s Safe Harbor Law includes design rules that require secure facilities for CSE children to be more residential and less prison-like. The law specifies the details of the security measures, such as the locking of doors and screening of visitors. Washington’s law calls for the provision of “safe and stable housing,” where the staff has been trained to work with sexually exploited children.

#### B. MEDICAL AND COUNSELING SERVICES

In Massachusetts, the Department of Children and Families is required to work with the Department of Mental Health to provide for the special needs of sexually exploited children, including medical care, counseling, and crisis intervention. Michigan’s law includes a similar provision. Trafficking victims there are entitled to medical and psychological treatment, and the supervising agency is required to give consideration of their status as a trafficking victim when determining which services are necessary and appropriate.

Delaware permits a court or the child welfare department to identify and order specialized services, if those services are available, but does not mandate that such services be established. Washington’s law

requires integrated mental health and chemical dependency services, as well as specialized trauma recovery services.

#### C. EDUCATION, EMPLOYMENT TRAINING AND OTHER SERVICES

The Safe Harbor Laws of Vermont, Washington, Minnesota, Louisiana, and Florida recognize the need for education, employment training, and job placement. Florida’s law delineates a list of services for CSE children that includes such things as child-care, life skills services and planning for a successful transition back into the community. Kansas’s law requires provision of mental health counseling, substance abuse screening and treatment and “all other appropriate services.” Vermont includes, among other services, English language instruction and assistance in establishing permanent residence in Vermont or the United States.



Other states have not specifically codified specialized services; instead referring the issue to other entities such as child welfare authorities, courts, or task forces. For example, in Louisiana the law permits, but does not mandate, the Department of Safety and Corrections to operate safe houses for CSE children if funding is available.

#### VI. Miscellaneous Protections

Safe Harbor legislation presents an opportunity to provide CSE children with every possible type of assistance to ensure their escape from sex slavery and to help ease their transition into a normal productive life. The current Safe Harbor Laws include a wide variety of provisions. Provisions that provide financial compensation are most common. Financial compensation provisions include new civil causes of action for damages (Delaware, Florida, Ohio, New Jersey, Michigan, Massachusetts, Louisiana) and mandatory restitution as part of a trafficker’s sentence (Delaware, Florida, Michigan, Louisiana).

A new or amended Safe Harbor Law can take into account provisions that would strengthen the anti-human trafficking laws. For example, the law could preclude a trafficker from claiming that a child consented to commercial sex activity (North Carolina, Minnesota) or that the trafficker was unaware of the child’s age (New Jersey, North Carolina, Minnesota). With respect to the knowledge-of-age issue, the law could include a presumption of knowledge, thus placing the burden of disproof on the accused trafficker.

A number of Safe Harbor Laws also include provisions to protect trafficking victims in court, such

as allowing victims to testify against their traffickers via closed circuit television and prohibiting admission of evidence of the minor's prior sexual conduct (Massachusetts, Kentucky, Kansas, Florida). Minnesota, for example, precludes any evidence that the victim had engaged in commercial sex before being trafficked and provides for sealing of all records that identify a minor victim of sex trafficking. In Florida, the law allows for the use of a pseudonym in place of the victim's name. These protections can serve to encourage CSE children to cooperate with prosecutors and testify against their traffickers.

### VII. Expungement of Past Convictions

Many states have included in their Safe Harbor Laws a provision that permits victims, after escaping from their trafficking situation, to obtain a court order vacating and expunging criminal convictions that were entered while they were being trafficked. Such a provision can serve the laudable purposes of correcting a past injustice and assisting a trafficking victim in re-entering mainstream life. Some states have imposed limitations, such as restricting the relief to juvenile delinquency adjudications (Louisiana), or imposing a waiting period before the relief can be sought (Delaware). But most extend discretion to the reviewing court to grant the relief upon consideration of all of the relevant facts.

### VIII. Funding for Services and Training

Expenses arising out of the provisions of a Safe Harbor Law can, of course, be paid for by appropriations from the state's general fund. Some states, however, have devised thoughtful and appropriate methods of financing expenses such as training and victim services.

The Safe Harbor Laws of twelve states provide for some type of specific funding. The most popular source of funding is increased fines or fees imposed on persons convicted of trafficking or prostitution related offenses. For example, Arkansas added a mandatory \$250 fine to the sentence of anyone convicted of prostitution or sexual solicitation. Florida adopted a similar measure, but the amount of its "civil penalty" ranges from \$500 to \$5000 and must be used to pay for safe houses for CSE children. Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, New Jersey, and Washington have also used this method of funding. Massachusetts's law stands out in this group due to the size of the fines - up to \$25,000 for a person convicted of trafficking and \$1,000,000 for a business.

There is, however, one caveat to the use of fines as a source of funding. To the extent that

fines are imposed on individuals convicted of prostitution there is a risk of punishing CSE children and adult trafficking victims who are subjected to criminal prosecution.

A number of states have enacted provisions that increase fees for vehicles impounded because they were used in the course of crime involving sexual exploitation of children. For example, in Illinois, persons convicted of engaging minors in prostitution must pay a \$1000 fee to re-gain possession of a vehicle. Several states, including Michigan, Ohio, and Washington, have tapped the proceeds of forfeited property as a source of funding.

Eleven states have established a special fund or account designated as a depository of monies to pay for victim services or training for persons who may come into contact with CSE children. In most instances, the new or enhanced fines collected from convicted traffickers are deposited into these accounts. For example, in Arkansas the law established the Safe Harbor Fund for Sexually Exploited Children into which the mandatory fine must be deposited. The same is true in Kansas where collected fine money is deposited in the Human Trafficking Victim Assistance Fund and must be used to pay for training and to assist child victims of human trafficking.

In Kentucky, the \$10,000 fee imposed on anyone convicted of human trafficking or promoting human trafficking is deposited in the Human Trafficking Victims Fund and may be dispersed to support agencies, including law enforcement and prosecutors, serving human trafficking victims. Similarly, Louisiana's law established the Children's Special Fund to receive the \$200 assessment imposed on anyone convicted of a crime involving commercial sexual exploitation of children. But, in that state, payment of bond obligations was given priority over paying for services for CSE children.



Overall, the Safe Harbor Laws currently in effect are wildly divergent. They vary from bare-boned, such as Connecticut and Tennessee, to reasonably comprehensive, like Minnesota, Kentucky, Michigan, and Delaware. Experience teaches the benefit of a well-thought-out, principle-based approach to drafting Safe Harbor legislation. For example, Connecticut has had to repeatedly enact new legislation to bolster and supplement the original law, which addressed only the issue of diverting children from the criminal justice system. Similarly, New York, which originally left sixteen and seventeen year olds to be prosecuted as adults, amended its law to offer diversion to those minors, and still ended up with a law that permits a persuasive trafficker to dissuade a victim from pursuing the law's benefits.



And, while it can be stated that, in a general sense, most Safe Harbor Laws reflect some understanding that children do not voluntarily engage in commercial sex and are, instead, the victims of serial rapes, most laws lack sufficient dedication to that principle. When Safe Harbor Laws are drafted with an understanding of how children end up in the control of traffickers and the damage done by criminal prosecution, the result will likely be a more victim-friendly statute.

## Where Do We Go From Here?

This report is premised on the principle that every state should have a Safe Harbor Law. The recently

enacted Justice for Victims of Trafficking Act of 2015 includes provisions that strongly encourage the enactment of Safe Harbor Laws. The need for effective state Safe Harbor Laws is acute and steps should be taken to pave the way for such laws.

The variety and complexity of state laws and the particularized and varying needs of states prevents drafting a single model Safe Harbor Law. Instead, ECPAT-USA has prepared a detailed checklist highlighting the most victim-friendly provisions of current Safe Harbor Laws, supplemented by additional provisions suggested by thoughtful consideration of the problems of CSE children and aimed at addressing practical issues that arise when addressing those problems. This report and checklist is intended to be used as a tool by advocates and lawmakers to enact laws that most effectively identify CSE children and direct them to protections and services.



# State Law Provisions

CSECS CREATES CSEC VICTIM FUND  
 PERMITS TEMPORARY DETENTION  
 PERMITS EXPUNGEMENT  
 IN-COURT PROTECTIONS  
 NO IGNORANCE OF AGE DEFENSE  
 NO CONSENT DEFENSE  
 FINANCIAL COMPENSATION  
 GENERAL SERVICES  
 DISCRETIONARY PROSECUTION  
 PROMOTES PUBLIC AWARENESS & SELF-IDENTIFICATION  
 COMMISSION/TASK FORCE  
 PROVIDES FUNDING SOURCE\*  
 SPECIALIZED SERVICES\*  
 IMMUNITY FROM PROSECUTION\*  
 ADDRESSES TRAINING TO IDENTIFY CSEC\*  
 CSEC CLASSIFIED AS ABUSE\*

STATE	CSECS CREATES CSEC VICTIM FUND	PERMITS TEMPORARY DETENTION	PERMITS EXPUNGEMENT	IN-COURT PROTECTIONS	NO IGNORANCE OF AGE DEFENSE	NO CONSENT DEFENSE	FINANCIAL COMPENSATION	GENERAL SERVICES	DISCRETIONARY PROSECUTION	PROMOTES PUBLIC AWARENESS & SELF-IDENTIFICATION	COMMISSION/TASK FORCE	PROVIDES FUNDING SOURCE*	SPECIALIZED SERVICES*	IMMUNITY FROM PROSECUTION*	ADDRESSES TRAINING TO IDENTIFY CSEC*	CSEC CLASSIFIED AS ABUSE*
Arkansas	✓							✓	✓		✓	✓	✓			
Connecticut									✓	✓ 16 & 17				✓ under 16		
Delaware			✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
District of Columbia			✓					✓	✓	✓	✓			✓	✓	
Florida					✓			✓		✓			✓	✓	✓	✓
Illinois			✓										✓	✓	✓	✓ if trafficker is a family member
Kansas					✓			✓			✓	✓	✓	✓	✓	✓
Kentucky			✓					✓			✓	✓	✓	✓	✓	✓
Louisiana				✓ juvenile delinquency only				✓		✓			✓	✓	✓	✓
Massachusetts					✓			✓		✓		✓	✓	✓	✓	✓
Michigan			✓					✓		✓	✓	✓	✓	✓	✓	✓ possible
Minnesota			✓		✓			✓		✓		✓	✓	✓	✓	✓
Nebraska			✓		✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
New Jersey					✓			✓	✓	✓	✓	✓	✓	✓	✓	✓
New York										✓				✓		✓ if trafficker is a family member
North Carolina				✓				✓	✓	✓		✓	✓	✓	✓	✓
Ohio								✓	✓	✓		✓	✓	✓	✓	✓
Tennessee															✓	
Vermont					✓			✓	✓	✓		✓	✓	✓	✓	✓
Washington								✓	✓	✓		✓	✓	✓	✓	✓

\* minimum provisions for safe harbor law

# Checklist for Drafting Safe Harbor Legislation

A victim-centered Safe Harbor law should include provisions that unconditionally remove CSE children from the criminal justice system and provide victim services consistent with the abuse suffered. A well-drafted law will provoke a positive response to the following questions:

## I. Does The Law Help Identify Commercially Sexually Exploited Children?

### A. DOES THE LAW ASSIST PEOPLE IN RECOGNIZING TRAFFICKED OR AT-RISK CHILDREN?

#### Who to Train:

1. Police officers, public defenders, prosecutors, judges, and other court personnel.
2. Medical care providers, such as emergency room personnel, ambulance drivers, and outpatient clinic personnel.
3. School personnel, including teachers, teaching assistants, school nurses, counselors, and school bus drivers.
4. Child welfare agency personnel, including anyone involved in investigating charges of child abuse or neglect or placing or monitoring foster children.
5. Miscellaneous employees who hold public jobs or whose jobs require a license or permit from a governmental agency, such as bus drivers, day care providers, shelter employees, owners and managers of public accommodations.

#### What to teach them:

1. Signs of trafficking and how to respond when such signs are observed.
2. The relevant laws and available victim resources.
3. Techniques for effective, non-judgmental communication.
4. Sensitivity toward the trauma suffered by CSE children, both at the hands of the traffickers and during the process of escape and recovery.

### B. DOES THE LAW ESTABLISH STRATEGIES THAT ENCOURAGE SELF-IDENTIFICATION AND PROMOTE PUBLIC AWARENESS?

#### Public Awareness Campaign Options:

1. **Advertisements.** The possibilities include posters, billboards, social media, posting

on agency websites and public service announcements.

**WHERE?** Possible locations include subways, homeless shelters, bus stations, soup kitchens, nail salons, massage parlors, welfare and employment offices, sex-related businesses, and any place that has been identified as a trafficking location.

**WHAT TO INCLUDE?** The content of the advertisement should include the telephone number of the National Human Trafficking Hotline. Information defining trafficking and available assistance for victims, as well as an assurance of confidentiality should be included. Advertisements should be printed in the most common languages of the focus population.

2. **Regulations** tied to a license or permit. Poster advertisements can be linked to licensing requirements, such as licenses to serve alcohol, to operate a nail salons or massage parlor, to operate a hotel or motel, to operate an adult entertainment business. The regulation can be enforced by the agency charged with oversight and non-compliance can result in a fine.
3. **In-school education programs.** The State's middle and high school curriculum can be changed to include a program to educate this most vulnerable age group on the danger of sex trafficking and the enticement techniques employed by traffickers.

### C. DOES THE LAW INCLUDE A PROCEDURE FOR VERIFYING THE AGE OF PERSONS DETAINED ON PROSTITUTION-RELATED CHARGES?

#### Options:

1. A provision that requires or permits a court to demand further proof of age if he or she has doubt about a defendant's age.
2. A provision that allows a court access to child welfare and school records for the purpose of verifying age.

## II. Does The Law Remove CSE Children From The Criminal Justice System and Classify Them as Abused Children?

### A. DOES THE LAW IMMUNIZE CSE CHILDREN FROM CRIMINAL PROSECUTION?

1. Is the law in line with Federal legislation, 18 U.S.C. § 1591(a)? Is everyone under the age of



eighteen engaged in commercial sex presumed to be a victim of trafficking, regardless of coercion, force or fraud?

2. Is criminal prosecution prohibited, either as an adult or as a juvenile delinquent, for anyone under the age of eighteen suspected of engaging in commercial sex activity?
3. Does the immunity apply to juvenile status offenses and other minor offenses related to commercial sex activity? Does the law recognize that oftentimes other charges, such as trespass, drug or weapon possession are directly connected to a child's status as a victim of trafficking? Have the options of immunity, diversion, or an affirmative defense to such charges been considered?
4. Does the law provide for temporary emergency detention of children suspected of engaging in commercial sex? If so, is there a provision for a prompt hearing to determine if detention is necessary to the health and wellbeing of the child?

#### **B. DOES THE LAW CLASSIFY CSE CHILDREN AS ABUSED CHILDREN?**

1. Are the emergency action, investigative and child protection rules, generally applicable to a report of severe child abuse, applicable to a report that a child has been trafficked in commercial sex?
2. Are CSE children protected without any obligation to prove that they were coerced, forced or tricked by fraud to engage in commercial sex.

### **III. Does the Law Include Trauma-Informed, Gender-Specific Services for CSE Children?<sup>17</sup>**

#### **A. IS SECURE HOUSING PROVIDED?**

1. Does the proposed law include both short and long-term housing for victims? Within the secure facility are victims' nutrition and clothing needs met?
2. Is there a balance between the need for security and providing housing that is not prison-like?
3. Can the children of victims be accommodated?
4. Is the facility staffed with people trained to be sensitive to the needs of CSE children and

versed in techniques to relate to survivors in a manner that does not heighten their fears and social ostracism?

#### **B. ARE MEDICAL SERVICES PROVIDED?**

1. Do victims have access to free medical care, including gynecological care?
2. Is the need to address substance abuse issues recognized?
3. Is dental care available?

#### **C. ARE MENTAL HEALTH SERVICES PROVIDED?**

1. Does the law provide counseling by mental health professionals trained to assist survivors of sex trafficking?

#### **D. DOES THE LAW ADDRESS THE NEED FOR EDUCATION AND JOB TRAINING?**

### **IV. Does the Law Include Rules and Procedures To Protect and Assist Children?**

#### **A. CAN CSE CHILDREN SEEK FINANCIAL COMPENSATION?**

1. Does the law create a civil cause of action for trafficking victims to seek actual, compensatory, and punitive damages? Does the statute of limitation for the cause of action take into consideration the circumstances that likely will delay the filing of a civil suit?
2. Does the law provide for restitution to victims of traffickers? Has restitution been included as a mandatory as part of the sentence imposed when traffickers are convicted after trial or upon a plea of guilty? Is the restitution directed to reimburse survivors for stolen money and property, as well as to pay the cost of the services necessary for their transition.

#### **B. ARE CSE CHILDREN PROTECTED IN COURT?**

1. Does the law limit the defenses available to traffickers, such as precluding assertion of a defense that the victim consented to engaging in commercial sex? Does it preclude traffickers from asserting as a defense their subjective belief that the victim was at least eighteen years old? Is there a legal presumption that the trafficker knew the actual age of the victim?
2. Does the law provide for in-court victim

- protections? Are victims protected from in-court trauma by such techniques as testifying via closed circuit television and rape-shield type evidentiary rules?
3. Is the identity of CSE children protected?

**C. CAN PAST CONVICTIONS BE VACATED AND EXPUNGED?**

1. Does the law permit persons convicted of prostitution to obtain an order vacating their convictions and expunging their records upon proof that he or she was a trafficking victim at the time of the offense?
2. Does the vacatur provision adopt the federal law definition of “trafficking victim” thereby designating anyone under the age of 18 engaged in commercial sex as a sex trafficking victim, regardless of force, fraud or coercion?
3. Does the provision reach beyond prostitution offenses to other related convictions for offenses committed due to the defendant’s status as a trafficking victim?

**V. Does the Law Include a Commission or Task Force to Investigate the Problem of CSE Children?**

**Commissions or Task Forces should:**

1. Include representatives of all interested law enforcement and governmental departments, non-profit organizations that work with CSE children, and survivors of sex trafficking.
2. Collect data, including the number of CSE children identified and services provided, and report to a central authority.

**Commissions or Task Forces should not:**

1. Delay implementation of the Safe Harbor Law’s provisions that identify CSE children as abused children and immunizing them from criminal prosecution.

2. Impede immediate provision of trauma-informed, gender-specific services to survivors.

**Has the option of creating a human trafficking agency or department, with a director, been considered?**

**VI. Does the Law Address the Question of Funding for Training Programs and Victim Services?**

**Does the law create a fund exclusively for trafficking victims?**

**Does the law create sources for funding? Possible sources include:**

1. Fines imposed as part of a sentence upon a conviction for any trafficking or prostitution-related offenses, including promoting prostitution, purchasing sex, and operating a brothel. The financial impact should be sufficient to impact traffickers’ profits and dissuade the buyers from re-offending.
2. Proceeds from the sale of forfeited property confiscated from traffickers, brothel owners and buyers of sex, including real property and cars.

**VII. Does the Law Address Any State-Specific Concerns?**

**Consideration should be given to whether the population make-up or geography of a particular State warrants recognition in a Safe Harbor Law.**

**For example:**

1. Is there a need for training for sensitivity with respect to shared-culture populations?
2. Is there a need for housing and service availability in remote rural areas?
3. Is a significant immigrant population impacted?

# Summary of Safe Harbor Laws (with citations)

## Commissions or Task Forces Established to Investigate, Gather Information, And Make Legislative Recommendations<sup>18</sup>

**ARKANSAS** The temporary Senate Interim Committee on Children and Youth was tasked to prepare a report, by July 1, 2014, including “a proposed plan for providing adequate services for sexually exploited children,” and suggesting changes in state law. S.B. 869, 89th Gen. Assemb. Reg. Sess. § 3(B) (Ark. 2013)

**DELAWARE** The permanent Human Trafficking Coordinating Council was established to, among other things, develop a comprehensive plan to provide victims of human trafficking with services, collect and evaluate data on human trafficking, promote public awareness and coordinate training. 11 Del. Code Ann. § 787(k)(1)(a).

**KANSAS** The Attorney General’s Human Trafficking Advisory Board was designated to act as an advisory board. S.B. 61., 85th Leg. Reg. Sess. (Kan. 2013)

**KENTUCKY** The Prosecutor’s Advisory Counsel is mandated to collect data on prosecution of individuals convicted of sex trafficking of minors. Ky. Rev. Stat. Ann. Chapter 15.706.

**MASSACHUSETTS** An Interagency Task Force made up of law enforcement, victim service organizations, trafficking survivors, medical and mental health professionals, and academic researchers, was mandated to collect and share data, review and evaluate services, and make recommendations within 18 months. 2011 Mass. Acts. Ch. 178 § 31(a).

**MICHIGAN** The Human Trafficking Commission within the Department of the Attorney General is mandated, *inter alia*, to increase public awareness of human trafficking, and provide information and training for law enforcement, prosecutors, court personnel, health care providers, and social services personnel, and collect and analyze data related to human trafficking. 2014 Mich. Pub. Acts 325 § 1 (House Bill No. 5158).

**MINNESOTA** The law directed the Commissioner of Public Safety to work with stakeholders to create a victim-centered plan. A comprehensive report resulted. Following the recommendation in the report, the State Commissioner of Health established the position of Director of Child Sex Trafficking Prevention. The Director is required to develop and provide training; collect, maintain, organize and disseminate information to identify best practice for serving sexually exploited youth; and evaluate programs for sexually exploited youth. Minn. Stat. § 145.4716(1).

**NEBRASKA** Nebraska’s temporary Human Trafficking Task Force - made up of eighteen members, drawn from law

enforcement, prosecuting authorities, persons with backgrounds in juvenile justice and education, and members of the public at large - was tasked with investigating human trafficking and required to issue a report within one year. Neb. Rev. Stat. §§ 81-1430.

**NEW JERSEY** The Commission on Human Trafficking, consisting of 15 members, was created to evaluate existing law and victim services, make recommendations for legislation, and develop public awareness. 2013 N. J. Laws C. 51, C.52:17B-237(1).

**NORTH CAROLINA** The North Carolina Trafficking Commission was established to apply for funds “that will assist in examining and countering the problem of human trafficking,” to inform on the issue of trafficking, and to suggest new policies. N.C. Gen. Stat. § 143A-55.10.

**OHIO** The Attorney General must collect and annually publish statistical data on human trafficking, including the number of investigations, arrests, prosecutions and convictions, the number and demographic characteristics of trafficker and their customers, the number and demographic characteristics of victims and how they were recruited, trafficking routes and patterns, and social and economic factors contributing to the demand for human trafficking. Ohio House Bill 262 at 2.

**VERMONT** The temporary Vermont Human Trafficking Task Force was required to make and present findings and recommendations regarding raising public awareness of human trafficking, victim services, and appropriate legislation. Vt. Stat. S. 272, An Act Relating to Human Trafficking, of the 2009 - 2010 General Assembly § 2(h).

**WASHINGTON** The temporary Commercially Sexually Exploited Children Statewide Coordinating Committee was created to make legislative recommendations on statewide laws and practices regarding sexually exploited children. The Administrative Office of the Courts was charged with compiling data regarding the number of sexually exploited children whose cases are diverted, whether they completed the diversion agreements and whether they have been subsequently arrested. Wash. Rev. Code §§ 7.68.801, 13.40213(4).

## Identification of CSE Children

### A. TRAINING FOR INDIVIDUALS COMING INTO CONTACT WITH AT-RISK YOUTH

**DELAWARE** The permanent Human Trafficking Coordinating Council must coordinate training of government employees who have contact with victims or perpetrators. 11 Del. Code Ann. § 787(k)(2)(d).



**FLORIDA** Training of law enforcement or others to identify CSE children is permitted, but not mandated. Law enforcement may contract with an appropriate not-for-profit agency for training “to the extent funds are available.” Fla. Stat. § 409.1678(3).

**KANSAS** The Attorney General is authorized to “coordinate training regarding human trafficking for law enforcement agencies throughout Kansas.” S. Substitute for H.B. 2034, New § 1 (Kan. 2013)

**KENTUCKY** Law enforcement and prosecutors are required to participate in human trafficking training, which includes training on victim services, the “characteristics and dynamics” of human trafficking and screening for human trafficking. Ky. Rev. Stat. §§ 15.334(1)(e), 15.718. Kentucky State Police must designate a unit to receive and investigate human trafficking complaints and to cooperate and assist other agencies in investigating human trafficking. Ky. Rev. Stat. § 16.173.

**LOUISIANA** Local departments of social services, public and private agencies, service providers and the public must be provided with educational and training programs and materials to increase awareness of human trafficking and services available to victims of human trafficking. La. Bill 88, Ch. 28-B § 2161B. An encountering agency must refer an individual identified as a victim of sex trafficking to the appropriate services. La. Bill 88, Chap. 28-B § 2161A.

**MASSACHUSETTS** The Commissioner of the Department of Children and Families may contract with NGO’s to train law enforcement in awareness and compliance with the state’s Safe Harbor Law, identification of exploitation and awareness of services. Mass. Gen. Laws Ch. 119 § 39K(d).

**MICHIGAN** The Human Trafficking Commission within the Department of the Attorney General is mandated to provide for training of law enforcement, prosecutors, court personnel, health care providers, and social services personnel. 2014 Mich. Pub. Acts 325 § 1. (H.B. 5158 § 4).

**MINNESOTA** Mandated training programs for law enforcement, social services professionals, medical professionals, public health workers, and criminal justice professionals. Minn. Stat. §§ 145.4716, 145.4717, 145.4718 & 256K.45(3-5).

**NEBRASKA** Mandatory training for law enforcement, prosecutors, public defenders, judges, juvenile detention center staff, and anyone involved in the juvenile or criminal justice systems in identifying victims of human trafficking, interviewing techniques, and methods for prosecuting traffickers. Leg. B. 1145 § 5, 8.

**OHIO** The Attorney General is mandated to create an extensive training program for law enforcement to help identify victims of human trafficking and facilitate their appropriate treatment as crime victims, and permitted to do the same for non-law enforcement agencies. Ohio H.B. 262 at 58.

**WASHINGTON, D.C.** Training is required on all aspects of human trafficking for law enforcement, social workers and case managers. D.C. Act 20-560 § 6.

## **B. PROVISIONS THAT PROMOTE PUBLIC AWARENESS AND SELF-IDENTIFICATION**

**DELAWARE** The Human Trafficking Coordinating Council must “[c]reate a public-awareness sign that contains the state and national Human Trafficking Resource Center hotline information.” The statute mandates that the Department of Transportation display the public-awareness sign in every transportation station, rest area and welcome center in Delaware. 11 Del. Code Ann. § 787(k).

**MICHIGAN** The law expressly delegates the task of promoting awareness to the Human Trafficking Commission. 2014 Mich. Pub. Act 343 § 16148 (1).

**NEBRASKA** All sex-industry type establishments, all businesses with a liquor license, all transportation centers, high schools, hospitals and clinics, and job recruitment centers must display a poster advertising the number of telephone number of the National Human Trafficking Resource Center Hotline. Legislative Bill 1145 § 5, 8.

**NEW JERSEY** The State must “[d]evelop mechanisms to promote public awareness of human trafficking, including promotion of the national . . . hotline telephone service . . . and the promotion of training courses and other educational materials” to train the various personnel on the handling of suspected human trafficking activity.” 2013 N. J. Laws C.52:17B-237(f)(4).

**OHIO** The Attorney General is mandated to create a public awareness program about human trafficking, designed to increase awareness. A poster with the national human trafficking hotline number must be made available online and posted in other public areas. Ohio House Bill 262 at 7 and 59.

**VERMONT** A notice offering help to human trafficking victims must be placed on the official Vermont Department of Labor website. Employers may but need not post similar notices in work places. Chap. 60 § 2; codified in Vt. Stat. Ann. tit. 13 § 2661(a).

**WASHINGTON, D.C.** A sign advertising the National Human Trafficking Resource Center telephone number must be displayed at rail and bus stations, nude-performance establishments, massage parlors and hotels where human trafficking has occurred, and any location identified as a prostitution-related nuisance. D.C. Act 20-560 § 6.

## **C. AGE VERIFICATION MECHANISMS**

**KENTUCKY** The Safe Harbor Law created a new crime of forging written instruments (e.g. age-identifying documents) in the commission of a human trafficking offense. Ky. Rev. Stat. § 516.030(1).<sup>19</sup>

## **Treatment of CSE Children in The Criminal Justice System**

### **A. COMPLETE IMMUNITY FOR MINORS (DEFINED AS UNDER 18-YEARS-OLD)**

**ILLINOIS** Illinois was the first state to make all children under the age of eighteen immune from criminal prosecution for prostitution. Ill. Public Act 96-1464.

**KANSAS** Kansas changed the definition of “prostitute” to include as an element that the person is over the age of eighteen, thus effectively immunizing anyone under eighteen from being charged with engaging in prostitution. S. Substitute for H.B. 2034 (Kan. 2013).

**KENTUCKY** If it is determined after “a reasonable period of custody” that the person suspected of prostitution is under the age of eighteen, then the minor “shall not be prosecuted for an offense.” Ky. Rev. Stat. § 529.120 (1). In addition to prohibiting prosecution of children for prostitution, Kentucky’s Act prohibits charging children with any “status crime” (e.g., runaway, incorrigible child, truant, etc.), if the conduct arises out of being a victim of human trafficking. Ky. Rev. Stat. § .125.

**MINNESOTA** No one under the age of eighteen can be charged criminally, either in an adult or juvenile court, for engaging in an act of commercial sex. 2013 Minn. Sess. Law Serv. Chap. 108 § 48.

**NEBRASKA** Everyone under 18 is immune from prosecution for prostitution, but they may be detained temporarily. L.B. 255 § 2(1), (5), codified at Neb. Rev. Stat. § 8-801.

**NORTH CAROLINA** There is complete immunity from prosecution for minors, defined as any person less than eighteen years of age, engaged in commercial sex acts. N.C. Gen. Stat. § 14-203 (2).

**TENNESSEE** No one under that age of 18 can be charged with the crime of prostitution. Tenn. Code Ann. § 39-13-513(d).

**VERMONT** Everyone under the age of 18 is immune from prosecution for prostitution. Ch. 60 § 2, codified in Vt. Stat. Ann. tit. 13 § 2652. In addition to protecting trafficking victims from prosecution for prostitution, lewdness, or obscenity, all trafficking victims, regardless of age, may assert an affirmative defense in a criminal prosecution for any other offense “which arises out of the sex trafficking or benefits the sex trafficker,” that they committed the offense as a result of force, fraud, or coercion by a sex trafficker. Vt. Stat. Ann. § 2652(c)(2).

**WASHINGTON, D.C.** Everyone under the age of 18 is immune from criminal prosecution for the crime of prostitution. D.C. Act 20-560 § 7.

## **B. COMPLETE IMMUNITY FOR MINORS UNDER 16 YEARS OLD**

**CONNECTICUT** Only a “person sixteen years of age or older” may be “guilty of prostitution.” Conn. Gen. Stat. § 53a-82(a).

## **C. CSE CHILDREN DEFINED AS ABUSED CHILDREN**

**DELAWARE** Delaware’s law created a presumption that any minor engaged in commercial sex is a “neglected or abused child.” 11 Del. Code Ann. § 787 (g)(1).

**FLORIDA** The definition of “abuse” includes sexual abuse, and the definition of “sexual abuse” was amended to include “sexual exploitation of a child,” which includes the act of a child offering sex-for-pay. 2012 Session H.B. 0099 § 3.

**ILLINOIS** The definition of an abused child includes children trafficked by a legally responsible relative or guardian. 705 Ill. Code R. 405/2-(3)(2)(vii).

**KANSAS** A minor engaged in commercial sex fits the definition of a “child in need of care.” Kan. Stat. Ann. § 38-2202 (d).

**KENTUCKY** The Cabinet for Health and Family Services is required to investigate and provide assessment, treatment, housing, and services to a child victim of sex trafficking as a dependent, neglected, or abused child. Ky. Rev. Stat. § 620.029.

**MICHIGAN** The Safe Harbor Law permits the Department of Human Services to classify CSE children as abused. 2014 Mich. Pub. Act 341 § 109m(1).

**NEBRASKA** Placing a child “in a situation to be a trafficking victim” was added to the definition of child abuse. Neb. Rev. Stat. § 28-707.

**NEW YORK** The definition of abused child includes children who have been subjected to trafficking by a legally responsible relative. Fam. Ct. Act § 1012(e)(iii).

**WASHINGTON** The definition of abuse was amended to include sexual exploitation of children. S.B. 6476 – 2009-10 § 1.

## **D. DIVERSION AT THE DISCRETIONARY OF THE PROSECUTOR OR COURT**

**CONNECTICUT** A sixteen- or seventeen-year-old child engaged in commercial sex is presumed to have been coerced. Unless the prosecutor overcomes that presumption, the minors will be diverted from the criminal justice system. Conn. Gen. Stat. § 531-82(c).

**DELAWARE** A minor or their lawyer or representative may move for a stay of prosecution. The Court has discretion to stay prosecution and order services. If the minor substantially complies with the services ordered by the Family Court or identified by the Department, and a year or more has elapsed since the original stay of prosecution, upon motion, the Attorney General is required to discontinue prosecution. 11 Del. Code Ann. tit. 11 § 787.

**FLORIDA** In the event that a minor detained for prostitution is subjected to juvenile delinquency proceedings, the minor can avoid a delinquency record by participating in and successfully completing a diversion program. Fla. Stat. § 985.433.

**LOUISIANA** A prosecutor “may effect an informal adjustment agreement which includes specialize services for the child.” Such agreement, however, is only available if it is the child’s first offense and the child expresses a willingness to cooperate and receive specialized services. If the child has previously been adjudicated a delinquent for acts involving prostitution or is unwilling to cooperate with specialized services for sexually exploited children, continuation of the de-

linquency proceeding is within the discretion of the district attorney. La. Bill 88, Ch. 20, Art. 839 D(1).

**MASSACHUSETTS** When a sexually exploited child is arrested for a prostitution offense any person, including the child, can file a petition for care and protection that would divert the criminal proceeding. Post-arraignment, unless the district attorney or attorney general objects, the court must place the child on “pretrial probation” contingent on cooperation with certain conditions. If the child fails to comply with the conditions of the pretrial probation or “if the child’s welfare and safety so requires,” the court may, in its discretion, restore the delinquency petition to the docket. Mass. Gen. Laws, Ch. 119 § 39L.

**MICHIGAN** The law presumes that commercial sex performed by a minor is a result of coercion. Diversion from criminal prosecution to child-in-need provisions of Michigan law depends upon the child’s cooperation with court ordered services. 2014 Mich. Pub. Act 336 § 451(6). If any person, not just a minor, who has not previously been convicted of a prostitution-related offense pleads guilty or is convicted after trial of such an offense, but swears under oath that it was a result of trafficking, the court, without entering judgment, may defer further proceedings and place the defendant on probation. Such deferral action, however, requires the consent of both the accused and the prosecuting attorney. 2014 Mich. Pub. Act 334 § 451c.

**WASHINGTON** Prosecutor must divert criminal prostitution proceeding if it is the juvenile’s first offense, but has discretion to divert subsequent offenses contingent on whether a “compressive program” of specified services is available in the applicable county. Wash. Rev. Code § 13.40.070(7); Wash. Rev. Code §§ 13.40.070(8), 13.40.213.

#### E. DIVERSION UPON THE REQUEST OF THE DEFENDANT

**NEW YORK** Conversion from juvenile delinquency complaint (if under 16) or Criminal Court complaint (if between 16 and 18) to Family Court person-in-need-of-services petition permitted, but not mandated. Accused must consent to conversion. N.Y. Soc. Serv. Law § 447-a, N.Y. Fam. Ct. Act § 311.4(3), N.Y. Crim. Pro. Law § 170.80.

**OHIO** The court has the discretion to divert criminal proceeding contingent on child’s self-identification as a victim of sex trafficking and compliance with diversion program for 90 days or longer. Ohio H.B. 262, pg. 2.

#### F. NO IMMUNITY OR DIVERSION MECHANISMS

**ARKANSAS** A minor can still be found guilty of prostitution and treated as an offender rather than a victim. S.B. 869, 89th Gen. Assemb. Reg. Sess. (Ark. 2013).

#### G. AFFIRMATIVE DEFENSE TO THE CHARGE OF PROSTITUTION

**NEW JERSEY** Minors can be arrested and charged with the offense of prostitution for engaging in commercial sex. N.J. Stat. § 2A:4A-23.A. To avoid conviction for prostitution

a defendant may assert an affirmative defense that they were a victim of human trafficking or compelled by another to engage in sexual activity, regardless of the defendant’s age. N.J. Stat. § 2C:24-1.e.

### Services for CSE Children

#### A. NO SERVICES STATUTORILY SPECIFIED

**CONNECTICUT** See Conn. Pub. Act 10-115, An Act Providing a Safe Harbor for Exploited Children, Conn. Gen. Assemb. (2010).

**TENNESSEE** Law Enforcement must provide sexually exploited child with the telephone number for the National Human Trafficking Resource Center hotline and must release the minor to their parents. See H.B. 0035, 106th Gen. Assemb. § 1 (Tenn. 2011).

**VERMONT** Services yet to be determined by the Vermont Human Trafficking Task Force. Chap. 60 §§ 1-19.

**WASHINGTON, D.C.** Law enforcement is required to refer CSE children to an organization that provides treatment, housing and services to young trafficking victims. Thus, it appears that services are to be provided by NGO’s, not the government supported child welfare agency. D.C. Act 20-560 § 7.

#### B. VICTIMS QUALIFY FOR GENERAL SERVICES PROVIDED TO ABUSED YOUTH

**MICHIGAN** Victims of human trafficking are eligible for “medical assistance benefits for medical and psychological treatment resulting from his or her status as a victim” and qualify for the same services as abused, neglected, or dependent children. 2014 Mich. Pub. Act 341 § 109m(1).

**NEW JERSEY** New Jersey does not address the provision of services to underage human trafficking victims but has created a rebuttable presumption that a child under the age of 18 years of age charged with prostitution is a victim of sex trafficking allowing access to similar services as other children passing through the juvenile courts. 2012 N.J. Assemb. Bill No. 3352 (3R).

**NORTH CAROLINA** Once the investigation of the abuse of trafficked minors is turned over to the Department of Social Services the already existing rules and protocols will be followed. N.C. Gen. Stat. § 14-203.

**OHIO** Ohio’s Safe Harbor Act does not provide special services for commercially sexually exploited children, but provides them access to a public child services agency. David M. Gold, *Bill Analysis - H.B. 262, 7* (Ohio Leg. Serv. Comm’n).

#### C. SPECIALIZED SERVICES FOR CSE CHILDREN

**DELAWARE** In a juvenile delinquency proceeding, specialized services based on a comprehensive plan created by a designated Council may be ordered in connection with a motion to stay court proceedings. 11 Del. Code Ann. § 787(g)(2).



**FLORIDA** Long-term safe home services providing security, crisis-intervention services, arranging for educational services, transportation, life skills services, behavioral health services, health and dental care, infant care, and, generally, planning for a successful transition of residents back to the community. Fla. Stat. § 409.1678.

**KANSAS** Secure facilities, staffed by individuals with special training geared to counsel and assist trafficking victims, were created to house children rescued from commercial sexual exploitation. The staff is required to provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and “all other appropriate services.” Bill 2034 New § 6.

**KENTUCKY** The Cabinet for Health and Family Services is mandated to create and promulgate targeted services that address the appropriate screening measures, assessment, treatment, services, temporary and long-term placement, training of staff, designation of specific staff, and collaboration with service providers and law enforcement. Ky. Rev. Stat. § 620.029.

**LOUISIANA** The Department of Children and Family Services, together with the Department of Health and Hospitals, must develop a plan for the delivery of services to victims of human trafficking that includes provisions for assisting the victims to apply for federal and state benefits, coordinating the delivery of health care, mental health care, housing, education, job training, child care, victim’s compensation, legal and other services to the victim. Bill 88, Chap. 28-B § 2161 A (2)-(3).

**MASSACHUSETTS** The law calls for the assignment of a special advocate and a needs assessment by a multi-disciplinary service team. The advocate and assessment team must recommend a plan for services that may include, but is not be limited to, shelter or placement, mental health and medical care needs and other services. Mass. Gen. Laws, Ch. 119 § 51D.

**MICHIGAN** The law provides for specialized housing that provides mental health services, counseling, or other specialized services necessary or appropriate for a victim of human trafficking. 2014 Mich. Pub. Act 338 § 4e.

**MINNESOTA** Housing for sexually exploited youth is mandated. Commissioner of Human Services must create a Homeless Youth Act fund to award grants to service providers. Minn. Stat. § 256K.45(6).

**NEW YORK** The Family Court can order a full range of services, including housing in specialized short- and long-term safe houses for trafficking victims, as funding permits. Local social services districts are directed to provide all of the “child welfare needs” of exploited children, including housing, food, clothing, counseling. All children residing in a short-term safe house are assigned a trained advocate. N.Y. Soc. Serv. Law § 447-b, N.Y. Fam. Ct. Act § 739.

**WASHINGTON** The list of services mandated by the law includes specialized trauma recovery assistance for children arrested for commercial sex activity. Wash. Rev. Code §§ 13.40; 13.40.213(1).

## D. EMERGENCY DETENTION OF CHILD VICTIM

**DELAWARE** A police officer or physician “who reasonably suspects that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect” may place the child in temporary emergency protective custody. 16 Del. Code Ann. § 907.

**ILLINOIS** Law enforcement officers who encounter a commercially sexually exploited minor are required to place the minor in temporary protective custody. 720 Ill. Comp. Stat. 5/11-14.

**KENTUCKY** Law enforcement is permitted to detain a child in protective custody. Ky. Rev. Stat. § 529.120. A trafficking victim may not be detained or incarcerated pending adjudication arising from human trafficking unless detention or incarceration is the best alternative for the victim and public safety. Ky. Rev. Stat. § 431.063

**MASSACHUSETTS** If a child who is reasonably believed to be a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the Department or any person may file a care and protection petition, which can include emergency commitment. Mass. Gen. Laws, Ch. 119 § 39K.

**MICHIGAN** A police officer encountering a minor engaged in commercial sex activity may detain the child for a “reasonable period” for “investigation purposes,” but then must “immediately report to the department of human services a suspected violation of human trafficking.” 2014 Mich. Pub. Act 341 § 451(7).

**MINNESOTA** Juveniles who are in immediate danger to be held in secure placement for up to 72 hours upon court order. Minn. Stat. 3260C (2) (ii).

**NEBRASKA** If a police officer, after a reasonable detention for investigative purposes, determines that a person suspected of or charged with prostitution is under eighteen years of age, the child may be placed in temporary custody. L.B. 255 § 2. Law enforcement may also place the minor at a mental health facility for evaluation and emergency treatment. L.B. 255 § 11, codified in Neb. Rev. Stat. § 43-250.

**WASHINGTON, D.C.** Both the police and employees of the Child and Family Services Agency are authorized to take a child into custody if there are reasonable grounds to believe that the child is engaging in commercial sex. D.C. Act 20-560, § 9.

## Civil Legal Protections for CSE Children

### A. SPECIAL COURTROOM PROCEDURES AND PROTECTIVE EVIDENTIARY RULES

**DELAWARE** Evidence of the victim’s past sexual behavior or reputation is not admissible in a criminal prosecution or a civil action for damages under the anti-trafficking law. 11 Del. Code Ann. § 787(f).

**FLORIDA** If a court finds that testifying in court would

cause “emotional or mental harm,” it may order that the testimony of a witness under the age of sixteen be videotaped and played in court. In a prosecution against a trafficker or purchaser of sex acts, evidence of the victim’s prior sexual conduct and manner of dress are inadmissible. Fla. Stat. §§ 92.53(1), 92.54(1), 794.011, 794.022(3).

**KANSAS** Evidence of a child victim’s previous sexual conduct is prohibited in prosecutions. Kan. Stat. Ann. § 21-5502. The court may allow a child under thirteen to testify via closed circuit television or record testimony in a criminal proceeding where the child is the alleged victim of the crime. Kan. Stat. Ann. § 22-3434(a). Victims of certain sexual offenses cannot be asked to submit to a polygraph examination as a condition for proceeding with an investigation or prosecuting the offense. Kan. Stat. Ann. § 22-4614.

**KENTUCKY** Child trafficking victims eligible for special consideration in giving testimony, like other victims of sexual assault. Ky. Rev. Stat. § 421.350.

**MASSACHUSETTS** Victims of sexual exploitation under the age of fifteen, where it is shown that the child witness is likely to suffer psychological or emotional trauma as a result of having to testify in open court or in the presence of the defendant during any proceeding under the Law, may utilize alternatives to live testimony. Mass. Gen. Laws, Ch. 278 § 16D. Evidence of the victim’s reputation for sexual conduct is not admissible in an investigation, before a grand jury, or in a court proceeding under the Anti-Trafficking Law. Mass. Gen. Laws, Ch. 233 § 21B.

**VERMONT** In prosecutions for human trafficking, evidence of the victim’s past sexual conduct (with limited exceptions) is inadmissible as is any opinion or reputation evidence regarding the victim’s sexual conduct. Chap. 60 § 8, codified at Vt. Stat. Ann. tit. 13 § 3255(a)(1), (3).

## B. CIVIL ACTION FOR VICTIMS OF SEX TRAFFICKING

**DELAWARE** The law created a civil cause of action for violations of anti-trafficking laws. 11 Del. Code Ann. § 787 (i)(1)-(3).

**FLORIDA** The Safe Harbor Law created a civil cause of action for compensatory and punitive damages against anyone who coerces a person to enter or remain in prostitution, or who uses coercion to obtain earning from prostitution. Fla. Stat. §§ 772.104; 796.09(1).

**KANSAS** Victims can sue traffickers for “childhood sexual abuse.” Kan. Stat. Ann. § 60-523.

**KENTUCKY** Commercially sexually exploited children have a cause of action, with an extended statute of limitations, against the exploiters. Ky. Rev. Stat. § 413.249.

**LOUISIANA** The law created a civil cause action for all victims of human trafficking. Pursuant to this cause of action, they can seek injunctive relief, actual, compensatory, and punitive damages, and, upon proof of willful and malicious conduct, treble damages. La. Bill 88, Ch. 28-B, § 2163.

**MASSACHUSETTS** Victims may bring a civil cause of action against the trafficker and court may award compensatory, actual, and punitive damages, as well as injunctive relief, attorney’s fees and costs. Mass. Gen. Laws, Ch. 260 §§ 4D(a), (b); see also Mass. Gen. Laws Ch. 260 § 4D(f).

**MICHIGAN** The law created a civil cause of action that may be asserted against a trafficker, regardless of whether the trafficker was convicted in criminal court, but it must be filed within three years “after the last violation that is the subject of the action.” 2014 Mich. Pub. Act 339 §§ 1-4.

**NEW JERSEY** Victims may sue their trafficker and anyone who acted in concert with the trafficker for compensation for injuries, lost money and property, pain and suffering, and punitive damages. N.J. Laws C.2C:13-8.14.a-d.

**NORTH CAROLINA** Trafficking victims were added to the list of eligible claimants for the Crime Victim’s Compensation fund. However this fund only compensates for economic loss, and not for noneconomic suffering. N.C. Gen. Stat. § 15B- 2(2)(a).

**OHIO** Victims of human trafficking can seek compensatory and punitive damages against their traffickers. Ohio H.B. 262 at 15.

**VERMONT** In a civil action, evidence of a victim’s alleged consent to the human trafficking is immaterial and inadmissible. Ch. 60 § 2, codified at Vt. Stat. Ann. tit. 13 §2662(c).

## C. RESTITUTION

**DELAWARE** Court must order anyone convicted of trafficking to pay restitution to victim, even if the victim is unavailable, in the amount of the gross income or value of the victim’s services or the value of the victim’s services under the Fair Labor Standards Act, whichever is greater. 11 Del. Code Ann. § 787 (d)(1), (2).

**FLORIDA** Law provides for restitution to victims. Fla. Stat. §§ 772.104; 796.09(1).

**KANSAS** Victims may seek restitution from convicted traffickers. Kan. Stat. Ann. § 22-3424.

**LOUISIANA** Mandatory restitution to be paid by persons convicted of human trafficking and trafficking of children for sexual purposes to their victims, adult or minor. La. Bill 88, § 539.3.

**MICHIGAN** Mandatory restitution for trafficking victims in all prosecutions of traffickers. When sentencing a trafficker, the court is required to order restitution for the full amount of loss suffered as well as the victim’s lost income and expenses incurred by the victim as a result of the crime, investigation and prosecution. 2014 Mich. Pub. Act 340 § 16b.

**NORTH CAROLINA** Victim restitution is mandatory, and will include the greater of “the gross income or value to the defendant of the victim’s labor or services” or “the value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act or the Minimum Wage Law, whichever is greater.” N.C. Gen. Stat. §

14-43.20(b).

**VERMONT** The criminal court is mandated to consider a restitution order whenever there is proof of a material loss, including property or monetary loss, lost wages, and medical expenses. Chap. 60 § 7, codified in Vt. Stat. Ann. tit. 13 §7043(a)(3).

#### D. PRIVACY PROTECTIONS AND SEALING OF RECORD

**FLORIDA** Florida law allows for the use of a pseudonym in court and in court records to protect the identity of a sexual-abuse victim. Fla. Stat. § 92.56(3).

**VERMONT** The keepers of state records shall not disclose the name or other identifying information of a trafficking victim. Chap. 60 § 8, codified at Vt. Stat. Ann. Tit. 13 §5322.

#### E. EXPUNGEMENT, VACATUR OR PARDON FOR PAST CONVICTIONS<sup>20</sup>

**DELAWARE** Prostitution convictions may be pardoned, expunged, or vacated upon proof that the conviction was a direct result of the movant being a victim of human trafficking, but the relief cannot be sought until at least two years after the movant's last conviction. 11 Del. Code Ann. §787(j).

**KENTUCKY** Trafficking victims may move to expunge convictions. H.B.3, Human Trafficking Victims Rights Act.

**LOUISIANA** The vacatur provision of Louisiana's law is limited to juvenile delinquency adjudications grounded on a finding that the child engaged in prostitution and must be based on a finding that, to a preponderance of the evidence, the child was a victim of human trafficking at the time of the offense. La. Bill 88, Chap. 28-B, § 2162 Art. 923 A-D.

**MICHIGAN** Trafficking victims may apply at any time to expunge a past prostitution conviction that directly resulted from their victim status. There is no limit to the number of convictions that may be vacated. The court must find that setting aside the conviction is consistent with the public welfare. 2014 Mich. Pub. Act 335, § 1(3), (5)-(12).

**NEBRASKA** Upon motion filed with due diligence following the victim's escape from trafficking and including an explanation as to why the movant did not bring the relevant facts to the attention of the original court, past prostitution convictions may be vacated. Neb. L.B. 1145 § 7 (1)(a).

**NEW JERSEY** Convictions for prostitution and related offenses may be vacated and expunged when the offense occurred as a result of the defendant being a victim of human trafficking. N.J. Rev. Stat. § 2C:44-1.1 (2013).

**NORTH CAROLINA** Prostitution convictions may be vacated upon proof that they resulted from the defendant being a victim of human trafficking. Expungement of the records requires a further showing that the defendant has no record of convictions for violent crimes and no convictions subsequent to the prostitution convictions, as well as upon receipt of affidavit attesting to the movants good moral character. N.C. Gen

Stat. § 15A-145.6.

**OHIO** Adult convictions or delinquent-child adjudications for the offense of prostitution may be expunged if the defendant demonstrates that the conviction resulted from being a human trafficking victim. Ohio H.B. 262 at 11.

## Funding

### A. CREATES A SOURCE FOR FUNDING

**ARKANSAS** Fines collected upon convictions for trafficking, prostitution or sexual solicitation, are deposited into the Safe Harbor Fund for Sexually Exploited Children. Senate Bill 869, § 4, 5, and 6.

**FLORIDA** Safe houses are funded by an increase in the civil penalty assessed against anyone convicted of soliciting prostitution. Fla. Stat. §§ 796.07(3)[6]; 796.07(6).

**ILLINOIS** Services funded in part by vehicle impoundment fee imposed on offenders arrested for soliciting minors for prostitution. 720 Ill. Comp. Stat. 5/11-14.

**KANSAS** Increased fines imposed on persons convicted of trafficking and buying or selling sexual relations pay for training law enforcement and providing services to CSE children. 2013 S. Substitute for H.B. 2034 New § 3.

**KENTUCKY** Law created a human trafficking victim's service fee collected from persons convicted of human trafficking or promoting human trafficking, and provided that half of the proceeds of assets seized from traffickers and forfeited would go to CSE children. Ky. Rev. Stat. §§ 529.140; 529.150.

**LOUISIANA** A mandatory assessment is imposed on everyone convicted of trafficking children for sexual purposes, prostitution with someone under the age of seventeen, or enticing a child to engage in prostitution. La. Bill 88, Ch. 28-B § 539.2A.

**MASSACHUSETTS** The law increased fines imposed on persons and businesses convicted of trafficking, and re-directs funds seized from traffickers into CSE Children fund. Mass. Gen. Laws, Ch. 265 §§ 50, 51.

**MICHIGAN** Property, such as cars or houses, used in the furtherance of human trafficking offenses can be seized and forfeited to satisfy any outstanding restitution order or other claim by a trafficking victim. 2014 Mich. Pub. Act 333, §§ 4702(1), 4708(1)(b), (c).

**MINNESOTA** The statute provided for appropriations from the State's general fund to the Departments of Health and Human Services to finance the Director of Child Sex Trafficking Prevention, six Regional Navigators, training, housing and programs. In addition, Minnesota increased the penalties imposed on adults convicted of patronizing a prostitute to a minimum of \$500.00 and a maximum of \$750.00. The law provides that the court cannot waive the penalty. Forty percent of the funds collected are distributed to organizations



that provide services to sexually exploited youth. Minn. HF 485 Article 3.

**NEW JERSEY** Fines for human trafficking activity increased, especially for convictions involving promoting child prostitution. A fee was also imposed on participants in the mandatory prostitution offender program. 2013 N.J. Pub. L., C.2C:34-1.f(2); C.2C:13-9.5.c.(1); C.2C:13-10c; C.2C:34-1.2.11a-b.

**OHIO** Money seized in connection with human trafficking investigations and the funds from the sale of assets seized in connection with such investigations must be used to pay for victim services. Ohio H.B. 262 at 8.

**WASHINGTON** The law created a mandatory fee imposed on anyone convicted of child abuse or promoting commercial sexual abuse of a child, as well as mandatory vehicle impoundment fees for any vehicle used in connection with the commercial sexual abuse of a minor. Wash. Rev. Code §§ 9.68A.105(1); 9A.88.140(2).

#### **B. CREATES A CSE CHILDREN COMPENSATION FUND OR ACCOUNT**

**ARKANSAS** The Safe Harbor Law created the Fund for Sexually Exploited Children. S.B. 869, 89th Gen. Assemb. Reg. Sess., §§ 4, 5, 6 (Ark. 2013).

**KANSAS** The Safe Harbor Law established the Human Trafficking Victim Assistance Fund. 2013 S. Substitute for H.B. 2034 New § 3.

**KENTUCKY** The law established the Human Trafficking Victims Fund that is maintained by the Justice and Public

Safety Cabinet, to pay for victim services. Ky. Rev. Stat. §§ 529.140; 529.150.

**LOUISIANA** The law established the Children's Special Fund within the state treasury to finance services and treatment of sexually exploited children. La. Bill 88, Ch. 28-B, § 539.2 A.

**MASSACHUSETTS** Statute created the Victims of Human Trafficking Trust Fund to satisfy victim restitution orders and finance services. Mass. Gen. Laws, Ch. 265, § 54, 55 & Ch. 10, § 66A.

**MICHIGAN** Money in the Fund may only be spent "upon appropriation and only in a manner to carry out the purposes set forth in this act." 2014 Mich. Pub. Act 340 § 5.

**NEW JERSEY** The law established a Human Trafficking Survivor's Assistance Fund. Money from the fund must be used to provide services to victims, promote awareness, develop and operated training programs. 2013 N.J. Pub. L., C.52:17B-238.2.a.

**OHIO** The law created the Victim of Human Trafficking Fund. The money is used to pay for victim services and awards to victims. Ohio H.B. 262 at 8.

**WASHINGTON** The Act created a "prostitution and intervention" account in the state treasury. Fines and fees deposited in the account are to be used to pay for services for minors who have been diverted from the criminal justice system following an arrest for prostitution. Wash. Rev. Code § 43.63A.740.



# Analysis of Existing Statutes

## ARKANSAS

On April 16, 2013, Senate Bill 869, subtitled, “An Act To Provide Safe Harbor For Victims of Certain Sex Trafficking and Commercial Sex Offenses,” was signed into law.<sup>21</sup> The law broadened the definition of a sexually exploited child, provided for the delivery of services to sexually exploited children, and created a fund to finance services, consisting of fines collected from persons convicted under Arkansas’ trafficking of persons, prostitution, and sexual solicitation statutes.

### IDENTIFICATION AND DIVERSION

Though not codified in the statute, the General Assembly made legislative findings in support of S.B. 869. These findings state: “(1) [t]he criminal justice system is not the appropriate place for sexually exploited children because it serves to re-traumatize them and to increase their feelings of low self-esteem; (2) [b]oth federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such; [and] (3) [s]exually exploited children should . . . be diverted into services that address [their] needs outside of the justice system.”<sup>22</sup>

The intent behind the legislation was explained as: 1) to protect sexually exploited children from further victimization by ensuring a “child protective response,” 2) to establish a presumption that “any child engaged in prostitution or solicitation is a victim of sex trafficking,” and 3) to identify the service needs of sexually exploited children and provide appropriate care and services.<sup>23</sup> In addition, “every effort should be made to ensure that [sexually exploited] children are not prosecuted or treated as juvenile delinquents, but instead are given the appropriate social services.”<sup>24</sup>

Nonetheless, the codified sections of Arkansas’s Safe Harbor Law do not expressly prohibit criminal prosecution of minors for prostitution-related offenses. Similarly, the penal code section defining the crime of prostitution, Arkansas Code § 5-70-102, does not distinguish between minor and adult offenders. Thus, under the statute, a minor could still be found guilty of prostitution and treated as an offender rather than a victim.

The Safe Harbor Law does, however, amend two sections of the Arkansas Code that define the term “sexually exploited child.”<sup>25</sup> The new definition includes a person under the age of eighteen who has

been subjected to sexual exploitation by: 1) being the victim of trafficking under Ark. Code Ann. § 5-18-103; 2) being the victim of child sex trafficking under 18 U.S.C. § 1591; or 3) engaging in an act of prostitution under Ark. Code Ann. § 5-70-102, or sexual solicitation under Ark. Code Ann. § 5-70-103.<sup>26</sup>

The amendments adding children engaged in prostitution or sexual solicitation to the definition of “sexually exploited child” are consistent with the 2013 change in Arkansas’s criminal code that provided that a person may be found guilty of trafficking of persons if he or she knowingly “[r]ecruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for sexual activity,” regardless of whether force, fraud or coercion was used.<sup>27</sup> Thus, if the person recruited, enticed, etc. to engage in sexual activity is a minor, he or she is a victim of human trafficking even in the absence of coercion, force, or fraud.<sup>28</sup>

Arkansas’s Safe Harbor Law also added a subchapter to the section of law entitled the Child Maltreatment Act that allows for training of “intake officers, law enforcement, prosecutors, and any other appropriate staff, concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.”<sup>29</sup> The language of this provision is permissive, not mandatory.

### SERVICES AND PROTECTIONS

Arkansas’s statute mandated the Department of Human Services “to develop a statewide referral protocol for helping to coordinate the delivery of services to sexually exploited children.”<sup>30</sup> It also created the Safe Harbor Fund for Sexually Exploited Children and directed the Department of Human Services to administer the fund to provide “[s]ervices and treatment, such as securing residential housing, health services, and social services for sexually exploited children [and] [g]rants to service providers working with sexually exploited children.”<sup>31</sup>

The statute also established, but did not codify, an interim study. The Senate Interim Committee

“ *The criminal justice system is not the appropriate place for sexually exploited children because it serves to re-traumatize them and to increase their feelings of low self esteem.* ”

Legislative finding in support of Arkansas’ Safe Harbor Law



on Children and Youth was directed to invite representatives of identified groups (law enforcement, prosecuting attorneys, the Department of Human Services, the office of Court Administration and victim service providers and advocates) to engage in a study of “the problem of child sex trafficking and the commercial sexual exploitation of children in Arkansas.”<sup>32</sup> The Committee was tasked to prepare a report to the Senate, by July 1, 2014, including “a proposed plan for providing adequate services for sexually exploited children; recommendation for changes in state law, policies and procedures; and any appropriations necessary to allow the applicable agencies to better serve and protect this victim population.”<sup>33</sup>

## FUNDING

Arkansas Safe Harbor Law established several sources of funding for the services of victims. Anyone convicted of the crimes of trafficking of persons, prostitution, or sexual solicitation “shall be” ordered to pay a \$250 fine, in addition to any other sentence imposed by the court. The fine payments are deposited into the Safe Harbor Fund for Sexually Exploited Children.<sup>34</sup>

## CONNECTICUT

Connecticut’s Safe Harbor Law, known as “An Act Providing A Safe Harbor For Exploited Children,” took effect on October 1, 2010.<sup>35</sup>

## IDENTIFICATION AND DIVERSION

Connecticut’s law amended the state’s penal provisions to add as an element of the crime of prostitution that the person charged was at least sixteen years old at the time of the commission of the commercial sex act.<sup>36</sup> Thus, no one under the age of sixteen may be criminally prosecuted for prostitution. This is consistent with Connecticut’s statutory rape law, where the age of consent is sixteen years old.<sup>37</sup>

In addition, with respect to sixteen and seventeen year olds, the law creates “a presumption that the actor was coerced into committing such offense by another person in violation of section 53a-192a.”<sup>38</sup> Thus, to criminally prosecute a sixteen or seventeen year old for engaging in commercial sex the prosecutor would have to overcome a legal presumption that the youth’s activities were the result of coercion.

Finally, section four of Connecticut’s Safe Harbor Law amended section 53a-84(b) (patronizing a prostitute or promoting prostitution) and section 53a-89 (permitting prostitution) to provide that a child’s inability to be prosecuted for prostitution due to their age is not a defense for individuals prosecuted for promoting prostitution, patronizing a prostitute, or permitting prostitution.<sup>39</sup>

## SERVICES AND PROTECTIONS

Connecticut’s Safe Harbor Law is silent regarding services to minors identified as engaging in commercial sex. Neither does it explicitly set forth whether services are available to child sex trafficking victims.<sup>40</sup>

Before the Connecticut’s Safe Harbor Law was enacted, however, the Department of Children and Families (DCF) had adopted a protocol to identify and serve child victims of trafficking.<sup>41</sup> Under this protocol, law enforcement officials who suspect that a child is a victim of commercial sexual exploitation must inform DCF. DCF employees collaborate with law enforcement officers to investigate the situation and the child is evaluated at a local hospital. DCF makes a determination as to the appropriate next steps, the child’s placement needs, and the child’s service needs.

## FUNDING

Connecticut’s law does not address funding services for commercially sexually exploited youth.<sup>42</sup>

## DELAWARE

Delaware’s Safe Harbor Law (Senate Bill 197, An Act to Amend Title 11 of the Delaware Code Relating to Trafficking of Individuals, Forced Labor, and Sexual Servitude) was signed into law on June 30, 2014.<sup>43</sup>

The law established the Human Trafficking Coordinating Council, consisting of seventeen members, including judges; the Attorney General; the Secretaries of the Departments of Education, Services for Children, Youth and Their Families, Health and Social Services, and Labor; the Commissioner of Corrections; and three representatives of survivors of human trafficking.<sup>44</sup> The Council was tasked to “develop a comprehensive plan to provide victims of human trafficking with services,” effect coordination between agencies, departments, and the courts, and collect and evaluate data on human trafficking.<sup>45</sup> The Council is required to meet at least four times per year and to report its activities and recommendations yearly to the Governor, General Assembly and Chief Justice.<sup>46</sup>

## IDENTIFICATION AND DIVERSION<sup>47</sup>

The duties of the Council also include identifying human trafficking victims and properly classifying them as such. The Council is required to “coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.”<sup>48</sup>

The Council must also “promote public awareness about human trafficking, victim remedies and



services, and trafficking prevention.”<sup>49</sup> As part of this task, it must “[c]reate a public-awareness sign that contains the state and national Human Trafficking Resource Center hotline information.”<sup>50</sup> The statute mandates that the Department of Transportation display the public-awareness sign in every transportation station, rest area and welcome center in Delaware.<sup>51</sup> Furthermore, the sign must be conspicuously displayed in a location visible to employees at all adult entertainment establishments, job recruitment centers, hospitals, emergency care providers, and any “entity found to be maintaining a criminal nuisance involving prostitution,” as defined by Delaware law.<sup>52</sup> Failure to display the sign is punishable by a \$300 fine.<sup>53</sup>

Delaware’s law created a presumption that any minor engaged in commercial sex is a “neglected or abused child.” A police officer who encounters a minor engaged in commercial sexual activity is obliged to immediately notify the Department of Services for Children, Youth and Their Families (hereinafter the Department).<sup>54</sup>

Delaware law permits a minor to be charged as a juvenile delinquent for engaging in commercial sex. However, the minor, his or her attorney, or a court-appointed special advocate may file a motion seeking to stay the delinquency proceedings, and the Family Court may grant that motion and stay the proceedings indefinitely. The Attorney General, however, retains the right to oppose the motion.

Upon a motion for a stay, the Court or the Department “may identify and order available specialized services” best suited for the needs of the minor. If the minor substantially complies with the services ordered by the Family Court or identified by the Department, and a year or more has elapsed since the original stay of prosecution, upon motion, the Attorney General is required to discontinue prosecution.<sup>55</sup>

If the minor does not substantially comply with the requirements of the ordered or identified services, the Family Court is required, on the motion of the Attorney General, to lift the stay and continue with the juvenile delinquency proceeding.<sup>56</sup>

Delaware’s law allows any individual charged with prostitution or loitering for prostitution, regardless of age, to assert an affirmative defense that the individual is a victim of human trafficking and committed the offense “as a direct result of being a victim of human trafficking.”<sup>57</sup>

The statute further provides that any individual who has been convicted of prostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking may now seek a pardon, expungement of their criminal record, or an order vacating the judgment of conviction.<sup>58</sup> A motion to vacate

must be in writing, served on the Department of Justice, filed at least two years after the “person’s last criminal conviction and within a reasonable period of time after the person ceases to be a victim of trafficking in persons.” The motion must include a description of the supportive evidence. Copies of all official documents must be provided. Official documentation of the person’s status as a trafficking victim issued by any government agency, although not required for a grant of relief, creates a presumption that the person’s participation in the prostitution offense was a result of having been a victim of human trafficking.<sup>59</sup>

If the movant satisfies the statutory requirements, the Court is required to hold a hearing on the motion. If the movant satisfies the Court of their entitlement to relief, the Court must enter an order vacating the judgment of conviction and dismissing the accusatory pleading.<sup>60</sup> If the movant also requests expungement of all records, the Court’s order must direct expungement of the police and court records related to the charge and conviction.<sup>61</sup>

## SERVICES AND PROTECTIONS

A child identified as involved in commercial sex qualifies as a neglected or abused child and is thus immediately eligible for rehabilitative and victim services.<sup>62</sup> Instances of suspected child neglect or abuse must be reported to the Department, which is required to conduct an investigation, to keep records of the abuse or neglect, and to direct the child to appropriate services. A police officer or physician “who reasonably suspects that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect” may place the child in temporary emergency protective custody.<sup>63</sup>

In a juvenile delinquency proceeding, specialized services may be ordered by the Court or the Department in connection with a motion to stay the proceedings.<sup>64</sup> The statute further provides that, regardless of whether there is an arrest or court proceeding, any police officer who encounters a person who “reasonably appears” to be a victim or a minor engaged in commercial sex must, as “soon as practicable,” notify the appropriate state or local agency.<sup>65</sup> Once the Council has fulfilled its obligation to “[d]evelop a comprehensive plan to provide victims of human trafficking with services,”<sup>66</sup> all minor victims of human trafficking will be eligible for those benefits and services, regardless of immigration status.<sup>67</sup>

“ Delaware’s law created a presumption that any minor engaged in commercial sex is a “neglected or abused child.” A police officer who encounters a minor engaged in commercial sexual activity is obliged to immediately notify the Department of Services for Children, Youth and Their Families. ”

Delaware’s statute mandates that a court order anyone convicted of a trafficking offense to pay restitution to the victim, even if the victim is unavailable, the greater of: 1) the gross income or value to the defendant of the victim’s services; or 2) the value of the victim’s services under the Fair Labor Standards Act.<sup>68</sup>

The law also creates a civil cause of action for violation of anti-trafficking laws. Victims can seek compensatory and putative damages, and injunctive relief. A court must also award attorneys’ fees and costs to a prevailing plaintiff. The action must be commenced no later than five years after either the victim is “freed from the human trafficking situation” or has reached the age of eighteen.<sup>69</sup>

Delaware’s law also requires law enforcement to assist trafficking victims in obtaining relevant immigration documentation.<sup>70</sup>

Additionally, a defendant charged with the sex trafficking a minor may not assert as a defense either that the victim consented to engage in commercial sex or that the trafficker mistakenly believed that the minor was an adult.<sup>71</sup> Nor is evidence of the victim’s past sexual behavior or reputation admissible in a criminal prosecution or civil action for damages under the anti-trafficking law.<sup>72</sup>

## FUNDING

The statute does not include any provisions for funding services for victims of human trafficking. It does, however, require that any restitution unclaimed by the victim for five or more years be paid into the general Victim Compensation Fund.<sup>73</sup> And it permits the court to order forfeiture of real or personal property used in commission of a human trafficking offense, which is then sold at public auction and distributed in the same manner as other judicial sales.<sup>74</sup>

## FLORIDA

Florida’s Safe Harbor Act, which was modeled on New York’s law, came into effect on January 1, 2013. The Act amended six existing sections of Florida’s Statutes and added two new provisions.

The Act includes a statement of the Legislature’s intent and goals. Those include recognition of the problem of child sexual exploitation and an aim to treat exploited children as dependents, rather

than delinquents.<sup>75</sup> The Legislature made findings that sexually exploited children, regardless of their immigration status, need special care and services, including counseling, health care, and “a safe environment secure from traffickers.”<sup>76</sup>

## IDENTIFICATION AND DIVERSION

Although Florida’s Safe Harbor Act moved toward treating commercially sexually exploited children under the age of eighteen as victims rather than criminals, it failed to expressly prohibit the institution of juvenile delinquency proceedings against minors who are detained for engaging in prostitution. The law defining the crime of prostitution, which includes sellers and buyers of sex acts, as well as those who assist or facilitate in the commission of prostitution by providing accommodations and transportation, does not include a minimum age requirement.<sup>77</sup> Minors cannot be subjected to prosecution as an adult because eighteen is the minimum age for criminal responsibility. However, despite the Act’s stated recognition that children engaged in commercial sex are exploited and should be treated as victims, it is still possible to charge a minor with juvenile delinquency for committing an act of prostitution.<sup>78</sup>

Non-criminal treatment of commercially sexually exploited minors can take two forms—adjudication as a dependent child or a finding that the minor is an abused child. Florida’s Safe Harbor Act expanded the definition of the term abuse to include children who have been sexually abused.<sup>79</sup> It also added a provision that a sexually exploited child lacking an appropriate adult guardian is a dependent child.<sup>80</sup> The law also expanded the definition of sexual abuse of a child to include “the act of a child offering to engage in or engaging in prostitution,” or allowing, encouraging or forcing a child to participate in the trade of sex trafficking.<sup>81</sup> These definitional changes facilitate the classification of the minor engaged in commercial sex as an abused or dependent child, rather than as a juvenile delinquent.

Florida’s Safe Harbor Act directs law enforcement officers to deliver anyone under eighteen years of age, whom they have taken into custody and believe to have been sexually exploited, to the Department of Children and Family Services (hereinafter DCFS). This section is written in mandatory terms, stating that the law enforcement officer “shall” deliver exploited children to DCFS.<sup>82</sup> Thus, the law could be read

“ [S]exually exploited children need special care and services . . . including counseling, health care, substance abuse treatment, educational opportunities, and a safe environment secure from traffickers. ”

Legislative finding in support of Florida’s Safe Harbor Law.

to mandate that anyone under eighteen years of age arrested for prostitution should be treated as an abused child and, if that interpretation is followed, delinquency proceedings should not result. But some ambiguity remains because there is no clear or express prohibition of delinquency proceedings for acts of prostitution committed by minors.

In the event that a minor detained for prostitution is subjected to juvenile delinquency proceedings, the minor can avoid a delinquency record by participating in and successfully completing a diversion program.<sup>83</sup> If a minor is adjudicated a delinquent, probation or placement in varying levels of facilities, including a secure facility, are possible.<sup>84</sup>

The statute permits, but does not mandate, training of law enforcement and others in identifying CSE children. It authorizes law enforcement to contract with an appropriate not-for-profit agency for training “to the extent funds are available.”<sup>85</sup>

## SERVICES AND PROTECTIONS

Florida’s Safe Harbor Act authorizes DCFS to place a sexually exploited child in a short-term safe house pending a final determination of the case.<sup>86</sup> The law mandates that DCFS access the history and psychological profile of any child over the age of six who has been determined to be a victim of sexual exploitation for long-term, post-adjudication placement in a safe house.<sup>87</sup> Any dependent child who has suffered sexual exploitation is eligible for safe-house placement, unless they are eligible for relief and benefits under the federal Trafficking Victims Protection Act.<sup>88</sup> The placement is subject to judicial review and DCFS is obligated to report annually to the Legislature the number of children accessed and placed, and the availability of safe houses.<sup>89</sup>

Florida’s Safe Harbor Law establishes the position of child advocate to oversee the safe houses and advocate for the needs of sexually exploited children. Safe houses are required to have around-the-clock staffing, licensed operators, personnel with clinical expertise, credentials, and training specifically geared toward sexually exploited children. In addition to shelter, short-term safe houses are required to provide food, clothing, medical care, and counseling.<sup>90</sup>

The law provides that all sexually exploited children are entitled to the services delineated, regardless of whether their placement in a safe house is voluntary, a condition of probation or a diversion program, by court order upon a finding of dependency, or by a referral from a social services agency. In addition to providing for the needs of the children, the provider of long-term safe home services is

responsible for security, crisis-intervention services, arranging for educational services, transportation, life skills services, behavioral health services, health and dental care, infant care, and, generally, planning for a successful transition of residents back to the community. The responsible agency is authorized to make decisions on behalf of the resident children, such as school enrolment, medical treatment, and signing for a driver’s license.<sup>91</sup>

The Act clarifies that victims of sexual exploitation are eligible for crime-victim awards, regardless of their participation in unlawful behavior or detention in a correctional facility.<sup>92</sup> Florida’s law provides for restitution and civil remedies for victims of sex trafficking, and creates a civil cause of action for compensatory and punitive damages against anyone who coerces a person to enter into or remain in prostitution, or who uses coercion to obtain earnings from prostitution.<sup>93</sup>

In addition, Florida’s law protects child victims in the courtroom. A guardian *ad litem* may be appointed for abused, abandoned, or neglected children.<sup>94</sup> And, if a court finds that testifying in court would cause “emotional or mental harm,” it may order that the testimony of a witness under the age of sixteen be videotaped and played in court.<sup>95</sup> Furthermore, in a prosecution against a trafficker or purchaser of sex acts, evidence of the victim’s prior sexual conduct and manner of dress are inadmissible.<sup>96</sup> Florida’s law also allows for the use of a pseudonym in court and in court records to protect the identity of a sex abuse victim.<sup>97</sup>

## FUNDING

Florida’s Safe Harbor Law provides for funding for safe houses by increasing the penalty assessed against anyone convicted of soliciting prostitution from \$500 to \$5000, and provides that most of those funds (\$4500) must be used to fund safe houses.<sup>98</sup>

## ILLINOIS

The Illinois Safe Children Act (ISCA) was signed into law on August 20, 2010. Illinois was the first state to make all children under the age of eighteen immune from criminal prosecution for prostitution.

## IDENTIFICATION AND DIVERSION

Although Illinois has a uniform age of consent to sex of seventeen,<sup>99</sup> the ISCA protects minors under the age of eighteen. The ISCA provides that “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of [the law prohibiting prostitution] is a person under the age of 18, that person shall



“ *The Illinois Safe Children Act (ISCA) was signed into law on August 20, 2010. Illinois was the first state to make all children under the age of eighteen immune from criminal prosecution for prostitution.* ”

be immune from prosecution for a prostitution offense . . . and shall be subject to the temporary protective custody provisions.”<sup>100</sup> Illinois’s prohibition of criminal prosecution of minors under the age of eighteen for engaging in commercial sex activity conforms their Safe Harbor provision to the federal and Illinois human-trafficking laws. The ISCA

effectively presumes that minors, even minors who can lawfully consent to sex, do not voluntarily engage in commercial sex.<sup>101</sup> The Act further provides that persons under the age of eighteen are immune from prosecution for the offense of promoting prostitution “if the practice of prostitution underlying such offense consists exclusively of the accused’s own acts of prostitution.”<sup>102</sup>

The ISCA replaced criminal code references to “juvenile prostitutes” with the phrase, “minor engaged in prostitution,” thus recognizing that children are not prostitutes, but rather victims of a serious sexual offense.<sup>103</sup>

The ISCA amended the definition of an abused or neglected child to include “a child whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent . . . commits or allows to be committed any sex offense against such child [or] commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor.”<sup>104</sup> The Act included a substantially identical amendment of the definition of a neglected or abused minor in the Juvenile Court Act, with the added provision that a child whose parent, etc., “allows, encourages or requires a minor to commit any act of prostitution” qualifies as a neglected or abused child.<sup>105</sup> The amended definitions do not appear to be broad enough to encompass non-familial traffickers.

### **SERVICES AND PROTECTIONS** <sup>106</sup>

Law enforcement officers who encounter CSE children are required to place them in temporary protective custody.<sup>107</sup> Temporary protective custody means “custody within a hospital or other medical facility or a place previously designated for such custody by the Department of Children Family Services, subject to review by the court, including a licensed foster home, group home, or other institution.”<sup>108</sup> The temporary protective custody may not be in a jail or other place of detention for criminal or juvenile offenders.<sup>109</sup> The officer must immediately notify the Department of Children and Family

Services, which must initiate an investigation of the matter as child abuse or neglect within 24 hours.<sup>110</sup> The child thereby becomes eligible for the protection and services of the Department of Children and Family Services.<sup>111</sup>

### **FUNDING**

The ISCA provides for funding for services by imposing vehicle impoundment fees on offenders arrested for engaging minors in prostitution. Persons convicted of such acts are charged a \$1000 fee. Five hundred dollars of the fee is distributed to the unit of government whose officers made the arrest and the remaining \$500.00 is deposited into the general Violent Crime Victims Assistance Fund and is used by the Department of Human Services to make grants to non-governmental organizations to provide services for victims of trafficking.<sup>112</sup>

### **KANSAS**

In 2013, the Kansas Legislature passed Senate Substitute for House Bill 2034 (hereinafter Kansas’s Safe Harbor Law), which created and amended the state’s human trafficking and prostitution statutes. With respect to minors, the law made three significant changes to Kansas’s human trafficking laws: 1) it imposed stringent criminal penalties against traffickers who commercially exploit minors; 2) it re-defined the crime of prostitution to exclude anyone under the age of eighteen from criminal liability; and 3) it expanded support services for CSE children.

### **IDENTIFICATION AND DIVERSION**

Kansas’s Safe Harbor Law modified the statutory language of all of Kansas’s human trafficking laws by changing “prostitution” to “selling sexual relations,” “house of prostitution” to “place where sexual relations are being sold or offered for sale by a person who is 18 years of age or older,” and “prostitute” to “person selling sexual relations who is 18 years of age or older.”<sup>113</sup> Thus, anyone under the age of eighteen does not fit within the statutory definition of a seller of commercial sex. In addition, the law created a new and separate offense of “[c]ommercial sexual exploitation of children,” which may also be used to prosecute those who commit commercial sex offenses against minors.<sup>114</sup>

With respect to everyone over the age of eighteen, Kansas’s Safe Harbor Law created an affirmative defense that the person charged with selling sexual relations was a victim of human trafficking at the time of the offense. The affirmative defense is also available to persons charged with selling sexual relations who “committed the violation of this

section because [he or she] was subjected to commercial sexual exploitation of a child,” as defined in Kan. Stat. Ann. 21-6422.<sup>115</sup> In short, children under eighteen cannot be arrested or prosecuted for engaging in commercial sex and adults charged with commercial sex related offenses can assert that their participation in the offense was a result of their current status as a victim of human trafficking or arose out of their commercial sexual exploitation when they were a child.

A minor engaged in commercial sex fits the definition of a “child in need of care,” (Kan. Stat. Ann. § 38-2202[d] (“a person less than 18 years of age . . . [who] has been physically, mentally or emotionally abused or neglected or sexually abused.”)). Once identified as “a child in need of care,” law enforcement officers are mandated to take the minor into custody.<sup>116</sup> Following a dispositional hearing, the court may place the child in the custody of a parent or remove the child from a parent’s custody and place the child in the custody of a relative or in a shelter, youth residential facility, or secure facility.<sup>117</sup>

To help identify commercially sexually exploited minors, the law authorized the Attorney General to “coordinate training regarding human trafficking for law enforcement agencies throughout Kansas.” The Attorney General has broad power to “increase awareness and training for professionals in the field” to ensure that minor victims are appropriately identified by law enforcement officials and not subjected to unnecessary and harmful treatment post-custody.<sup>118</sup>

## SERVICES AND PROTECTIONS

Kansas’s Safe Harbor Law designated the Attorney General’s Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. The law requires a court to transfer any child who has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation to the custody of the Department for Children and Families. The Department is then required to assess the safety, placement, and treatment needs of the child, and to make appropriate recommendations to the court based on that assessment.<sup>119</sup>

The statute created “staff secure facilities” to house children rescued from commercial sexual exploitation.<sup>120</sup> A staff secure facility may “not include construction features designed to physically restrict the movement and activities of residents,” but, rather, must be designed “to promote a safe comfortable and therapeutic environment.”<sup>121</sup> The statute further delineates various steps that the staff must take to ensure safety, security and orderly operation of the facility, including written policies and procedures, locked doors, screening and searching of residents and vis-

itors, monitoring the whereabouts of residents, and around-the-clock monitoring of entrances and exits by a retired or off-duty law enforcement officer.<sup>122</sup>

The statute mandates that the staff of a secured facility be trained “to counsel and assist victims of human trafficking and sexual exploitation.”<sup>123</sup> The staff is required to provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and “all other appropriate services.”<sup>124</sup>

In addition, Kansas’s Safe Harbor Law provides a number of victim-friendly procedures and protections for minors during the court proceedings, such as: 1) prohibiting evidence of a child victim’s previous sexual conduct;<sup>125</sup> 2) permitting the court to allow a child under thirteen to testify via closed circuit television or recorded testimony in a criminal proceeding where the child is the alleged victim of the crime;<sup>126</sup> 3) prohibiting law enforcement officers, prosecutors, and government officials from requesting victims of certain sexual offenses<sup>127</sup> to take polygraph examinations as a condition for proceeding with an investigation or prosecuting the offense; and 4) allowing juvenile offenders who were sex trafficking victims to petition to have their records expunged.<sup>128</sup>

The Safe Harbor Law further modified Kansas’s law to permit victims of criminal offenses to seek restitution when the criminal offender is found guilty.<sup>129</sup> Finally, the law permits victims of “childhood sexual abuse” to bring civil actions against their offenders.<sup>130</sup>

## FUNDING

Kansas’s Safe Harbor Law established the Human Trafficking Victim Assistance Fund in the state treasury.<sup>131</sup> The funding is primarily derived from a significant increase in criminal fines imposed on persons convicted of trafficking and buying or selling sexual relations.<sup>132</sup> The minimum fine was set at \$2500 and, for a repeat offender, \$5000. The funds collected are available to pay for training law enforcement agencies throughout Kansas regarding human trafficking and to support care, treatment, and other services for child victims of human trafficking and commercial sexual exploitation.<sup>133</sup>

## KENTUCKY

In 2013, Kentucky unanimously passed the Human Trafficking Victims Rights Act.<sup>134</sup> The highlights of the Act, which amends numerous sections of Kentucky law, are: 1) the expansion of the definition of human trafficking victim to include anyone under the age of eighteen engaged in commercial sexual activity, regardless of whether they were subjected to force,

“*Kentucky’s Act provides that, upon receiving notification of a CSE child, the Cabinet must respond within an hour, treating it as a high-risk case, like a report of sexual abuse.*”

fraud, or coercion; 2) no child suspected of being a victim of human trafficking can be charged with or convicted of a “status offense” related to conduct arising from the trafficking; 3) no one under the age of eighteen can be prosecuted for prostitution or loitering for prostitution; 4) children detained under suspicion of engaging in commercial sex are to be treated as dependent, abused or neglected and provided with care and services; 5) funds collected from forfeiture of assets seized from traffickers and money collected as fines imposed on people convicted of trafficking offenses are placed in a Human Trafficking Victims Fund; 6) victims may move to expunge convictions; and 7) created a civil cause of action for damages arising out of human trafficking.<sup>135</sup>

Kentucky’s law defines human trafficking as any criminal act whereby an individual or a group of individuals are subjected to engage in either “[f]orced labor or services” or “[c]ommercial sexual activity through the use of force, fraud, or coercion”; however, if the trafficked person is a minor, then the commercial sexual activity need not involve force, fraud, or coercion.<sup>136</sup>

## IDENTIFICATION AND DIVERSION

To assist in identifying victims of human trafficking, Kentucky’s Trafficking Victims Rights Act amended a statute pertaining to training for law enforcement to include “characteristics and dynamics” of human trafficking, screening for human trafficking, as well as the relevant law and available victim resources, in the training agenda.<sup>137</sup> Prosecutors are also required to participate in human trafficking training.<sup>138</sup> The Act requires the Kentucky State Police to designate a unit to receive and investigate human trafficking complaints and to cooperate and assist other agencies in investigating human trafficking.<sup>139</sup>

The Act recognized the problem of trafficked children with false identification by including a new crime of forgery in the second degree. That section makes it a crime to coerce another person to falsely make, complete, or alter a written instrument in the commission of a human trafficking offense.<sup>140</sup>

The Act prohibits prosecution of minors for prostitution or loitering for prostitution.<sup>141</sup> Any law enforcement officer who encounters or receives a report of a child engaged in commercial sex is obligated to report the child to the Cabinet for Health and Family Services (hereinafter the Cabinet), regardless of any relationship between the child and the trafficker.<sup>142</sup> A court-designated worker is permitted to conduct an initial screening to identify a victim of human trafficking and then refer the child

to the Cabinet.<sup>143</sup> Law enforcement is permitted to detain the child in protective custody.<sup>144</sup>

In addition to prohibiting prosecution of children for prostitution, Kentucky’s Act prohibits charging children with any “status crime” (e.g., runaway, incorrigible

child, truant, etc.), if the conduct arises out of being a victim of human trafficking.<sup>145</sup> A trafficking victim may not be detained or incarcerated pending adjudication, unless detention or incarceration is the best alternative for the victim and public safety. A child may be held in protective custody if there is “reasonable grounds” to believe that the child is in danger of death or serious physical injury, being sexually abused, or is the victim of human trafficking and the parents or guardian are unable or unwilling to protect the child. A law enforcement officer holding such a child must seek an emergency custody order from a court within twelve hours.<sup>146</sup>

The Act also provides for those instances when discovery of a child’s status as a victim of human trafficking is delayed. If a case progresses to the Department of Juvenile Justice before the child is identified as a victim, that Department is required to file a report with the Cabinet, to notify the child’s attorney, and to petition the court to transfer custody to the Cabinet, unless the child poses a threat to public safety.<sup>147</sup>

The Act requires the Prosecutors Advisory Council to collect data on human trafficking cases involving minors engaged in commercial sexual activity.<sup>148</sup> The Cabinet is required to report annually to the Interim Joint Committee on Judiciary, Health, and Welfare the number of reports received alleging human trafficking, the number of cases substantiated and the number of cases where services were provided.<sup>149</sup>

## SERVICES AND PROTECTIONS

Kentucky’s Act provides that, upon receiving notification of a CSE child, the Cabinet must respond within an hour, treating it as a high-risk case, like a report of sexual abuse.<sup>150</sup> The Cabinet is required to investigate and provide assessment, treatment, housing, and services to the child as a dependent, neglected, or abused child.<sup>151</sup> Communications between the victim and caseworker are confidential.<sup>152</sup> All of the obligations imposed on the Cabinet by law with respect to a report of an abused child, such as a written report to law enforcement within seventy-two hours and the involvement of a multi-disciplinary team, apply to a report of a commercially sexually trafficked child.<sup>153</sup>

The Act also requires the Cabinet to promul-



gate administrative regulations for the treatment of trafficked children and, in doing so, to consult with agencies serving victims of human trafficking. The regulations must address the appropriate screening measures, assessment, treatment, services, temporary and long-term placement, training of staff, designation of specific staff, and collaboration with service providers and law enforcement.<sup>154</sup> The Cabinet is also required to submit an annual report outlining its response to child trafficking victims to the Legislative Research Commission.<sup>155</sup>

The Department of Juvenile Justice was authorized to promulgate regulations, in consultation with agencies that provide services to victims of human trafficking, concerning treatment for child victims who cannot be placed with the Cabinet.<sup>156</sup> Victims of human trafficking cannot be held in a detention center, jail, or other secure facility pending trial for an offense arising from conduct committed while they were victims of human trafficking.<sup>157</sup>

The Act amended the law to add child victims of promotion of human trafficking involving commercial sexual activity to the list of causes of action with an extended statute of limitations.<sup>158</sup> Child victims of human trafficking were also added to the list of those eligible for special consideration in giving testimony, like other victims of sexual assault.<sup>159</sup>

## FUNDING

The Act created the Human Trafficking Victims Fund (hereinafter the Fund) that is maintained by the Justice and Public Safety Cabinet as a separate and revolving fund.<sup>160</sup> In addition to general appropriations and contributions, the fund consists of monies collected pursuant to the newly created human trafficking victim's service fee. That fee is \$10,000 imposed on every person convicted of human trafficking or promoting human trafficking.<sup>161</sup> Additionally, half of the proceeds of all seized and forfeited assets related to human trafficking crimes are deposited in the Fund while the remainder is distributed to the appropriate law enforcement and prosecutorial agencies.<sup>162</sup> The Fund supports all service, law enforcement, and prosecutorial agencies serving human trafficking victims, and dictates that the Cabinet for Health and Family Services be adequately funded to serve trafficked minors.<sup>163</sup>

## LOUISIANA

Louisiana's Safe Harbor Law, Senate Bill No. 88, was signed into law on June 24, 2013. The Bill included revisions to various Louisiana statutes, including the Children's Code, and added a new section entitled, "Chapter 20. Safe Harbor For Sexually Exploited Chil-

dren" (hereinafter Safe Harbor Law). The Safe Harbor Law included the following express statement of legislative findings and purpose:

The legislature finds that arresting, prosecuting, and incarcerating victimized children serves to re-traumatize them and to increase their feelings of low self-esteem, which only makes the process of recovery more difficult . . . . Therefore, sexually exploited children should not be prosecuted for criminal acts related to prostitution. Instead, sexually exploited children should, where possible, be diverted into services that address the needs of these children outside of the justice system.<sup>164</sup>

The law provides for mandatory diversion of cooperative, consenting minors charged with engaging in commercial sex for the first time from the criminal justice system to the child welfare system, and mandates specialized services.<sup>165</sup> But, if the child is non-consenting, uncooperative, or has previously been adjudicated a juvenile delinquent, the decision of whether to prosecute or divert is left to the discretion of the local prosecutor.

## IDENTIFICATION AND DIVERSION

Louisiana's Safe Harbor Law provides that sexually exploited children, defined to include anyone under the age of eighteen who has been a victim of sex trafficking under state or federal law, should, where possible, be diverted into services that address the needs of these children outside of the justice system.<sup>166</sup> It recognized that sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services, and the government should presume that any child engaged in prostitution, prostitution by massage, or crime against nature by solicitation was a victim of sex trafficking, and provide these children with appropriate care and services where possible.<sup>167</sup>

The Safe Harbor Law included a new chapter addressed to identifying and servicing child victims of human trafficking. Chapter 28-B mandates the Department of Children and Family Services, together with the Department of Health and Hospitals, to develop a plan for the delivery of services to victims of human trafficking. The plan is required to include provisions for "[i]dentifying victims of human trafficking in Louisiana."<sup>168</sup> In developing the plan, the Departments are required to work with "such other state and federal agencies, public and private entities, and other stakeholders as they deem appropriate."<sup>169</sup> As part of the plan, the Departments are also

required to prepare and disseminate “educational and training programs and materials to increase awareness of human trafficking and services available to victims of human trafficking among local departments of social services, public and private agencies and service providers and the public.”<sup>170</sup>

“ [A]rresting, prosecuting, and incarcerating victimized children served to re-traumatize them and to increase their feelings of low self-esteem, which only make the process of recovery more difficult. ”

Legislative finding in support of Louisiana’s Safe Harbor Law.

The statute provides that “any child engaged in prostitution, prostitution by massage, or crime against nature by solicitation” is presumed to be a victim of sex trafficking.<sup>171</sup> In the event that a juvenile delinquency petition involves an allegation that the child has committed a prostitution offense the prosecutor “may effect an informal adjustment agreement which includes specialized services for the child.” Such agreement, however, is only

available if it is the child’s first offense and the child expresses a willingness to cooperate and receive specialized services.<sup>172</sup> If the child has previously been adjudicated a delinquent for acts involving prostitution or is unwilling to cooperate with specialized services for sexually exploited children, continuation of the delinquency proceeding is within the discretion of the district attorney.

The Safe Harbor Law contains a new section that addresses the identification of all victims of human trafficking. That section provides that “as soon as practicable” after encountering someone who appears to be a victim of human trafficking, a law enforcement agency, district attorney’s or attorney general’s office must notify the Crime Victims Services Bureau that the person may be eligible for services.<sup>173</sup> The law enforcement agency that encounters a possible human trafficking victim must assess whether the person meets the criteria for certification as a victim of trafficking pursuant to federal law and, if it appears that they qualify, the agency must so inform the victim. In the event that the victim is a child, defined as under eighteen, the encountering agency or officer must refer the victim to the appropriate protective services agency and to appropriate services, including legal services providers.<sup>174</sup>

Upon the request of a person who appears to meet the criteria of victim or possible victim of human trafficking under the federal Trafficking Victims Protection Act, the agency or office must provide and complete the relevant immigration forms.<sup>175</sup>

Louisiana’s Law created a mechanism by which a child victim of sex trafficking can expunge juve-

nile delinquency adjudications that were grounded on a finding that the child engaged in a prostitution offense. Based upon a written motion to set aside a delinquency adjudication, filed and served upon the district attorney, the court may grant expungement if the preponderance of the evidence establishes that the child was a victim of human trafficking at the time of the offense.<sup>176</sup>

## SERVICES AND PROTECTIONS

The plan mandated for child victims of human trafficking (see above) must include provisions for assisting the victims to apply for federal and state benefits, coordinating the delivery of health care, mental health care, housing, education, job training, child care, victim’s compensation, legal and other services to the victim.<sup>177</sup> The plan must also include referrals to appropriate community-based services and assisting victims with family reunification or return to their place of origin if they so desire.<sup>178</sup>

Louisiana’s Safe Harbor Law provides that the Office of Juvenile Justice of the Department of Public Safety and Corrections “may, to the extent funds are available, operate or contract with an appropriate nongovernment agency with experience working with sexually exploited children to operate one or more safe houses in a geographically appropriate area.” The Department was mandated to develop a statewide protocol to coordinate the delivery of services to sexually exploited children and to work with court intake officers “to ensure that all state, federal, and community-based resources for sexually exploited children are known and available to children who have been granted diversion.”<sup>179</sup> The “specialized services” to be provided to children diverted from the criminal justice system include “comprehensive on-site case management, integrated mental health and chemical dependency services, including specialized trauma recovery services, education and employment training, and referrals to off-site specialized services, as appropriate.”<sup>180</sup>

The Safe Harbor Law established mandatory restitution to be paid by persons convicted of human trafficking and trafficking of children for sexual purposes to their victims, adult or minor.<sup>181</sup> The expenses covered by a restitution order must be verified and include the cost of medical and psychological treatment, the cost of necessary transportation and temporary housing, the greater of the value of the victim’s labor or the gross income to the defendant from the victim’s services, the return of property, or the value of destroyed property, expenses incurred by the victim and members of the victim’s household in relocating away from the defendant and the defendant’s associates.<sup>182</sup>

The Law also established a civil cause of action for all victims of human trafficking. Pursuant to this cause of action, they can seek injunctive relief, actual, compensatory, and punitive damages, and, upon proof of willful and malicious conduct, treble damages.<sup>183</sup>

## FUNDING

Louisiana’s Safe Harbor Law established mandatory assessment of \$2000 imposed on anyone convicted of trafficking children for sexual purposes, prostitution with persons under seventeen, or enticing a child to engage in prostitution. The assessment is deposited into the Children’s Special Fund, which the law established.<sup>184</sup> The Fund was established in the state treasury, but the funds, including appropriation by the legislature, are not available to pay for services and treatment for sexually exploited children until after the state satisfied any “obligations incurred by the full faith and credit of the state.” (bond obligations).<sup>185</sup>

The law further provides that any proceeds from the sale of property subject to forfeiture that was confiscated in connection with the crimes of human trafficking or trafficking of children for sexual purposes is to be used first to pay restitution to the victim of trafficking.<sup>186</sup> If the restitution claim is satisfied, any remaining proceeds are divided between the “seizing agency” (25%), the prosecuting agency (25%), and the Exploited Children Special Fund (50%).<sup>187</sup>

## MASSACHUSETTS

On November 21, 2011, Massachusetts’s Governor signed into law House Bill 3808, “An Act Relative to the Commercial Exploitation of People” (hereinafter the Anti-Trafficking Law). The law took effect on February 19, 2012. This Act was part of Massachusetts’s general human trafficking legislation and contains Safe Harbor provisions.<sup>188</sup> The Law also created a new crime—enticing a child under the age of eighteen to engage in prostitution through electronic communication.<sup>189</sup>

The Anti-Trafficking Law created the Interagency Human Trafficking Task Force to address all aspects of human trafficking (sex and labor). The task force, consisting of eighteen members, including representatives from law enforcement, victim service organizations, trafficking survivors, medical and mental health professionals, and academic researchers, was mandated, “[s]ubject to appropriation,” to: collect and share data; review and recommend policies and procedures to prevent human trafficking; identify and review the existing services and facilities that meet the needs of victims of human trafficking; evaluate approaches to increase public awareness of human trafficking; rec-

ommend education and training opportunities for law enforcement and social service providers, including methods used to identify victims of trafficking; examine ways to curtail the demand side of trafficking; examine the cost associated with establishing a safe house; examine cost-effective notices and advertisements related to services for victims; recommend strategies and relevant methodologies for training providers in health and human services; recommend ways to develop educational material and health curricula to be used by educators; and submit a report of findings and recommendations to the Senate and the House of Representatives within eighteen months.<sup>190</sup>

## IDENTIFICATION AND DIVERSION

The Anti-Trafficking Law provides that the Commissioner of the Department of Children and Families may, “subject to appropriation,” contract with non-governmental agencies with experience working with sexually exploited children to train law enforcement officials “likely to encounter [a] sexually exploited child in the course of their law enforcement duties.” The training must include “awareness and compliance with provisions of [the statute], identification of, access to, and the provision of services for sexually-exploited children.”<sup>191</sup>

Although minors (defined as under eighteen)<sup>192</sup> are not immune from prosecution for prostitution in Massachusetts, the Anti-Trafficking Law created presumptions that favor non-criminal treatment. First, the definition of “sexually exploited child” was expanded to include anyone under eighteen who:

- (1) is the victim of the crime of sexual servitude . . . or is the victim of the crime of sex trafficking . . .
- (2) engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee . . . or in exchange for food, shelter, clothing, education or care;
- (3) is a victim of the crime, whether or not prosecuted, of inducing a minor into prostitution . . . or
- (4) engages in common night walking or common streetwalking.<sup>193</sup>

“ Massachusetts’s Law mandates that the Department of Children and Families collaborate with the Department of Mental Health and other appropriate state agencies to “provide for the child welfare service needs of sexually exploited children,” including all children residing in Massachusetts when taken into custody by law enforcement or identified by the department as sexually exploited. ”

Thus, every child engaged in commercial sex, regardless of whether a trafficker is involved, qualifies as a sexually exploited child.

Second, the Anti-Trafficking Law created a presumption that a child detained on suspicion of engaging in commercial sex should be treated as a child in need of care and protection or a child in need of services, and that a petition seeking one of these two legal classifications should be filed.<sup>194</sup>

When a sexually exploited child is arrested for a prostitution offense any person, including the child, can file a petition for care and protection. A parent or police officer may file a child-in-need petition. The court may appoint a guardian ad litem for the child and must hold a hearing on the petition.<sup>195</sup> Pre-arraignment, unless there is an objection by the district attorney or the attorney general, all criminal proceedings are stayed indefinitely and the case is placed “on file.”<sup>196</sup> The court is required to make written finding of fact in rendering a decision at the hearing on the petition.<sup>197</sup> If the petition is granted, the child is transferred to the Department of Children and Families. If a court subsequently finds that a child failed “to comply with the requirements of services or that the child’s welfare or safety so requires,” the court may “remove the proceeding from file, arraign the child and restore the delinquency or criminal complaint to the docket.”

Post-arraignment, unless the district attorney or attorney general objects, the court must place the child on “pretrial probation” and set appropriate condition, such as requiring the child to comply with all court orders, including orders relating to the care and protection or child-in-need-of-services proceedings, and guidance and services of the Department. If the child fails to comply with the conditions of the pretrial probation or “if the child’s welfare and safety so requires,” the court may, in its discretion, restore the delinquency petition to the docket.<sup>198</sup>

## SERVICES AND PROTECTIONS

Massachusetts’s Law mandates that the Department of Children and Families collaborate with the Department of Mental Health and other appropriate state agencies to “provide for the child welfare service needs of sexually exploited children,” including all children residing in Massachusetts when taken into custody by law enforcement or identified by the department as sexually exploited. The provision of services must continue for the duration of any legal or administrative proceeding in which the child is the complaining witness, defendant or the “subject child.”<sup>199</sup> The Department is tasked with providing services appropriate for a sexually exploited child “to safeguard the child’s welfare.”<sup>200</sup>

In doing so, the Department must “recognize that sexually exploited children have separate and distinct service needs according to gender.”<sup>201</sup> Appropriate services include, but are not limited to, food, clothing, medical care, counseling, and crisis intervention services.<sup>202</sup>

The Department’s obligation to provide services is the same regardless of whether the child voluntarily seeks to access services or if they are ordered by a court or through a referral.<sup>203</sup> In the event that a child victim of sexual exploitation or human trafficking comes to the attention of the Department by some means other than detention by law enforcement, the Department is obligated to report the child to the district attorney or local law enforcement.<sup>204</sup>

The Department’s response to a report of a sexually exploited or otherwise trafficked child calls for the gathering of a multi-disciplinary service team and assignment of a special advocate.<sup>205</sup> For reports specifically involving a sexually exploited child, the multi-disciplinary service team may consist of a team of professionals trained or otherwise experienced and qualified to assess the needs of sexually exploited children. This team may consist of, but is not limited to, police officers, employees of the Department, representatives of the district attorney, social service providers, medical professionals, or mental health professionals. The multi-disciplinary service team must determine whether the child has been sexually exploited and recommend a plan for services to the Department, which may include, but is not limited to, shelter or placement, mental health and medical care needs and other services.<sup>206</sup> If a sexually exploited child declines services or is unable or unwilling to participate in the services offered, the Department or any person may file a care and protection petition, which can include emergency commitment.<sup>207</sup>

Massachusetts’s Anti-Trafficking Law allows a victim to bring a civil action against his or her trafficker. The court in such an action may award actual, compensatory, and punitive damages, as well as injunctive relief. A prevailing plaintiff must also be awarded attorney’s fees and costs, and treble damages may be awarded on proof of actual damages if the defendant’s acts were willful and malicious. Such action must be commenced within three years of the date when the victim was freed from human trafficking, or if the victim was a child during the commission of the offense, within three years after the victim attains the age of eighteen.<sup>208</sup>

Massachusetts’s Anti-Trafficking Law provides alternatives to live testimony for victims of sexual exploitation under the age of fifteen, where it is



shown that the child witness is likely to suffer psychological or emotional trauma as a result of having to testify in open court or in the presence of the defendant.<sup>209</sup> The Law also precludes introduction of “[e]vidence of the reputation of a victim’s sexual conduct” in an investigation, before a grand jury, or a court proceeding under the Anti-Trafficking Law.<sup>210</sup>

The Law includes a privilege of confidentiality between a trafficking victim and his or her caseworker. Except in limited circumstances, a victim’s caseworker cannot disclose the details of any confidential communication, without the written consent of the victim or the victim’s guardian.<sup>211</sup>

## FUNDING

The Anti-Trafficking Law created a Victims of Human Trafficking Trust Fund. The Law increased the fines imposed on persons convicted of trafficking in person to up to \$25,000. Businesses so convicted can be fined up to \$1,000,000.<sup>212</sup> This money, together with money seized from traffickers by law enforcement and forfeited, is deposited in the trust fund.<sup>213</sup> Money from the fund must be used first to satisfy any restitution ordered by a court in favor of a trafficking victim. The remainder may be used to provide grants to public, private non-profit, or community-based programs in the Commonwealth to provide services to victims.<sup>214</sup>

## MICHIGAN

Michigan was among the first states to prohibit prosecution of minors for the crime of prostitution, but that law, passed in 2006, with changes taking effect in April of 2011, was limited to youth under the age of sixteen.<sup>215</sup>

In 2013, Michigan’s Attorney General established the Michigan Commission on Human Trafficking. In a report submitted in November 2013, the Commission analyzed Michigan’s stance on human trafficking using five metrics: legislation and policy, data collection, victim services, public awareness, and professional training. Based on its findings, the Commission suggested a number of improvements to Michigan law.

The Commission identified a serious lack of funding, as well as deficiencies in data collection, professional training, public awareness, and legislation. To cure these defects, the Commission recommended that Michigan enhance data collection, develop a victim assessment tool for service providers, increase service availability and housing facilities, develop professional training programs, implement a public awareness campaign, and address eleven points of weakness in Michigan legislation.

Specifically, the Commission recommended curing these defects by passing a Safe Harbor Law, increasing penalties for “johns,” modifying the prostitution laws, strengthening forfeiture, characterizing human trafficking as a public nuisance, amending the Human Trafficking Act of 2006, providing for expungement of convictions for trafficking victims, lengthening the statute of limitations for trafficking offenses, amending the federal Communication Decency Act, and creating a human trafficking poster law to increase awareness.<sup>216</sup>

Following the Commission’s report, numerous bills were proposed, passed, and signed into law as Public Acts 324 through 344, on October 16, 2014, with an effective date of January 14, 2015.<sup>217</sup> The Bills are entitled, collectively, “The Human Trafficking Commission Act.”<sup>218</sup> The Act established the Human Trafficking Commission within the Department of the Attorney General. The Commission consists of representatives of the Governor’s office, the Attorney General’s Office, the State Police, the Departments of Human Services, Community Health, and Licensing and Regulatory Affairs, two individuals chosen from lists provided by the leaders of the Senate and the speaker of House of Representatives, a sitting Circuit Court Judge, a county prosecutor, and two survivors of human trafficking.<sup>219</sup>

The Commission was tasked to: 1) seek grant money to examine and fight human trafficking; 2) fund research to measure the extent of the problem in Michigan; 3) provide information and training for, among others, law enforcement, prosecutors, court personnel, health care providers, and social services personnel; 4) collect and analyze data related to human trafficking; 5) identify agencies involved in combating human trafficking and coordinate efforts; 6) review existing services and establish a program to advertise their availability; 7) establish a program to improve public awareness of human trafficking; 8) review relevant state laws and administrative rules and recommend changes to the legislature; and 9) file an annual report.<sup>220</sup>

## IDENTIFICATION AND DIVERSION

The Act did not expressly establish any training programs, data collection, or public awareness campaigns that could aid in identifying victims of human trafficking. Rather, it placed those tasks in the list of the responsibilities of the Human Trafficking Commission. In addition, the Department of Public Health was mandated to “promulgate rules to include training standards for identifying victims of human trafficking required for [licensed or registered] individuals.” The department was given two years to promulgate the standards.<sup>221</sup>

The age of adult criminal responsibility in Michigan is generally eighteen. Children under the age of eighteen can be criminally charged, presumably as juvenile delinquents, for engaging in acts of commercial sex. However, the Act created a presumption that “[i]n any prosecution of a person under 18 years of age” for prostitution-related offenses “it shall be presumed that the person under 18 years of age was coerced into child sexually abusive activity or commercial sexual activity . . . or otherwise forced or coerced into committing that offense by another person engaged in human trafficking.” To overcome this presumption, a prosecutor would have to establish, beyond a reasonable doubt, that the person was not forced or coerced into committing the offense.<sup>222</sup>

The “state may petition the court to find [such a] person . . . to be dependent and in danger of substantial physical or psychological harm.” However, if the child fails to comply with the services ordered by the court, he or she is no longer eligible for the presumption that the commercial sex activity resulted from coercion.<sup>223</sup> Thus, diversion to the child-in-need provisions of Michigan law is dependent upon the child’s cooperation in the ordered services. The Act places these petitions within the jurisdiction of the Family Division of the Circuit Court.<sup>224</sup>

Under Michigan’s law, a police officer encountering a minor engaged in commercial sex activity may detain the child for a “reasonable period” for “investigation purposes,” but then must “immediately report to the department of human services a suspected violation of human trafficking.”<sup>225</sup> The department is obligated to begin an investigation within twenty-four hours, including a determination as to whether the minor is a dependent and in danger of physical or psychological harm.<sup>226</sup> The definition of a dependent juvenile was amended to include a juvenile alleged to have committed a commercial sex act.<sup>227</sup>

Michigan’s law also includes diversion provisions for all victims of human trafficking, not just minors. The Act provides for deferred prosecution of first-time prostitution offenders if the offense was “committed as a direct result of the individual being a victim of a human trafficking violation.”<sup>228</sup> If a person who has not previously been convicted of a prostitution-related offense pleads guilty or is convicted after trial of such an offense the court, without entering judgment, may defer further proceedings and place the defendant on probation. Such deferral action, however, requires the consent of both the accused and the prosecuting attorney.<sup>229</sup>

To avail itself of this option the court must conduct an investigation to establish that the defendant has not previously been convicted or the subject of

a deferred prosecution. The court must also investigate the outcome of any prior arrests involving assaultive conduct.<sup>230</sup>

To obtain an order of deferred prosecution, the accused has the burden of proving by a preponderance of the evidence that the violation of the prostitution statute was a direct result of their status as a victim of human trafficking. To meet this burden the accused must swear under oath that he or she committed the act because of his or her status as a trafficking victim.<sup>231</sup>

The probation ordered in connection with a grant of deferral may include a variety of conditions, such as mandatory counseling and drug treatment. The accused can be required to pay for the mandated counseling. The court is permitted also to order periods of incarceration up to 93 days within the period of probation, but jail time may not exceed the maximum period allowed for the offense. Day parole from jail for school or work is permitted.<sup>232</sup>

If the accused commits a violation of the prostitution laws or violates a court-ordered condition that the accused participate in counseling for violent behavior or refrain from contact with an identified individual, the court must “enter an adjudication of guilt” and proceed with the criminal prosecution.<sup>233</sup>

If the accused successfully completes the probation, the court must enter an order discharging the person and dismissing the charges, without an adjudication of guilt. Only one such discharge and dismissal is permitted.<sup>234</sup> The record of the proceedings is unavailable to the public during the period of probation and, in the absence of a judgment of guilt, the records are nonpublic, except for certain law enforcement related agencies.<sup>235</sup>

Michigan’s law contains a provision creating criminal responsibility for anyone sixteen years old or older for aiding, assisting, or abetting in offense of prostitution (a.k.a. pimping).<sup>236</sup> Such a person, however, can seek deferred prosecution on the ground that he or she was a victim of human trafficking.

## SERVICES AND PROTECTIONS

As a general matter, minors referred to the Department of Human Services after being detained by law enforcement under suspicion of engaging in commercial sex will be entitled to services commensurate with the investigation conducted by the department and the resulting classification—abused, neglected or dependent child. Michigan’s Safe Harbor Law provides that victims of human trafficking are eligible for “medical assistance benefits for medical and psychological treatment resulting from his or her status as a victim.”<sup>237</sup> The agency supervising the care of a child alleged to be the victim of human trafficking is

required to have “an experienced and licensed mental health professional” perform “an assessment or psychological evaluation of the child.”<sup>238</sup>

With respect to the housing placement of victimized children, the Act requires the supervising agency to “give special consideration to information that a child may be the victims of human trafficking [and] place the child in a setting that provides mental health services, counseling, or other specialized services that are necessary or appropriate for a victim of human trafficking.”<sup>239</sup>

Part of the Act, (Senate Bill 590), entitled, “Human Trafficking Victims Compensation Act” created a civil cause of action that a victim can bring against a trafficker, regardless of whether the trafficker was convicted in criminal court, for a wide range of damages. The action must be filed within three years “after the last violation that is the subject of the action.”<sup>240</sup>

The Act also created a procedure for trafficking victims to seek expungement of past prostitution convictions that directly resulted from being a victim of human trafficking. An application to set aside such a conviction may be filed at any time and there is no limit to the number of convictions that may be vacated. The movant is required to establish by a preponderance of the evidence that the conviction was a direct result of being a victim of human trafficking.<sup>241</sup> Upon finding that “the circumstances and behavior” of the applicant “warrant setting aside the conviction” and that such an order would be “consistent with the public welfare,” the court may enter an order setting aside the conviction.<sup>242</sup>

The Act established mandatory restitution for trafficking victims in all prosecutions of traffickers. When sentencing a trafficker, the court is required to order restitution for the full amount of loss suffered, as well as lost income and expenses incurred by the victim as a result of the crime, investigation and prosecution.<sup>243</sup>

## FUNDING

The Act established the Human Trafficking Commission Fund, which is administered by the Attorney General’s Office. Money in the Fund may only be spent “upon appropriation and only in a manner to carry out the purposes set forth in this act.”<sup>244</sup> The lack of funding for services, a problem identified in the Commission Report, was unaddressed in the Act.<sup>245</sup>

The Act further provides that any physical property used for human trafficking, such as vehicles or residences, is subject to seizure and forfeiture and that such funds should be used to satisfy an order of restitution to victims or victim claims not covered by an order of restitution.<sup>246</sup> The Act increased the

fine to be imposed on anyone convicted of running a brothel, but did not direct that the money be deposited in the Fund.<sup>247</sup>

## MINNESOTA

The Minnesota Legislature first enacted the Safe Harbor for Sexually Exploited Youth Act in 2011. The impetus beyond the statute was a publicly pronounced agreement by prosecutors in Minneapolis and St. Paul, soon joined in by other counties, that they were changing their policies to treat prostituted juveniles as victims. The Minnesota legislature followed suit and amended various juvenile, criminal, and child welfare code sections accordingly.<sup>248</sup>

Subsequently, the 2011 statute was amended by the Safe Harbor For Sexually Exploited Youth Act of 2013, which was signed into law on May 23, 2013, and took effect on August 1, 2014. The amendments were intended to strengthen, clarify, and broaden the protections of the original statute.<sup>249</sup>

## IDENTIFICATION AND DIVERSION

Minnesota’s Safe Harbor Law changed the statutory definitions of “delinquent child” and “juvenile petty offender” to exclude a child alleged to have engaged in commercial sex.<sup>250</sup> It also added a definition of the term “sexually exploited youth” that included a child “alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct.”<sup>251</sup>

No one under the age of eighteen can be charged criminally, either in an adult or juvenile court, for engaging in an act of commercial sex. Initially, the law passed with a provision that mandatorily diverted sixteen and seventeen year olds from the criminal system to the child welfare system only upon the child’s first encounter with the system. Upon a second encounter, it was to be within the court’s discretion to continue diversion or to treat the youth as a juvenile delinquent. This provision was, however, subsequently repealed.<sup>252</sup> Thus, no one under the age of eighteen detained upon suspicion of engaging in commercial sex may be criminally prosecuted, regardless of how many

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times they have been detained for commercial activity in the past.

In addition, the term “sexually exploited youth” was added to the definition of a “child in need of protection or services,” replacing the phrase “[a child who] has engaged in prostitution.”<sup>253</sup> This change in terminology was intended to reinforce the lack of criminality involved in the child’s behavior.

To help identify CSE children, the statute includes a mandate for training programs for law enforcement, social services professionals, medical professionals, public health workers, and criminal justice professionals.<sup>254</sup>

### SERVICES AND PROTECTIONS

The 2011 legislation directed the Commissioner of Public Safety to work with stakeholders to create a victim-centered response to sexually exploited youth. The law mandated recommendations from the “Safe Harbor for Sexually Exploited Youth Pilot Project,” but it also required that no fiscal burden be placed on the State to develop the model. The Women’s Foundation of Minnesota agreed to fund the project. The result of this mandate was the “No Wrong Door” Project.

The report entitled: “No Wrong Door, a Comprehensive Approach to Safe Harbor for Minnesota’s Youth,” was published by the Department of Public Safety in January 2013. It was the product of a collaborative effort of professionals working in the field to develop a victim-centered service model to respond to the needs of sexually exploited children. The report made eleven specific recommendations, some of which required legislative changes. The legislative recommendations were: 1) creation of the position of director of human trafficking, 2) funding six regional navigator positions, 3) establishing a training grant fund to facilitate provision of comprehensive training on juvenile sexual exploitation, 4) establishing funding to ensure effective outreach to youth, 5) amending the child protection law to permit sexually exploited juveniles, who are in immediate danger, to be held in secure placement for up to 72 hours upon court order, 6) amending the law to include sexually exploited youth or youth at risk of sexual exploitation in the statutory definitions of homeless and runaway youth; 7) funding for appropriate and accessible supportive services for sexually exploited youth, including health care, mental and chemical dependency health care, education and employment, advocacy, civil legal services, family reunification and aftercare, and relapse prevention, and 8) funding for evaluation of the effectiveness of the model.

The “No Wrong Door” report was submitted

during the 2012-13 legislative session. The resulting 2013 Safe Harbor Law included nearly all of the recommendations set forth in the “No Wrong Door” report.

Minnesota’s 2013 Safe Harbor Law mandated the State Commissioner of Health “to establish a position for a Director of Child Sex Trafficking Prevention.”<sup>255</sup> The Director was entrusted with the responsibilities of implementing the statute and maintaining continued oversight of that implementation. The Director was mandated to develop and provide training; collect, maintain, organize and disseminate information on sexual exploitation and resources; monitor and apply for federal funding; manage grant programs established by the law; identify best practices for serving sexually exploited youth; evaluate the program for sexually exploited youth; and develop policy for sharing data among regional navigators and community-based advocates consistent with concerns for victim confidentiality.

The Director was further mandated to “conduct, or contract for” a “comprehensive evaluation of the statewide program for safe harbor for sexually exploited youth,” by June 30, 2015, and thereafter every two years.<sup>256</sup> The evaluations are required to determine whether the program is reaching the intended victims, and whether the services were accessible and adequate.

The Director of Child Sex Trafficking Prevention was required to appoint and oversee six Regional Navigators. The Regional Navigators were, in turn, mandated to develop and annually submit a work plan to the Director that included, at a minimum, a needs statement for their region, with an examination of the at-risk population; a list of regional resources; grant goals and outcomes; and grant activities.<sup>257</sup>

The “No Wrong Door” Report included specific recommendations for housing for sexually exploited youth (20 beds in emergency shelters; 15 units in transitional living programs for up to 24 months and five dedicated supportive housing units for unlimited stay). The statute, however, does not quantify the number and type of housing options. It amended Minnesota’s Homeless Youth Act, which provides for various types of shelter and programs, by adding an expansion of funding “to meet the greatest need on a statewide basis.”<sup>258</sup>

Similarly, the statute did not mandate the list of services to sexually exploited youth recommended in the Report (see number 7 above). It mandated instead that the Commissioner of Human Services create a Homeless Youth Act fund to award grants to service providers.<sup>259</sup>

In addition, Minnesota’s Law includes protections geared toward minimizing the trauma to the

victim arising out of cooperation with law enforcement. Thus, prosecuted traffickers may not assert as a defense that the victim consented to the trafficking or that the victim had engaged in commercial sexual activity before being trafficked.<sup>260</sup> Nor is the trafficker permitted to seek to escape responsibility by claiming ignorance of the victim's age or that the promoted victim did not actually engage in prostitution.<sup>261</sup> Finally, all records identifying a minor victim of sex trafficking must remain under seal unless ordered unsealed by a court.<sup>262</sup>

## FUNDING

The statute provided for appropriations from the State's general fund to the Departments of Health and Human Services to finance the Director of Child Sex Trafficking Prevention, six Regional Navigators, training, housing and programs. In addition, Minnesota increased the penalties imposed on adults convicted of patronizing a prostitute to a minimum of \$500 and a maximum of \$750. The law provides that the court cannot waive the penalty. Forty percent of the funds collected are distributed to organizations that provide services to sexually exploited youth.

## NEBRASKA

Nebraska has enacted two pieces of legislation that come within the scope of safe-harbor-law concerns. Legislative Bill 1145 (hereinafter L.B. 1145), was signed into law effective July 19, 2012,<sup>263</sup> and Legislative Bill 255 (hereinafter L.B. 255) came into effect on October 1, 2013.<sup>264</sup>

Among other things, L.B. 1145 established a commission, later called Nebraska's Human Trafficking Task Force.<sup>265</sup> The Task Force was mandated to investigate human trafficking, including the methods used to advertise it, its prevalence, the efforts employed to prevent it, and the services available to victims. The Task Force was also required to investigate "the limitations upon victims who wish to come forward and seek medical attention," and the potential to stop trafficking, promote recovery, and protect trafficked children and their families.<sup>266</sup>

The Commission was made up of eighteen members, including representatives appointed by the Governor for specified terms, of law enforcement, prosecuting authorities, people with backgrounds in juvenile justice and education, and members of the public at large.<sup>267</sup> The Commission was required to report the results of its investigation and its recommendations no later than one year after the effective date of the statute.<sup>268</sup>

## IDENTIFICATION AND DIVERSION

The first statute, L.B. 1145, created a requirement

that all sex-industry type establishments, all businesses with a liquor license, all transportation centers, high schools, hospitals and clinics, and job recruitment centers display a poster advertising the telephone number of the National Human Trafficking Resource Center Hotline. The provision dictated the exact language to be printed on the posters and required that they be printed in English and Spanish and additional languages consistent with the mandate of the federal Voting Rights Act of 1965.<sup>269</sup> The licensing or regulating authority for the entities required to display the posters was assigned the job of notifying the entities and providing the posters.<sup>270</sup>

L.B. 1145 also established mandatory training for law enforcement, prosecutors, public defenders, judges, juvenile detention center staff, and anyone involved in the juvenile or criminal justice systems.<sup>271</sup> The training was mandated to include methods used to identify victims of human trafficking, interviewing techniques, and methods for prosecuting traffickers. The training must also address ways to protect the rights of victims and the "special needs of women and minor victims," as well as promoting collaboration with relevant social service organizations. The law dictates that training focus on the "necessity of treating victims of human trafficking as crime victims rather than as criminals," and promoting their safety.<sup>272</sup> In preparing and presenting the training, the various governmental entities are required to seek the input and participation of appropriate nongovernmental organizations.<sup>273</sup>

The second law, L.B. 255, prohibits criminal prosecution of anyone under the age of eighteen for the crime of prostitution.<sup>274</sup> The statute provides that "if the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of [prostitution] is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense . . . and shall be subject to temporary custody." Upon detaining the minor, the officer must immediately report a violation of anti-human trafficking law to the Department of Health and Human Services (hereinafter the Department). The Department must commence an investigation within twenty-four hours.<sup>275</sup>

L.B. 255 also created new penal provisions. It added placing a child "in a situation to be a trafficking victim" to the definition of child abuse.<sup>276</sup> It also elevated the level of felony classification for the crime of soliciting a sex act if the person solicited is under the age of eighteen.<sup>277</sup> Similarly, it elevated the felony classification for "pandering" (pimping) a person under the age of eighteen or keeping a brothel where anyone there is under the age of eighteen.<sup>278</sup>

## SERVICES AND PROTECTIONS

The first statute, L.B. 1145, established a procedure for vacating a conviction for prostitution if the defendant's participation in the prostitution offense was a result of having been a victim of trafficking, as defined under state or federal law.<sup>279</sup> The motion, on notice to the prosecutor, must be filed "with due diligence after the defendant has ceased to be a victim," and the movant must explain why the facts underlying the motion were not presented to the original trial court.<sup>280</sup> The statute includes a non-exclusive list of evidence proving the movant's status as a trafficking victim that can be offered in support of a vacatur motion, including immigration records and sworn statements of professionals who have assisted the survivor.<sup>281</sup>

L.B. 255 directs law enforcement officers to investigate and protect any person under the age of eighteen years suspected of being sexually exploited. When a minor is taken into temporary protective custody, the officer must immediately take reasonable measures to notify the minor's parent or guardian. While in temporary protective custody, the minor must be placed in the least restrictive environment, consistent with the best interest of the minor as determined by the Department. Additionally, the Department must consent to any necessary emergency medical, psychological, or psychiatric treatment for the minor.

Law enforcement may also place the minor in a mental health facility for evaluation and emergency treatment if the officer believes the minor to be mentally ill and dangerous. The officer responsible for taking the minor into custody "shall execute a written certificate as prescribed by the Department of Health and Human Services, which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous and a summary of the subject's behavior supporting such allegations."<sup>282</sup> A copy of the certificate must be forwarded to the county attorney and the officer must notify the minor's parent or guardian about the minor's placement.

L.B. 255 also established an affirmative defense for adults charged with prostitution that the offense was committed while the person was a trafficking victim.<sup>283</sup>

## FUNDING

None of Nebraska's Safe Harbor legislation provides funding. L.B. 1145 included detailed provisions for seizure and forfeiture of property used in connection with trafficking.<sup>284</sup> But proceeds from the sale of confiscated property are deposited in the general county treasury.<sup>285</sup>

## NEW JERSEY

On May 16, 2013, New Jersey enacted the "Human Trafficking Prevention, Protection and Treatment Act" (hereinafter the Act), which addressed some of the issues commonly addressed in Safe Harbor legislation.<sup>286</sup> A year earlier, New Jersey had enacted P.L. 2011, c.195, which provided an affirmative defense to prosecution for prostitution or offenses related to prostitution, if the defendant was either a victim of human trafficking or under the age of eighteen. The Act of 2013, however, changed the affirmative defense to make it applicable to all sex trafficking victims, without mention of age.<sup>287</sup>

New Jersey's Act contains legislative findings relative to human trafficking. The legislature declared, among other things, that the number of victims of human trafficking is more than twelve million, and could be as high as twenty-seven million, that at least 100,000 of these are children in the United States, whose average age is thirteen, and that internet advertisements for escort services often falsely claim that minors are eighteen years old or older.<sup>288</sup>

The Act created a Commission on Human Trafficking, consisting of fifteen members from various backgrounds, including law enforcement, victim assistance organizations, and at least one human trafficking survivor.<sup>289</sup> The statute specifies the manner of appointment and terms of members. It mandates an annual report to the Governor and Legislature of its finding and recommendations concerning human trafficking laws, victim assistance programs, including coordination of public and private services and cost analysis, and methods of promoting public awareness of trafficking.<sup>290</sup>

## IDENTIFICATION AND DIVERSION

The Act provides for the inclusion of "courses of study on the handling, response procedure, investigation, and prosecution of human trafficking cases" into the police-training course.<sup>291</sup> The police-training curriculum must include "specific training on responding to the needs of victims of human trafficking . . . and on services available to provide assistance . . . to victims of human trafficking." It also mandates the development of a one-time training course on the "handling and response procedures of suspected human trafficking activities" for owners, operators, and staff of hotels and motels and employees of every licensed health care facility.<sup>292</sup>

The Administrative Office of the Courts was mandated to develop a training course for judges and judicial personnel on the "seriousness of the crime of human trafficking, its impact on human



rights and the need to adequately implement anti-trafficking laws.” Judicial training must address both the prosecution and sentencing of human traffickers and the “need to respect and restore rights and needs of victims of human trafficking.”<sup>293</sup> The Act also provides for in-service training of police officers and educating prosecutors, detectives and investigators on the “specialized needs of crime victims and available services.”<sup>294</sup> The Commission is mandated to “[d]evelop mechanisms to promote public awareness of human trafficking, including promotion of the national . . . hotline telephone service . . . and the promotion of training courses and other educational materials” to train the various personnel on the handling of suspected human trafficking activity.<sup>295</sup>

Minors can be arrested and charged with the offense of prostitution for engaging in commercial sex in New Jersey.<sup>296</sup> Because the age of adult criminal responsibility is eighteen years, the minors will be prosecuted in the juvenile courts. A juvenile engaged in commercial sex can be charged with delinquency,<sup>297</sup> or processed through the juvenile-family crisis system.<sup>298</sup>

The Act affords the protection of an affirmative defense against prostitution charges to defendants who are victims of human trafficking or compelled by another to engage in sexual activity, regardless of the defendant’s age.<sup>299</sup> A similar affirmative defense is included in the penal sections defining the crimes of procuring a person to engage in sexual activity and assisting someone in the commission of human trafficking.<sup>300</sup>

Additionally, the Act added a mechanism for vacating and expunging convictions of “prostitution and related offenses, loitering for the purpose of engaging in prostitution, or a similar local ordinance” when such offenses occurred as a result of being a victim of human trafficking.<sup>301</sup>

## SERVICES AND PROTECTIONS

New Jersey does not address the provision of services to underage human trafficking victims. Presumably, the same services available to, as well as sentences imposed on, other children passing through the juvenile courts are provided to minors engaged in commercial sex. Part of the Commission’s duties, however, is to review victim assistance programs, analyze their cost, organization and availability to victims of human trafficking, and make recommendations for legislation.<sup>302</sup>

The Act created a rebuttable presumption that “a child under the age of 18 years of age charged with a violation of this section [procurement of persons to engage in sexual activity or assisting in the crime

of human trafficking] was a victim of human trafficking.”<sup>303</sup> There is no equivalent presumption in the section dealing with persons charged with a violation of the section defining the offense of prostitution.<sup>304</sup>

Persons charged with human trafficking or promoting prostitution may not assert as a defense that they mistakenly believed that the child was eighteen years of age or older, even if such mistaken belief was reasonable.<sup>305</sup> In a prosecution for, *inter alia*, human trafficking, evidence of the victim’s prior sexual conduct is inadmissible.<sup>306</sup>

The Act established a civil action for victims against traffickers and anyone acting in concert with a trafficker for compensation for injuries; cost of services, such as medical, dental or psychological assistance; pain and suffering; loss of money or property; and punitive damages.<sup>307</sup>

## FUNDING

The Act established a Human Trafficking Survivor’s Assistance Fund (hereinafter the Fund). All money deposited in the fund must be used for the provision of services to victims of human trafficking, to promote awareness of human trafficking, and the development, maintenance, revision, and distribution of training courses and other educational materials, and the operation of educational or training programs.<sup>308</sup> Payments to victims may not be conditioned upon cooperation with law enforcement.<sup>309</sup>

The Act increases fines and penalties for activities associated with human trafficking. A person convicted of prostitution or related offense must be assessed a penalty of at least \$10,000, but not more than \$50,000. But, if the offense involved promoting a child for prostitution, the penalty must be at least \$25,000.<sup>310</sup> Anyone convicted of the offenses of assisting a human trafficker or procuring a person to engage in prostitution must be fined no less than \$15,000.<sup>311</sup> The Act created the crime of advertising commercial sex abuse of a minor and imposes a fine of at least \$25,000 upon anyone so convicted.<sup>312</sup> The Act also established a “Prostitution Offender Program,” and attendance is a mandatory part of any sentence imposed upon anyone convicted of patronizing a prostitute. All attendees are charged a \$500 fee. Part of that fee, as well as all of the other above-mentioned penalties and collected fines, must be forwarded to the Department of the Treasury for deposit into the Fund.<sup>313</sup>

## NEW YORK

New York’s “Safe Harbour for Exploited Children Act” (hereinafter SHA)<sup>314</sup> was the first such law in the nation “recognizing that young people who have been subjected to commercial sexual exploitation

“ The New York SHA requires that short-term safe houses be staffed by individuals who have “received appropriate training approved by the office of children and family services regarding sexually exploited children,” and allows not-for-profit agencies to staff such short-term safe houses. ”

are victims – not perpetrators – of crimes.” The SHA has two main objectives: to end the criminalization of youth engaged in prostitution and establish rehabilitative services targeting young sex trafficking victims.<sup>315</sup> To achieve these ends, the Act amended and expanded New York’s

Family Court Act, Social Services Law, and Executive Law. The SHA was designed to work within the existing framework of legal protections targeting sex trafficking victims, New York’s Anti-Human Trafficking Act<sup>316</sup> and the federal Trafficking Victims Protection Act.<sup>317</sup>

The SHA was signed into law on September 25, 2008, but its effective date was delayed until April 1, 2010. Initially, the option of proceeding in Family Court, rather than Criminal Court, was limited to children under the age of sixteen. The law was amended in 2014, with the enactment of section 170.80 of the Criminal Procedure Law, which extended Safe Harbor protection to sixteen and seventeen year olds charged with the offense of prostitution.

#### IDENTIFICATION AND DIVERSION<sup>318</sup>

The statutory changes created by the amended SHA permit, but do not mandate, diversion of minors under the age of eighteen away from criminal prosecution and into non-criminal proceedings in Family Court. Diversion requires the consent of the accused child and the law does not include a mechanism to override objections to non-criminal treatment. The statutory changes also broaden the definition of a sex-trafficking victim and of a sexually exploited child allowing for an increased provision of rehabilitative services.<sup>319</sup>

If a child under the age of sixteen is accused of juvenile delinquency in the Family Court for engaging in acts of commercial sex, the child may request that the delinquency proceeding be converted into a person in need of supervision (PINS) proceeding, under Article 7 of the Family Court.<sup>320</sup> The definition of a person in need of supervision includes anyone under the age of eighteen who fits within the definition of a sexually exploited child. That definition includes anyone who has been the victim of sex trafficking, (as defined in Penal Law section 230.34), or has engaged in an act of prostitution or has been found loitering for prostitution or has been the victim of the crime of compelling prostitution (as defined in Penal Law § 230.33), or has been used in a sexual performance.<sup>321</sup> The law created a

presumption that any child under the age of sixteen who is arrested for prostitution satisfies the criteria of a victim of a severe form of trafficking as defined in the federal Trafficking Victim Protection Act.<sup>322</sup>

The Family Court, however, may convert the PINS petition back into a delinquency case if it determines that the respondent either: 1) was previously adjudicated a juvenile delinquent for an act of prostitution or 2) “expresses a current unwillingness to cooperate with specialized services for sexually exploited youth,” or 3) “is not in substantial compliance with a lawful order of the court” at any time after the PINS conversion.<sup>323</sup>

Similarly, sixteen and seventeen year olds arrested for engaging in commercial sex and brought before the Criminal Court may request that the proceeding be converted into a non-criminal PINS proceeding.<sup>324</sup> In those cases, the criminal court judge has the authority of a family court judge to order services as if the proceeding were being held in the Family Court. With respect to all such conversions, in Family Court or Criminal Court, the law provides that the conversion is done “without the consent of the presentment agency.”<sup>325</sup> Thus, neither the District Attorney nor the Corporation Counsel (the agency that handles juvenile proceedings for New York City), nor the Attorney General has control over the conversion of proceeding. The language of the statute is permissive (the court *may* convert). Thus, it is unclear whether the court has the discretion to deny such a request.<sup>326</sup>

In the case of a sixteen or seventeen year old, if the minor has already pled guilty to the charge, or if the judge declines to convert the proceeding into a PINS proceeding, the judge must find the individual to be a “youthful offender.” A youthful offender finding limits the sentence that may be imposed, except if the charge was for loitering for purposes of prostitution.<sup>327</sup>

In addition, the SHA broadened the definition of an abused child to include a child under the age of eighteen whose parent, guardian, custodian, or “any other person responsible for the child’s care” encourages or allows the commission of prostitution-related crimes or a sexual performance.<sup>328</sup> Custodian is defined to include “any person continually or at regular intervals found in the same household as the child.” Thus, if anyone responsible for the child’s care is implicated in the commercial sex activity—and the definition may be broad enough to encompass a pimp or brothel owner—the prostituted minor could be treated as an abused child.

#### SERVICES AND PROTECTIONS<sup>329</sup>

The SHA’s broadened definition of a sexually exploited child and its presumption that a sexually

exploited child is a person in need of supervision,<sup>330</sup> allows the Family Court to authorize the provision of services to all sexually exploited youth under the age of eighteen, regardless of whether the minor is a subject of a proceeding before the court.<sup>331</sup> The New York Office of Children and Family Services is the agency responsible for implementing the services required by the SHA.<sup>332</sup>

The SHA requires, as funding permits, the creation of short-term and long-term safe houses that will operate as hubs for providing sexually exploited youth with a range of rehabilitative services, including housing, assessment, case management, medical care, legal, mental, health, and substance abuse services, counseling, therapeutic, and educational services.<sup>333</sup> The SHA requires that “every local social services district shall . . . address the child welfare services needs of sexually exploited children.”<sup>334</sup> All other services referenced by the SHA are contingent on the availability of funding. Once a PINS proceeding is commenced, the court may immediately direct that the child be housed in a safe-house.<sup>335</sup>

The SHA envisions the creation and maintenance of short-term safe houses that will provide shelter, food, clothing, medical care, counseling, and “appropriate crisis intervention services.”<sup>336</sup> An individual who resides in a short-term safe house “will have an advocate . . . who has been trained to work with, and advocate for the needs of, sexually exploited children, and who shall accompany the child to all court appearances and serve as a liaison between the short-term safe house and the court.”<sup>337</sup>

Safe house accommodations are available to sexually exploited children from the moment “they are taken into custody by law enforcement (or juvenile detention officials, law enforcement, local jails or the local commissioner of social services or is residing with the local runaway and homeless youth authority) and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child.”<sup>338</sup> The SHA amended the Family Court Act to allow an arresting officer to take a child arrested for an act of prostitution directly to a short-term safe house in lieu of a detention center or jail.<sup>339</sup>

The SHA requires that short-term safe houses be staffed by individuals who have “received appropriate training approved by the office of children and family services regarding sexually exploited children,” and allows not-for-profit agencies to staff such short-term safe houses.<sup>340</sup> The SHA requires that “once a sexually exploited youth arrives at a short-term safe house . . . an advocate or other appropriate staff shall, to the maximum extent possible[,]” notify the child’s parent, guardian, or custodian of his or

her “physical and emotional condition and the circumstances surround[ing] the child’s presence at the program, unless there are compelling circumstances why that notification should not occur.”<sup>341</sup>

The law also mandates the creation of a long-term safe house “in a geographically appropriate area” operated by a not-for-profit agency with experience working with sexually exploited children. This safe house will provide “secure long term housing and specialized services for sexually exploited children.”<sup>342</sup> The law mandates that such a safe house be available as a placement upon final disposition of a PINS petition for a sexually exploited child.<sup>343</sup>

## FUNDING

The statute does not address funding.

## NORTH CAROLINA

North Carolina’s Senate Bill 683, entitled, An Act to Create Safe Harbor for Victims of Human Trafficking and for Prostituted Minors, became law on October 1, 2013. The bill, which passed with unanimous approval, increased punishment for traffickers and patrons, and mandated that minors engaged in commercial sex activity be treated as victims rather than criminals.

Together with House Bill 221 (increasing penalties for human trafficking), SB 683 marked a shift in North Carolina’s approach to sex trafficking. The Bill established complete immunity from prosecution for minors, defined as any person less than eighteen years of age, engaged in commercial sex acts.<sup>344</sup> At the same time, it elevated “patronizing a minor engaged in prostitution” and “promoting prostitution of a minor” to higher-level felonies.<sup>345</sup>

North Carolina’s Safe Harbor Law established the North Carolina Trafficking Commission made up of twelve members appointed by the President *Pro Tempore* of the Senate.<sup>346</sup> The members include representatives from law enforcement, Legal Aid, service providers and various departments of the government.<sup>347</sup> The Commission’s powers include: seeking funding to research the problem of trafficking and how to best combat it; helping to inform and educate law enforcement, service providers and the general public about human trafficking; suggesting new policies, procedures and legislation to fight human trafficking; assisting in developing “regional response teams” or other coordinated efforts to counter human trafficking; identifying gaps in the law and recommending solutions; and considering

“ North Carolina’s Safe Harbor Law establishes that neither mistake of age nor consent by the minor can be asserted as a defense to a charge of promoting prostitution of a minor. ”



whether human trafficking should be added to the list of the convictions that require registration as a sex offender.<sup>348</sup>

## IDENTIFICATION AND DIVERSION

In North Carolina, the age of adult criminal responsibility is sixteen and prostitution is classified as a Class 1 misdemeanor.<sup>349</sup> Pursuant to the Safe Harbor Law, however, no one under the age of eighteen can be prosecuted for the crime of prostitution. The law provides that persons under eighteen years of age “shall be immune from prosecution” and instead “shall be taken into temporary protective custody as an undisciplined juvenile.”<sup>350</sup>

A law enforcement officer who detains a minor on suspicion that they have engaged in acts of prostitution is obligated to “immediately report an allegation of a violation of G.S. 14-43.11 (human trafficking) and G.S. 14-43.13 (sexual servitude) to the director of the department of social services in the county where the minor resides or is found.” The Department, in turn, must “commence an initial investigation into child abuse or child neglect within 24 hours.”<sup>351</sup>

The Safe Harbor Law added a subsection to the statutory definition of “abused juveniles.” That term now includes “[a]ny juvenile less than 18 years old whose parent, custodian, or caretaker . . . [c]ommits or allows to be committed an offense under 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43 (sexual servitude).”<sup>352</sup> The language appears to be broad enough to include a trafficker who has control of the child.<sup>353</sup>

## SERVICES AND PROTECTIONS

The mandatory provision of services to survivors of sex trafficking is not addressed in North Carolina’s Safe Harbor Law. Once the investigation of the abuse of trafficked minors is turned over to the Department of Social Services the already existing rules and protocols will be followed. Those include “a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition.”<sup>354</sup> The Department follows guidelines for placement in non-secure custody and a court will then determine whether continued custody is necessary following a hearing.<sup>355</sup>

The Safe Harbor Law provides that “subject to the availability of funds,” the Department of Health and Human Services “may provide or fund emergency

services and assistance” to victims of trafficking and sexual servitude.<sup>356</sup>

North Carolina’s Safe Harbor Law establishes that neither mistake of age nor consent by the minor can be asserted as a defense to a charge of promoting prostitution of a minor.<sup>357</sup> It also states that providing alcohol or drugs to a minor is presumed to be without consent in the absence of explicit consent from a parent or legal guardian.<sup>358</sup>

In addition, the Safe Harbor Law added a mechanism for sex trafficking victims to vacate and expunge prostitution convictions “if the violation was the result of the defendant having been a victim of human trafficking or sexual servitude.” After examining the evidence, the court has the discretion to dismiss the prosecution and may take any further action it deems appropriate.<sup>359</sup> Expungement, however, requires proof that the person convicted has no record of convictions for violent crimes and no convictions for any crime following the entry of the prostitution conviction as well as affidavits attesting to the petitioner’s good moral character.<sup>360</sup> The petitioner must also establish that one of three listed conditions is met—no prior prostitution convictions, participation in prostitution was a result of having been trafficked or that the petitioner received a conditional discharge.<sup>361</sup>

The Safe Harbor Law also added “mandatory restitution” for victims of human trafficking, involuntary servitude, and sexual servitude.<sup>362</sup> The statute states that “restitution for a victim is mandatory” and will include the greater of “the gross income or value to the defendant of the victim’s labor or services” or “the value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act or the Minimum Wage Law, whichever is greater.”<sup>363</sup>

Trafficking victims were added to the list of eligible claimants for the Crime Victim’s Compensation fund.<sup>364</sup> However, this fund only compensates for economic loss, and not for non-economic suffering. Under this compensation mechanism, certain factors present special hurdles to victims of sex trafficking crimes. For example, the claim can be denied if not filed within two years from the occurrence of the criminally injurious conduct, or if the conduct was not reported within seventy-two hours or if “[t]he victim was participating in a felony” at or about the time the injury occurred.<sup>365</sup>

The statute includes a certification process for foreign nationals. The Attorney General, a district attorney or any law enforcement official is required to notify the U.S. Department of Justice, Homeland Security or other federal agency about an investigation or prosecution that has identified a likely

victim of sex trafficking to facilitate the victim obtaining the appropriate special immigrant visa and other possible federal benefits. Although adult victims are required to cooperate with law enforcement, victims under eighteen years of age are eligible for certification regardless of cooperation.<sup>366</sup>

## FUNDING

The statute does not contain any provisions addressing funding.

## OHIO

Ohio's Safe Harbor Act became law on June 27, 2012.<sup>367</sup> The Act was intended to enhance Ohio's existing legal protections against human trafficking.<sup>368</sup> It was intended to address Ohio's significant human trafficking situation.<sup>369</sup> Over the preceding decade, Ohio had received national and local media attention for the high levels of human trafficking within the state, particularly in Toledo.<sup>370</sup> The legislature pushed for the law as a way to recognize the subjects of human trafficking as victims, rather than criminals, as well as to enable victims to receive more support.<sup>371</sup>

## IDENTIFICATION AND DIVERSION

Ohio's Safe Harbor Law mandated the Attorney General to create an extensive training program for law enforcement to help identify victims of human trafficking and facilitate their appropriate treatment as crime victims.<sup>372</sup> Training was also recommended for all non-law-enforcement commissions, boards, and agencies licensed by the state.<sup>373</sup>

The statute permits the Attorney General's Office, in its discretion, to create a public awareness program about human trafficking, designed to increase awareness and protection techniques among potential victims.<sup>374</sup> The Division of Criminal Justice Services is mandated by the statute to create a poster with the national human trafficking hotline number and make it available online. The Division was encouraged, but not required, to display the poster at truck stops, hotels, and other places where trafficking might occur.<sup>375</sup>

The statute requires the Attorney General to collect and annually publish statistical data on human trafficking, including the number of investigations, arrests, prosecutions and convictions, the number and demographic characteristics of traffickers and their customers, the number and demographic characteristics of victims and how they were

“ *Ohio's Safe Harbor Law mandated the Attorney General to create an extensive training program for law enforcement to help identify victims of human trafficking and facilitate their appropriate treatment as crime victims.* ”

recruited, trafficking routes and patterns, and social and economic factors contributing to the demand for human trafficking. Each state agency and agency of each political subdivision is required to submit this data to the Attorney General for publication.<sup>376</sup>

Minors can still be prosecuted as juvenile delinquents for engaging in commercial sex acts, but the court has the discretion to hold a hearing to determine whether the child is a sex trafficking victim.<sup>377</sup> After the hearing, the court can direct that the delinquency complaint be held in abeyance for ninety days while the child completes diversion actions, such as counseling or community service. The prosecuting attorney has the right to participate in the hearing. No statement made by the child at the hearing is admissible in any subsequent proceeding against the child.<sup>378</sup>

If the child completes the diversion actions, the court may then dismiss the complaint. The ninety-day period can be extended. The child, however, must consent to the hearing and the diversion process. The statute does not contain any mechanism to override the child's objection.<sup>379</sup>

## SERVICES AND PROTECTIONS

Ohio's Safe Harbor Act does not provide special services for CSE children. Rather, it provides that if a court has reason to believe that a child is the victim of trafficking or if a child has been charged with engaging in prostitution or solicitation, the court must appoint a guardian ad litem for the child. It is then the guardian's responsibility to recommend to the court whether the child should be placed under the supervision of a public child services agency.<sup>380</sup> Following a hearing, the court may make whatever orders are in the “best interest of the child” with respect to placement, services, supervision, and conditions of the abeyance order.<sup>381</sup>

The statute created a procedure by which a person can obtain a court order expunging a conviction or delinquent-child adjudication for a prostitution related offense. The person seeking expungement must demonstrate that the offense or act was committed as a result of the person having been a victim of human trafficking.<sup>382</sup>

The statute also created a civil cause of action whereby victims of human trafficking can seek compensatory and punitive damages against their traffickers.<sup>383</sup>

## FUNDING<sup>384</sup>

Ohio's Safe Harbor Law established the Victims of Human Trafficking Fund, consisting of any money seized in connection with human trafficking inves-

tigations conducted under state law and money from the sale of assets seized in connection with such investigations.<sup>385</sup> The collected funds are slated to pay for services for victims of human trafficking, such as rehabilitation, medical treatments, housing and education.

Victims of human trafficking who were minors when they were victimized may also receive awards from the Victims of Crime Fund.<sup>386</sup>

## TENNESSEE

Tennessee's Safe Harbor Act was signed into law on May 21, 2011.<sup>387</sup> Various versions of the law were proposed but, ultimately, a significantly scaled-down version was enacted.

### IDENTIFICATION AND DIVERSION

Tennessee's Safe Harbor Act prohibits criminal prosecution of any minor under the age of eighteen for the crime of prostitution. The law provides that any "law enforcement officer who takes a person under eighteen years of age into custody for a suspected violation of this section [prostitution] shall, upon determination that the person is a minor, provide the minor with the telephone number for the National Human Trafficking Resource Center hotline and release the minor to the custody of a parent or legal guardian."<sup>388</sup>

### SERVICES AND PROTECTIONS

Tennessee does not offer any services to CSE children.<sup>389</sup>

### FUNDING

Tennessee's Safe Harbor Law does not include any funding provisions.

## VERMONT

Vermont's Safe Harbor provisions are included in its anti-human trafficking statute. Chapter 60 of the Vermont Statutes, entitled Human Trafficking, became law on July 1, 2011.<sup>390</sup> The law's enactment was preceded by the issuance of a report prepared by the Vermont Human Trafficking Task Force. The Legislature reported its findings that, according to the report: 1) the number of enslaved people worldwide exceeds twenty-seven million; 2) that as a border state Vermont was "susceptible to human trafficking activity" and had "seen elements of human trafficking"; and 3) that Vermont was one of the few states with no anti-trafficking legislation.<sup>391</sup>

The statute contains a number of penal sections. It created the crimes of human trafficking and aggravated human trafficking, including definitions

of terms relevant to human trafficking. The crime of human trafficking includes recruiting or enticing someone under the age of eighteen to engage in commercial sex, regardless of whether force, fraud, or coercion was used.<sup>392</sup> There is no statute of limitation for prosecutions for human trafficking.<sup>393</sup> The law also added the crimes of patronizing or facilitating human trafficking and soliciting a victim of human trafficking for commercial sex.<sup>394</sup>

### IDENTIFICATION AND DIVERSION

Vermont's statute does not include any provisions relevant to training people who might come into contact with trafficking victims. It does, however, include a provision requiring the posting of a notice offering help to human trafficking victims on the official Vermont Department of Labor website. That provision also permits, but does not require, employers to post similar notices in work places.<sup>395</sup> If an employer elects to post a resource notice, it should provide contact information for at least one local enforcement agency and the National Human Trafficking Resource Center hotline. The statute supplies the exact wording of the notice, including information about the availability of assistance in many different languages at any hour.<sup>396</sup> Additionally, the statute suggests that the information be made available in Spanish, English, and another language if requested by the employer.<sup>397</sup>

The statute mandates that the Vermont Department of Labor "develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline . . . and about other [available] resources." The Department was required to report its progress in this regard to several legislative committees by January 15, 2013.<sup>398</sup>

Vermont's Human Trafficking Law appears to preclude criminal prosecution of minors for engaging in commercial sex activity.

The statute provides that a person who is a victim of sex trafficking "shall not be found in violation of or to be the subject of a delinquency petition based on chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking."<sup>399</sup> Because the definition of a human trafficking victim includes anyone under the age of eighteen engaged in commercial sex, this provision effectively immunizes minors from criminal prosecution.

The law also states:

Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the



superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children for treatment under chapter 53 of Title 33.<sup>400</sup>

These two provisions are arguably contradictory. Subdivision (A) of section 2652(c)(1) states that a minor engaged in prostitution cannot be “the subject of a delinquency petition,” while subdivision (B) states that such a person can be treated as a juvenile under chapter 52 of Title 33 (Vermont’s juvenile delinquency law). This confusing language might be explained by the existence of a provision in Vermont’s juvenile delinquency law of an “order of adjudication non-criminal.”<sup>401</sup> Another reviewer has interpreted this statute as completely protecting minors against prosecution for prostitution.<sup>402</sup>

In addition to protecting child trafficking victims from prosecution for prostitution, lewdness, or obscenity, all trafficking victims, regardless of age, may assert as an affirmative defense in a criminal prosecution for any other offense, “which arises out of the sex trafficking or benefits the sex trafficker” that they committed the offense as a result of force, fraud, or coercion by a sex trafficker.”<sup>403</sup>

## SERVICES AND PROTECTIONS

The statute suggests, but does not mandate, services for trafficking victims. The law provides that the Vermont Center for Crime Victim Services “may convene a task force” to assist in the development of a statewide protocol to provide services to human trafficking victims. The statute contains a list of possible co-participants in creating the service protocol, including social service agencies and law enforcement.<sup>404</sup> The statute further authorizes the Center to enter into contracts to develop protocol and coordinate services to human trafficking victims “insofar as funds are available.”<sup>405</sup> The law provides that the services may include case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment service to assist job retention and assistance in establishing permanent residence in Vermont or the United States.<sup>406</sup>

The statute further provides immigration assistance to victims by obliging law enforcement, the state’s attorneys’ office, and the Office of the Attorney General to assess the victim’s eligibility for a certificate pursuant to 22 U.S.C. § 7105 (Trafficking Victims Protection Act) or other similar immigra-

tion relief and, if the victim appears to be eligible, to notify the crime victim services agency of the victim’s possible eligibility and to prepare the necessary documents.<sup>407</sup>

The statute provides for a civil remedy, in the form of a private cause of action for damages, including injunctive relief, punitive damages, attorney’s fees, and actual damages, as well as relief in the form of restitution to victims by convicted traffickers.<sup>408</sup> The criminal court is mandated to consider a restitution order whenever there is proof of a material loss, including property or monetary loss, lost wages, and medical expenses.<sup>409</sup> The victim’s absence from the United States does not relieve the trafficker of the obligation to pay restitution.<sup>410</sup>

Vermont’s law establishes evidentiary rules for court proceedings and rules for public record keeping designed to protect the victims of trafficking. In prosecutions for human trafficking, evidence of the victim’s past sexual conduct (with limited exceptions) is inadmissible, as is any opinion or reputation evidence regarding the victim’s sexual conduct.<sup>411</sup> The statute further provides that the keepers of state records shall not disclose the name or other identifying information of a trafficking victim.<sup>412</sup>

In a civil action, evidence of a victim’s alleged consent to the human trafficking is immaterial and inadmissible.<sup>413</sup> Similarly, consent is irrelevant to a charge of unlawful procurement, which criminalizes paying or accepting payment to procure a person “for immoral purposes in a house of prostitution, with or without the person’s consent.”<sup>414</sup> Finally, evidence that the victim consented to the trafficking behavior is expressly precluded as immaterial.<sup>415</sup>

## FUNDING

The statute contains no provisions for funding. It does, however, include penal provisions related to patronizing or facilitating human trafficking and solicitation. For both of those crimes the possible punishment includes a fine up to \$100,000.00.<sup>416</sup>

## WASHINGTON

Traditionally, prosecutors in Washington were entrusted with discretion whether to allow minors arrested for engaging in commercial sex to complete a diversion program in exchange for resolving their cases before any charges were filed. If, however, an offender already had two or more diversion agree-

“ Vermont’s law establishes evidentiary rules for court proceedings and rules for public record keeping designed to protect the victims of trafficking. ”

ments, the prosecutor was required to file charges. After the 2008 release of a report commissioned by the City of Seattle examining juveniles engaged in prostitution in King County, an *ad hoc* committee was created to look at strategies for providing services to youth who were involved in prostitution. In 2009, the Washington State Legislature passed a law allowing a prosecutor to divert a case where a youth is alleged to have committed the crime of prostitution or prostitution loitering, regardless of the youth's offense history or previous diversions.<sup>417</sup>

In 2010, the law was amended and renamed the Sex Crimes Involving Minors Act (hereinafter "the Act"). Its substance resembles many states' Safe Harbor Laws. The Act amended various sections of Washington law and added new sections.<sup>418</sup> Washington State also established a "commercially sexually exploited children statewide coordinating committee," entrusted "to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional entities involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices."<sup>419</sup>

### IDENTIFICATION AND DIVERSION

Washington's Sex Crimes Involving Minors Act, effective July 1, 2011, defines a sexually exploited child to include "any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor."<sup>420</sup> The Act created a presumption that any minor arrested for prostitution or prostitution loitering meets the criteria for certification as a victim of severe form of trafficking in persons, as defined in the United States Code, and the alleged offender is also a victim of commercial sex abuse of a minor.<sup>421</sup>

Under the Act, the prosecutor must divert a case when an alleged offender is charged for the first time with either prostitution or prostitution loitering.<sup>422</sup> The prosecutor may also divert subsequent allegations, but, when the charge of prostitution or prostitution loitering is not the juvenile's first offense, the diversion is discretionary and contingent on whether a "compressive program" of specified services is available in the applicable county.<sup>423</sup> A diversion agreement "may extend to twelve months."<sup>424</sup>

Additionally, the Administrative Office of the Courts was charged with compiling data regarding the number of sexually exploited children whose cases are diverted, whether they completed the diversion agreements and whether they have been subsequently arrested.<sup>425</sup>

### SERVICES AND PROTECTIONS

The Act provides that a youth diverted from the criminal justice system following an arrest for an

alleged act of prostitution or prostitution loitering is referred to the child welfare department in the county of the arrest, and the department shall arrange for services. The Act includes the following list of services:

- a. Safe and stable housing.
- b. Comprehensive on-site case management.
- c. Integrated mental health and chemical dependency services, including specialized trauma recovery services.
- d. Education and employment training delivered on-site.
- e. Referral to off-site specialized services, as appropriate.<sup>426</sup>

The child welfare department is mandated to require that residential and "Hope" centers have staff or access to persons trained to work with sexually exploited children.<sup>427</sup>

The Act provides that victims of the crimes of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor are victims for the purpose of claiming crime-victim benefits, regardless of whether the minor was charged with prostitution.<sup>428</sup>

### FUNDING

The Act established the "prostitution and intervention account" in the state treasury.<sup>429</sup> The account is funded, in part, by the mandatory \$5000 fees collected from anyone convicted of commercial sexual abuse of a child or promoting commercial sexual abuse of a minor.<sup>430</sup> Additional funding comes from fees collected for any vehicle that is impounded in connection with a charge of commercial sexual abuse of a minor. The Act provides that, upon an arrest for a suspected violation of commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car.<sup>431</sup> A \$2500 fee must be paid to redeem an impounded vehicle.<sup>432</sup>

The law states that the account funds must be used for services aimed at youth who have been diverted under the Sex Crimes Involving Minors Act after being charged with prostitution.<sup>433</sup>

### WASHINGTON, D.C.

Effective January 6, 2015, the Council of the District of Columbia enacted the Sex Trafficking of Children Prevention Amendment Act of 2014, (hereinafter Safe Harbor Act) thereby providing protection from

criminal prosecution and services to young victims of sex trafficking.<sup>434</sup> The Act also expanded the penal definition of prostitution to include commercial sex where “anything of value was given or received,” rather than only when “a fee was paid.”<sup>435</sup>

## IDENTIFICATION AND DIVERSION

D.C.’s Safe Harbor Act mandates that the Metropolitan Police Department, the Child and Family Services Agency, and the Department of Youth Rehabilitative Services provide training on the subject of human trafficking to current and new law enforcement officers, social workers, and case managers.<sup>436</sup> The training includes the “nature and dimensions” of human trafficking, the legal rights and remedies of victims, the services and facilities available to victims, the legal duties of police officers, social workers and case managers to offer protection and services, “techniques for determining when a person may be a victim of trafficking,” “techniques for handling a human trafficking offense that promotes the safety of the victim,” and the needs of child trafficking victims.<sup>437</sup> The Departments are required to consult with community organizations that work with victims of human trafficking to develop and present the training.

The Safe Harbor Act requires the creation of a sign advertising the telephone number of the National Human Trafficking Resource Center. Although the Act does not specify who is responsible for the creation of the sign, it includes specific language that must be printed on it. In addition to the telephone number, the sign, which must be at least 8.5 by 11 inches in size, urges the reader to call if they or anyone they know is being forced to have sex without consent, has had their identification or documentation taken away, is being threatened by or in debt to an employer, or cannot freely leave their job. The poster must also state that calls are toll free and confidential, and that interpreters are available.<sup>438</sup>

The mandated sign must be conspicuously displayed in: 1) inter-city rail or bus stations; 2) nude-performance establishments; 3) massage establishments or hotels where a prior violation of human trafficking has occurred; and 4) any property found to be a prostitution-related nuisance. The hotel and massage parlor display requirement is limited to those establishments that have been identified as the location of a human trafficking violation resulting in a conviction. And the requirement is only for one year after the conviction. Any business owner who fails to comply with the posting requirement is subject to a civil penalty for every day of non-compliance.<sup>439</sup>

In addition, the Safe Harbor Act requires that the Child and Family Services Agency and the Department of Youth Rehabilitation Services establish

screening procedures to identify children under their custodial care “who are victims of, or who may be at risk for becoming victims of, sex trafficking.”<sup>440</sup> The Act also mandates that the police immediately report any “knowledge, information, or suspicion” of a child engaged in a commercial sex act to the Child and Family Services Agency. The Agency is required to file a missing person report with the police immediately upon discovering that a child in the Agency’s custody is missing from their home or out-of-home placement. All mandatory reporters are also permitted to file a missing child report with the police. In turn, the police department is required to file a missing child report with the National Center for Missing and Exploited Children.<sup>441</sup>

The Safe Harbor Act immunizes any child who engages in sex-for-pay from prosecution for prostitution. A police officer who encounters a child suspected of engaging in sex-for-pay must refer the child to “an organization that provides treatment, housing, or services appropriate for [child] victims of sex trafficking.”<sup>442</sup> The Act authorizes police officers and employees of the Child and Family Services Agency to take a child into custody if there “exists reasonable grounds to believe that the child is engaging in or offering to engage in a sexual act.”<sup>443</sup>

## SERVICES AND PROTECTIONS

The Safe Harbor Act does not establish specialized services or protections for CSE children. And it does not expressly classify commercially sexually exploited children as abused. The obligation imposed on the police to refer CSE children to an organization that provides services, housing and treatment for trafficked children suggests that the responsibility for helping CSE children will fall on NGO’s, unless the government supported child welfare agency fits the statutory qualifications. In that case, existing services for abused or neglected children could be available to CSE children.

## FUNDING

D.C.’s Safe Harbor Act does not address funding, except to adopt the fiscal impact statement included in the committee report and to require the Chief Financial Officer to certify the date of the inclusion of the fiscal effect of the legislation in an approved budget and provide notice to the Budget Director.<sup>444</sup>

# Endnotes

- <sup>1</sup> 22 U.S.C. § 7101, *et seq.* (2000)
- <sup>2</sup> *ABA Policies on Human Trafficking—2010, Resolution 105B*, AM. BAR ASS'N [http://www.americanbar.org/groups/human\\_rights/projects/task\\_force\\_human\\_trafficking/policies\\_on\\_humantrafficking.html](http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/policies_on_humantrafficking.html) (last visited Apr. 7, 2015); Nat'l Council of Juv. & Fam. Ct. Judges Board of Trustees at Spring Meeting, San Antonio TX, Feb. 23, 2013.
- <sup>3</sup> INST. OF MED. & NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, (2013) (hereinafter "Nat'l Acad. of Scis. Report").
- <sup>4</sup> Nat'l Acad. of Scis. Report at 1.
- <sup>5</sup> *Id.* at xi-xii.
- <sup>6</sup> *Id.* at 8.
- <sup>7</sup> *Id.*
- <sup>8</sup> G.M. Broughton, *Prosecuting Innocence: An Analysis of Statutory Efforts to Stop the Justice System's Re-Victimization of Exploited Youth in America's Sex Trade*, UPDATE Vol. 23, No. 8 (NDAA/Nat'l Ctr. for Prosecution of Child Abuse), 2012, available at [http://www.ndaa.org/pdf/Update%20Vol23\\_No8.pdf](http://www.ndaa.org/pdf/Update%20Vol23_No8.pdf); M. Annitto, *Consent, Coercion, and Compassion: Emerging Legal Response to the Commercial Sexual Exploitation of Minors*, 30 YALE L & POL'Y REV. 1 (2011).
- <sup>9</sup> D. Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, LEGIS. & POL'Y BRIEF, Vol. 4, Iss. 2, No. 3, 2012.
- <sup>10</sup> The Justice for Victims of Trafficking Act of 2015 was signed into law on May 29, 2015.
- <sup>11</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 11* (2013).
- <sup>12</sup> *Id.*
- <sup>13</sup> U.S. DEP'T OF EDUC., *HUMAN TRAFFICKING IN AMERICAN SCHOOLS*, available at <http://safesupportivelearning.ed.gov/sites/default/files/HumanTraffickinginAmericasSchools.pdf>.
- <sup>14</sup> INST. OF MED. & NAT'L RESEARCH COUNCIL, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES 25* (The Nat'l Acad. Press 2013).
- <sup>15</sup> Although not included in its Safe Harbor Law, New York allows vacatur of convictions for various offenses arising out of the defendant's status as a trafficking victim if the "arresting charge" included prostitution. N.Y. Crim. Pro. Law § 440.10(1)(i); *People v. L. G.*, 41 Misc.3d 428, 972 N.Y.S.2d 418 (Crim. Ct. Queens Cnty. 2013); *People v. G.M.*, 32 Misc.3d 274, 922 N.Y.S.2d 761 (Crim. Ct. Queens Cnty. 2011).
- <sup>16</sup> A. Bergman, *For Their Own Good? Exploring Legislative Responses to the Sexual Exploitation of Children and the Illinois Safe Children Act*, 65 VAND. L. REV. 1361, 1365-66 (2012).
- <sup>17</sup> ECPAT-USA believes strongly in the provision of trauma-informed, gender-specified specialized services to CSE children. For further information regarding the provision of such services, see the National Colloquium 2012 Final Report on The Availability of Shelter and Services in Response to Domestic Minor Sex Trafficking.
- <sup>18</sup> The commissions or task forces identified here are those included in a state's Safe Harbor Law—the focus of this Report. There are task forces or commission created by other legislation. For example, New York's Human Trafficking Law, enacted before its first safe harbor law, established the Interagency Task Force on Human Trafficking, which was tasked to: 1) collect and organize data on the nature and extent of human trafficking in New York; 2) identify and develop victim service programs; 3) establish interagency protocols; and 4) evaluate and recommend strategies to increase public awareness and training programs. N. Y. Anti-Human Trafficking Act of 2006, L. 2007, Ch. 74.
- <sup>19</sup> Kentucky's new forgery law does not directly address the problem of determining the actual age of person detained by law enforcement upon suspicion of engaging in commercial sex activity. It is included here because it is the only provision of any Safe Harbor Law that recognizes that problems.
- <sup>20</sup> Additional states have statutes, other than Safe Harbor Laws, that permit expungement of past convictions. To date, those states are Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Maryland, Mississippi, Montana, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Vermont, Washington, and West Virginia.
- <sup>21</sup> S.B. 869, 89th Gen. Assemb. Reg. Sess. (Ark. 2013). The full title is "An Act To Provide a Safe Harbor for Victims of Certain Sex Trafficking and Commercial Sex Offenses; To Provide for a Fine; To Provide for a Study; To Develop a Protocol; To Establish a Safe Harbor for Sexually Exploited Children Fund; To Provide for Training; and For other Purposes." S.B. 869 § 1.
- <sup>22</sup> *Id.* § 2(1)-(2).
- <sup>23</sup> *Id.* § 2(3).
- <sup>24</sup> *Id.* § 2(3).
- <sup>25</sup> The amended code sections are Arkansas Code Section 9-27-323 (concerning diversion for juveniles) and Section 12-18-1201 (definitions related to training regarding sexually exploited children).
- <sup>26</sup> S.B. 869 §§7-8.
- <sup>27</sup> Ark. Code Ann. § 5-18-103(a)(4).
- <sup>28</sup> *Id.* § 5-18-102.13.
- <sup>29</sup> S.B. 869 § 8, amending Ark. Code Ann. § 12-18-1202.
- <sup>30</sup> S.B. 869 § 7, amending Ark. Code Ann. § 9-27-323.
- <sup>31</sup> S.B. 869 § 9, amending Ark. Code Ann. § 19-5-12 to add subchapter 1249.
- <sup>32</sup> S.B. 869 § 3.
- <sup>33</sup> *Id.* § 3(B).
- <sup>34</sup> *Id.* §§ 4-6.
- <sup>35</sup> Conn. Pub. Act 10-115, An Act Providing a Safe Harbor for Exploited Children, Conn. Gen. Assemb. (2010).
- <sup>36</sup> Conn. Gen. Stat. § 53a-82(a).
- <sup>37</sup> *Id.* § 53a-84.
- <sup>38</sup> *Id.* § 531-82(c); Section 53a-192a defines the crime of "Employing a Minor in an Obscene Performance," a class A felony.
- <sup>39</sup> *Id.* § 53a-84.
- <sup>40</sup> Subsequent legislation, Public Act 14-186: An Act Concerning Department of Children and Families and Protection of Children, addressed training of law enforcement and allows human trafficking victims to be classified as "uncared for" children thereby triggering the assistance of multidisciplinary teams to provide services. In addition, Public Act 11-180: An Act Concerning Notification By the Department of Children and Families When a Youth is Arrested For Prostitution, added a requirement that an officer who arrests a child for prostitution must report that event to DCF.
- <sup>41</sup> See STATE OF CONN. DEP'T OF CHILDREN AND FAMILIES, *Intake & Investigative Response to Human Trafficking of Children Policy 31-06.1*, available at <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=453920>.
- <sup>42</sup> In addition, sections two and three of the law amended the penal statutes defining the crimes of promoting prostitution in the first and second degrees to "expand criminal liability to anyone who advances or profits from prostitution of persons less than 18 years old." See Conn. Gen. Stat. §§ 53a-86 & 53a-87.
- Previously, the age had been set at sixteen. In addition, the law mandated that in the event of a conviction for first-degree promoting, the court could not suspend or reduce seven months of the defendant's sentence.
- <sup>43</sup> 11 Del. Code Ann. § 787(a)-(o).
- <sup>44</sup> 11 Del. Code Ann. § 787(k)(1)(a)-(o).
- <sup>45</sup> *Id.* § 787(k)(2)(a)-(c).
- <sup>46</sup> *Id.* § 787(k)(3)(a)-(e).
- <sup>47</sup> The law added several penal provisions, including a definition of "sexual servitude" that makes providing a minor for the purpose of engaging in commercial sex a crime, without regard to the use of coercion or deception, and raises the level of the felony for traffickers and patrons based on the fact that the victim is a minor. See 11 Del. Code Ann. § 787(b)(1), (3), (4).
- <sup>48</sup> 11 Del. Code Ann. § 787(k)(2)(f).
- <sup>49</sup> *Id.* § 787(k)(2)(d).
- <sup>50</sup> *Id.* § 787(e).
- <sup>51</sup> *Id.* § 787(l)(1).
- <sup>52</sup> *Id.* §§ 787(l)(2)(a)-(e).
- <sup>53</sup> 11 Del. Code Ann. § 787(l)(3).
- <sup>54</sup> *Id.* § 787(g)(1) (citing § 901, *et seq.*).
- <sup>55</sup> *Id.* § 787(g)(2).
- <sup>56</sup> *Id.* § 787(g)(2). It is unclear whether the services identified by the Department have to be incorporated in a Court order to be binding on the minor.
- <sup>57</sup> 11 Del. Code Ann. § 787(h). Although not initially charged in criminal court, a child deemed non-amenable to the Family Court's rehabilitative process may be transferred to the criminal court system. See 10 Del. Code Ann. § 1010. Therefore, section 787(h) could provide protection to minors facing charges of prostitution in criminal court.
- <sup>58</sup> 11 Del. Code Ann. § 787(j)(1)-(2).
- <sup>59</sup> *Id.* § 787(j)(2) (b), (d).
- <sup>60</sup> *Id.*
- <sup>61</sup> *Id.* § 787(j)(3), (4).
- <sup>62</sup> 16 Del. Code Ann. §§ 903, 905-07.
- <sup>63</sup> *Id.* § 907.
- <sup>64</sup> 11 Del. Code Ann. § 787(g)(2).
- <sup>65</sup> *Id.* § 787(m)(3).
- <sup>66</sup> *Id.* § 787(k)(2)(a).
- <sup>67</sup> *Id.* § 787(m)(2).
- <sup>68</sup> *Id.* § 787(d)(1), (2).
- <sup>69</sup> 11 Del. Code Ann. § 787(i)(1)-(3).
- <sup>70</sup> *Id.* § 787(n)(1).
- <sup>71</sup> *Id.* § 787(4).
- <sup>72</sup> *Id.* § 787(f)(1).
- <sup>73</sup> *Id.* § 787(d)(3).
- <sup>74</sup> 11 Del. Code Ann. § 787(e).
- <sup>75</sup> Fla. Stat. § 39.001(4)(a), (b)(2).
- <sup>76</sup> *Id.* § 39.001(4)(c), (d).
- <sup>77</sup> *Id.* § 796.07.
- <sup>78</sup> An earlier version of the legislation contained an amendment that provided that children under the age of sixteen could not be charged with prostitution and



- created a rebuttable presumption that sixteen and seventeen year olds should be treated as dependents rather than delinquents. That provision, however, was not in the bill as enacted.
- 79 Fla. Stat. § 39.01(2).  
80 *Id.* § 39.01(15)(g).  
81 *Id.* § 39.01(67)(g)(3).  
82 *Id.* § 39.401(2)(b).  
83 *Id.* § 985.125.  
84 Fla. Stat. § 985.433.  
85 *Id.* § 409.1678(3).  
86 *Id.* § 39.401(2)(b).  
87 *Id.* § 39.524(1).  
88 Fla. Stat. § 409.1678(1)(d).  
89 *Id.* § 39.524(3)(a), (b).  
90 *Id.* § 409.1678(1)(a), (b), (e).  
91 *Id.* § 409.1678(2)(b), (d).  
92 *Id.* § 960.065(5).  
93 Fla. Stat. §§ 772.104; 796.09(1).  
94 *Id.* § 39.822.  
95 *Id.* §§ 92.53(1); 92.54(1).  
96 *Id.* §§ 794.011; 794.022(3).  
97 *Id.* § 92.56(3).  
98 Fla. Stat. §§ 796.07(3)(6); 796.07(6).  
99 720 Ill. Comp. Stat. 5/11-6  
100 Pub. Act 096-1464 (H.B. 6462) § 15 (amending 720 Ill. Comp. Stat. 5/11-14).  
101 *Id.*  
102 720 Ill. Comp. Stat. 5/11-14.3.  
103 *Id.* at 5/11-18.1.  
104 Pub. Act 096-1464 (H.B. 6462) § 5 (amending § 3 of the Abused and Neglected Child Reporting Act).  
105 Pub. Act 096-1464 (H.B. 6462) § 10 (amending §§ 2-3 and 2-18 of the Juvenile Court Act (705 Ill. Comp. Stat. 405)).  
106 Although not in the Safe Children Act, Illinois has enacted legislation that permits victims of sex trafficking to move for vacatur of prostitution convictions on the ground that the violation was committed as a result of the movant being a victim of human trafficking. 725 Ill. Comp. Stat. 5/116-2.1.  
107 720 Ill. Comp. Stat. 5/11-14(d).  
108 325 Ill. Comp. Stat. 5/3.  
109 705 Ill. Comp. Stat. 405/2-7(1).  
110 720 Ill. Comp. Stat. 5/11-14(d).  
111 325 Ill. Comp. Stat. 5/2.  
112 720 Ill. Comp. Stat. 5/36.5-5; 725 Ill. Comp. Stat. 5/124B-305.  
113 S. Substitute for H.B. 2034 (Kan. 2013).  
114 *Id.* at New § 4; Kan. Stat. Ann. § 21-5510(a) (Sexual exploitation of a child).  
115 Kan. Stat. Ann. § 21-6419(c).  
116 *Id.* § 38-2231(b)(1).  
117 *Id.* §§ 38-2255(b), (c)-(d).  
118 S. Substitute for H.B. 2034 New § 1.  
119 *Id.* at New § 2.  
120 *Id.* at New § 6.  
121 *Id.* at New § 6(a)(1).  
122 *Id.* at New § 6(a) (2)-(7), (d).  
123 *Id.* at New § 6(c).  
124 *Id.* at New § 6(b)(1).  
125 Kan. Stat. Ann. § 21-5502.  
126 *Id.* § 22-3434(a).  
127 *Id.* § 22-4614.  
128 *Id.* § 38-2312(e)(1).  
129 *Id.* § 22-3424.  
130 Kan. Stat. Ann. § 60-523.  
131 S. Substitute for H.B. 2034 New § 3.  
132 L. Klaassen, *Breaking the Victimization Cycle: Domestic Minor Trafficking in Kansas*, 52 WASHBURN L.J. 581, 610 (2013).  
133 Bill 2034 New § 3.  
134 Kentucky's Act also addresses the issue of labor trafficking. It requires the Labor Cabinet to report all suspected incidents of human trafficking to law enforcement and provides immunity for anyone in the Cabinet reporting in good faith. Ky. Rev. Stat. § 336.075. In addition, the Act provides for punitive damages at least three times the amount of wages and overtime due when an employer fails to pay an employee the full amount due and the has subjected the employee to forced labor or services. Ky. Rev. Stat. § 337.385(3).  
135 H.B. 3, Human Trafficking Victims Rights Act, effective June 26, 2013.  
136 Ky. Rev. Stat. § 529.010(5) (a), (b).  
137 *Id.* § 15.334(1)(e).  
138 *Id.* § 15.718.  
139 *Id.* § 16.173.  
140 *Id.* § 516.030(1).  
141 Ky. Rev. Stat. § 529.120 (1) ("[I]f it is determined after a reasonable period of custody . . . that the person suspected of [the underlying offense] is under the age of eighteen (18), then the minor shall not be prosecuted for an offense."); *Id.* § 630.125 ("If reasonable cause exists to believe the child is a victim of human trafficking, as defined in § 529.010, the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense").  
142 *Id.* §§ 529.120; 620.030(3); 620.040(1)(a).  
143 *Id.* § 605.030(1)(d).  
144 *Id.* § 529.120.  
145 *Id.* § 630.125.  
146 Ky. Rev. Stat. § 620.040(5)(c).  
147 *Id.* at Ch. 15A.  
148 Ky. Rev. Stat. § 15.701.  
149 *Id.* § 620.029.  
150 *Id.* at § 620.029.  
151 *Id.* at § 620.040(1)(b).  
152 *Id.* at § 422.295.  
153 Ky. Rev. Stat. § 620.040.  
154 *Id.* at § 620.029.  
155 *Id.* at § 620.029(2)(b).  
156 *Id.* at Ch. 15A.  
157 *Id.* § 431.063.  
158 Ky. Rev. Stat. § 413.249.  
159 *Id.* § 421.350.  
160 *Id.* § 529.140.  
161 *Id.* § 529.130.  
162 *Id.* at §§ 529.140; 529.150.  
163 Ky. Rev. Stat. § 529.140 (provides that the Cabinet shall receive first priority for funding allocation to meet the responsibilities to serve minor victims of trafficking).  
164 La. S.B. 88, Ch. 20, Art. 725.  
165 La. S.B. 88. Before the enactment of this statute and starting in 2012, Louisiana law permitted children charged with engaging in prostitution to assert as an affirmative defense that they were the victims of sex trafficking at the time of the offense. See La. H.B. 49.  
166 La. S.B. 88, Ch. 20, Art. 725, 725.1 (3)(a)-(b).  
167 *Id.* at Ch. 20, Art. 725.  
168 *Id.* at Ch. 28-B, § 2161 A(1).  
169 *Id.* at Ch. 28-B, § 2161 B.  
170 *Id.* at Ch. 28-B, § 2161 B(4).  
171 La. S.B. 88, Ch. 20, Art. 725.  
172 *Id.* at Ch. 20, Art. 839 D(1).  
173 *Id.* at Ch. 28-B, § 2162 A(1).  
174 *Id.* at Ch. 28-B, § 2162 A(2)(a)-(b).  
175 *Id.* at Ch. 28-B, § 2162 B.  
176 La. S.B. 88, Ch. 28-B, Art. 923 A-D.  
177 *Id.* at Ch. 28-B, § 2161 A (2)-(3).  
178 *Id.* at Ch. 28-B, § 2161 A(5)-(6).  
179 *Id.* at Ch. 20, Art. 725.2.  
180 *Id.* at Ch. 20, Art. 839 D(3).  
181 La. S.B. 88, Ch. 20, § 539.3.  
182 *Id.* at Ch. 20, § 539.3 A (1)-(5).  
183 *Id.* at Ch. 28-B, § 2163.  
184 *Id.* at Ch. 28-B, § 539.2 A.  
185 *Id.* at Ch. 28-B, § 539.2 B.  
186 La. S.B. 88, Ch. 28-B, § 539.1 E.  
187 *Id.* at Ch. 28-B, § 539.1 E(1)-(3).  
188 2011 Mass. Legis. Serv. Ch. 178 (H.B. 3808). Most notably, the law amended or augmented Chapter 119 (Protection and Care of Children, and Proceedings Against Them) of Massachusetts's Public Welfare laws and Chapter 265 (Crimes Against the Person) of Massachusetts's Crime and Punishment Laws.  
189 Mass. Gen. Laws, Ch. 6 § 178C.  
190 *Id.* at Ch. 278 § 31(a), (b)(i)-(x).  
191 *Id.* at Ch. 119, § 39K(d).  
192 *Id.* at Ch. 272 § 53A, which defines the crime of prostitution without including a minimum age requirement. The age of adult criminal responsibility in Massachusetts is eighteen. Therefore, anyone under the age of eighteen charged with prostitution would be prosecuted in the juvenile court.  
193 Mass. Gen. Laws Ch. 119, § 21 (2011).  
194 *Id.* at Ch. 119 § 39L.  
195 *Id.* at Ch. 119 § 21(e). Sexually exploited child was added to the definition of "child in need of services."  
196 *Id.* at Ch. 119 § 39L.  
197 *Id.* at Ch. 119 § 39L(b).  
198 Mass. Gen. Laws Ch. 119 § 39L(c).  
199 *Id.* at Ch. 119 § 39K.  
200 *Id.* at Ch. 119 § 39K(a)(ii).  
201 *Id.* at Ch. 119 § 39K(c).  
202 *Id.* at Ch. 119 § 21.  
203 Mass. Gen. Laws Ch. 119 § 39K(b).  
204 *Id.* at Ch. 119 §§ 51A, 51B.  
205 *Id.* Ch. 119 §§ 39K(a)(ii), 51D.  
206 *Id.* at Ch. 119 § 51D.  
207 *Id.* at Ch. 119 § 39K.  
208 Mass. Gen. Laws Ch. 260 §§ 4D(a)-(b); see also *id.* at Ch. 260 § 4D(f) ("Any legal guardian, family member, representative of the human trafficking victim or court appointee may represent the . . . victim's rights, in the event the . . . victim is deceased or otherwise unable to represent his own interests in court.").  
209 Mass. Gen. Laws Ch. 278 § 16D.  
210 *Id.* at Ch. 233 § 21B.  
211 *Id.* at Ch. 233 § 20M.  
212 *Id.* at Ch. 265 §§ 50, 51.  
213 *Id.* at Ch. 265, § 54, Ch. 10, § 66A.  
214 Mass. Gen. Laws Ch. 10 § 66A; Ch. 265 § 55.  
215 *Human Trafficking Laws*, MICH. ATTY GEN'S OFFICE [http://michigan.gov/ag/0,4534,7-164-60857\\_60859---.00.html](http://michigan.gov/ag/0,4534,7-164-60857_60859---.00.html) (last visited Apr. 17, 2015).  
216 MICH. COMM'N ON HUMAN TRAFFICKING, 2013 REPORT ON HUMAN TRAFFICKING (hereinafter MICH. 2013 REPORT), available at [http://www.michigan.gov/documents/ag/2013\\_Human\\_Trafficking\\_Commission\\_Report\\_439218\\_7.pdf](http://www.michigan.gov/documents/ag/2013_Human_Trafficking_Commission_Report_439218_7.pdf)  
217 See 2013 H.B. 5012, 2014 Mich. Pub. Act 336, <http://legislature.mi.gov/doc.aspx?2013-HB-5012> (last visited Apr. 17, 2015); 2013 S.B. 0585, 2014 Mich. Pub. Act 334, <http://legislature.mi.gov/doc.aspx?2013-SB-0585> (last visited Apr. 17, 2015). See also 2013 S.B. 588, 590 & 596. The law includes several penal provisions, such as soliciting a person under the age of 18 for prostitution (2014 Mich. Pub. Act 326), classifying restraining a child for the purpose of producing child pornography as kidnapping (2014 Mich. Pub. Act 330), and increasing the offense level of the crime of recruiting a minor for a commercial sex.  
218 2014 Mich. Pub. Act 325 § 1. (2013 H.B. 5158).  
219 *Id.* § 3(1).  
220 *Id.* § 4.  
221 2014 Mich. Pub. Act 343 § 16148(1).  
222 2014 Mich. Pub. Act 336 § 451(6).  
223 *Id.* § 451(6).  
224 2014 Mich. Pub. Act 341, §§ 2(a) (1) and (b)(3).  
225 *Id.* § 451(7).  
226 *Id.* § 451(8).  
227 2014 Mich. Pub. Act 342 § 2(b)(3) (C).  
228 2014 Mich. Pub. Act 334 § 451c(1).  
229 *Id.* § 451c(2).  
230 *Id.* § 451c(2)(a)-(b).  
231 *Id.* § 451c(2)(c) (i)-(ii).  
232 *Id.* § 451c(4).  
233 2014 Mich. Pub. Act § 451c(5).  
234 *Id.* § 451c(6).  
235 *Id.* § 451c (7)-(8).  
236 2014 Mich. Pub. Act 326 § 450.

- 237 2014 Mich. Pub. Act 341 § 109m(1).
- 238 2014 Mich. Pub. Act 337 § 4c(4).
- 239 2014 Mich. Pub. Act 338 § 4e.
- 240 2014 Mich. Pub. Act 339 §§ 1-4.
- 241 2014 Mich. Pub. Act 335 §§ 1(3), (5) - (11).
- 242 *Id.* § 1(12).
- 243 2014 Mich. Pub. Act 340 § 16b.
- 244 *Id.* § 5.
- 245 MICH. 2013 REPORT, *supra* note 216, at 19.
- 246 2014 Mich. Pub. Act 333 §§ 4702(1), 4708(1)(b), 4708(1) (c).
- 247 2014 Mich. Pub. Act 331 § 452.
- 248 M. Golke, *The Age of Consent: How Minnesota's Safe Harbor For Sexually Exploited Youth Act of 2011 Falls Short of Fully Addressing Domestic Child Sex Trafficking*, 33 HAMLINE J. PUB. L. & POLY 201 (2011).
- 249 Minn. Stat. § 145.4716, *et seq.*
- 250 *Id.* §§ 260.007(6)(c), 260B.007(16).
- 251 *Id.* § 260C.007(31).
- 252 Minn. Sess. Law. Serv. Ch. 108, § 48.
- 253 Minn. Stat. § 260C.007, subdiv. 6(11).
- 254 *Id.* §§ 145.4716, 145.4717, 145.4718, 256K.45(3-5).
- 255 *Id.* § 145.4716(1).
- 256 *Id.* § 145.4718(a).
- 257 *Id.* § 145.4717.
- 258 *Id.* § 256K.45(6).
- 259 *Id.* § 256.45(3-5).
- 260 *Id.* §§ 609.325(2), (3).
- 261 *Id.* § 609.325(1).
- 262 *Id.* § 609.3471.
- 263 Legislative Bill 1145 amended several criminal sections and added several more.
- 264 Legislative Bill 255 amended numerous criminal justice related sections and refined the duties of the Task Force.
- 265 L.B. 1145, 102d Leg. 2d Sess. (Neb. 2012). Legislative Bill 255 also addressed the establishment of a task force to investigate and study human trafficking. See L.B. 255, 103d Leg., 1st Sess. § 12 (Neb. 2013), codified in Neb. Rev. Stat. § 81-1430. The section is nearly identical to the task force provision of the earlier bill, but specifies that the task force must “utilize information and research available from the Innocence Lost National Initiative.” The provision appears to be a continuation of the original task force. The deadline for the first report to the Legislature, July 19, 2013, remained unchanged. The task force issued a report on July 9, 2013.
- 266 L.B. 1145 § 6(1) (Neb. 2012).
- 267 *Id.* §§ 6(2)(a)-(m), (3), (4) (codified in Neb. Rev. Stat. §§ 81-1430 & 81-1431).
- 268 L.B. 1145 § 6(11) (Neb. 2012).
- 269 L.B. 1145 § 5(1)-(2) (Neb. 2012). The display of posters with the hotline number is also addressed in L.B. 255 (Neb. 2013). That legislation mandates that the Department of Labor work with the task force to develop the posters and determine where they should be placed. L.B. 255 § 12 (Neb. 2013) (codified at Neb. Rev. Stat. § 81-1430(3)).
- 270 L.B. 255 § 5(3) (Neb. 2013)
- 271 *Id.* § 8(1).
- 272 *Id.* § 8(1)(d)-(g).
- 273 *Id.* § 8(2).
- 274 *Id.* § 2(1), (5) (codified at Neb. Rev. Stat. § 8-801).
- 275 L.B. 255 § 2(5) (Neb. 2013).
- 276 *Id.* § 1(f) (codified at Neb. Rev. Stat. § 28-707).
- 277 *Id.* § 3 (codified at Neb. Rev. Stat. 28-801.01).
- 278 *Id.* § 4 (codified at Neb. Rev. Stat. §§ 28-802); *Id.* § 5 (codified at Neb. Rev. Stat. § 28-804).
- 279 L.B. 1145, § 7(1) (Neb. 2012). Because the federal definition provides that anyone under the age of eighteen engaged in commercial sex is a victim of a severe form of human trafficking, without regard to coercion, force or fraud (22 U.S.C. § 7101, *et seq.*), anyone convicted of the crime of prostitution under Nebraska law before attaining the age of eighteen would automatically be eligible for vacatur relief.
- 280 L.B. 1145, § 7(1)(a) (Neb. 2012).
- 281 *Id.* §§ 2(2)(a)-(d).
- 282 L.B. 255 § 11 (Neb. 2013) (codified in Neb. Rev. Stat. § 43-250).
- 283 *Id.* § 2 (codified in Neb. Rev. Stat. 28-801).
- 284 *Id.* §§ 4, (1)-(8).
- 285 *Id.* § 4(8).
- 286 2013 N.J. Laws C.51, *available at* [http://www.njleg.state.nj.us/2012/Bills/AL13/51\\_PDF](http://www.njleg.state.nj.us/2012/Bills/AL13/51_PDF)
- 287 There was, apparently, some concern that the language of the 2012 law could be interpreted to decriminalize acts of pimping committed by someone under the age of eighteen. See AMERICAN THINKER (Jan. 27, 2014), *available at* [www.americantinker.com/articles/2014/01/new\\_jersey\\_safe\\_harbor\\_law\\_provides\\_a\\_lesson\\_in\\_unintended\\_consequences.html](http://www.americantinker.com/articles/2014/01/new_jersey_safe_harbor_law_provides_a_lesson_in_unintended_consequences.html).
- 288 2013 N.J. Laws C. 51, C.2C:13-10.12.a.(1)-(3).
- 289 *Id.* at C.52:17B-237(1).
- 290 *Id.* at C.52:17B-237(b)-(f).
- 291 *Id.* at C.2C:13-12; C.2C:19.a.
- 292 *Id.* at C.2C:19.b(1)-(3), c(1)-(3).
- 293 2013 N.J. Laws C.2C:19.d; C.52:4B-47.9.a.
- 294 *Id.* at C.52:4B-47, 9.b.
- 295 *Id.* at C.52:17B-237(f)(4).
- 296 Although not binding law, the New Jersey Attorney General, in 2012, issued a Directive, Law Enforcement Directive number 2012-2 (Investigation of Human Trafficking), stating that law enforcement officers who have reason to believe that someone is a victim of trafficking should take “appropriate action” to protect the victim, notwithstanding that they may have committed an offense, and notify the County Prosecutor’s Human Trafficking Liaison, who, in turn, should arrange for referral for victim services. See N.J. Att’y Gen., Attorney General Law Enforcement Directive No. 2012-2, *available at* <http://www.nj.gov/oag/news-releases12/AG-Human-Trafficking-Directive.pdf>.
- 297 New Jersey law permits prosecution for delinquency for any act that, if committed by an adult, would be a violation of any penal statute. N.J. Stat. Ann. § 2A:4A-23.
- 298 A juvenile-family crisis is defined to include acts of prostitution committed by a juvenile or any act related to the juvenile being a victim of human trafficking. N.J. Stat. Ann. § 2A:4A-22(g) (5).
- 299 *Id.* 2C:24-1.e.
- 300 2013 N.J. Pub. Laws C.2C:13-9, 5.a(1), (2) & 5.b.
- 301 *Id.* at C.2C:44-1.1.
- 302 *Id.* at C.52:17B-237.1.f(2).
- 303 *Id.* at C.2C:13-9, 5.b.(2).
- 304 *Compare id.* at C.2C:13-9, 5b.(2), *with id.* at C.2C:34-1.
- 305 2013 N.J. Pub. Laws C.2C:13-8.1(3); C.2C:34-1.b.(3).
- 306 *Id.* at C.2C:14-7.a.
- 307 *Id.* at C.2C:13-8.1.4.a-d.
- 308 *Id.* at C.52:17B-238.2.a.
- 309 *Id.* at 2.b.
- 310 2013 N.J. Pub. Laws C.2C:34-1.f(2).
- 311 *Id.* at C.2C:13-9.5.c.(1).
- 312 *Id.* at C.2C:13-10.c.
- 313 *Id.* at C.2C:34-1.2.11a-b.
- 314 2008 N.Y. Sess. Laws, Ch. 569 (A. 5258-C) (McKinney).
- 315 K. Mullen & R. Lloyd, *The Passage of the Safe Harbor Act*, LAWYER’S MANUAL ON HUMAN TRAFFICKING 129 (J.L. Goodman & D.A. Leidholdt eds., 2013).
- 316 2007 N.Y. Laws Ch. 74 § 2 (effective Nov. 1, 2007).
- 317 22 U.S.C. § 7101 *et seq.* (2000)
- 318 Under New York Law, a child under the age of seventeen is incapable of consenting to sex. Because the age of adult criminal responsibility in New York is sixteen, (N.Y. Penal Law § 30.00) and the definition of prostitution makes no reference to age, before the enactment of the SHA, a child incapable of consenting to sex was considered to have the capacity to consent to sex-for-pay and was exposed to criminal prosecution for prostitution and related offenses.
- 319 The initial draft of the SHA would have amended New York’s Penal Law defining the crime of prostitution to include a minimum age of eighteen.
- 320 N.Y. Fam. Ct. Act § 311.4.
- 321 N.Y. Soc. Serv. Law § 447-a(1)(a)-(d).
- 322 N.Y. Fam. Ct. Act § 311.4(3).
- 323 N.Y. Fam. Ct. Act § 311.4(3); see *Also In re Bobby P.*, 28 Misc.3d 959, 972, 907 N.Y.S.2d 540, 549 (Fam. Ct. 2010) (15-year-old girl facing juvenile delinquency charge was denied PINS conversion due to unwillingness to cooperate with specialized services, “extensive history” of engaging in “street life,” demonstrated lack of sound judgment and immaturity.).
- 324 N.Y. Crim. Pro. Law § 170.80.
- 325 N.Y. Fam. Ct. Act § 311.4 (McKinney) (“Upon the motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition.”)
- 326 NY Crim. Pro. Law § 170.80 (McKinney) (W. C. DONNINO, PRACTICE COMMENTARY)
- 327 *Id.* § 170.80.
- 328 N.Y. Fam. Ct. Act § 1012(e)(iii).
- 329 Although not included in the SHA, New York has established a procedure for victims of human trafficking to seek vacatur of past convictions for prostitution-related convictions. See N.Y. Crim. Proc. Law § 440.10(1) (i). For vacatur purposes, the definition of a victim of human trafficking includes anyone under the age of eighteen engaged in commercial sex.
- 330 N.Y. Fam. Ct. Act § 712(a).
- 331 Mullen & Lloyd, *supra* note 315, at 138 (referencing N.Y. Fam. Ct. Act § 712).
- 332 A. Ackerman & C. Stewart, LAWYER’S MANUAL ON HUMAN TRAFFICKING 58 (J.L. Goodman & D.A. Leidholdt eds., 2013).
- 333 Mullen and Lloyd, *supra* note 315, at 138 (referencing N.Y. Exec. Law § 532).
- 334 N.Y. Soc. Serv. Law § 447-b.
- 335 N.Y. Fam. Ct. Act § 739 (upon the initiation of PINS proceeding, Family Court may direct child victim to safe house.)
- 336 Mullen and Lloyd, *supra* note 315, at 138 (referencing N.Y. Soc. Serv. Law § 447-b).
- 337 *Id.* (referencing N.Y. Soc. Serv. Law § 447-a).
- 338 N.Y. Soc. Serv. Law § 447-a.
- 339 N.Y. Fam. Ct. Act § 305.2(4)(d).
- 340 *Id.*
- 341 Mullen and Lloyd, *supra* note 315, at 138 (referencing NY Soc. Serv. Law § 447-a (4)).
- 342 NY Soc. Serv. Law § 447-b (5).
- 343 *Id.* § 447-a (4).
- 344 N.C. Gen. Stat. § 14-203 (2). The statute also provided that an adult convicted of prostitution for the first time is to be sentenced to probation, without entry of judgment and, upon their consent, with specific conditions. *Id.* § 14-204(b) (1)-(4).
- 345 *Id.* §§ 14-203.3(b), 14-205.3(b).
- 346 *Id.* § 143A-55.10.(a)
- 347 *Id.* §§ 143A-55.10.(a) (1), (2), (3).
- 348 *Id.* §§ 143A-55.10.(c) (1) - (7).
- 349 N.C. Gen. Stat. §§ 7B-1604(a); 14-204.
- 350 *Id.* § 14-204(c).
- 351 *Id.*

- <sup>352</sup> *Id.* § 7B-101(1)(g).
- <sup>353</sup> Although not part of the Safe Harbor Law, North Carolina Law includes a definition of “neglected juvenile” that is broad enough to encompass a child subjected to commercial sexual exploitation. *Id.* § 7B-101(15).
- <sup>354</sup> N.C. Gen. Stat. § 7B-302(a).
- <sup>355</sup> See *id.* §§ 7B-503, 7B-505, 7B-807, 7B-901.
- <sup>356</sup> *Id.* § 14-43.20(c).
- <sup>357</sup> *Id.* §§ 14-43.11(c), 14-43.12(c1), 14-43.13(b1).
- <sup>358</sup> *Id.* § 14-205.3(b).
- <sup>359</sup> N.C. Gen. Stat. §§ 15A-1416.1; 15A-145.6.
- <sup>360</sup> *Id.* §§ 15A-145.69(b), (c).
- <sup>361</sup> *Id.* Although not in the Safe Harbor Law, minors adjudicated delinquent and undisciplined may move through an expedited expunging process, provided that the offense for which the minor was adjudicated would be less than a Class E crime if the minor had been an adult at the time the offense was committed. N.C. Gen. Stat. § 7B-3200.
- <sup>362</sup> *Id.* § 14-43.20.
- <sup>363</sup> *Id.* § 14-43.20(b).
- <sup>364</sup> N.C. Gen. Stat. § 15B-2(2)(a).
- <sup>365</sup> *Id.* §§ 15B-11(a)(1), (3), (6). Traffickers may be required to pay damages due to a civil suit and may be liable for triple damages under the civil racketeering statute. *Id.* § 75D-8(c).
- <sup>366</sup> *Id.* § 14-43.20(d).
- <sup>367</sup> Ohio H.B. 262, 129th Gen. Assemb. (2012), available at <http://innovationohio.org/women-3/legislation-state/legislation-ohio-house-bill-262-human-trafficking-safe-harbor/>.
- <sup>368</sup> M. S. Haggerty, *Human Trafficking in Ohio* (Ohio State Bar Ass’n), available at <https://www.ohioabar.org/NewsAndPublications/OhioLawyer/Pages/Human-trafficking-in-Ohio.aspx>.
- <sup>369</sup> Jim Provance, *House Slaps Rules on Human Trafficking*, THE BLADE (May 5, 2012) <http://www.toledoblade.com/State/2012/05/22/Ohio-House-unanimously-passes-trafficking-bill.html>.
- <sup>370</sup> *Id.*
- <sup>371</sup> David M. Gold, *Bill Analysis - H.B. 262* (Ohio Leg. Serv. Comm’n).
- <sup>372</sup> Ohio H.B. 262 at 6 (2012).
- <sup>373</sup> *Id.* at 58.
- <sup>374</sup> *Id.* at 7.
- <sup>375</sup> *Id.* at 59.
- <sup>376</sup> *Id.* at 2.
- <sup>377</sup> Ohio H.B. 262 at 14 (2012).
- <sup>378</sup> Gold, *supra* note 372, at 11.
- <sup>379</sup> Ohio H.B. 262 at 2 (2012).
- <sup>380</sup> Gold, *supra* note 372, at 11.
- <sup>381</sup> *Id.* at 11-12.
- <sup>382</sup> Ohio H.B. 262 at 11, 52 (2012); Gold, *supra* note 372, at 15.
- <sup>383</sup> Ohio H.B. 262 at 15 (2012); Gold, *supra* note 372, at 10.
- <sup>384</sup> Several Penal Code amendments were included in Ohio’s Safe Harbor Law. A new provision making it a crime to solicit anyone 16 or 17 years old to engage in sex was included, but the solicitor must have known or recklessly disregarded the age of the victim and the victim must be a human trafficking victim. (Ohio H.B. 262 at 19 (amending Ohio Rev. Code Ann. § 2907.07)). The criminal offense of “Procuring” was amended to add a section specifically addressed to procuring anyone under the age of eighteen to engage in prostitution. (Ohio H.B. 262 at 21 (amending Ohio Rev. Code Ann. § 2907.23)). It also increased the penalty for traffickers and those who aid traffickers and added sex traffickers to the list of convicted criminals who must register as sex offenders. (Ohio H.B. 262 at 41 (2012)).
- <sup>385</sup> Ohio H.B. 262 at 8.
- <sup>386</sup> *Id.* at 18.
- <sup>387</sup> H.B. 0035, 106th Gen. Assemb. § 1 (Tenn. 2011).
- <sup>388</sup> *Id.* § 39-13-513(d).
- <sup>389</sup> Some proposed versions of the Bill contained provisions to divert minors into “protective custody” through the Department of Children’s Services “as a possible victim of child sexual abuse.” The law enforcement officer would then have to “immediately” report possible child abuse to that department, which would have to start an investigation within 24 hours of the report. This approach would have provided some protection and services to the prostituted minor and would have started an investigation into the abuse. See S.B. 0064, 107th Leg. Sess. (Tenn. 2011).
- <sup>390</sup> Vt. Stat. Ch. 60 §§ 1-19 (amending multiple sections of Vermont law).
- <sup>391</sup> *Id.* § 1.
- <sup>392</sup> *Id.* § 2 (codified in Vt. Stat. Ann. tit. 13 § 2652(a)(1)). This definition is consistent with the federal TVPA. Human trafficking is “aggravated” when the victim’s age is less than eighteen. Vt. Stat. Ann. tit. 13 § 2653 (a)(1).
- <sup>393</sup> Ch. 60 § 4 (codified in Vt. Stat. Ann. tit. 13 § 4501(a)).
- <sup>394</sup> Ch. 60 § 2 (codified in Vt. Stat. Ann. tit. 13 §§ 2654-55).
- <sup>395</sup> Ch. 60 § 2 (codified in Vt. Stat. Ann. tit. 13 § 2661(a)).
- <sup>396</sup> Ch. 60 § 2 (codified in Vt. Stat. Ann. tit. 13 § 2661(b)).
- <sup>397</sup> Vt. Stat. Ann. tit. 13 § 2661(c).
- <sup>398</sup> *Id.* § 2661(d).
- <sup>399</sup> *Id.* § 2652(c)(1)(A).
- <sup>400</sup> *Id.* § 2652(c)(1)(B).
- <sup>401</sup> *Id.* § 5202.
- <sup>402</sup> PROTECTED INNOCENCE CHALLENGE, 2014 ANALYSIS AND RECOMMENDATIONS VERMONT § 5.3, available at [sharedhope.org/PICframe4/analysis/PIC\\_AR\\_2014\\_VT.pdf](http://sharedhope.org/PICframe4/analysis/PIC_AR_2014_VT.pdf).
- <sup>403</sup> Vt. Stat. Ann. tit. 13 § 2652(c)(2).
- <sup>404</sup> Vt. Stat. Ch. 60 § 3(a).
- <sup>405</sup> *Id.* § 3(b).
- <sup>406</sup> *Id.* §§ 3(b)(1)-(10).
- <sup>407</sup> *Id.* § 2 (codified in Vt. Stat. Ann. tit. 13 §§ 2663(a)-(b)).
- <sup>408</sup> *Id.* § 2 (codified in Vt. Stat. Ann. tit. 13 §§ 2657, 2662 & 7043).
- <sup>409</sup> Vt. Stat. Ch. 60 § 7 (codified in Vt. Stat. Ann. tit. 13 § 7043(a)(3)).
- <sup>410</sup> *Id.* § 2 (codified at Vt. Stat. Ann. tit. 13 § 2657(c)).
- <sup>411</sup> *Id.* § 8 (codified at Vt. Stat. Ann. tit. 13 §§ 3255(a)(1), (3)).
- <sup>412</sup> Vt. Stat. Ann. tit. 13 § 5322.
- <sup>413</sup> Vt. Stat. Ch. 60 § 2 (codified at Vt. Stat. Ann. tit. 13 § 2662(c)).
- <sup>414</sup> Vt. Stat. Ann. tit. 13 §§ 2636(a)(3), (4).
- <sup>415</sup> *Id.* § 2652(d).
- <sup>416</sup> Vt. Stat. Ch. 60 § 2 (codified in Vt. Stat. Ann. tit. 13 §§ 2654, 2655).
- <sup>417</sup> *House Bill Report: Hearing on H.B. 1505 Before the H. Comm. on Human Servs.*, 2009 Leg., 61th Sess. (Wash. 2009), available at: [lawfilesexult.leg.wa.gov/biennium/2009-10/Pdf/Bill%20Reports/House/1505%20HBR%20HS%2009.pdf](http://lawfilesexult.leg.wa.gov/biennium/2009-10/Pdf/Bill%20Reports/House/1505%20HBR%20HS%2009.pdf).
- <sup>418</sup> Substitute S.B. 6476, 2010 Reg. Sess. (Wash. 2010); see generally M. Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1, 54 (2011). In addition to the provisions addressing the treatment of minors arrested for prostitution related offenses, the Act increased the severity level of the crimes of commercial sexual abuse of a minor and promoting commercial sexual abuse of a minor. Wash. Rev. Code §§ 9.68A.100, 9.68A.101.
- <sup>419</sup> Wash. Rev. Code § 7.68.801.
- <sup>420</sup> *Id.* § 13.32A.030(17).
- <sup>421</sup> *Id.* § 13.40 (9).
- <sup>422</sup> *Id.* § 13.40.070(7).
- <sup>423</sup> *Id.* §§ 13.40.070(8), 13.40.213.
- <sup>424</sup> Wash. Rev. Code § 13.40.213(3).
- <sup>425</sup> *Id.* § 13.40213(4).
- <sup>426</sup> *Id.* §§ 13.40; 13.40.213(1).
- <sup>427</sup> *Id.* § 74.15.
- <sup>428</sup> Wash. Rev. Code § 7.68.070(3)(b).
- <sup>429</sup> *Id.* § 43.63A.740.
- <sup>430</sup> *Id.* § 9.68A.105(1).
- <sup>431</sup> *Id.* § 9A.88.140(2).
- <sup>432</sup> *Id.* § 9A.88.140(4)(a).
- <sup>433</sup> Wash. Rev. Code § 43.63A.740.
- <sup>434</sup> D.C. Act 20-560.
- <sup>435</sup> D.C. Act 20-560 § 8 (amending section 2 of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981).
- <sup>436</sup> D.C. Act 20-560 § 6.
- <sup>437</sup> D.C. Act 20-560 § 6 (adding new section 112 to the Prohibition Against Human Trafficking amendment Act of 2010).
- <sup>438</sup> D.C. Act 20-560 § 6 (adding new section 113 of The Prohibition Against Human Trafficking Amendment Act of 2010).
- <sup>439</sup> See D.C. Code § 42-3101(5).
- <sup>440</sup> D.C. Act 20-560 §§ 2-3 (adding a new section to the Prevention of Child Abuse and Neglect Act of 1977, and amending the Department of Youth Rehabilitation Services Establishment Act of 2004).
- <sup>441</sup> D.C. Act 20-560 §§ 4-5.
- <sup>442</sup> D.C. Act 20-560 § 7 (amending section 1 of An Act For the Suppression of prostitution in the District of Columbia).
- <sup>443</sup> D.C. Act 20-560 § 9 (amending D.C. Code, tit. 16, Ch. 23).
- <sup>444</sup> D.C. Act 20-560 §§ 10-12.





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