

Falling Through the Cracks:

Rethinking Child Protective Services' Response to Victims of Child Sex Trafficking in the U.S.



RENEWAL FORUM

Foreword
By Steven Wagner
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America today harbors a vast and terrible criminal enterprise that victimizes a very large number of children each year. This enterprise is known alternatively as human trafficking, modern-day slavery, or, more precisely, the commercial sexual exploitation of juveniles. At the Renewal Forum, we put the annual number of victims – all under 18 – at 250,000,¹ although certain government agencies have advanced a lower estimate.²

This estimate, which is based on the social science research of others, may seem large, but it is credible as the states reported to the federal government 241,136 cases of serious sexual or physical abuse of juveniles in 2011. This number does not include the numerous cases that go unreported. This is where the path of victimization often begins: in the home, where instead of receiving the love to which they are entitled by right, children are treated as objects. Many of these children then go looking for love in all the wrong places, and get caught up in situations of commercial sexual exploitation from which they cannot readily escape.

Secondly, when the federal government last studied the phenomenon of runaway kids (1999), it was estimated that 377,300 are gone for a week or more, a situation which puts these kids at acute risk of commercial sexual exploitation.

At a time when tremendous federal resources are being devoted to pursuing the transmission of child pornography, the enticement of children via the Internet, and the abuse and neglect of children at the hands of parents, we as a society are doing virtually nothing to serve the needs of the quarter of a million children who are victims of commercial sexual exploitation. These children constitute the largest population of persons in the United States who are in severe need and utterly underserved.

It seems to me a reasonable expectation that an agency of state government with the name “Child Protective Services” or its equivalent – an agency which is found in every state of the union – should, by definition, be committed to identifying, rescuing, and treating the juvenile victims of commercial sexual exploitation. Tragically, as this report establishes, in many states, child protective services agencies are not helping these victims.

The Renewal Forum – with the assistance of the international law firm, Paul Hastings LLP – has undertaken this analysis of state laws governing child protective services agencies because we believe that every available tool of state government must be utilized to respond to the vast population of children who are the severely traumatized victims of this crime. And in particular, child protective services agencies should take the lead in this response.

¹ The Renewal Forum, *How Many Juvenile Victims of Human Trafficking Are There?* (2007), available at <http://renewalforum.org/wp-content/uploads/2012/01/Victim-Population-Estimates.pdf>.

² National Center for Missing and Exploited Children, *Testimony for the Victim’s Rights Caucus, Human Trafficking Caucus, U.S. House of Representatives* (2010), available at <http://www.missingkids.com/Testimony/07-19-10>.

Yet we find, with few exceptions, that child protective service agencies are *not* responding to the needs of this population of victims. Indeed, our analysis of the laws of every state governing child protective services finds that in twenty-two, the laws are written in such a way that the state agency is specifically barred from protecting these children. This situation generally arises because child protective services agencies in these states are only authorized to respond to cases of abuse perpetrated by a parent, and typically in situations of the commercial sexual exploitation of children, the parent is nowhere to be found, as the child is either a “throwaway” or runaway.

This situation must change. We cannot allow, either on moral or practical grounds, another cohort of children to be discarded by their families, subjected to profound trauma and serial rape, and then, when used up, thrown back on the street to fend for themselves. Such children are virtually assured of being incapable of achieving independent, fulfilling adult lives without help.

The Renewal Forum graded the states according to three criteria:

- 1) Whether the definitions of abuse and the perpetrator of abuse under state law allow for juvenile victims of commercial exploitation to be considered a population for which the child protective services agency is responsible;
- 2) Or, as a (less desirable) alternative, whether state law allows for “Child in Need of Services” (CHINS) provisions to be utilized to serve juvenile victims of commercial exploitation; and
- 3) Whether state law includes an appropriate definition of human trafficking – i.e., defining any person under 18 who engages in commercial sex as a victim – and provides immunity for these children from prosecution for acts committed as victims of human trafficking.

Using these criteria, the Renewal Forum’s analysis of state laws (which included the District of Columbia and Puerto Rico for a total of fifty-two jurisdictions) finds that roughly half (twenty-four) merit an overall grade of F. Nine merit an A; four, a B; nine, a C; and six, a D.

America has become a profoundly exploitative culture, constituting a “perfect storm” for the commercial sexual exploitation of children, owing to, in my opinion, a confluence of four factors.

- 1) I have already alluded to the first of these factors – the creation of future victims in our homes through serious sexual and physical abuse (241,136 children in 2011).
- 2) We are discarding kids like yesterday’s trash: of the 1,682,900 kids who go missing each year (this data is derived from a 1999 US Department of Justice study, the latest available),³ 377,300 are gone for a week or more. These kids are at severe risk of becoming victims of commercial sexual exploitation. And, most shockingly of all, only twenty-one percent of the 1,682,900 annual juvenile absences are reported to the police. It can be inferred that in many of the most serious cases of kids gone for more than a week, no one is looking for these children.

³ USDOJ/OJJDP. NISMART-2, the National Incidence Study of Missing, Abducted, Runaway and Throwaway Children (October 2002). Available at www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf.

Factors one and two are the practical face of family breakdown in the United States. Instead of the loving and nurturing environments which children deserve – the place where children first experience “what it means to love and to be loved, and thus what it actually means to be a person” (in the words of Pope John Paul II) – for many, home is a nightmare of objectification.⁴

- 3) Where does the demand for children to serve as sexual objects come from? Who are the huge numbers of men willing to pay for sex with children? It is plausible, if unsubstantiated, that this demand derives in part from our national epidemic of pornography consumption. In particular, the United States is one of the largest producers and consumers of child pornography in the world.⁵
- 4) The final factor which makes America such a fertile culture for the commercial sexual exploitation of children is governmental indifference. Across the country, vice squads, that element of the local law enforcement agency which is often charged with addressing this crime, are closing down. Prostitution is made a low priority for investigation and prosecution because it is wrongly perceived as a “victimless crime.” Ultimately, however, the root of official indifference is public indifference. Until the American public sees the connection between the widespread sexual exploitation of juveniles and the proliferation of sexual predators, which puts all children at risk, aggressive action will be limited.

Recommendations

I felt compelled to issue this report because the Renewal Forum believes child protective services agencies ought to play a central role in addressing the commercial sexual exploitation of juveniles – especially in meeting the needs of the victims for stabilization and recuperation. Our goal is not to criticize how these agencies have conducted themselves in the past, but rather to empower them to respond to the needs of this victim population, and to be on the frontlines of our collective national response to this crime.

To this end, I recommend that states amend their laws in order to incorporate these provisions:

- 1) The state mandate for the child protective services agency – i.e., the statute which authorizes the agency (or its equivalent) – should specifically ***assign responsibility to the agency for any child who is a victim of commercial sexual exploitation.***
- 2) The state statute(s) governing the child protective services agency (or its equivalent) should ***define abuse*** to expressly include the commercial sexual exploitation of a juvenile. Abuse should also be defined in such a way that any person can be a perpetrator – not solely a person with legal responsibility for the child.
- 3) The state statute(s) should provide that a “person responsible for the child’s welfare” includes any person exercising effective custodial control of a child. (This would include a trafficker or a pimp.)

⁴ John Paul II, *Centesimus Annus* ¶ 39 (May 1, 1991).

⁵ *Child Sex Trafficking and Pornography Aided by Internet Anonymity*, Thorn (Feb. 24, 2014), <http://www.wearethorn.org/child-sex-trafficking-child-pornography-aided-internet-anonymity/>.

- 4) With the previous provisions in place, a CHINS provision would not be necessary to address the needs of the population of commercially sexually exploited juveniles, so we do not recommend that states use CHINS provisions to address the needs of commercially sexually exploited juveniles. But in the absence of the provisions we recommend above, a CHINS provision is a necessary tool for the provision of assistance to victims, which should include the following:
 - (a) The definition of a “Child in Need of Services” should specifically include trafficked children and commercially sexually exploited children.
 - (b) Rather than limiting persons who may file a CHINS petition to states’ attorneys or prosecutors, or to mandatory reporters, any person, including the child at issue, should be able to initiate a petition for services.
 - (c) Upon filing of a CHINS petition, the child should be sent to child protective services, to be cared for in collaboration with his or her parents, not placed in detention.
- 5) The state statute regarding human trafficking should follow the federal definition of a victim, such that any person under the age of 18 who engages in commercial sex, regardless of coercion, is deemed to be a victim of human trafficking.
- 6) State statutes should include a “safe harbor provision,” extending to the juvenile victim immunity from prosecution for acts attendant to being the victim of human trafficking or of commercial sexual exploitation, and remanding any juvenile caught in such acts to the child protective services agency for services.
- 7) The state should use a standard of “child’s time” in order to emphasize that these matters should be handled without unnecessary delay. This standard recognizes that children perceive time differently than adults.
- 8) Under state law, parents and legal guardians should have an affirmative obligation to report to a local law enforcement agency or to a child protective services agency any child under 18 who is absent from their home, as many of these children are at high risk of becoming victims of commercial sexual exploitation. Again, federally-sponsored research finds that in only twenty-one percent of cases of runaway episodes is law enforcement notified, meaning no one is looking for the large majority of juveniles at highest risk of commercial sexual exploitation.

The next three recommendations concern the federal Child Abuse Prevention and Treatment Act, which makes grants to the states for child abuse or neglect prevention and treatment.⁶ These recommendations are not covered in the report which follows, but I nonetheless regard them as necessary for an effective societal response to exploitation, and so offer them for the reader’s consideration.

- 9) All children involved in matters under the jurisdiction of the state child protective services agency (or its equivalent) should be screened for past victimization in a scheme of

⁶ 42 U.S.C. § 5106a.

commercial sexual exploitation. The state plan required in order for states to qualify for grants under the Act should include certification that such a screening protocol is in place.

- 10) The state plan should also include certification that juvenile victims of commercial sexual exploitation are not placed in the juvenile justice system, as this is inappropriate given their status as victims of a crime.
- 11) The state plan should also describe how truancy data collected by schools is utilized by the child protective services agency (or its equivalent) to identify children at risk of being or becoming victims of commercial sexual exploitation, as indicated by chronic truancy. We believe that truancy data from the schools is the best source of data from any source concerning children who are missing from their home, and who should therefore be the subject of law enforcement investigation as potential victims.
- 12) Child protective services agencies should receive additional enforcement tools in recognition of the added responsibility we advocate that these agencies be given for responding effectively and aggressively to the phenomenon of juvenile commercial sexual exploitation.
- 13) Financial responsibility for any child under 18 does not end because the child is absent from the home, or because the parents and/or guardians do not exercise effective custodial control. Child protective services agencies should have the ability to enforce this principle by collecting child support payments from both parents and/or guardians, including the ability to garnish wages and state-funded public assistance, when a child is in state custody.
- 14) Child protective services agencies should be able to cause the denial of public assistance claims based on a child who is either absent from the home, or over whom the claimant does not exercise effective custodial control, or who is under the custodial care of the state agency.

The Renewal Forum is deeply indebted to the international law firm of Paul Hastings LLP for conducting the review of state laws upon which this report is based. The Renewal Forum's Director of Policy and Programs, Mr. Ian Kitterman (JD, Georgetown University), along with Paul Hastings, conducted interviews with state officials in every state to confirm those findings, and to put them into an appropriate context. Mr. Kitterman is also responsible for the grading of the states and for preparing the analysis provided in this report; the Renewal Forum congratulates him for his excellent and thorough work, and acknowledges our huge debt of gratitude to Mr. Kitterman.

The Renewal Forum is a non-profit with 501(c)(3) tax-exempt recognition, founded in 2007 for the purpose of undertaking projects of research and advocacy to realize the dignity of every person. Our principal focus currently is our project for the abolition of human trafficking in the United States – particularly the commercial sexual exploitation of juveniles. The Renewal Forum works with communities to improve their response to trafficking and with legislatures to improve state laws regarding trafficking. The Renewal Forum also developed the “model city” action plan which serves as the basis for our Kansas City Model City Program, to demonstrate that a community working together can substantially reduce the incidence of commercial sexual exploitation of juveniles.

Foreword
By Paul Hastings LLP

Often referred to as “modern-day slavery,” human trafficking is the illegal trade in human beings for the purposes of commercial sexual exploitation or forced/bonded labor. With 12.3 million adults and children worldwide in forced labor, bonded labor, and forced prostitution, human trafficking is tied with the illegal arms industry as the second largest – but fastest growing – criminal industry in the world, second only to the drug trade.¹ Human trafficking and exploitation is one of the most pressing human rights issues of our time.

The United States is a source, transit, and destination country for human trafficking. Tens of thousands of adults and children are trafficked into the United States annually. A lesser known fact, however, is that hundreds of thousands of *American* children are currently at risk for commercial sexual exploitation.²

Paul Hastings has worked with the Renewal Forum, a non-profit organization dedicated to promoting respect for human dignity, to support the Renewal Forum’s efforts to abolish child trafficking in the United States. On a pro bono basis, Paul Hastings attorneys conducted certain background research for the comprehensive report below prepared by the Renewal Forum, which analyzes the effectiveness of each state’s child protective services (CPS) system in serving victims of child trafficking. In conducting that research, Paul Hastings attorneys primarily reviewed and analyzed the authorizing legislation and mission/mandate of each state’s CPS agency in order to determine whether juvenile victims of commercial sexual exploitation fall within the population served by CPS.

Attorneys from the Firm’s offices in multiple jurisdictions researched the relevant laws for the fifty states, as well as the District of Columbia and Puerto Rico. Paul Hastings attorneys, staff, and summer associates contributing to this research include:

Heena A. Ali; W. Toliver Besson; Elizabeth L. Brann; Lauren E. Briggerman; Veronica Cortez; Ryan D. Craig; Maria E. Douvas; Rebecca L. Eggleston; Ryan Enchelmayer; James T. Evans; Marianna Faircloth; Rebecca D. Farber; Melissa M. Garcia; Meagan Griffin; Christina Hardjasa; Ryan C. Hess; Corbin R. Kennelly; Frank Lee; Helen Y. Lee; Victor Martinez; Jacqueline A. May; Laura McGurty; Judy A. Miller; Lakshmi U. Mohandas; Lorena Moreno; Young J. Park; Daniel Prince; Tahira A. Prince; Pedro Reyes; Jennifer D. Riddle; Joseph Rumpler; Ericka J. Schulz; Jenny J. Wang; Dana R. Weir; Taylor Wemmer; Imtiaz Yakub; and Stephen N. Yang.

¹ *Human Trafficking: Understand the Problem*, Not For Sale, <http://notforsalecampaign.org/human-trafficking/> (last visited Sept. 12, 2014).

² See Heather J. Clawson, et al., *Human Trafficking Into and Within the United States: A Review of the Literature*, U.S. Department of Health & Human Services, Study of HHS Programs Serving Human Trafficking Victims (Aug. 2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/> (“Between 244,000 and 325,000 American youth are considered at risk for sexual exploitation . . . in the United States.”).

I. EXECUTIVE SUMMARY

This report reviews individual states' responses to the commercial sexual exploitation of children. Specifically, it reviews how well the child protective services agency (or "CPS") in each state responds to children who have been commercially exploited for sex by someone other than their parent or guardian.

The commercial sexual exploitation of children (or "CSEC") happens in every state in the United States and in most communities. CSEC occurs anytime anything of value is promised or received in exchange for sexual activities or favors of a child. The Renewal Forum's research suggests nearly 250,000 children in the United States are commercially exploited for sex.¹ A large portion of these victims of CSEC are runaway or "throwaway" kids whose disappearance goes unreported.

Commercially sexually exploited children are one of the largest underserved populations in the United States today. In the majority of states, these children often fall through large cracks in the CPS system. The statutory mandates for CPS and statutory definitions of abuse are often written in such a way that CPS is only authorized to provide services to children who are abused by a parent or guardian, by definition excluding most victims of CSEC. CPS, however, is the best-suited and most responsive place for commercially sexually exploited children. Unlike any other system, CPS workers are trained to navigate the process of family reunification, seek the best interest of the child, and interact with traumatized children.

In most states, a victim of CSEC will not receive any services from CPS unless a "child in need of services" process is initiated and, through that process, the court orders CPS to provide services. States' "child in need of services" programs are typically reserved for children who are habitually not under the control of their parents, habitually truant, or have committed a status offense that does not rise to the level of classifying them as juvenile offenders. In the majority of states, a police officer, parent, school district, or county attorney is required to petition the court to have a child declared in need of services. However, this requirement necessitates that someone actively participate in the care of the child, which, unfortunately, does not happen often enough. Moreover, even if a child is declared in need of services, the court may not elect to order CPS services for the child.

At least in part because of these obstacles, every year nearly a thousand commercially sexually exploited children who are actually discovered end up in the hands of law enforcement, rather than being placed with CPS.² Unfortunately, the law enforcement response may include detaining these children, charging them with a crime, or returning them back to their homes where they are at risk of re-exploitation. In most cases, unlike CPS, law enforcement is simply not equipped to serve the needs of victims of CSEC.

¹ *How Many Juvenile Victims of Human Trafficking Are There?*, The Renewal Forum, <http://renewalforum.org/wp-content/uploads/2012/01/Victim-Population-Estimates.pdf> (last modified Dec. 2007).

² UCR data from 2002–2012 indicating that 11,269 minors were arrested for prostitution and commercialized vice in those cities that reported. See Federal Bureau of Investigation, *Crime in the United States*, Table 43B, U.S. Department of Justice, available at <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s> (last visited May 23, 2014) (data compiled by The Renewal Forum from FBI annual reports).

This report was prepared by examining (i) the laws in each state authorizing CPS and defining the population it serves, (ii) the statutes governing each state's "child in need of services program," if any, and (iii) the general treatment of minors under each state's criminal trafficking laws. Telephone calls were then placed to each state's child protective services agency to determine whether additional policies are in place.³ Based on the results of this research, each state was assigned a letter grade for each of the above categories, as well as a cumulative letter grade.

This report includes all fifty states plus the District of Columbia and Puerto Rico. Out of those fifty-two, nine states received a cumulative A, four received a B, nine received a C, six received a D, and twenty-four received a failing grade. A review of only the child protective services provisions earned fourteen states an A, nine a B, one a C, six a D, and twenty-two a failing grade. A review of only the "child in need of services" provisions earned fifteen states an A, ten a B, two states a C, six states a D, and nineteen a failing grade. It is clear from these statistics that nearly every state has room for improvement in its response to the commercial sexual exploitation of children.

This report neither assumes a one-size-fits-all approach, nor that responding to this problem necessarily should expand the scope of government powers. The Renewal Forum advocates for not taking a child away from his or her family when the family is willing and able to provide appropriate supervision and love for the child. Instead, this report advocates and provides a roadmap for all children to be able to access services and assistance when abused. The way forward is to address the gaps in CPS services for victims of CSEC by expanding CPS mandates, rewording definitions of abuse to encompass CSEC, and then acting on the expanded mandates and definitions by providing services to these victims.

II. INTRODUCTION

The guiding principle behind this report is that commercially sexually exploited children should have access to services in a way that is individualized and responsive to each child's trauma. This report does not suggest that victims of CSEC should always be taken into state custody, but instead advocates for the provision of services based on the needs of the individual child.

This report highlights weaknesses in states' use of CPS as a tool to respond to the commercial sexual exploitation of children and provides recommendations as to how states can better respond, as well as examples of states that currently have effective responses. The hope is that states will take this review and its recommendations and use it to improve their own responses and more effectively serve this population.

The report builds on numerous other reports done in the past. These reports have included reviews of states' responses to trafficking and domestic minor sex trafficking,⁴ and reviews

³ Each telephone call was placed to a central state CPS line, and a request was then made to be directed to the appropriate person for the inquiry.

⁴ *Report Card on State Action to Combat International Trafficking*, Center for Women Policy Studies (May 2007), available at <http://www.centerwomenpolicy.org/documents/ReportCardonStateActiontoCombatInternationalTrafficking.pdf>; Ian Kitterman, *An Examination of State Laws on Human Trafficking*, The Renewal Forum, <http://renewalforum.org/wp->

undertaken by organizations looking to transform the child welfare system.⁵ If not for these extensive reports, it would not have been possible to undertake this survey.

The research underlying this report began in October 2011 and was updated in 2012 and again in 2013. The research and grades reflected in the report are up to date as of August 1, 2013.

This report focuses specifically on the policy and procedures that CPS has put into place in order to respond to the problem of CSEC. It does not extensively examine the law enforcement response, nor does it analyze the entire system of human trafficking laws. While it is a narrow report, it also attempts to provide a comprehensive analysis of the extent to which CPS agencies are responding to the commercial sexual exploitation of children.

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter, the “Palermo Protocol”), adopted by the United Nations in 2000, contains the following provisions with respect to human trafficking:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” *even if this does not involve any of the means set forth in subparagraph (a) of this article*;

content/uploads/2012/01/State-Law-Analysis.pdf (last modified Aug. 2007); *How Does Your State Rate on Human Trafficking Laws in 2012?*, Polaris Project (July 2012), available at <https://na4.salesforce.com/sfc/p/3000000006E4SZ2vOAvBtmKICytWEBvS.6oLeE4k=>; *Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation’s Children*, Shared Hope International (2012), available at http://sharedhope.org/wpcontent/uploads/2012/09/ProtectedInnocenceChallenge_FINAL_2012_wcover_web.pdf.

⁵ Child Welfare Information Gateway, *Definitions of Child Abuse and Neglect*, U.S. Department of Health & Human Services (Feb. 2011), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf. National Law Center on Homelessness & Poverty; *Alone without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth*, National Law Center on Homelessness & Poverty (Sept. 2012), available at http://www.nlchp.org/Alone_Without_A_Home.

(d) “Child” shall mean any person under eighteen years of age.⁶

Both the Palermo Protocol and the federal definition of trafficking define the trafficking of minors for the purpose of sex as not requiring any show of force, fraud, or coercion. The definition assumes a child cannot consent to trading sexual acts for anything of value. Thus, regardless of the means by which a child comes to engage in a commercial sex act, the child is defined as a victim of commercial sexual exploitation. These definitions recognize that no child should be called a child prostitute; instead, every child bought or sold for sex is to be treated as a victim of CSEC, not as a criminal.

Every year, close to a quarter of a million children are bought and sold for sex in the United States.⁷ Sometimes this victimization occurs through coercion, sometimes through fraud, and often because a child is looking for love in the wrong places. This abuse constitutes trafficking regardless of whether it is perpetrated by a parent or guardian, a family friend, a pimp, or another unrelated person. It is tragic that such abuse happens to children, but the tragedy is compounded by the fact that in most states these children would not qualify for protective services to help them recover from their abuse.

At first glance, 250,000 victims of CSEC may seem like an unreasonably high figure, but, sadly, this is a rather conservative estimate. The National Runaway Safeline estimates the number of runaway youth in the United States is somewhere between 1.6 and 2.8 million at any given time.⁸ The sad state of affairs is that, of those children who are missing three days or more from the home, only one in five are reported.⁹

CPS as a whole is failing this population. Of the fifty states, the District of Columbia, and Puerto Rico, twenty-six states limit their child welfare response to cases where the child is abused by a person with legitimate conferred custody or a person living in the home of the child. This means that CPS *will not* respond to children being abused by a trafficker. Only six states explicitly include commercially sexually exploited children within their mandates. States can remedy this problem by expanding CPS mandates so that CPS can provide protective services to children abused by persons other than their parents or guardians.

A. History

1) History of Movement Against Human Trafficking

Human trafficking is often called modern day slavery because it resembles many aspects of the former transatlantic slave trade. Human trafficking has always existed in society, from ancient Greece until today. The modern movement against human trafficking in the United States has its

⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, U.N. Doc. Art. 3 (Nov. 15, 2000) (emphasis added).

⁷ The Renewal Forum, *supra* note 1.

⁸ National Runaway Safeline, <http://www.runaway.org> (last visited May 23, 2014).

⁹ Andrea J. Sedlak, David Finkelhor, Heather Hammer & Dana J. Schultz, *National Estimates of Missing Children: An Overview*, Office of Juvenile Justice and Delinquency Prevention (Oct. 2002), http://www.missingkids.com/en_US/documents/nismart2_overview.pdf.

origins in the “White-Slave Traffic Act of 1910,” or the Mann Act. The original act was intended to stop the forced prostitution of young girls transported across state lines.¹⁰

In the late 1990s, increasing numbers of policy makers became aware of the seriousness of international human trafficking. Their concerns culminated in 2000 with the passage of the Trafficking Victims Protection Act (TVPA), which made human trafficking a federal crime and put into place numerous enforcement measures. In addition, the TVPA authorized the provision of services for international trafficking victims.

When the TVPA was first enacted, the assumption was that these victims typically were brought in from other countries and then isolated. Since 2000, however, the Department of Justice has discovered that eighty-three percent of sex trafficking victims are actually American citizens or U.S. permanent residents.¹¹ Although the law underwent amendments in 2003, 2005, 2008, and 2013,¹² it has yet to fully respond to the domestic problem, as the services and federal programs are still largely focused on international victims.

After passage of the TVPA, many states created laws criminalizing human trafficking, and some states passed laws responding to the needs of victims of human trafficking. The passage of state trafficking laws was documented by the Center for Women’s Policy Studies in 2003,¹³ the Renewal Forum in 2005,¹⁴ the Polaris Project annually since 2007,¹⁵ and Shared Hope International annually since 2011.¹⁶ Most of these reviews have focused on the passage of laws specifically relating to the criminalization of human trafficking and the restoration of victims. The Shared Hope International report focused specifically on the issue of domestic child sex trafficking. The current report examines one particular aspect of domestic child sex trafficking: the extent to which each state’s child protective services system responds to trafficking.

2) History of Child Protective Services

Prior to the late 1800s in the United States, there was an absence of organized child protective services.¹⁷ Protection was limited to removing abused children from their parents’ custody

¹⁰ See Mann Act, 18 U.S.C. §§2421–2424 (2010).

¹¹ Duren Banks & Tracey Kyckelhahn, *Characteristics of Suspected Human Trafficking Incidents, 2008–2010* (April 28, 2011), U.S. Department of Justice, available at <http://bjs.gov/content/pub/pdf/cshti0810.pdf>.

¹² For a comparison between the versions of the TVPA, see *The TVPA in 5 Colors*, The Protection Project, available at http://www.protectionproject.org/wp-content/uploads/2013/06/TVPA-in-5-Colors_2013_FINAL.pdf (last visited May 23, 2014).

¹³ Center for Women Policy Studies, *supra* note 4.

¹⁴ Kitterman, *supra* note 4.

¹⁵ See *2013 Analysis of State Human Trafficking Laws*, Polaris Project (Aug. 2013), http://www.polarisproject.org/storage/2013_State_Ratings_Analysis_Full_Report.pdf (reviewing most current state trafficking laws).

¹⁶ See *Protected Innocence Challenge: A Legal Framework of Protection for the Nation’s Children*, Shared Hope International, <http://sharedhope.org/wp-content/uploads/2014/02/2013-Protected-Innocence-Challenge-Report.pdf> (last visited May 23, 2014) (reviewing most current state trafficking laws).

¹⁷ See John E.B. Myers, *A Short History of Child Protection in America*, 42 Fam. L.Q. 449, 450–54 (Fall 2008), available at http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/ChildProtectionHistory.authcheckdam.pdf.

through a court order.¹⁸ In 1875, the world’s first organization dedicated to the protection of children, the New York Society for the Prevention of Cruelty to Children, was founded.¹⁹ By 1922, there were about 300 non-governmental child protection societies across the country.²⁰ However, by 1967, due to a combination of factors including the economic effects of the Great Depression and the increasing role of the federal and state governments in the provision of social services, the number of organizations that existed for the protection of children had dwindled to ten.²¹ In 1974, the federal Child Abuse Prevention and Treatment Act (CAPTA) was enacted.²² CAPTA authorized federal funds to improve the state response to child abuse and neglect. To qualify, states were required to adopt child abuse and neglect definitions that included abuse by parents or caretakers, and to define sexual abuse consistently with federal standards. By the end of the 1970s, government-sponsored child protection existed in states and localities throughout the nation.²³

State child protective services systems were originally designed to protect children from abuse in their homes. During the last few decades, states have enacted mandatory reporter laws and expanded the definitions of abuse and neglect in an effort to identify and respond to more child abuse victims. The mandates for child protective services have also expanded by requiring CPS to offer services, not just to the child who is abused, but to all the other children in the home of an abused child. Few states, however, have adopted a comprehensive approach to attend to all children without regard to whether the abuse is inflicted in the home or from an outside third party. This report argues that CPS’s mandate should be expanded further to require CPS to provide services to all children who are commercially sexually abused, regardless of whether the abuse happens at the hands of the child’s parents.

In addition to authorizing child protective services, the legislation in many states also contains a “child in need of services” (CHINS) provision. The definition of a “child in need of services” is different in every state, but most states define children in need of services as children who are habitually truant or beyond the control of a parent or guardian, or who have committed a status offense that does not rise to the level of classifying them as juvenile offenders. Children subject to CHINS provisions typically fall under the jurisdiction of the court, which, upon adjudicating a child’s case, will determine the proper placement for the child (i.e., in detention, under the care of CPS, or home under the care of a parent or guardian), depending on state requirements and the particular child’s situation. In some states, the CHINS process is the only means by which a child abused by someone other than a parent or guardian can obtain services.

B. Child Protective Services As the Proper Response for Victims of CSEC

1) Rationale

The Renewal Forum believes that the child protective services system is the best place for the care and treatment of victims of CSEC. In response to telephone calls by the Renewal Forum

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

and Paul Hastings attorneys to state CPS agencies, agency representatives often stated that CSEC is a law enforcement problem and does not fall under the realm of CPS. Police, however, are ill-equipped to respond to this population of children because they are trained to handle criminal offenders. Although in reality these children are victims, police may treat them as offenders, either because they are classified as such by state statutes or because police are not properly trained to deal with this population. Sexually exploited children, therefore, may be arrested for prostitution and placed in juvenile detention.

If police do become adequately trained to respond to child victims of trafficking, they frequently feel powerless to respond effectively due to the lack of social services for victims. When the police arrest a child for the purpose of getting the child off the street, often the only option for the police is to return the child to the custody of his or her parent. If the parent does not have control over the child or does not care if the child is being abused, the child will often return to the street the same night he or she is brought home by the police.

CPS, on the other hand, is trained to identify instances in which children are in dangerous situations and/or at risk of abuse. CPS can place children into temporary custody where the children will be supported, rather than placing them in juvenile detention centers or back into a potentially dangerous situation.²⁴ CPS can also provide necessary services to these children that can help them to overcome their complex trauma.

An alternative to placing victims of CSEC within the control of CPS is to send these children directly to local organizations that specialize in dealing with victims of CSEC. While this approach is preferable to the alternative of treating CSEC as a law enforcement problem, the best practice would be to utilize CPS as the route by which victims of CSEC arrive at local partner organizations in order to ensure the state maintains some record of these children coming into the system and the services provided. Partnering CPS with local organizations in the provision of child protective services to victims of CSEC leverages the resources of both the state and the local organization and ensures the continuous maintenance of adequate records with respect to the child victims.

2) Dealing with Objections

Some will state that CPS is not the answer for dealing with the population of commercially sexually exploited children, but that we should continue to rely on law enforcement and the CHINS system. One common objection to CPS providing services to victims of CSEC is that these children are outside the scope of the population CPS was designed to serve. It is true that, historically, CPS has responded to children abused in the home. On the other hand, CPS is more equipped than any other government agency to provide services to traumatized children, with the goal of healing such children and reuniting them with their families. Additionally, there is already a nexus between many victims of CSEC and CPS. According to a report by MISSEY,²⁵

²⁴ Some will say that state CPS agencies are already stretched too thin and that expanding the agencies' mandates will reduce the resources available to protect children who are abused in the home. The Renewal Forum maintains that the appropriate response to this complaint lies not in declining to expand CPS's mandate, but in improving CPS's resources.

²⁵ "MISSEY" is an acronym for the agency Motivating, Inspiring, Supporting, and Serving Sexually Exploited Youth.

of the commercially sexually exploited children in the Oakland, California area, more than half were foster care youth.²⁶

Another common objection to expanding the scope of the population served by CPS to include victims of CSEC is that CPS agencies are already overburdened and cannot afford to increase their responsibilities. CPS agencies are often the target of criticism from those outside the system – on the one hand, some complain that the agencies are too lenient in not removing children from the home, and, on the other hand, some criticize the agencies for being too quick to separate families. That there are failings in the current CPS system, however, is an insufficient justification for declining to expand the CPS mandate to serve traumatized victims of CSEC. A more appropriate response would be to work toward fully funding and equipping state child protective services systems so they are able to respond to the needs of *all* abused children. In many states, the provision of services to victims of CSEC is already performed by non-profit organizations, and the states can work to expand their coordination with these organizations to increase the provision of services to these victims.

C. Child in Need of Services As an Alternative for Victims of CSEC

Those who oppose expanding the scope of CPS services may argue that victims of CSEC already have access to services through a state's CHINS provision. Although the CHINS process is not ideal for victims of CSEC, in the event that it is not presently feasible to reform a state's CPS system, the CHINS process is the next best alternative. However, the efficacy of the typical CHINS provision is dramatically reduced by the hurdles to receiving services through the CHINS process.

In most states, a child enters this process when a police officer, school district, parent, or county attorney petitions the court to have a child declared a "child in need of services." The CHINS system is normally reserved for children who are habitually not under the control of their parents, habitually truant, or have committed a status offense that does not rise to the level of classifying them as juvenile offenders. The Renewal Forum does not recommend the CHINS process as the primary means of serving victims of CSEC because, in many states, this process requires that a third party file a petition on behalf of a child rather than permitting the child who is the victim to apply for services on his or her own behalf; the provision of services is contingent upon the parents' ability to pay for the services; and there is a possibility that the child could be placed in juvenile detention. Placing commercially sexually exploited children in juvenile detention treats them as offenders rather than victims of a crime. These children should instead be reunited with their families where appropriate and provided with access to services similar to those that would be provided to other victims of child abuse or neglect. If a state decides to utilize the CHINS system as the primary method to respond to commercially sexually exploited children, it should

²⁶ *Framing the Issue of the Commercial Sexual Exploitation of Children*, MISSEY, (2009), www.misseey.org/documents/framing_the_issue.pdf (last visited May 23, 2014); *CSEC Report – Data Highlights*, MISSEY, http://www.misseey.org/documents/misseey_wcc_pgsp_data_highlights.pdf (last visited May 23, 2014); Susan Abram, *Child Sex Trafficking in Los Angeles: 'It Happens Way Too Often'*, LA Daily News, May 4, 2012, available at http://www.dailynews.com/ci_20558028/16-year-old-girl-targeted-by-burbank-pimp (noting that, in Los Angeles, thirty-three percent of the girls brought in for prostitution in 2010 had ties to the Los Angeles Department of Children and Family Services).

amend its law to specifically account for victims of CSEC and to otherwise eliminate these deficiencies and procedural hurdles.

D. Protective Criminal Provisions

This report also includes a review of two aspects of the criminal law in each state: (1) the relevant provisions regarding sex trafficking of a minor; and (2) the safe harbor provisions giving minors immunity from prosecution for prostitution offenses. It is important to recognize CSEC as a criminal act against a child. The federal government already recognizes that any person under the age of eighteen who engages in a commercial sex act is a victim of sex trafficking.²⁷ Additionally, it recognizes that anyone who recruits or entices a minor to engage in a commercial sex act, or harbors, transports, provides, obtains, or benefits from a minor engaging in a commercial sex act is guilty of the offense of sex trafficking of a minor. States should align themselves with this federal law.

A safe harbor that makes minors immune from prosecution for prostitution offenses further reflects the understanding that children subjected to CSEC are victims of a crime. Many states have passed an affirmative defense to prostitution charges for victims of trafficking. This is a good start; however, those affirmative defenses require child defendants to be identified as victims of trafficking, something that can be difficult if a victim does not understand the law or does not identify herself as a victim, which can be true of many child trafficking victims. Instead, the understanding that any minor engaging in a commercial sex act is a trafficking victim should presumptively bar a minor from being prosecuted for offenses arising out of those actions.

III. METHODOLOGY

A large portion of the research for this report was conducted by Paul Hastings attorneys on a pro bono basis. The Paul Hastings attorneys researched the following information for each state:

- 1) The authorizing legislation for CPS;
- 2) The population served by CPS (i.e., whether the definition of abuse would include traffickers or is limited to those who have custody over a child);
- 3) Whether a person responsible for the welfare of a child is defined to include anyone exercising effective custodial control, like a trafficker;
- 4) The expressed mandate or mission of CPS (often found on the CPS website);
- 5) The reporting obligations of CPS to law enforcement if trafficking is suspected;
- 6) Any differences in the victim population served between local and state agencies;
- 7) Other relevant state legislation relating to child trafficking victims; and

²⁷ 18 U.S.C § 1591.

- 8) Any state or local agency other than CPS that provides welfare services to victims of human trafficking (particularly child victims), and the authorizing/enabling legislation for that agency.

In October 2011, the result of this research was a nearly 200-page report detailing the extent to which state mandates and policies allow or require CPS to respond to the trafficking of children. Lawyers from the Renewal Forum and Paul Hastings expanded upon these findings by contacting individual states' child protective services divisions to determine if there were any further processes that would allow CPS to respond to child victims of commercial sexual exploitation.

While many state CPS agencies indicated that their child protective services systems would only deal with children abused by a parent or guardian, some CPS agencies suggested that a child, such as a habitual runaway, could access services through a child in need of services program. The Renewal Forum then undertook an additional research project to investigate every state's legislation to determine:

- 1) Whether the state has a child in needs of services law;
- 2) How the state defines a "child in need of services" (i.e. whether the definition contains references to runaways or commercially sexually exploited children);
- 3) The eligibility requirements for a child to be declared a child in need of services (i.e., whether a child trafficked by a person other than his or her parents can be eligible for the CHINS procedure);
- 4) The parties authorized to file to have a child declared a child in needs of services (in particular, whether a child who has been trafficked is permitted to file a CHINS petition on his or her own behalf); and
- 5) The placement process for a child declared in need of services, in particular whether and under what circumstances a child would be placed in the juvenile justice system as opposed to being provided with services from CPS.

The Renewal Forum also supplemented the research conducted by the Paul Hastings attorneys on state anti-trafficking legislation, in order to determine whether the individual states have safe harbor laws to protect victims of CSEC from prosecution.

A. Scoring of States

After the research was completed, the Renewal Forum assessed each state, providing point totals and letter grades for the following three categories: (i) the child protective services systems; (ii) the child in need of services systems; and (iii) the trafficking legislation related to providing services to victims of CSEC. The categories were weighted in order to reflect the priority of addressing the needs of commercially sexually exploited children through the child protective services system. The child protective services review was worth fifty percent (25 points) of the grade; the CHINS review, thirty percent (15 points); and the review of protective trafficking legislation, twenty percent (10 points) of the total grade.

The Renewal Forum assessed each state according to the following rubric.

B. Child Protective Services (25 points possible)

- 1) Mandate of the state's child protective services system (8 points possible)
 - (a) Eight points if CPS's mandate explicitly includes children who have been commercially sexually abused by anyone.
 - (b) Six points if CPS's mandate does not explicitly include children who have been commercially sexually abused by anyone, but a common sense reading would include these children.
 - (c) Four points if CPS's mandate does not lend itself to a common sense reading that would include children who have been commercially sexually abused by anyone, but a CPS representative affirmed that CPS would provide services to these children.
 - (d) Two points if CPS's mandate only requires CPS to provide services to children abused by persons legally responsible for their welfare, but a person legally responsible for a child's welfare is defined broadly.
 - (e) Zero points if CPS's mandate only requires CPS to provide services to children abused by persons legally responsible for their welfare, but a person legally responsible for a child's welfare is defined so narrowly as to exclude an abuser other than a parent, guardian, or person responsible by virtue of a position of conferred authority (e.g., a teacher, babysitter, or other person whom a legal custodian consents to having temporary physical custody of the child).
 - (f) Negative two points if CPS's mandate explicitly disavows responsibility for children who are abused by someone other than a parent or guardian.
 - (g) Negative two points if a CPS representative indicated that CPS would not provide services to a child sex-trafficking victim.

- 2) Definition of abuse in legislation authorizing CPS services (10 points possible)
 - (a) Ten points if the definition of abuse acknowledges that anyone can be the perpetrator of the abuse.
 - (b) Eight points if the definition of abuse includes acts or omissions by a person responsible for the welfare of a child, and the definition of a person responsible for the welfare of a child is defined broadly enough to include a trafficker.
 - (c) Six points if the definition of abuse (i) is limited to acts or omissions by a parent or guardian, but allows for the provision of CPS services in any case of sexual abuse, or (ii) explicitly includes child trafficking, but limits trafficking to cases involving force, fraud, or coercion.
 - (d) Four points if the definition of abuse includes acts or omissions only by the child's parent or guardian, or abuse by another individual when the child's parent or guardian fails to make a reasonable effort to prevent the abuse. This

standard assumes a parent or guardian should have known that abuse was possible but did not undertake reasonable efforts to prevent it.

- (e) Two points if the definition of abuse confines abuse to situations in which a child's parent or guardian commits or allows sexual abuse. This standard assumes a parent or guardian knew of the abuse and did not prevent it.
- (f) Zero points if the definition of abuse includes acts or omissions by a person responsible for the child's welfare, but a person responsible for the child's welfare is so narrowly defined as to exclude an abuser other than a parent, guardian, or person responsible by virtue of a position of conferred authority (e.g., a teacher, babysitter, or other person whom a legal custodian consents to having temporary physical custody of the child).
- (g) Negative one point if the definition of abuse is limited only to acts or omissions by a parent or guardian.

3) Definition of person responsible for child's welfare (7 points possible)

- (a) Seven points if a person responsible for the child's welfare is defined as one of the following:
 - i. A person exercising actual control/custody over the child;
 - ii. A person exercising custodial control who has assumed the role and responsibility of the child's parent regardless of legal custody; or
 - iii. A person in a position of trust, authority, supervision, or control over the child.
- (b) Six points if a person responsible for the child's welfare is defined as one of the following:
 - i. A person who has regular responsibility for the child;
 - ii. A person temporarily responsible for the child's welfare; or
 - iii. A person charged with physical custody or care of the child.
- (c) Three points if a person responsible for the child's welfare is defined as one of the following:
 - i. A person who has regular contact with the child;
 - ii. A person with whom the child resides, regardless of duration of time;
 - iii. A family member or person living in the child's home; or
 - iv. A person with substantial and regular contact with the child.
- (d) One point if a person responsible for the child's welfare is defined as a person with legal responsibility for the child or a person responsible by virtue of a position of conferred authority (e.g., a teacher, babysitter, or other person whom a legal custodian consents to having temporary physical custody of the child).
- (e) Negative one point if a person responsible for the child's welfare is defined only as a parent, guardian, or legal custodian.

C. Child in Need of Services (15 points possible)

Where the Renewal Forum determined that a particular state has such an effective CPS system that a CHINS system would not be required, that state was given the full 15 points for the CHINS portion of its grade regardless of the quality of its CHINS provisions. In such a case, the

Renewal Forum still provided recommendations for improving the state's CHINS provisions. On the other hand, where a particular state is without a CHINS system and the state's CPS system would not handle victims of CSEC, negative one point was given for each category within the CHINS section of the state's report.

1) CHINS eligibility for victims of CSEC (5 points possible)

- (a) Five points if the CHINS provision specifically includes trafficked children, commercially sexually exploited children, or victims of related circumstances such as children who are in the presence of prostitution or sexual abuse.
- (b) Three points if the CHINS provision specifically includes runaway children.
- (c) Negative one point if there is no mention of runaways, trafficked children, or commercially sexually exploited children in the CHINS provision.

2) Persons authorized to file CHINS petition (5 points possible)

- (a) Five points if the persons authorized to file include either of the following:
 - i. The child; or
 - ii. Any person with knowledge of the abuse.
- (b) Two points if the persons authorized to file do not include the above categories, but include any of the following:
 - i. The child's appointed guardian ad litem;
 - ii. Any person with informal supervision of the child (i.e., a teacher, day care worker, or other mandatory reporter of abuse); or
 - iii. A social worker, police officer, or other service worker who would come into contact with the child through the course of their duties.
- (c) Zero points if only a government actor such as the state's attorney may initiate a CHINS proceeding.
- (d) Negative one point if only the child's parent is authorized to file a CHINS petition.

3) The CHINS process (5 points possible)

- (a) Five points if the victim of CSEC is placed with the CPS agency to be cared for in collaboration with the child's parents.
- (b) Three points if the victim of CSEC is first sent through the court system and then to CPS, and the law does not authorize placing a victim of CSEC in detention.
- (c) Two points if the victim of CSEC is first sent through the court system for adjudication, and the law authorizes detention as an option for placement of a victim of CSEC.
- (d) Negative one point if the victim of CSEC is placed in a juvenile detention facility similar to where a juvenile offender would be placed.

D. Trafficking Laws (10 points possible)

1) Trafficking statute (5 points possible)

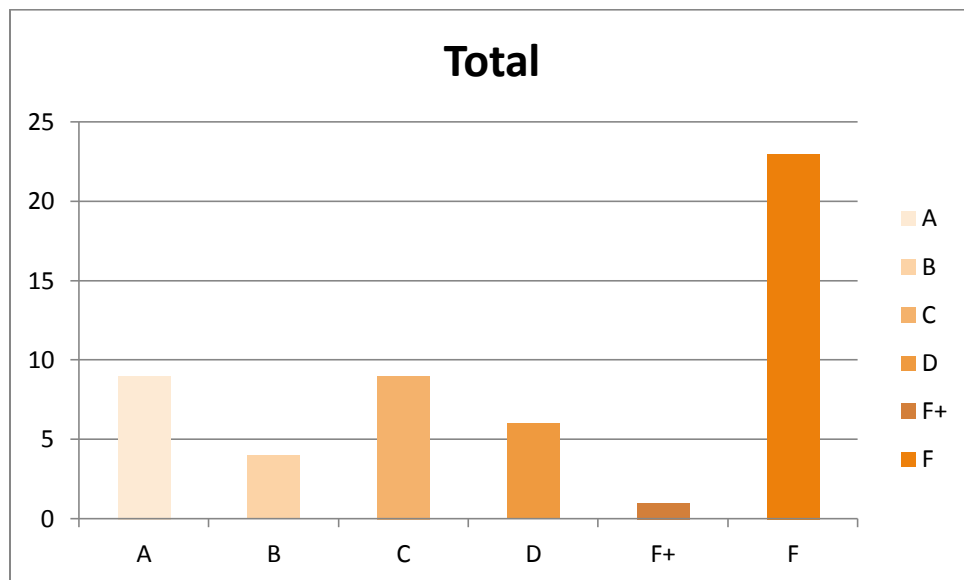
- (a) Five points if the state's trafficking statute deems minors engaged in commercial sex as victims of trafficking, regardless of a showing of coercion.
- (b) Three points if the state's trafficking statute deems minors under the age of 16 or 15 who are engaged in commercial sex as victims of trafficking, regardless of a showing of coercion.
- (c) Zero points if the state has a trafficking statute devoted to the trafficking of minors, but the statute requires a showing of coercion.
- (d) Negative one point if the state does not have a trafficking statute specifically referencing the trafficking of minors.

2) Safe harbor law (5 points possible)

- (a) Five points if the state's safe harbor law provides that a commercially sexually exploited child is immune from prosecution for engaging in a commercial sex act.
- (b) Four points if the state's safe harbor law has a rebuttable presumption that a child engaged in a commercial sex act has been coerced and is thus exempt from prosecution.
- (c) Three points if the state's safe harbor law (i) provides that a child accused of engaging in a commercial sex act may assert that he or she was commercially sexually exploited as an affirmative defense to prosecution or (ii) diverts a child accused of engaging in a commercial sex act to the CHINS process, although the child could still be prosecuted for prostitution through that process.
- (d) Two points if (i) the state's safe harbor law directs that a child engaging in a commercial sex act be provided CPS services, but is silent on the issue of prosecution; (ii) the state's safe harbor law prohibits prosecution of anyone under the age of 16 for engaging in a commercial sex act; or (iii) the prostitution offense does not apply to certified trafficking victims.
- (e) Zero points if the state has no safe harbor law for victims of CSEC.

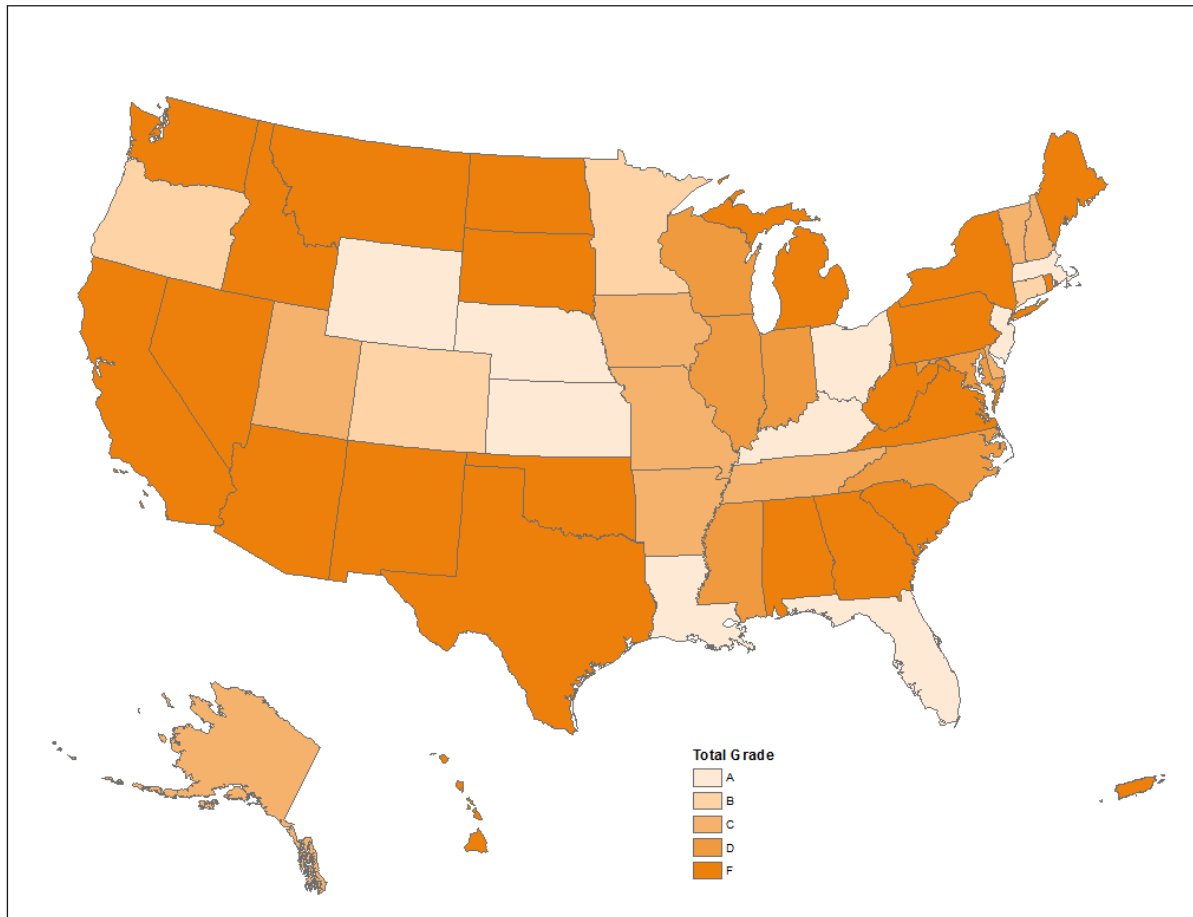
IV. FINDINGS

A. Summary of Findings



A total of nine states received a cumulative A. These states have child protective services systems that would adequately respond to commercially sexually exploited children and safe harbor laws to protect children from prosecution. A further four states received a B, nine received a C, six received a D, and twenty-four states received a failing grade. In these twenty-four states, a commercially sexually exploited child would most likely be unable to receive any CPS services. For the child protective services portion of the grade, fourteen states received an A, nine received a B, one received a C, six received a D, and twenty-two received an F. In the child in need of services category, fifteen states received an A, ten states received a B, two states received a C, six states received a D, and nineteen states received a failing grade. In the trafficking legislation category, only six states received an A, nine received a B, two received a C, and thirty-five states received an F, mostly because of the lack of a safe harbor law to ensure that trafficked children are treated as vulnerable victims.

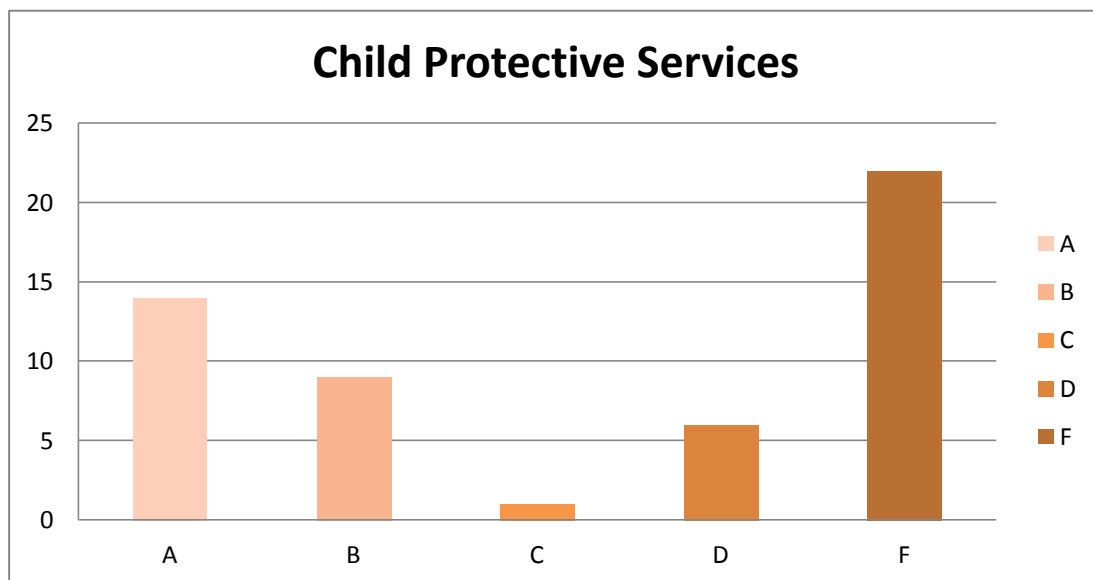
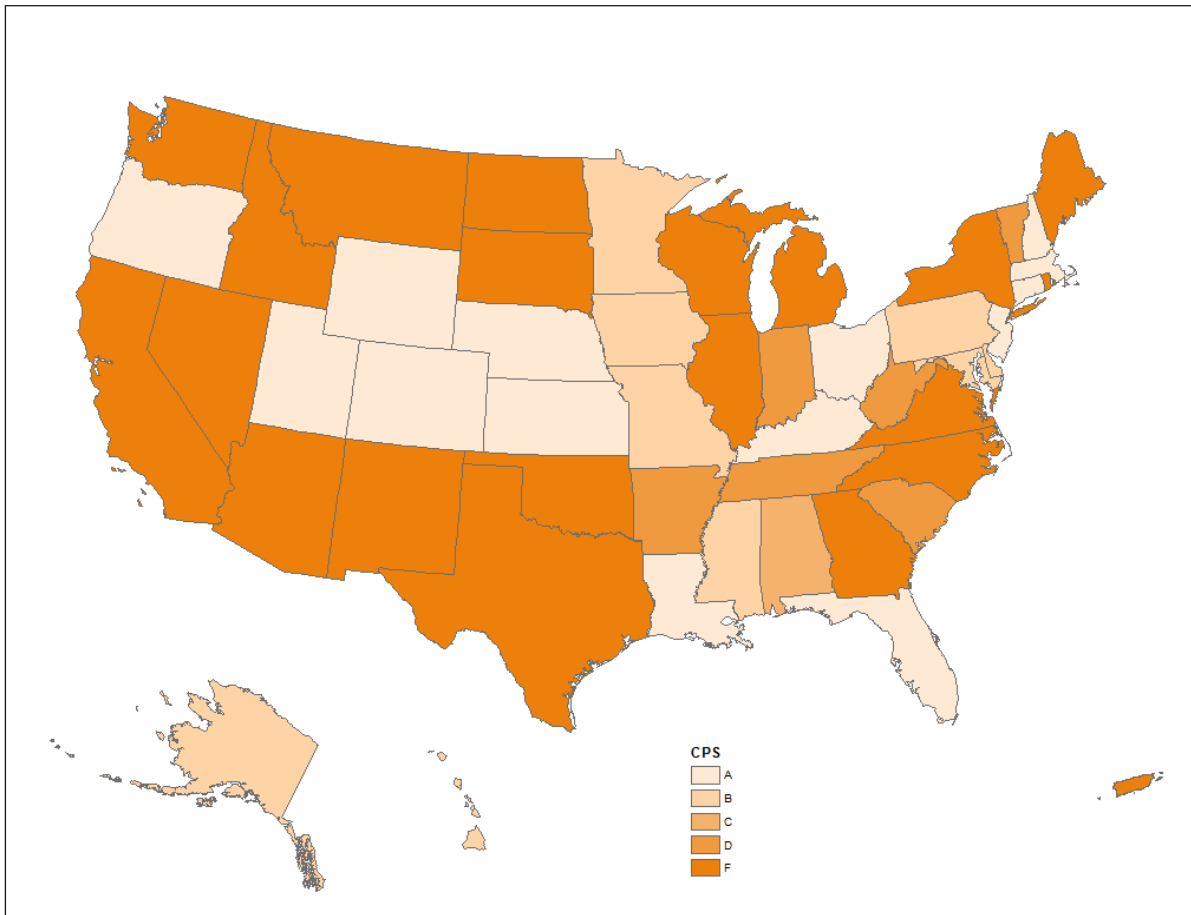
B. Full Report of Findings



State	Total Grade	CPS Grade	CHINS Grade	Trafficking Legislation Grade
Alabama	F	C	F	F
Alaska	C	B	F	F
Arizona	F	F	B	F
Arkansas	C	D	B	B
California	F	F	F	F
Colorado	B	A	A	F
Connecticut	B	A	A	F
Delaware	C	B	B	F
District of Columbia	F	F	F	F
Florida	A	A	A	B
Georgia	F+	F	C	F
Hawaii	F	B	F	F
Idaho	F	F	F	F
Illinois	D	F	D	A
Indiana	D	D	D	F
Iowa	C	B	D	F
Kansas	A	A	A	B
Kentucky	A	A	A	A
Louisiana	A	A	A	B
Maine	F	F	F	F
Maryland	D	B	F	F
Massachusetts	A	A	A	B
Michigan	F	F	F	C
Minnesota	B	B	B	B
Mississippi	D	B	F	F
Missouri	C	B	D	F
Montana	F	F	F	F
Nebraska	A	A	A	B
Nevada	F	F	F	F
New Hampshire	C	A	A	F
New Jersey	A	A	A	B
New Mexico	F	F	C	F
New York	F	F	B	F
North Carolina	D	F	B	A
North Dakota	F	F	D	F

Ohio	A	A	A	B
Oklahoma	F	F	F	F
Oregon	B	A	A	F
Pennsylvania	F	B	F	F
Puerto Rico	F	F	F	F
Rhode Island	F	F	B	F
South Carolina	F	D	F	F
South Dakota	F	F	F	F
Tennessee	C	D	B	A
Texas	F	F	F	F
Utah	C	A	A	F
Vermont	C	D	D	A
Virginia	F	F	B	F
Washington	F	F	A	A
West Virginia	F	D	F	F
Wisconsin	D	F	B	F
Wyoming	A	A	A	C

C. Child Protective Services



1) Mandate of the Child Protective Services System

Only six states explicitly include commercially sexually exploited children within the CPS mandate. Thirty-six states have mandates that would include victims of CSEC under a common-sense reading of the statute. In three states, a common-sense reading suggests that the mandates would not cover victims of CSEC, but CPS representatives from those states stated that their agencies are required to provide services to these children. In four states, the mandate explicitly limits CPS's ability to respond to abuse by a parent or another person "legally responsible for the child."²⁸ In three states, a representative of CPS stated that a trafficked child would not be given services unless abused by a person responsible for the child's welfare.

The most effective mandates require CPS to investigate any situation involving a child who is suspected of being a victim of maltreatment, and to make services available if abuse is confirmed. The least effective mandates either are so narrowly tailored that only parents or guardians are included in the mandate, or explicitly abandon any responsibility for children who are abused by someone other than a parent or guardian. Such mandates should be changed to require CPS to protect and rehabilitate all children who have suffered abuse, regardless of the identity of the perpetrator.

2) Definition of Abuse

Even though many states' mandates are broad enough to permit CPS to help any sexually exploited child, the definition of abuse often effectively restricts CPS from becoming involved if the child is abused by someone other than a person responsible for the welfare of the child.

The most effective definition of abuse includes maltreatment of a child by any person regardless of that person's relationship to the child, thereby enabling the state to intervene and provide services to children suffering abuse at the hands of any perpetrator. Twenty states, however, only allow CPS to respond when a person responsible for the child's welfare²⁹ is connected to the abuse – either by directly inflicting the abuse (seven states), knowingly allowing it (nine states), or failing to make a reasonable effort to prevent it (four states). Fourteen additional states allow CPS to provide services when abuse is committed by a "person responsible for the welfare of the child," but the definition of a person responsible for the welfare of the child is broad enough to possibly include a trafficker. In *sexual abuse* cases only, five additional states permit CPS to provide services irrespective of the abuser's relationship to the child. Only thirteen states allow CPS to respond to general abuse without regard to the abuser's relationship to the child.

3) Definition of Person Responsible for the Child's Welfare

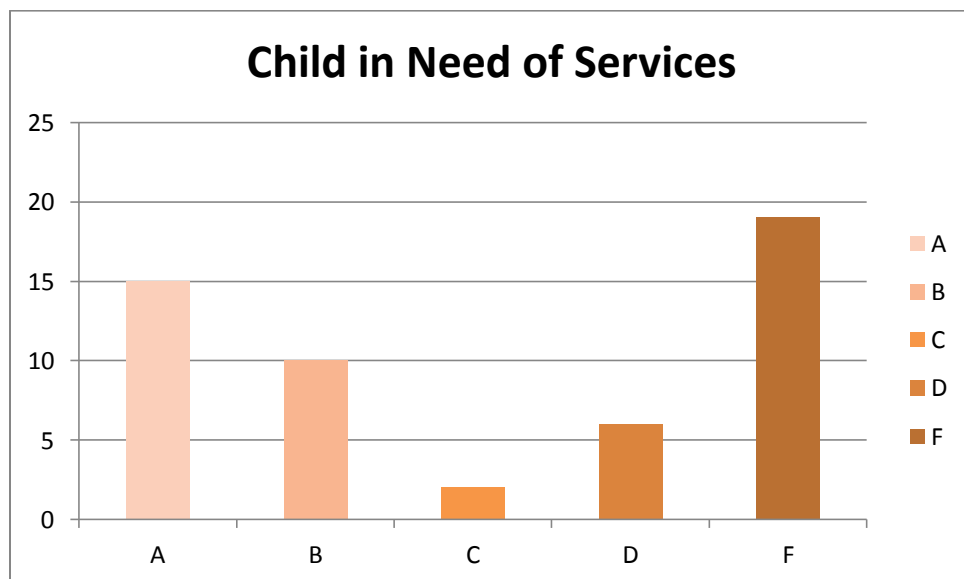
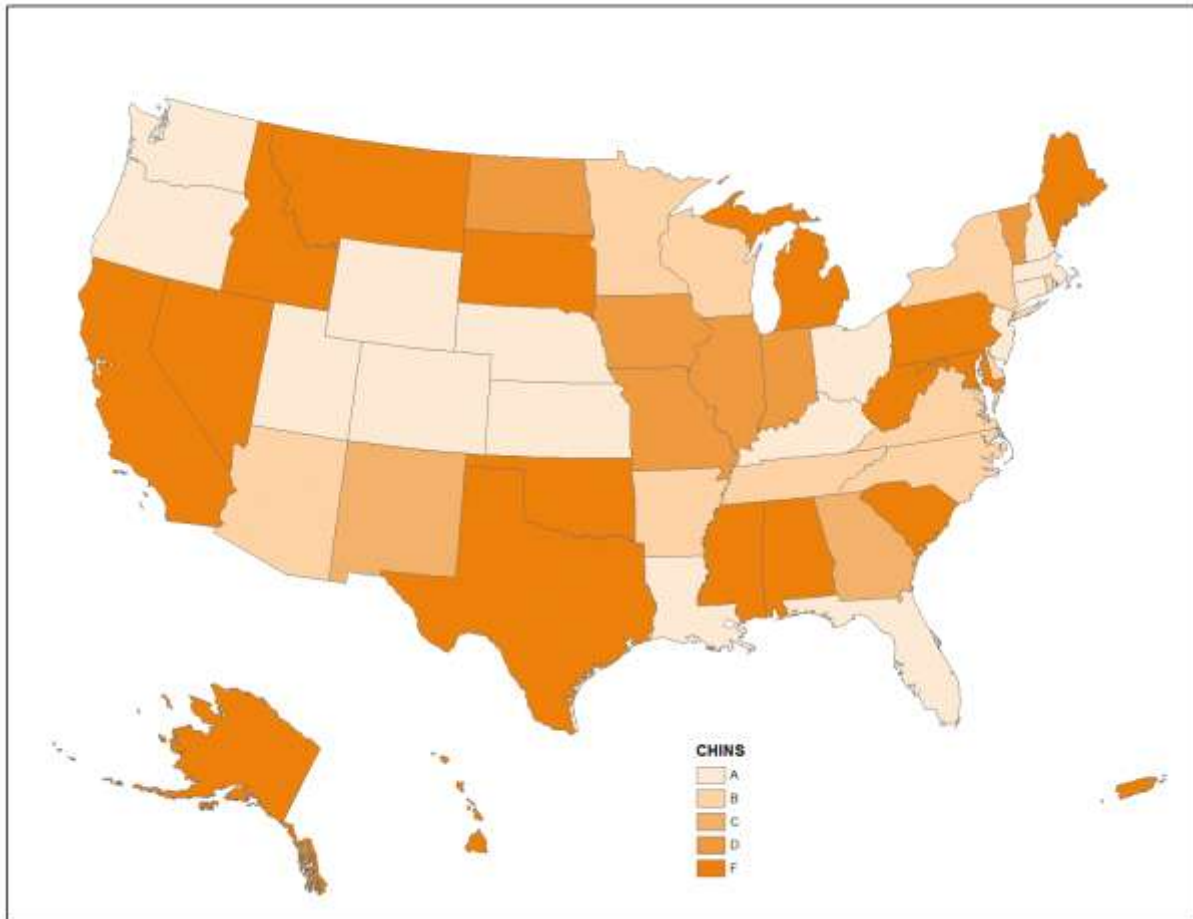
There are a variety of definitions for persons responsible for the welfare of a child. These definitions range from only including parents or guardians to including any person with temporary responsibility or control over a child. Of course, not every person who comes into

²⁸ Those legally responsible for the children would include school teachers and day care staff as well as parents, guardians, and custodians.

²⁹ As traditionally defined, a person responsible for the welfare of a child would include the child's parents, guardians, custodians, schools, daycare and live-in child care centers, and others with legal custody of the child.

contact with a child should have legal responsibility for the child's welfare. However, the definition should be broad enough to include a person who has assumed control over a child and is profiting from the sexual exploitation of that child. In four states the definition of a person responsible for the welfare of a child (i.e., situations to which CPS is permitted to respond) is limited to parents or guardians only. In five states, the definition of a person responsible for the welfare of a child is limited to those who are responsible by virtue of a position of conferred authority (e.g., a teacher, babysitter, or other person whom a legal custodian consents to having temporary physical custody of the child). In sixteen states, the definition would include those who live in the home and those with regular contact with the child. In two states, a person responsible for the welfare of a child would include those charged with physical custody or temporary responsibility for the child. In nineteen states, a person responsible for the welfare of a child would include anyone exercising actual control or custody. Six states were given full credit for their definition of a person responsible for the welfare of a child because, without regard to that definition, their definition of abuse is broad enough to cover actions by any person.

D. Child in Need of Services



A CHINS system is only necessary if the state's statutes regarding child protective services fail to authorize CPS to adequately protect sexually exploited children. Eleven states were given full credit for their CHINS score because, regardless of the strength of their existing CHINS systems, their child protective services systems are broad enough to provide services to sexually exploited children. Eight states have no CHINS statutes. However, three of the eight have comprehensive CPS systems that would provide services to sexually exploited children and thus were also given full credit for their CHINS score. The remaining states were graded on the basis of the categories set forth below.

1) Definition of Child Eligible

In fifteen states, the definition of an eligible child under the CHINS provisions would include commercially sexually exploited children. In over half the states, the CHINS provisions specifically include runaway children, which in some instances would include trafficked children. Seven states do not mention runaway or trafficked children in their CHINS provisions.

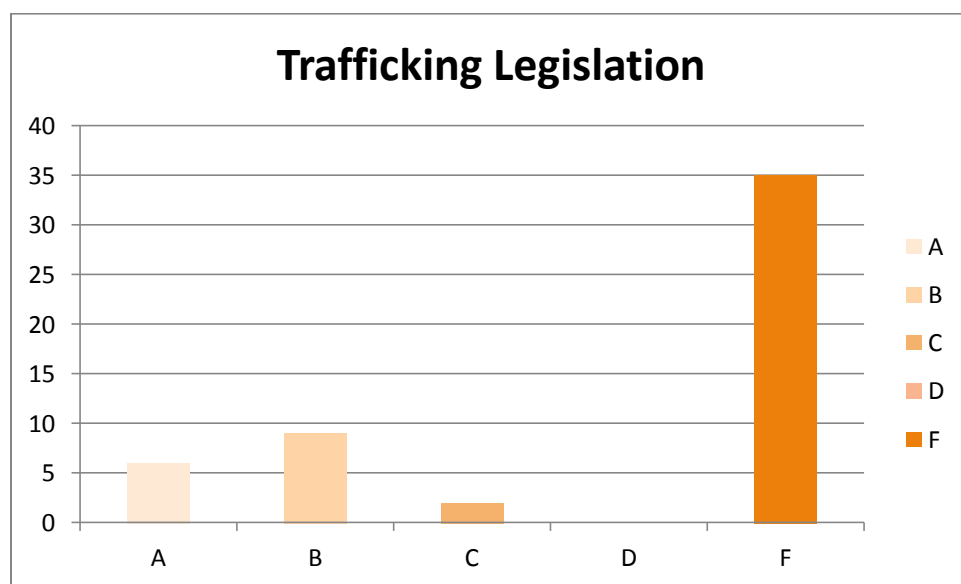
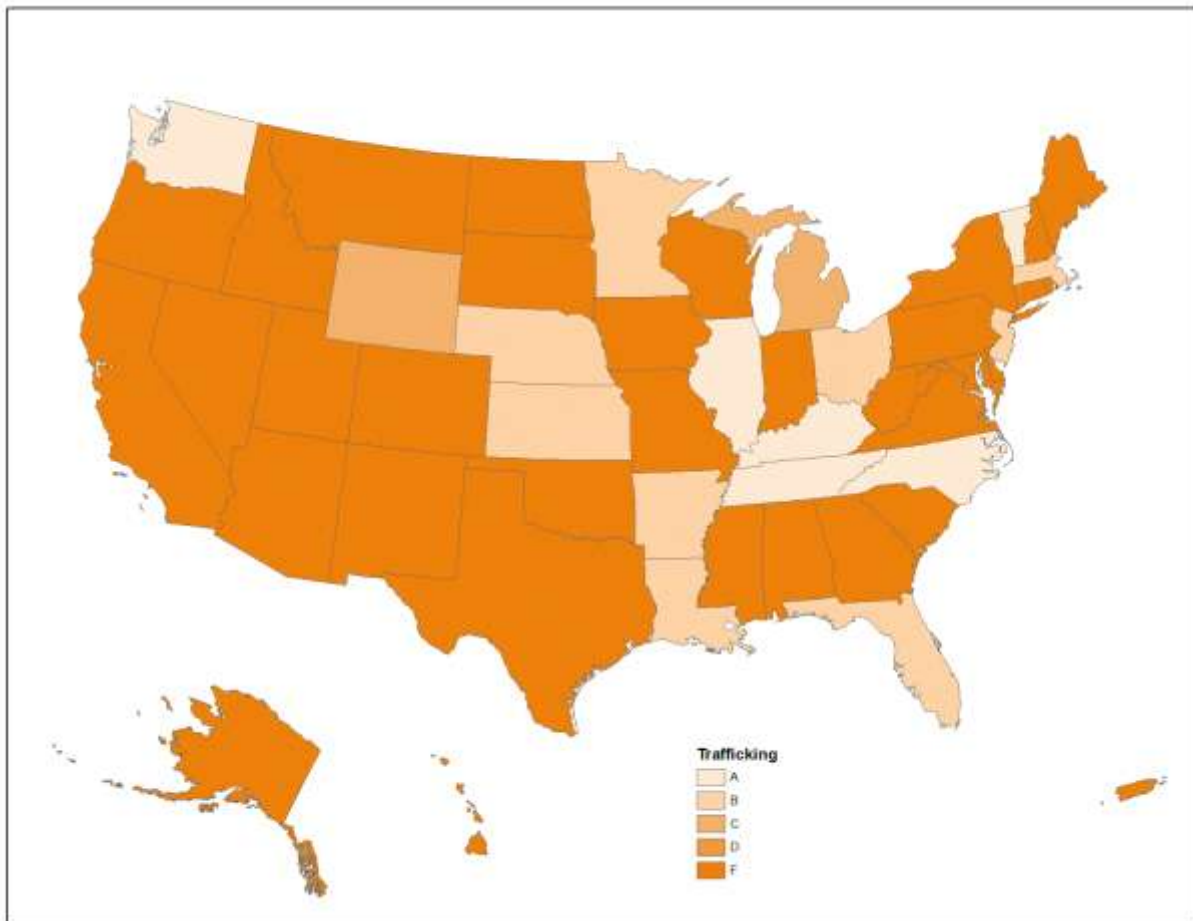
2) Definition of Who Can File

Twenty-one states allow any person, including the child on his or her own behalf, to petition the court to initiate the CHINS process. Seven states allow any person with informal supervision over the child or those who would come into contact with the child through the course of their duties to file a petition. Fifteen states limit the ability to file a petition to government representatives such as city attorneys, and nine states limit the ability to file a petition to only the child's parent or guardian.

3) Process for Child Placement

Most states allow children who are declared to be in need of services to receive assistance through a mix of family services and CPS services. However, in twenty states, a child could be sent to juvenile detention upon being declared a child in need of services.

E. Trafficking Laws



In the ten-plus years since the federal TVPA was enacted, most states have also enacted laws criminalizing trafficking in persons. However, unlike the federal law, a significant number of states only criminalize trafficking of minors if force, fraud, or coercion is involved, and most states have not passed a safe harbor law providing children with immunity from prosecution for the commission of a commercial sex act.

1) Trafficking Law

Under federal law, as detailed above, sex trafficking of minors does not require force, fraud, or coercion. Many states, however, have been slow to adopt this standard. Some states have yet even to pass statutes that contemplate a separate or harsher punishment for the sex trafficking of a minor. A quarter of the states still require force, fraud, or coercion in order to classify a minor as a victim of sex trafficking. Although most of the states now apply the federal standard, and do not require that minor victims of sex trafficking be subject to force, fraud, or coercion, there is still room for improvement in a significant number of states.

2) Safe Harbor

About one-third of the states have laws that provide safe harbor from prosecution for victims of CSEC and refer the victims to CPS for services. Of those states, only five explicitly exempt a commercially sexually exploited child from prosecution, while the others only apply a rebuttable presumption of coercion in cases involving CSEC. In the vast majority of states, therefore, a child who is a victim of CSEC may be arrested for prostitution and placed into the juvenile justice system. Five states would actually require a child to enter the juvenile justice system for the safe harbor law to apply, as the law only gives a victim of CSEC an affirmative defense that may be raised in the context of a prosecution for commission of a commercial sex act.

V. SOLUTIONS

A. General Recommendations

While there is not necessarily a universal formula to apply in responding to CSEC, in the vast majority of states, there is room for improvement in providing protections and services to the victims of CSEC. To better respond to this population, states should change their CPS mandates to include provision of services for victims of CSEC, change definitions of abuse to include these children, change the definition of persons responsible for the welfare of a child to include exploiters, ensure that the CHINS system provides services to victims of CSEC rather than treats them as offenders, and guarantee no requirement of force, fraud, or coercion for minor trafficking victims.

B. Recommendations for CPS Mandate and Definitions

1) Improve the Child Protective Services Mandate to Include All Children

In many states, CPS is able to respond only in cases where the parent, guardian, or another person who has legal custody of the child abuses the child. In these states, therefore, children who are abused by a third party – including children who are repeatedly sexually exploited in the form of prostitution by a trafficker – are unable to receive services that can help them heal from

the abuse. Changing the mandates of these states would allow CPS to shift from its role in dealing only with family situations to providing services to *every* child who is a victim of abuse. Additionally, any services provided by CPS should involve more than just removing a child from the parent's custody or detaining the child until another responsible adult can provide supervision. CPS should also provide rehabilitation and restorative justice services to fully address the needs of these children.³⁰

A state's CPS mandate, and definitions in connection with the mandate, should explicitly obligate CPS to provide services to children who have been commercially sexually abused by *anyone*. Moreover, it is imperative that this requirement not merely be a unilateral administrative decision, but be reflected in the actual legislative mandate of the agency. Administrative decisions are too easily overturned.

- (a) **Exemplary Mandate: Wyo. Stat. Ann. § 14-3-201** – “The purpose of [the authorizing statutes] is to delineate the responsibilities of the state agency, other governmental agencies or officials, professionals and citizens to intervene on behalf of a child suspected of being abused or neglected, to protect the best interest of the child, to further offer protective services when necessary in order to prevent any harm to the child or any other children living in the home, to protect children from abuse or neglect which jeopardize their health or welfare, to stabilize the home environment, to preserve family life whenever possible and to provide permanency for the child in appropriate circumstances.”
- (b) **Exemplary Mandate: La. Ch.C. Art. § 601** – “The purpose of this Title is to protect children whose physical or mental health and welfare is substantially at risk of harm by physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing for the reporting of suspected cases of abuse, exploitation, or neglect of children; by providing for the investigation of such complaints; and by providing, if necessary, for the resolution of child in need of care proceedings in the courts. The proceedings shall be conducted expeditiously to avoid delays in achieving permanency for children. This Title is intended to provide the greatest possible protection as promptly as possible for such children.”
- (c) **Deficient Mandate: West Virginia** – “Child Protective Services is . . . provided to families on behalf of children who are neglected or abused by their *parents* or by the *guardians* or *custodians* responsible for the care of children.”³¹

³⁰ Of course, these services should be provided in conjunction with a law enforcement investigation of the child's sexual exploitation case.

³¹ See *Child Protective Services*, West Virginia Department of Health & Human Resources, http://www.wvdhhr.org/bcf/children_adult/cps/ (last visited May 23, 2014) (emphases added).

2) Amend the Definition of Abuse

When the definition of abuse in the authorizing statutes for CPS is limited only to harm inflicted by parents or guardians, it eliminates a commercially sexually exploited child's ability to receive services. The most effective way to ensure that victims of CSEC are covered under a CPS mandate that is itself broad enough to cover these children is likewise to broaden the definition of abuse.

It is important to revise both the mandate (as indicated above) and the definition of abuse. Some states' mandates appear to protect a child abused by a third party, but the definition of abuse is limited to parents or guardians. The reverse can also be true, as a state's definition of abuse may include abuse by anyone, but its mandate may only allow CPS to provide services to children abused by a family member.

- (a) **Exemplary Definition: Neb. Rev. Stat. § 28-707(1)** – “A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be: (a) placed in a situation that endangers his or her life or physical or mental health . . . (d) placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution . . . or (f) placed in a situation to be a trafficking victim”

Note that *any* person can be considered a perpetrator of abuse, and specific references to sexual exploitation and trafficking of minors are included.

- (b) **Exemplary Definition: K.S.A. 38-2202(x)** – “‘Physical, mental or emotional abuse’ means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child’s health or emotional well-being is endangered.”

Note that *any* physical, mental or emotional harm is abuse, there is a specific reference to exploitation of a child, and there is no narrow specification of persons who can be considered perpetrators of abuse.

- (c) **Exemplary Definition: 10 Del. Code Ann. § 901(1)** – “‘Abuse’ or ‘abused child’ means that a person: a. causes or inflicts sexual abuse on a child; or b. has care, custody or control of a child, and causes or inflicts: 1. physical injury through unjustified force . . . ; 2. emotional abuse; 3. torture; 4. exploitation; or 5. maltreatment or mistreatment.”

Note that although “care, custody or control of a child” should be broad enough to include a trafficker, Delaware could still improve its definition by explicitly including a trafficker. An express inclusion is particularly important if a state’s common law definition of “control of a child” is limited to legal control.

- (d) **Deficient Definition: N.D. Cent. Code § 14-09-22(1)** – Abuse occurs when a “parent, adult family or household member, guardian, or other custodian of any child . . . willfully commits any of the following offenses . . . : a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury . . . or mental injury. b. Fails to provide proper parental care or control”³²

3) Amend the Definition of a “Person Responsible for the Child’s Welfare”

Although only parents or individuals with legal custody of a child should have rights with respect to the child, individuals who have physical custody or control of a child should be held responsible for the care of that child. In essence, the statutory definition of a “person responsible for the welfare of a child” should be revised where necessary to allow CPS to provide services to any child who is abused by a person exercising custodial control over the child. Making this definition as expansive as possible would enable all children who are commercially sexually abused/exploited to receive protective services.

- (a) **Model Definition** – “A ‘person responsible for a child’s welfare’ shall mean a person or persons in a position of permanent or temporary trust, authority, supervision, or physical or emotional control over a child.”³³

Note that this statute includes *temporary* trust, authority, or supervision, and *emotional* control over a child, both of which are characteristic of a trafficking situation.

- (b) **Exemplary Definition: 10 Del. C. § 901(3)** – “‘Care, custody and control’ or ‘those responsible for care, custody and control’ shall mean a person or persons in a position of trust, authority, supervision or control over a child.”
- (c) **Exemplary Definition: Wyo. Stat. Ann. § 14-3-202(a)(i)** – “A person responsible for a child’s welfare’ includes the child’s parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child.”
- (d) **Exemplary Definition: 23 Pa. Cons. Stat. Ann. § 6303(a)** – “A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.”
- (e) **Exemplary Definition: 110 CMR 2.00** – “Caretaker means a child’s: (a) parent (b) stepparent (c) guardian (d) any household member . . . (e) any other person entrusted with the responsibility for a child’s health or welfare whether in the child’s home, a relative’s home, a school setting, a day care setting . . . , a foster home . . . , or any other comparable setting. The ‘caretaker’ definition is meant to be construed broadly and inclusively to encompass any person

³² Subsection 2 of this statute also covers abuse by persons in positions of authority conferred by the parent or guardian. See N.D. Cent. Code § 14-09-22(2) (covering “a person who provides care, supervision, education, or guidance for a child unaccompanied by the child’s parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services”).

³³ The Renewal Forum’s recommended language; this language is not currently part of any state’s statutes.

who is, at the time in question, entrusted with a degree of responsibility for the child.”

- (f) **Deficient Definition: Cal. Welf. & Inst. Code § 300** – Includes acts or omissions by a child’s *parent or guardian*. “As used in this section, ‘guardian’ means the legal guardian of the child.”³⁴

C. Recommendations for a State’s “Child in Need of Services” Process

The CHINS process can be utilized as an alternative to CPS. For victims of commercial sexual exploitation, the preferred service provider should be CPS, but if the child protective services system is inadequate, a CHINS provision may enable a child to receive the services he or she requires. The CHINS process in many states can be greatly improved by revising a few select provisions. First, the definition of who is eligible for CHINS should explicitly include commercially sexually exploited children. Second, anyone who becomes aware that a child has been commercially sexually exploited should be permitted to file a CHINS petition so services can ultimately be provided to that child. Indeed, the child victim should be permitted to file on his or her own behalf. Lastly, victims of CSEC who go through the CHINS process should be placed with CPS to be cared for in collaboration with their parents, instead of being subjected to detention.

1) Include Victims of CSEC in Definition of Persons Eligible for CHINS Services

The CHINS provision should specifically reference (or, at the least, clearly include) trafficked children and commercially sexually exploited children in the definition of persons eligible for the CHINS process.

- (a) **Model Definition** – “‘Child in Need of Services’ means a child under age 18 who refuses to obey the reasonable and proper orders or directions of a parent, guardian, or custodian and is beyond control of that person; is habitually truant from school; is a runaway from the child’s home or parent, guardian or custodian; habitually behaves in such a manner as to injure or endanger the morals or health of self or others; is engaged in any form of *sexual exploitation*; commits any act constituting an offense that can only be committed by a minor and that is not designated as a delinquent act; and fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.”³⁵
- (b) **Exemplary Definition: Iowa Code § 232.2(6)** – “‘Child in need of assistance’ means an unmarried child . . . who has been the subject of or a party to sexual activities for hire”
- (c) **Deficient Definition: Cal. Welf. & Inst. Code § 601(a)** – “Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or

³⁴ Emphasis added.

³⁵ The Renewal Forum’s recommended language; this language is not currently part of any state’s statutes.

custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age”

Note that this statute does not include runaway children or any provision that explicitly or impliedly references trafficked children.

2) Allow More People to File CHINS Petitions

In some states, any mandatory reporter can file a CHINS petition; in others, only the state’s attorney or a prosecutor may file. Less than half of the states allow a child to file a petition on his or her own behalf. Filing a CHINS petition should not be left up to mandatory reporters or states’ attorneys. Leaving this decision to a prosecutor sends a message to victims of CSEC that they can only receive help or services when a prosecutor has enough evidence to pursue a case. States should revise their CHINS legislation where necessary to allow any person with knowledge of potential abuse, including the child at issue, to file a CHINS petition.

- (a) **Exemplary Statute: Tenn. Code Ann. 37-1-119** – “The petition may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true.”
- (b) **Exemplary Statute: Minnesota 260C.141(a)** – “Any reputable person, including, but not limited to any agent of the commissioner of human services, having knowledge of a child in this state or of a child who is a resident of this state, who appears to be in need of protection or services or neglected and in foster care, may petition the juvenile court in the manner provided in this section.”
- (c) **Deficient Statute: Tex. Fam. Code § 53.04(a)** – “If the preliminary investigation, required by Section 53.01 of this code[,] results in a determination that further proceedings are authorized and warranted, a petition for an adjudication or transfer hearing of a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision may be made as promptly as practicable by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.”

3) Place Children with CPS and into Homes, Not Detention Facilities

The CHINS legislation should provide that victims of CSEC will be referred to CPS to be cared for in collaboration with their parents or an appropriate local organization, rather than being subject to detention or the possibility of detention.

- (a) **Model Statute:** “Upon filing of a child in need of services petition, the child may be placed in a crisis residential center, foster home, group home facility,

or any other suitable residence; however, detention in a juvenile detention facility is not an option.”³⁶

Note that this model statute includes an explicit statement that detention in a juvenile facility is not a possibility.

(b) **Exemplary Statute: Rev. Code Wash. § 13.32A.160(2)** – “Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility . . . , or any other suitable residence other than a HOPE center to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement”

(c) **Exemplary Statute: Wis. Stat. 938.19(3)** – “Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.”

Note that although a trafficked child may be taken into custody, the statute makes it clear that an arrest will not occur.

D. Amend Domestic Minor Sex Trafficking Laws

1) Align State Laws with Federal Legislation So That Force, Fraud, or Coercion Is Not Required

While many states have brought their trafficking laws in line with the federal standard identifying any child involved in a commercial sex act as a victim of trafficking regardless of whether there was force, fraud, or coercion, not every state has done so. Like the federal law, state laws should acknowledge that children cannot legally consent to engaging in a commercial sex act.

(a) **Exemplary Statute: La. R.S. § 14:46.3(A)** – “It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section. (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including, but not limited to, helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person. (5) For any person to knowingly advertise any of the activities prohibited by this Section C. (1) *Consent of*

³⁶ The Renewal Forum’s recommended language; this language is not currently part of any state’s statutes.

the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.”³⁷

- (b) **Deficient Statute: Alaska Stat. 11.41.360(a)** – “A person commits the crime of human trafficking in the first degree if the person compels or induces another person to come to this state to engage in sexual conduct, adult entertainment, or labor in the state by force or threat of force against any person, or by deception.”

Note that there is no provision exempting victims who are minors from the requirement of force or coercion.

2) Ensure That Children Are Not Prosecuted for Being Victims

Safe harbor laws provide safety from prosecution to commercially sexually exploited children. States with the best safe harbor laws provide no option to prosecute children for engaging in commercial sex acts. Other states have created rebuttable presumptions or allow the child’s age to be raised as an affirmative defense in the event of prosecution of the child for engaging in a commercial sex act. All states should acknowledge that, by definition, a child is not capable of legally consenting to commercial sexual exploitation and thus will always be immune from prosecution for engaging in any commercial sex act.

- (a) **Exemplary Statute: 720 ILCS §§ 5/11-14(d)** – “Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987, a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 of this Code to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.”
- (b) **Exemplary Statute: La. R.S. § 14:46.3.E** – “No victim of trafficking . . . shall be prosecuted for unlawful acts committed as a direct result of being trafficked.”
- (c) **Exemplary Statute: 13 V.S.A. § 2652(c)(1)** – “(A) A person who is a victim of sex trafficking . . . shall not be found in violation of or 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

³⁷ Emphasis added.

trafficking. (B) 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 33 V.S.A. chapter 52 or referred to the department for children and families for treatment under 33 V.S.A. chapter 53.

Note that Vermont's law exempts children from prosecution for acts of prostitution, although these children may be referred to CPS or possibly the juvenile justice system if necessary.

E. Other Recommended Provisions

- 1) **“Child’s Time”** – Matters involving the commercial sexual exploitation of children should be addressed without unnecessary delay. This standard recognizes that children perceive time differently than adults.
- 2) **Reporting Obligations** – Parents and legal guardians should have an affirmative obligation to report to a local law enforcement agency or to a child protective services agency any child under 18 who is absent from their home, as many of these children are at high risk of becoming victims of commercial sexual exploitation.
- 3) **N.Y. CLS Soc. Serv. Law § 447-b(2)** – “All of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.”

Note that New York's law provides services for commercially sexually exploited children without regard to how they are accessed.

VI. CONCLUSION

Every year, states become more aware of the issue of child trafficking and the commercial sexual exploitation of children. They continue to refine their processes and improve their responses to victims of CSEC. Despite this progress, twenty-five states still received a failing grade for their current system for responding to victims of CSEC. The Renewal Forum hopes that by publishing these results and the accompanying recommendations, states will continue to work toward the development of a comprehensive system for responding to victims of CSEC.

In reforming their policies, states should amend their CPS systems to include the provision of services to commercially sexually exploited children. When a state's CPS system does not adequately respond to the needs of victims of CSEC, the state should ensure its CHINS system is able to address the needs of these children. This includes allowing a child to file a petition for

services on his or her own behalf and ensuring that victims of CSEC are not sent to juvenile detention facilities. Finally, states should amend their criminal laws to ensure that the crime of trafficking in children does not require a showing of force, fraud, or coercion, and that children who are commercially sexually exploited are protected by a safe harbor law that grants them immunity from prosecution for engaging in commercial sex acts.

In addition to the legislative changes that should be made at the state level, there are a variety of public policy considerations and non-legal solutions that should be considered as states develop their responses to trafficking victims. The Renewal Forum will release an additional report in the near future regarding these considerations and potential solutions, as well as a resource manual for CPS agencies that want to improve their response to CSEC.

Alabama

Final Grade: F 29/50

Name of Agency: Department of Human Resources – Family Services Division – Office of Child Protective Services

Category 1 – Child Protective Services: C 19/25

State Mandate: 2 pts.

Protective services for children are directed toward children unable to protect their own interests or harmed or threatened with harm by a person responsible for the child's health or welfare (and for runaways).¹

Definition of Abuse: 10 pts.

Harm or threatened harm to a child's health or welfare, which occurs through non-accidental physical or mental injury, sexual abuse, or attempted sexual abuse, or sexual exploitation, or attempted sexual exploitation.²

"Sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct, or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law.³

"Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child for sexual purposes.⁴

Definition of Person Responsible for Welfare of Child: 7 pts.

A "responsible person" is a child's natural parent, stepparent, adoptive parent, legal guardian, custodian or any other person who has the permanent or temporary care or custody or responsibility for the supervision of a child.⁵

Recommendations: The state mandate should be expanded to allow for the provision of services to children regardless of who perpetrated the abuse. Alabama should also issue a statement clarifying that a person with permanent or temporary care or custody could be considered a trafficker.

¹ Ala. Code § 660-5-34-.01 (2008).

² Ala. Code § 660-5-34-.02 (2008).

³ *Id.*

⁴ *Id.*

⁵ Ala. Code § 26-15-2(4) (2008).

Name of CHINS Provision: “Child in Need of Supervision”

Definition of Eligible Child: 3 pts.

A “child in need of supervision” is a child who has been adjudicated by a juvenile court for doing any of the following and who is in need of care, rehabilitation, or supervision:

- a. Is habitually truant from school as defined by the State Board of Education in the Alabama Administrative Code. Notwithstanding the foregoing, a child shall not be found in need of supervision pursuant to this subdivision if the juvenile court determines that the parent, legal guardian, or legal custodian of the child was solely responsible for the nonattendance of the child.
- b. Disobeys the reasonable and lawful demands of his or her parent, legal guardian, or legal custodian and is beyond the control of the parent, legal guardian, or legal custodian.
- c. Leaves or remains away from the home without the permission of the parent, legal guardian, legal custodian, or person with whom he or she resides.
- d. Commits an offense established by law but not classified as criminal.⁶

Who Can File: 0 pts.

CHINS cases and proceedings before the juvenile court are initiated by the filing of a petition by the juvenile court intake officer who shall receive verified complaints and proceed thereon pursuant to rules of procedure adopted by the Supreme Court of Alabama.⁷

Process for Child Placement: 2 pts.

A child in need of supervision is immediately released, upon the ascertainment of the necessary facts, to the care, custody, and control of the parent, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child unless the juvenile court or juvenile court intake officer finds that the child should instead be held in detention or placed in a shelter or other care. A juvenile court or juvenile court intake officer may impose restrictions on the travel, association, or place of abode of the child or place the child under the supervision of a department, agency, or organization agreeing to supervise the child, and may place the child under supervision such as electronic or telephone monitoring.⁸

Recommendations: Alabama’s CHINS statute does not specifically reference children who have been commercially sexually abused or sexually exploited. The statute does mention children who have run away from home, but an explicit mention of trafficked and sexually exploited children should be included.

Currently, the juvenile court intake officer is the individual who files a petition for CHINS on the basis of substantiated accounts. Presumably, the child could be the person providing the accounts to the juvenile intake officer, but the child should also be able to file the petition on his or her own behalf. Additionally, detention should not be an option for a child who has been commercially sexually abused or sexually exploited. Instead, the child should be directed to the child protective services system, where the child can be cared for in collaboration with his or her parents.

⁶ Ala. Code § 12-15-102(4) (2008).

⁷ Ala. Code § 12-15-50 (2008).

⁸ Ala. Code § 12-15-128 (2008).

Trafficking Statute: 5 pts.

The statute does not require coercion or deception if the crime involves sexual servitude and the victim is a minor.¹

Safe Harbor: 0 pts.

Alabama has no safe harbor law; however, an affirmative defense is available to victims of human trafficking if they are prosecuted for prostitution or another sexually explicit performance engaged in or performed as a result of labor servitude or sexual servitude.²

Recommendations: Alabama’s trafficking statute aligns with the federal definition of not requiring coercion for sexually trafficked minors. Although Alabama does offer human trafficking as an affirmative defense in certain prosecutions, Alabama currently has no safe harbor laws. Alabama should pass safe harbor laws that protect sexually trafficked minors from prosecution.

¹ Ala. Code § 13A-6-152 (2010).

² Ala. Code § 13A-6-159 (2010).

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Alaska

Final Grade: C 35/50

Name of Agency: Department of Health & Social Services – Office of Children’s Services

Category 1 – Child Protective Services: B 22/25

State Mandate: 6 pts.

Protective services will be made available to abused and neglected children in an effort to: (1) prevent further harm to the child; (2) safeguard and enhance the general well-being of children in the state; and (3) preserve family life unless that effort is likely to result in physical or emotional damage to the child. The mandate is broad enough to include all children and youth who are abused or neglected, but an Office of Children’s Services representative stated she was unsure how the agency would handle victims of child trafficking via a phone call.¹

Definition of Abuse: 10 pts.

“Child abuse or neglect” is defined as the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under age 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.²

“Sexual exploitation” includes: (A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100-150, by a person responsible for the child’s welfare; and (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a) by a person responsible for the child’s welfare.

Definition of Person Responsible for Welfare of Child: 6 pts.*

The “person responsible for the child’s welfare” is the child’s parent, guardian, foster parent, a person responsible for the child’s care at time of alleged child abuse or neglect, or a person responsible for the child’s welfare in a public or private residential agency or institution.³

Recommendations: The definition of “sexual exploitation”, and thus the definition of “child abuse or neglect”, is limited to situations where a child is sexually exploited by a person responsible for the child’s welfare. To eliminate any uncertainty as to how a commercially sexually abused or exploited child should be treated, the definition of “sexual exploitation” should be amended to allow for the provision of services to children regardless of who perpetrated the abuse.

*Not given full credit because children who are abused by someone other than a parent or caretaker are screened out of services.⁴

¹ Alaska Stat. § 47.17.010 (2010); phone call with representative from Juneau Office of Children’s Services, (907) 465-1650 (representative noted she is unsure how it would be handled as they have never had a case of child trafficking).

² Alaska Stat. § 47.17.290(2) (2011).

³ Alaska Stat. § 47.17.290(12) (2011).

⁴ See Alaska Office of Children’s Services *Child Protective Services Manual*, Section 2.1 Protective Services Reports (pages 11-12 of 14) available at <http://www.hss.state.ak.us/ocs/Publications/CPSManual/cps-manual.pdf> (August 1, 2014).

Name of CHINS Provision: “Children in Need of Aid”

Definition of Eligible Child: 3 pts.

A child who has been subject to any of the following: (1) a parent or guardian has abandoned the child ; (2) a parent, guardian or custodian is incarcerated and has not made adequate arrangements for the child ; (3) a custodian with whom the child has been left is unwilling or unable to provide care, supervision, or support for the child ; (4) the child is in need of medical treatment to cure, alleviate, or prevent substantial physical harm or is in need of treatment for mental injury and the child’s parent, guardian or custodian has knowingly failed to provide the treatment; (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; (6) the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of such person to supervise the child adequately; (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of such person to adequately supervise the child; (8) conduct or conditions created by the parent, guardian, or custodian have (A) resulted in mental injury to the child or (B) placed the child at substantial risk of mental injury as a result of certain factors; (9) conduct or conditions created by the parent, guardian, or custodian have subjected the child or another child in the same household to neglect ; (10) the parent, guardian, or custodian’s ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant , which has resulted in a substantial risk of harm to the child; (11) the parent, guardian, or custodian has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury; or (12) the child has committed an illegal act as a result of pressure, guidance, or approval from the child’s parent, guardian, or custodian.⁵

Who Can File: 0 pts.

If an official investigation is not already underway, the court appoints a “competent person or agency” to make a preliminary inquiry and report on the child, either on its own motion or at the request of “a person or agency having knowledge of the child’s circumstances.” Upon receipt of the report, the court may either close the matter without a hearing, determine whether the best interests of the child require that further action be taken, or authorize the person or agency having knowledge of the facts of the case to file with the court a petition setting out the facts. The Department of Health and Social Services (the “Department”) need not obtain authorization from the court before conducting an investigation or a report of child abuse or neglect or filing a petition.⁶

Process for Child Placement⁷: 5 pts.

Within 120 days after a finding of probable cause is entered based on a petition, a hearing is completed at which the court determines whether the child is or is not a child in need of aid.⁸ If a court finds the child is a child in need of aid, the court will either order the child committed to the Department for placement in an appropriate setting or order the child released to a parent, adult family member, or guardian of the child or to another suitable person (either with or without Department supervision). This order is not to exceed two years or extend past the date the child becomes 19 years of age, with extension possible under certain

⁵ Alaska Stat. § 47.17.290(12) (2011).

⁶ Note that cases involving an “Indian child” may operate with different requirements and procedures.

⁷ Alaska Stat. § 47.10.080(a) (2011).

⁸ Alaska Stat. § 47.10.080(c) (2011).

circumstances, or the court may order termination of parental rights and responsibilities of one or both parents and commit the child to the custody of the Department for permanent placement.⁹

The Department may also take emergency custody of a child without a court order in certain circumstances, including in the case of runaways.¹⁰ If at a temporary custody hearing the court finds probable cause exists for believing the child to be a child in need of aid, the court will either order the child returned to home with supervision by the Department or order the child committed to the Department for temporary placement, with the placement plan to be reviewed within 12 months.¹¹

Recommendations: While the Department does have the ability to take emergency custody of a child in need of aid in certain circumstances, it is unclear under Alaska law whether this ability extends to children who are sexually exploited by someone other than a parent, guardian, or custodian. AS 47.10.142(a) and AS 47.10.141 should be amended to specifically include children who have been sexually exploited regardless of who perpetrated the abuse. With respect to the filing of petitions, Alaska law does allow persons outside of the Department to file petitions, but requires prior court authorization unless the Department is the filing person. Alaska law should be amended to also allow persons with knowledge of the relevant facts, including the child in question, to file a petition without requiring prior court authorization.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pt.

Alaska criminalizes the prostitution of minors by any means through its promoting prostitution statute.¹²

Safe Harbor: 0 pts.

There is currently no safe harbor law in Alaska.

Recommendations: Alaska should declare all minor victims of commercial sexual exploitation to be victims of human trafficking and broaden its prostitution of minors law to include all forms of commercial sexual exploitation, not just prostitution. While Alaska does provide in AS 47.12.200 that an arrest of a minor is not considered “an arrest” for traditional purposes, children can still be prosecuted. Alaska must pass and implement safe harbor laws to protect sexually exploited children from prosecution.

⁹ Alaska Stat. § 47.10.142(a) (2011); Alaska Stat. § 47.10.141 (2011).

¹⁰ *Id.*

¹¹ Alaska Stat. § 47.10.142(d)-(h) (2011).

¹² Alaska Stat. § 11.66.110(2) (2011).

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Arizona

Final Grade: F 25/50

Name of Agency: Department of Economic Security for Child Protective Services

Category 1 – Child Protective Services: F 7/25

State Mandate: 6 pts.

Child Protective Services (“CPS”) exists to protect children by investigating allegations of abuse and neglect, promoting the well-being of the child in a permanent home and coordinating services to strengthen the family and prevent, intervene in, and treat the abuse and neglect of children.¹

Definition of Abuse: 2 pts.

The infliction or allowing of physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody, and control of a child.²

Definition of Person Responsible for Welfare of Child: -1 pt.

Only includes parent, legal guardian, or custodian.³

Recommendations: The mandate of Arizona’s CPS should be expanded to explicitly cover commercially sexually exploited children. The current definition of abuse is not broad enough and should be expanded to explicitly include sexual exploitation of a child. Also, the statutes should be amended so that any person exercising control over a child is deemed responsible for the welfare of the child.

¹ Ariz. Rev. Stat. § 8-800 (2013).

² Ariz. Rev. Stat. § 8-201(2) (2013).

³ Ariz. Rev. Stat. § 8-201(8) & (22(a)) (2013).

Name of CHINS Provision: “Incorrigible Child”

Definition of Eligible Child: 3 pts.

A child who refuses to obey the reasonable and proper orders of a parent, guardian, or custodian and is beyond that person’s control, or is habitually truant, or is a runaway, or habitually behaves as to injure or endanger the morals or health of self or others, or commits an offense that can only be committed by a minor that is not a delinquent act, or who fails to obey any lawful court order in a noncriminal action.⁴

Who Can File: 5 pts.

Any interested party may file a petition to commence proceedings in the juvenile court alleging that a child is “dependent.”⁵

Process for Child Placement: 5 pts.

The child is sent to the court and can then be handed over to the child’s parents, protective services, a “reputable citizen of good moral character,” or other relatives subject to supervision of the probation department, or to the probation department, subject to any conditions by the court.⁶

Recommendations: Arizona’s Incurrigible Child provision includes children who have run away and children who behave as to endanger their health or morals, which could include trafficked children; however, a specific mention of trafficked children is needed. The definition for who can file is broad enough to include anyone who can claim the child as dependent; however, the definition should be expanded to give children the ability to file for themselves.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

No coercion is required if a minor is a victim of trafficking.⁷

Safe Harbor: 0 pts.

Arizona currently has no safe harbor law.

Recommendations: Arizona must pass and implement safe harbor laws to protect sexually exploited children from prosecution.

⁴ Ariz. Rev. Stat. § 8-201(16) (2013).

⁵ Ariz. Rev. Stat. § 8-841 (2013).

⁶ Ariz. Rev. Stat. § 8-341(2) (2013); also see Ariz. Rev. Stat. § 8-304 (2010).

⁷ Ariz. Rev. Stat. § 13-1307 (2013).

Arkansas

Final Grade: C 36/50

Name of Agency: Department of Health & Human Services – Division of Children and Family Services

Category 1 – Child Protective Services: D 15/25

State Mandate: 6 pts.

The Division of Children and Family Services' ("DCFS") mission is to keep children safe and help families. DCFS will work to assist parents in caring for their children. The mission is to focus on the safety, permanency, and well-being for all children and youth.¹

Definition of Abuse: 6 pts.

"Abuse" includes any of the following actions committed against a child by a parent, guardian, custodian, foster parent, person 18 years of age or older living in the home with a child whether related or unrelated to the child, or any person entrusted with the child's care by a parent, guardian, custodian, or foster parent: (a) extreme or repeated cruelty; conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ; injury to a child's intellectual, emotional, or psychological development; any injury that is at variance with the history given; any non-accidental physical injury; (b) any of the following with physical injury and without justifiable cause: throwing, kicking, burning, biting or cutting; striking with a closed fist; shaking; or striking on the face or head; (c) any of the following, with or without physical injury: interfering with a child's breathing; pinching, biting, or striking a child in the genital area; or tying a child to a fixed or heavy object or binding or tying a child's limbs together; or (d) administering to or permitting a child to consume or inhale a poisonous substance or a substance not prescribed by a physician that has the capacity to alter the mood of the child.²

Pursuant to Act 1055, children who have been trafficked by any person as a result of threats, coercion or fraud are dependent juveniles³ and can come under the definition of a maltreated child.⁴ Additionally, if a parent knew or should have known the child was a victim of human trafficking as a result of threats, coercion or fraud, the child is not a dependent juvenile but may be dependent-neglected.⁵ The DCFS policy has been updated to reflect the expanded definition of a dependent juvenile to include a child who has been the victim of human trafficking as a result of threats, coercion, or fraud.⁶

¹ Arkansas Department of Health and Human Services, Division of Children and Family Services, Mission Statement at p.1, available at <http://humanservices.arkansas.gov/dcf/Pages/default.aspx> (June 25, 2014).

² Ark. Code Ann. § 12-18-103(3) (2013).

³ Ark. Code Ann. § 9-27-303 (18)(B) (2013).

⁴ The DCFS has not yet developed any specific placement protocols for human trafficking victims. They would assess the needs of the juvenile and place him or her in the placement that best suits his or her needs, just as they would with any other child brought into care. September 27, 2013 Email from Christin Harper, supervisor at the DCFS.

⁵ Ark. Code Ann. § 9-27-303 (18)(B) (2013).

⁶ September 27, 2013 Email from Christin Harper, supervisor at the DCFS.

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, guardian, custodian, foster parent, or any person 14 years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor.⁷ The definition of abuse also contemplates acts by any person 18 years of age or older living in the home with the child whether related or unrelated to the child.⁸

Recommendations: Arkansas has directed the DCFS to provide services to victims of human trafficking who are victims because of threats, coercion, or fraud. However, consistent with the federal definition, Arkansas's definition of trafficking does not require coercion for the prosecution of trafficking a minor for commercial sexual activity.⁹ The definitions of dependent juvenile and dependent-neglected, and the corresponding mandate of the DCFS, should be consistent with the human trafficking laws and not require threats, coercion, or fraud in order for the DCFS to step in and provide services.

Category 2 – Child in Need of Services: B 13/15

Name of CHINS Provision: "Family in Need of Services"

Definition of Eligible Child: 3 pts.

Refers to any family with a child who evidences behavior that includes being habitually absent from school or habitually disobedient to his or her parent/guardian/custodian, or having run away from home without sufficient cause, permission or justification.¹⁰

Who Can File: 5 pts.

Any adult or a member, 10 years of age or older, of the immediate family of the child alleged to be in need of services may file a petition for dependency-neglect or family in need of services.¹¹ Only a law enforcement officer, prosecuting attorney, or the Department of Human Services (the "DHS") or its designee may file a dependency-neglect petition seeking *ex parte* emergency relief.¹²

Process for Child Placement: 5 pts.

A petition is filed with the clerk of the circuit court. Concurrent with filing, a copy of any petition that requests that the DHS take custody or provide family services shall be mailed to the Director of the DHS and to the attorney of the local Office of Chief Counsel of the DHS by the petitioner.¹³

Recommendations: Arkansas Safe Harbor for Victims of Certain Sex Trafficking and Commercial Sex Offenses Act 1257 (2013) ("Act 1257") requires an interim study on child sex trafficking and the commercial sexual exploitation of children in Arkansas. Findings from this study should be used to inform the development of the statewide referral protocol to coordinate the delivery of services to sexually exploited children that the DHS is responsible for developing (also per Act 1257).

⁷ Ark. Code Ann. § 12-18-103(3)(A) (2013).

⁸ *Id.*

⁹ Ark. Code Ann. § 5-18-101 (2013) (Arkansas Human Trafficking Act of 2013, Act 132).

¹⁰ Ark. Code Ann. § 9-27-303(24) (2013).

¹¹ Ark. Code Ann. § 9-27-310(b)(3) (2013).

¹² Ark. Code Ann. § 9-27-310(b)(2) (2013).

¹³ Ark. Code Ann. § 9-27-310(c) (2013).

Trafficking Statute: 5 pt.

No coercion is required under the statute when the victim is a minor.¹⁴ A person commits the offense of trafficking of persons if he or she knowingly recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity.¹⁵

Safe Harbor: 3 pt.

Arkansas provides an affirmative defense to the act of prostitution or sexual solicitation if the person engaged in the act is a victim of trafficking.¹⁶

Recommendations: Act 1257 was passed to, among other things, “provide a safe harbor for victims of certain sex trafficking and commercial sex offenses.” Act 1257 does not actually amend any statutes to prevent children from being prosecuted for prostitution, though it states as its legislative intent that “[t]he criminal justice system is not the appropriate place for sexually exploited children because it serves to retraumatize them and to increase their feelings of low self-esteem”. The safe harbor law should explicitly make a commercially sexually exploited child immune from prosecution. The Attorney General should establish a State Task Force for the Prevention of Human Trafficking as provided for in the Arkansas Human Trafficking Act of 2013. The State Task Force would provide a forum for state agencies and community providers to discuss the special needs of juvenile human trafficking victims, including placement issues.¹⁷

¹⁴ Ark. Code Ann. § 5-18-102 (2013).

¹⁵ Ark. Code Ann. § 5-18-103 (2013).

¹⁶ Ark. Code Ann. § 5-70-102(c) (2013).

¹⁷ The Attorney General may establish a State Task Force for the Prevention of Human Trafficking, which, if established, shall develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors. Ark. Code Ann. § 12-19-101 (2013).

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California

Final Grade: F 18/50

Name of Agency: Child Protective Services/Child Welfare Services (“CPS”)

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

The goal of CPS is to keep the child in his/her own home when it is safe, and when the child is at risk to develop an alternative plan as quickly as possible.¹ Services are available to children and their families when children are victims of, or at risk of, abuse, neglect, exploitation, or parental absence.²

Definition of Abuse: 4 pts.

The definition of abuse includes the infliction or substantial risk of sexual abuse by a parent, guardian, or household member, or the failure of a parent or guardian to adequately protect against sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.³

Definition of Person Responsible for Welfare of Child: -1 pt.

Only includes a parent, legal guardian, or household member.⁴

Recommendations: California’s CPS mandate appears to be broad enough to encompass children who have been commercially sexually exploited, but should specifically mention these children to help ensure that they fall within the agency’s mandate. While California’s definition of abuse currently contemplates sexual abuse, the definition should be expanded to include abuse by anyone regardless of the child’s relationship to the abuser. Finally, the definition of a person responsible should be expanded to include anyone exercising control over the child.

¹ Child Protective Services, <http://www.dss.cahwnet.gov/cdssweb/PG93.htm> (July 2, 2014).

² *Id.*

³ Cal. Welf. & Inst. Code § 300 (2014).

⁴ *Id.*

Name of CHINS Provision: “Child as Wards of the Court”

Definition of Eligible Child: -1 pt.

A child who persistently or habitually disobeys and is beyond the control of his or her parent, guardian, or custodian, or who violates a curfew law or is truant four or more times in a school year.⁵

Who Can File: 2 pts.

Proceedings to declare a minor a ward of the court may be filed by a probation officer or by a district attorney after consultation with the probation officer under certain circumstances.⁶

Process for Child Placement: 3 pts.

The child first goes to juvenile court⁷, and may be referred to the county referral center.⁸

Recommendations: California’s definition of an eligible child fails to mention either runaway or trafficked children, so it is likely that children who have been commercially sexually exploited would not be considered eligible; therefore, the provision should be amended to cover these children.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The law includes language related to minors, and coercion is not explicitly required in the trafficking act. The law is instead based upon the intent of the trafficker.⁹

Safe Harbor: 0 pts.

There are currently no safe harbor laws in California.

Recommendations: California’s trafficking statute mentions minors, but it is unclear whether coercion is still a predicate. The law should be amended to ensure that force, fraud, or coercion is not a prerequisite in finding that a minor has been trafficked. California should also pass and implement safe harbor laws to protect sexually exploited children from prosecution.

⁵ Cal. Welf. & Inst. Code § 601(a)-(b) (2014).

⁶ Cal. Welf. & Inst. Code § 601.3(e) (2014).

⁷ Cal. Welf. & Inst. Code § 602 (2014).

⁸ Cal. Welf. & Inst. Code § 601.5(h) (2014). See also Cal. Welf. & Inst. Code § 654 (2014) (with the consent of a minor and the minor’s parents, the minor can submit to services and supervision to avoid being declared a ward of the state).

⁹ Cal. Penal Code § 236.1 (2014).

Colorado

Final Grade: B 43/50

Name of Agency: Division of Child Welfare

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The mission of Colorado’s Division of Child Welfare (“DCW”) is to enhance the delivery of child welfare services so that Colorado’s children and families are safe and stable.¹ The mandate is to protect children from harm and to assist families in caring for and protecting their children.²

Definition of Abuse: 10 pts.

Abuse means an act or omission in one of the following categories that threatens the health or welfare of a child: 1) child exhibits evidence of physical abuse; 2) child is subjected to unlawful sexual behavior; 3) child is in need of services because the child’s parents, legal guardian, or custodian fails to take actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take; 4) child is subjected to emotional abuse; 5) child lacks proper parental care; 6) child resides or is present where a controlled substance is or is attempted to be manufactured; or 7) child tests positive at birth for a schedule I controlled substance or a schedule II controlled substance, unless the mother’s lawful intake of the schedule II controlled substance is prescribed.³

Definition of Person Responsible for Welfare of Child: 7 pts.⁴

Parent, legal guardian, or custodian, or any other person responsible for the child’s health and welfare.⁵

Recommendations: Colorado’s Adolescent and Youth Services Program administered by the DCW appears sufficient to cover children who have been commercially sexually exploited as it aims to protect children from the risks of “exploitation,” but a specific mention of these children would be ideal so as to ensure their coverage.

¹ Division of Child Welfare webpage, [http://www.colorado.gov/cs / Satellite/CDHS-ChildYouthFam/CBON/1251579373548](http://www.colorado.gov/cs/Satellite/CDHS-ChildYouthFam/CBON/1251579373548) (July 2, 2014).

² *Id.*

³ Colo. Rev. Stat. § 19-1-103(1) (2012).

⁴ Full credit given because the definition of abuse is not dependent on a person responsible for the welfare of the child being the perpetrator of the abuse.

⁵ Colo. Rev. Stat. § 19-1-103(94) (2012).

Name of CHINS Provision: “Neglected or Dependent Child”

Definition of Eligible Child: 3 pts.

A child is neglected or dependent if: (a) a parent, guardian, or legal custodian has abandoned the child or has subjected the child to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop it and prevent it from recurring; (b) the child lacks proper parental care through the actions or omissions of the child’s parent, guardian or legal custodian; (c) the child’s environment is injurious to the child’s welfare; (d) a parent, guardian, or legal custodian fails or refuses to provide care necessary for the child’s health, guidance, or well-being; (e) the child is homeless, without proper care, or not domiciled with the child’s parent, guardian, or legal custodian through no fault of such person; (f) the child has run away from home or is otherwise beyond the control of a parent, guardian, or legal custodian; (g) the child tests positive at birth for a schedule I controlled substance or a schedule II controlled substance, unless the mother’s lawful intake of the schedule II controlled substance is prescribed.⁷

Who Can File: 0 pts.

Petitions are filed by the county/city attorney.⁸ The court must authorize or order the filing of a petition.⁹

Process for Child Placement: 5 pts.

Children may be taken into temporary custody by a law enforcement officer without order of the court, which is not deemed an arrest.¹⁰ It is then determined whether the child can be released to the care of his or her parent or other responsible adult, or whether it is in the child’s best interest and necessary for the child’s welfare to be placed out of the child’s home.¹¹

Recommendations: If the services provided by the DCW encompass sexually exploited children, the CHINS system would never need to be initiated. In the event that the services provided by the DCW do not encompass sexually exploited children, it is important to still review the CHINS statute. The CHINS statute fails to specifically mention children who have been commercially sexually abused by anyone, but it does mention runaways. Colorado should expand the definition of who is eligible for services as a “neglected or dependent” child so as to ensure that children who have been trafficked by third parties would be eligible. Currently, only an attorney can file a petition for services on behalf of a child; the procedures should be changed to allow a child to file a petition on his or her own behalf.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

Colorado has a trafficking in children law that requires no coercion. A child is defined as any person under 18 years of age.¹²

Safe Harbor: 0 pts.

There is currently no safe harbor law in Colorado.

Recommendations: Colorado should pass a safe harbor law to protect commercially sexually exploited children from prosecution.

⁶ The state’s Child Protective Services system provides a sufficient response to child trafficking victims so as not to require services for these children under the CHINS system.

⁷ Colo. Rev. Stat. § 19-3-102(1) (2012).

⁸ Excellence in Customer Service Colorado Judicial Branch, Dependency & Neglect (2001), http://www.courts.state.co.us/userfiles/File/Self_Help/d_nweb.pdf (July 2, 2014).

⁹ Colo. Rev. Stat. § 19-3-501 (2012).

¹⁰ Colo. Rev. Stat. § 19-3-401.

¹¹ Colo. Rev. Stat. § 19-3-402.

¹² Colo. Rev. Stat. § 18-3-502 (2012).

Connecticut

Final Grade: B* 42/50

Name of Agency: Department of Children and Families (“DCF”)

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The mandate of Connecticut’s DCF includes the protection of children who are being abused or neglected.¹ This responsibility is primarily carried out by Child Protective Services, which investigates reports of alleged child maltreatment and provides services to affected children.²

Definition of Abuse: 10 pts.

A child may be considered “abused” if he or she has been inflicted with physical injury other than by accidental means or is in a condition that is the result of maltreatment, including sexual molestation or exploitation.³

Definition of Person Responsible for Welfare of Child: 7 pts.**

Parent, guardian, or foster parent; an employee of a public or private residential home, agency, or institution or other person legally responsible in a residential setting; or any staff person providing out-of-home care, including center-based child day care, family day care, or group day care.⁴

Recommendations: Connecticut’s mandate fails to explicitly mention children who have been commercially sexually abused, but a general reading of the mandate and the policy of the DCF would include trafficked children. It would be preferable if such children were specifically mentioned, in order to ensure that they are being provided for.

* Connecticut has established a system for protective services for trafficked children under internal policies to respond to children who have been identified as victims of human trafficking. This system seems to work well and is one of the nation’s best responses by a child protective services system to the commercial sexual exploitation of children. However, these are merely internal policies that could be easily overturned by the next administration; thus, they are not included in the above grading. Connecticut should strive to incorporate this system into its laws.⁵

** Full credit given because definition of abuse is not dependent on a person responsible for the welfare of the child being the perpetrator of the abuse.

¹ Department of Children and Families at <http://www.ct.gov/dcf/cwp/view.asp?a=2565&Q=314326#Agency> (July 2, 2014).

² *Id.* at <http://www.ct.gov/dcf/cwp/view.asp?a=2556&q=314386#CPS> (July 2, 2014).

³ Conn. Gen. Stat. § 46b-120(7) (2013).

⁴ Conn. Gen. Stat. § 17a-93(12) (2013).

⁵ See Connecticut Department of Children & Families Policy at 31-10-6.1, <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=453920> (July 2, 2014).

Name of CHINS Provision: “Family with Service Needs”

Definition of Eligible Child: 5 pts.

Children who are runaways,⁷ children beyond the control of their parent, guardian or other custodian, children who have engaged in indecent or immoral conduct, children who are truants or habitual truants or who, while in school, have been continuously and overtly defiant of school rules and regulations, and children 13 years of age or older who have engaged in sexual intercourse with another person within two years of their age.⁸

Who Can File: 5 pts.

Any of the following individuals can file a complaint with the Superior Court if the individual believes that a child is from a family with service needs: a selectman, town manager, police officer or welfare department of any town, city or borough; superintendent of schools or probation officer; the Commissioner of the DCF; a licensed child-caring institution or agency or a youth service bureau; a parent or foster parent; or the child or the child’s representative or attorney.⁹

Process for Child Placement: 5 pts.

The court refers the complaint to a probation officer, and the probation officer initially determines whether the allegations in the complaint, if true, would be sufficient to meet the definition of a family with service needs.¹⁰ If so, the probation officer will conduct an initial assessment and refer the child and the child’s family to a community program or other service provider or to a family support center for voluntary services.¹¹ If the service provider eventually determines that the child and family can no longer benefit from its services, the probation officer will decide whether or not to file a petition with the court.¹² If a petition is filed, and the court ultimately determines that the child is from a family with service needs, the court may: (1) refer the child to the DCF for voluntary services or, if the petition was filed based on the child’s truancy, to any applicable school authorities or community agency; (2) order the child to remain in the child’s own home or in the custody of a relative or other suitable person, subject to supervision by a probation officer and, in the case of a truant child, the applicable school authorities; (3) if the petition was filed because the child engaged in sexual intercourse with another person within two years of the child’s age, require the child to perform relevant community service (such as service with an AIDS prevention or obstetrical program) and refer the child to a sexual education program; or (4) if there is no less restrictive alternative, commit the child to the DCF’s custody for an indefinite period (up to 18 months).¹³

Recommendations: Connecticut’s law regarding “families with service needs” fails to specifically include children who have been commercially sexually abused, although it does mention runaways. Trafficked children should be specifically mentioned in the statute, either separately or in the definition of indecent and immoral conduct, in order to ensure that they are covered.

⁶ The state’s Child Protective Services system provides a sufficient response to child trafficking victims so as not to require services for these children under the CHINS system.

⁷ Connecticut has a separate homeless youth program. Conn. Gen. Stat. § 17a-62a (2010). Public or private agencies may provide services to homeless children and youth, unless a parent or guardian does not consent to such services. Conn. Gen. Stat. § 17a-62b (2010).

⁸ Conn. Gen. Stat. § 46b-120(5) (2013).

⁹ Conn. Gen. Stat. § 46b-149(a) (2013); Department of Children and Families Policy Manual at 46-3-31 (2005), <http://www.dir.ct.gov/dcf/policy/court46/46-3-31.htm> (July 2, 2014).

¹⁰ Conn. Gen. Stat. § 46b-149(b) (2013).

¹¹ *Id.*

¹² *Id.*

¹³ Conn. Gen. Stat. § 46b-149(h) (2013).

Trafficking Statute: 0 pts.

Connecticut law states that a person is guilty of trafficking when he compels or induces the victim to engage in multiple occurrences of sexual contact with another person through the use of force, fraud or coercion.¹⁴ The requirement of coercion applies to trafficking of minors as well as adults.

Safe Harbor: 4 pts.

The definition of prostitution is limited to persons 16 and older,¹⁵ and Connecticut's safe harbor law presumes that children aged 16 or 17 found committing an act of prostitution are victims of trafficking.¹⁶ Additionally, a person charged with prostitution can assert as an affirmative defense that he or she was a victim of trafficking.¹⁷

Recommendations: Connecticut should amend its trafficking law to mirror the federal law, which does not require force, fraud or coercion to establish the trafficking of minors. It is commendable that Connecticut presumes trafficking for minors who are charged with prostitution offenses, but the state should expand this to include any commercial sex act.

¹⁴ Conn. Gen. Stat. § 53a-192(a) (2013).

¹⁵ Conn. Gen. Stat. § 53a-82(a) (2013).

¹⁶ Conn. Gen. Stat. § 53a-82(c) (2013).

¹⁷ Conn. Gen. Stat. § 53a-82(b) (2013).

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Delaware

Final Grade: C 39/50

Name of Agency: Department of Services for Children, Youth, and Their Families – Division of Family Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

Delaware's child welfare policy advances the best interests and secures the safety of the child, while preserving the family unit whenever the safety of the child is not jeopardized. This policy extends to all child victims of intra-familial or extra-familial abuse and neglect.¹

Definition of Abuse: 8 pts.

The definition of abuse includes (1) sexual abuse by any person or (2) physical injury, emotional abuse, torture, exploitation or maltreatment by a person who has care, custody, or control.²

Definition of Person Responsible for Welfare of Child: 7 pts.

A person with care, custody, and control is a person who is in a position of trust, authority, supervision, or control over a child. This may include a parent, guardian, or custodian; other members of the child's family or household (regardless of relation or length of residence); any family member or relative; persons temporarily responsible for the child's well-being or care (teacher, coach, sitter, etc.) or with regular direct contact with children through affiliation with an applicable organization (school, church, athletic organization, etc.) whether in a paid or volunteer position; or any person who has assumed control of or responsibility for the child.³

Recommendations: Delaware's mandate is sufficiently broad in covering both intra-familial and extra-familial abuse and defines a Person Responsible for Welfare of Child as any person who has assumed control or responsibility of the child. The definition of abuse should be expanded to include abuse by any person, regardless of whether it is sexual in nature.

¹ Del. Code Ann. tit. 16 § 901 (2013).

² Del. Code Ann. tit. 10 § 901(1) (2013).

³ Del. Code Ann. tit. 10 § 901(3) (2013).

Name of CHINS Provision: “Dependent Child”

Definition of Eligible Child: 3 pt.

A child is dependent when a person responsible for care of the child does not have the ability or financial means to provide for the child and (1) fails to provide for the child; (2) the child is living in a nonrelated home on extended basis without approval from the Department of Services for Children, Youth, and Their Families (“DSCYF”), an applicable agency, or the court; or (3) the child has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan.⁴

Who Can File: 5 pts.

Any person having knowledge of a child within the state who appears to be neglected, dependent, or delinquent may file with the Clerk of the Court a petition in writing setting forth the facts verified by affidavit.⁵

Process for Child Placement: 5 pts.

The Division of Child Protective Services (“CPS”) must provide written consent to any placement of a dependent child (with some exceptions for a licensed institution taking the child under permanent care, certain placements with relatives, placements where there have been no allegations of neglect or abuse, etc.).⁶ CPS may examine the circumstances of a placement and may order the child to be transferred away from an improper home to a proper one. If CPS’s order is not obeyed within 30 days, CPS may itself take charge of the child, returning it to a person, agency, or organization responsible for taking care of the child.⁷

Recommendations: CPS’s involvement in the detection of and response to commercially sexually exploited children in Delaware. However, the definition of Eligible Child does not mention commercially sexually exploited children and can be read so as to not include them. To ensure that trafficked children are properly cared for, the definition should be expanded to specifically mention such children.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

A person is guilty of sexual servitude of a minor when the person (a) recruits, entices, harbors, transports, provides or obtains a minor, knowing that the minor will engage in commercial sexual activity, a sexually explicit performance, or the production of pornography, or (b) causes a minor to engage in commercial sexual activity or a sexually explicit performance.⁸ Coercion is not required.

Safe Harbor: 0 pts.

There is currently no safe harbor law in Delaware.

Recommendations: The current trafficking statute does not require coercion for a minor and is thus in line with the federal mandate. However, Delaware should pass and implement safe harbor laws to protect commercially sexually exploited children from prosecution.

⁴ Del. Code Ann. tit. 10 § 901(8) (2013).

⁵ Del. Code Ann. tit. 10 § 1003 (2013).

⁶ Del. Code Ann. tit. 31 § 351 (2013).

⁷ Del. Code Ann. tit. 31 § 352 (2013).

⁸ Del. Code Ann. tit. 11 § 787(b)(2) (2013).

District of Columbia

Final Grade: F 14/50

Name of Agency: Child and Family Services Agency

Category 1 – Child Protective Services: F 3/25

State Mandate: -2 pts.

The mission of D.C.’s Child and Family Services Agency (“CFS”) is to protect abused and neglected children by encouraging and responding to reports of child abuse; conducting investigations and notifying the Metropolitan Police Department when the child is at risk; offer appropriate treatment when there has been a finding of abuse; and ensuring the protection of children who have been abused or neglected from further experiences and conditions detrimental to their healthy growth and development.¹ While a plain reading of the mandate would seem to include trafficked children, a representative stated that it would be a police matter and CFS would not be involved.

Definition of Abuse: 4 pts.

Abuse means any infliction of physical or mental injury upon a child, sexual abuse or exploitation of a child, or negligent treatment or maltreatment of a child.² The definition of a neglected child as it pertains to abuse is limited to when a parent, guardian, or custodian abandoned, abused, or failed to make reasonable efforts to prevent the infliction of abuse upon the child.³

Definition of Person Responsible for Welfare of Child: 1 pt.

A parent, guardian, or custodian, including a day care provider, a person or agency who is acting in the place of a parent, or a person or agency who has been granted legal custody of a child by order of a court.⁴

Recommendations: A plain reading of D.C.’s mandate appears sufficient to cover children who have been commercially sexually abused; however, a representative stated that such an issue would be a police matter and that CFS would not be involved.⁵ To ensure coverage, the mandate should explicitly mention children who have been commercially sexually abused by any individual. Also, the definition of Person Responsible for Welfare of Child should be expanded to include anyone exercising control over a child.

¹ D.C. Code § 4-1303.01a (2013).

² D.C. Code § 16-2301(23)(A) (2013).

³ D.C. Code § 16-2301(9)(A) (2013).

⁴ D.C. Code § 16-2301(12) (2013)

⁵ Telephone interview with D.C. Child Abuse and Neglect Hotline (June 2013).

Name of CHINS Provision: “Child in Need of Supervision”

Definition of Eligible Child: -1 pt.

Any child who is in need of care or rehabilitation and: (1) is ungovernable by a parent, guardian, or custodian; (2) is habitually truant from school without justification; or (3) has committed a status offense.⁶

Who Can File: 2 pts.

Director of Social Services, a representative of a public agency or a nongovernmental agency licensed and authorized to care for children, a representative of a public or private agency providing social service for families, a school official, or a law enforcement officer may file.⁷

Process for Child Placement: 5 pts.

If found in need of supervision, a child will be returned to his or her parent, guardian, or custodian unless the child would be returning to an abusive situation or the parent, guardian, or custodian is unwilling or unable to care for or supervise the child. In that case, CFS would open a neglect investigation.⁸

Recommendations: The definition of CHINS is much too narrow and would likely not include children who have been commercially sexually exploited. There is no mention of either runaway or trafficked children. The definition should be expanded to include these children. Also, a child should be able to file to receive services on his or her own behalf.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

Statute does not require a finding of coercion.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Washington D.C.

Recommendations: Washington D.C. currently has no safe harbor laws, but should pass and implement such laws to protect commercially sexually exploited children from prosecution.

⁶ D.C. Code § 16-2301(8) (2013).

⁷ D.C. Code § 16-2305(b) (2013).

⁸ D.C. Code § 16-2320(d) (2013).

⁹ D.C. Code § 22-1834 (2013).

Florida

Final Grade: A 46/50

Name of Agency: Department of Children and Families

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The mission of Florida’s Department of Children and Families (“DCF”) is to protect the vulnerable; promote strong and economically self-sufficient families; and advance personal and family recovery and resiliency.¹

Definition of Abuse: 10 pts.

Abuse means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions.² “Sexual abuse” of a child includes the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or allowing, encouraging, or forcing a child to solicit for or engage in prostitution, engage in a sexual performance, or participate in the trade of sex trafficking.³

Definition of Person Responsible for Welfare of Child: 7 pts.⁴

Parent; legal guardian; or foster parent; employee of school, day care center, residential home, institution, facility, or agency; law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice (“DJJ”); any other person legally responsible for child’s welfare in a residential setting; adult sitter or relative entrusted with a child’s care.⁵

Recommendations: The mandate is sufficiently broad to include commercially sexually abused children but does not explicitly mention them. However, effective January 1, 2013, Florida’s Safe Harbor Act allows DCF, DJJ, law enforcement and other local partners across the state to treat and help child victims who have been trafficked for sex.⁶ The intent is to provide special care and services in the dependency process to all sexually exploited children.⁷

¹ DCF Quick Facts, December 2009, <http://www.dcf.state.fl.us/admin/publications/docs/quickfacts.pdf> (July 2, 2014).

² Fla. Stat. § 39.01(2) (2013).

³ Fla. Stat. § 39.01(67)(g) (2013).

⁴ Full credit given as Florida’s definition of abuse does not require abuse to be done by a person responsible for the welfare of a child.

⁵ Fla. Stat. § 39.01(47) (2013).

⁶ Human Trafficking, Florida Department of Children and Families, <http://www.myflfamilies.com/service-programs/human-trafficking> (July 2, 2014).

⁷ See Fla. Stat. § 39.001(4) (2013).

Name of CHINS Provision: “Children and Families in Need of Services”

Definition of Eligible Child: 3 pts.

A child for whom there is no pending investigation regarding abuse, neglect, or abandonment, referral regarding delinquency, or supervision by the DCF or DJJ must be found by the court: (a) to have persistently runaway despite reasonable efforts to remedy the conditions contributing to the behavior; (b) to be habitually truant from school despite reasonable efforts to remedy the situation; or (c) to have persistently disobeyed the reasonable and lawful demands of the child’s parents or legal custodians and is beyond the control of the parents or legal custodians despite efforts to remedy the conditions contributing to the behavior.⁸

Who Can File: 2 pts.

A parent, guardian, legal custodian, or attorney representing the DJJ can file.⁹

Process for Child Placement: 3 pts.

The court may order a child in need of services to be placed for up to 90 days in a staff-secure shelter or a physically secure center, as applicable, and may order the child to remain in such setting for an additional 30 days. The child’s placement is reviewed every 45 days, and the court may determine the child should be handled as a dependent child and transfer jurisdiction to the DCF as necessary.¹⁰ A dependent child six years of age or older who has been found to be a victim of sexual exploitation must be assessed for placement in a safe house.¹¹ The assessment is based on the child’s history with law enforcement, history with family or guardian, and history with any professional, such as therapist or teacher, that has knowledge of the child.¹²

Recommendations: The CHINS statute does not include children who have been commercially sexually abused in its definition of an Eligible Child, although there is a reference to runaways. The definition should be expanded to specifically include commercially sexually abused children in order to ensure coverage of such children. Also, a child should be able to file for CHINS on his or her own.

Category 3 – State Laws: B 8/10

Trafficking Law: 5 pts.

The law does not require coercion for minors.¹³

Safe Harbor: 3 pts.

Florida’s safe harbor law sends children who are arrested for prostitution to CPS where they can file an abuse and neglect petition.¹⁴

Recommendations: Florida’s trafficking law is in line with the federal definition. Their safe harbor law is a good start but limits the provision to children who are ineligible for relief under the TVPA. However, every commercially sexually exploited child should be eligible for relief. Additionally, the safe harbor law should explicitly exempt children from prosecution for prostitution and related offenses in addition to providing services.

⁸ Fla. Stat. § 984.03(9) (2013).

⁹ Fla. Stat. § 984.15(1) (2013).

¹⁰ See Fla. Stat. §§ 984.225–26 (2013).

¹¹ Fla. Stat. § 39.524(1) (2013).

¹² *Id.*

¹³ Fla. Stat. § 787.06 (2013).

¹⁴ See H.B. 99, 114th Reg. Sess. (Fla. 2012); Fla. Stat. § 39.524 (2013); Fla. Stat. § 409.1678 (2013).

Georgia

Final Grade: F+* 25/50

Name of Agency: Department of Human Services – Division of Family and Children Services

Category 1 – Child Protective Services: F 9/25

State Mandate: 0 pts.

The state's purpose is to provide for the protection of children whose health and welfare are adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear on the situation in an effort to prevent further abuses, to protect and enhance the welfare of these children, and to preserve family life wherever possible.¹

Definition of Abuse: 6 pts.

Abuse means physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means. The term also includes neglect or exploitation of a child by a parent or caretaker thereof, and sexual abuse or sexual exploitation of a child by any person. The term does not include physical forms of discipline so long as there is no physical injury to the child.² The term also does not include a child being treated through spiritual means in accordance with the practices of a religious denomination by a duly accredited practitioner thereof.³

Definition of Person Responsible for Welfare of Child: 3 pt.

Only parents or caretakers are responsible in the context of physical injury, neglect or exploitation. However, in the case of sexual abuse or exploitation, the person responsible is not limited to a parent or caretaker.⁴ A caretaker is a parent, guardian, foster parent, employee of a public or private residential home or facility or a day care facility, personnel of public and private schools or any other person often found in the same household or caretaking unit for a child (e.g. boyfriend/girlfriend, stepparent, adoptive parent.)⁵

Recommendations: Georgia's mandate is much too narrow and would exclude the majority of commercially sexually abused children. The mandate needs to explicitly mention children who have been commercially sexually abused by anyone, as traffickers are often not parents, guardians, or custodians of these children. Another way to ensure that these children are covered would be to expand the definition of abuse to include acts or omissions of abuse by anyone, not just a parent or caregiver. To fully showcase a policy of child protection, the definition of Person Responsible for Welfare of Child should be expanded to include anyone exercising custody or control, not just a parent or caretaker.

*Georgia has undertaken efforts to directly respond to commercial sexual exploitation through the Governor's Office for Children and Families. This program is a grant program that leads the statewide initiative to end the CSEC through infrastructure development, convening a quarterly task force, and providing resources and services to victims of CSEC.⁶ The Georgia Care Connection Office is a grantee of the Governor's Office of

¹ Ga. Code Ann. § 19-7-5(a) (2013).

² Ga. Code Ann. § 19-7-5(b)(4) (2013).

³ *Id.*

⁴ *Id.*; Ga. Code Ann. § 49-5-180(5) (2013).

⁵ Georgia Social Services Manual, Child Protection, Chapter 2101.5 (2014).

⁶ See Grant Programs, Governor's Office for Children and Families, <http://www.children.georgia.gov/yc-grant-programs> (Mar. 24, 2014).

Children and Families that identifies commercially sexually exploited girls between the ages of 11 and 17 and links them to services.⁷ The Georgia Care Connection provides “statewide, independent care coordination for commercially sexually exploited children”⁸ and serves as a “single point of contact for anyone who seeks help, [or] needs information or technical assistance” for a victim of CSEC. Services provided are funded by the Division of Family and Children Services (“DFCS”), the Department of Juvenile Justice, the Georgia Care Connection Office, and the Safety Gap Fund.⁹ Georgia’s efforts to take a comprehensive, collaborative approach to CSEC through this grant program are laudable; however, the Renewal Forum believes that DFCS should be the primary coordinator of services and directly respond to these children. Since 2009, Georgia’s legislature has introduced bills to reform the DFCS system such as the Child Protection and Public Safety Act. Georgia should pass this bill in the next legislative session.

Category 2 – Child In Need of Services: C 11/15

Name of CHINS Provision: “Child in Need of Services”

Definition of Eligible Child: 3 pts.

A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment or rehabilitation and who is adjudicated to be habitually truant; habitually disobedient to commands of parent or guardian and is ungovernable or places himself or herself or others in unsafe circumstances; a runaway; a child who has committed an offense only applicable to a child; a child who wanders the streets between midnight and five a.m.; a child who disobeys court ordered supervision; a child who patronizes bars without parent or guardian, or who possesses alcoholic beverages; or a child who has committed a delinquent act and is in need of supervision but not treatment or rehabilitation.¹⁰

Who Can File: 5 pts.

Any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed of and believes that they are true. A petition will not be filed unless the court or a person authorized by the court has determined and endorsed on the petition that filing is in the best interest of the public and the child.¹¹

Process for Child Placement: 3 pts.

If a child is found to be in need of services, the court will order the least restrictive and most appropriate disposition, which many include permitting the child to remain with his or her caregiver, with or without limitations prescribed by the court, any order authorized for a dependent child, or any order authorized for a delinquent child, except that a child in need of services will not be placed in a secure or nonsecure facility.¹²

Recommendations: Georgia’s definition of an Eligible Child fails to specifically mention children who have been commercially sexually abused, although runaways are mentioned. The definition should be expanded to ensure that trafficked children are eligible. Also, a child should be able to file a petition for services on his or her own behalf, and it should be made clear that a trafficked child would not be detained but would instead be placed in protective services and offered a variety of treatment and counseling programs.

⁷ See Contact Us, Georgia Care Connection, <http://www.georgiacareconnection.com/> (Mar. 24, 2014).

⁸ See About GCCO, Georgia Care Connection, http://www.georgiacareconnection.com/about_gcco (Mar. 24, 2014).

⁹ See About GCCO, Georgia Care Connection, http://www.georgiacareconnection.com/about_gcco (Mar. 24, 2014).

¹⁰ Ga. Code Ann. § 15-11-2(11) (2014).

¹¹ Ga. Code Ann. § 15-11-420 (2014).

¹² Ga. Code Ann. § 15-11-442 (2014).

Trafficking Law: 5 pts.

No coercion required if minor is 18 or younger.¹³

Safe Harbor: 0 pts.

There is currently no safe harbor law in Georgia.

Recommendations: Georgia needs to pass and implement safe harbor laws to protect commercially sexually exploited children from prosecution.

¹³ Ga. Code Ann. § 16-5-46 (2013).

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Hawaii

Final Grade: F 23/50

Name of Agency: Department of Human Services, Social Services Division, Child Welfare Services Branch

Category 1 – Child Protective Services: B 20/25

State Mandate: 6 pts.

The Child Welfare Services Branch (CWSB) provides services to children and their families when the children are reported to have been abused and/or neglected, or to be at risk for abuse and/or neglect. These services include child protection, family support, foster care, adoption, independent living, and licensing of resource family homes, group homes, and child placement organizations. The mission of the CWSB is to ensure the safety and permanency of children in their own homes or, when necessary, in out-of-home placements. When a child cannot be safely returned to the family home within a reasonable time frame, the CWSB proceeds with a permanent placement for the child through adoption, legal guardianship, or other long-term substitute care.¹

Definition of Abuse: 8 pts.

Abuse means the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed.² The acts or omissions include: (1) When the child exhibits evidence of injury or death; (2) When the child has been the victim of sexual contact or conduct, including sexual exploitation; (3) When there exists injury to the psychological capacity of a child; (4) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; (5) When the child is provided with dangerous, harmful, or detrimental drugs; or (6) When the child has been the victim of labor trafficking.

Definition of Person Responsible for Welfare of Child: 6 pts.

Any person or entity that is in any manner or degree related to the child, residing with the child, or is otherwise responsible for the child's care.³

Recommendations: The mandate should explicitly mention commercially sexually exploited children. The definition of abuse should be expanded to specifically include abuse by any individual who sexually exploits a child.

¹ State of Hawaii Department of Human Services: Social Services Division, Child Welfare Service Branch, A Guide to Child Welfare Services, <http://humanservices.hawaii.gov/ssd/files/2013/04/A-GUIDE-TO-CHILD-WELFARE-FINAL.pdf> (July 2, 2014).

² Haw. Rev. Stat. § 350-1 (2013).

³ Haw. Rev. Stat. § 350-1 (2013).

Name of CHINS Provision: “Youth at Risk or Youth in Need of Services”

Definition of Eligible Child: -1 pt.

An eligible child is any youth who has been arrested, has had contact with the police, or is experiencing social, emotional, psychological, educational, moral, physical, or other similar problems.⁴

Who Can File: 0 pts.

Only the Office of Youth Services may file.⁵

Process for Child Placement: 5 pts.

A child is sent to the office of youth services which will provide both residential and non-residential services for the children.⁶ This could include individual, group, and family counselling.

Recommendations: The definition of eligible child fails to mention either runaways or trafficked children. It is unclear what “experiencing social, emotional, psychological, educational, moral, and physical problems” means. The definition should be expanded to ensure that children who have been commercially sexually abused are able to take advantage of the services. Additionally, while it appears that any individual can report abuse, the statute should state that children can file for themselves.

Category 3 – State Laws: F -1/10

Trafficking Statute: -1 pt.

There is currently no statute directly addressing minor trafficking.

Safe Harbor: 0 pts.

There is currently no safe harbor law in Hawaii.

Recommendations: Hawaii currently has limited criminal trafficking statutes. In order to align with the federal mandate, Hawaii should enact a minor trafficking statute that has no requirement of a showing of force, fraud, or coercion. Also, Hawaii must enact a safe harbor statute to protect commercially sexually exploited children from prosecution. Hawaii does allow an individual who is convicted of prostitution but who is a victim of a severe form of trafficking, as defined in 22 U.S.C. § 7102, to file a motion to vacate the conviction.⁷ It would be best though if a minor victim of commercial sexual exploitation was never charged with prostitution.

⁴ Haw. Rev. Stat. § 352D-3 (2013).

⁵ Haw. Rev. Stat. §§ 352D-6, 7 (2013).

⁶ Haw. Rev. Stat. § 352D-4 (2013); *see also* State of Hawaii Department of Human Services Office of Youth Services, available at <http://humanservices.hawaii.gov/oys/office/> (July 2, 2014).

⁷ Haw. Rev. Stat. § 712-1209.6 (2013).

Idaho

Final Grade: F 13/50

Name of Agency: Department of Health and Welfare – Family and Community Services – Children and Family

Category 1 – Child Protective Services: F 11/25

State Mandate: 6 pts.

The mandate broadly encompasses all children whose opportunities for normal physical, social, and emotional growth and development have been endangered for any reason and calls for receiving and investigating from any source all reasonable reports or complaints of neglect, abuse, exploitation or cruel treatment of children.¹

Definition of Abuse: 4 pts.

Abuse means any case in which a child has been the victim of (i) conduct or omission resulting in physical injury (including malnutrition, failure to thrive or death) or (ii) sexual conduct or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.²

CFS will only respond though to cases of sexual abuse when the abuser is either a parent, guardian, custodian, or the abuse occurred because of lack of protection on the part of the caregiver.³

Definition of Person Responsible for Welfare of Children: 1 pt.

A parent, guardian, or custodian.⁴ A caregiver is an adult responsible for the child's care, supervision and welfare which includes parent, guardian, custodian, relative, foster parent, or other adults who provide care to the child.⁵

Recommendations: Idaho's mandate fails to specifically reference children who have been commercially sexually abused. A reading of the statute offers a common sense understanding that these children are covered but a specific reference would be beneficial to ensure coverage. In order to be comprehensive, Idaho should include anyone with custodial control over a child in the definition of person responsible for the welfare of the child.

¹ Idaho Code Ann. § 56-204A (2013).

² Idaho Code Ann. § 16-1602 (2013).

³ Idaho Department of Health and Welfare Priority Guidelines p. 1, 4, 6 available at <http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/PriorityGuidelines.pdf> (July 2, 2014).

⁴ Idaho Code Ann. § 16-1602 (2013).

⁵ Idaho Department of Health and Welfare Priority Guidelines p. 1 available at <http://www.healthandwelfare.idaho.gov/Portals/0/Children/AdoptionFoster/PriorityGuidelines.pdf> (July 2, 2014).

Name of CHINS Provision: Idaho does not have a current CHINS (or equivalent) statute.

Definition of Eligible Child: -1 pt.

N/A

Who Can File: -1 pt.

N/A

Process for Child Placement: -1 pt.

N/A

Recommendations: Idaho does not currently have a CHINS (or equivalent) statute. To ensure that commercially sexually abused children are provided the necessary services, Idaho should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The statute has no coercion requirement for sex trafficking of a minor.⁶

Safe Harbor: 0 pts.

There is currently no safe harbor law in Idaho.

Recommendations: Idaho should enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁶ Idaho Code Ann. §§ 18-8601, 18-8602 (2013).

Illinois

Final Grade: D 31/50

Name of Agency: Department of Children and Family Services

Category 1 – Child Protective Services: F 11/25

State Mandate: 6 pts.

Children and Family services exists to protect the best interest of the child, provide for the reporting and investigation of child abuse and neglect, offer protective services in order to prevent any further harm to the child, stabilize the home environment and preserve family life whenever possible.¹

Definition of Abuse: 2 pts.

Abuse of a child is when a parent, immediate family member, any person responsible for the child's welfare, or any individual residing in the same home or a paramour of the child's parent (i) inflicts, allows to be inflicted, or creates a substantial risk of physical or emotional injury to the child, (ii) creates a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function, (iii) commits or allows to be committed any sex offense against the child, (iv) commits or allows to be committed an act of torture upon the child, (v) inflicts excessive corporal punishment, (vi) commits or allows to be committed the offense of female genital mutilation against the child, (vii) causes to be sold, transferred, distributed or given to the child a controlled substance (except for controlled substances that are prescribed in accordance with law and are dispensed to such child in a manner that substantially complies with the prescription) or (viii) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor or trafficking in persons against the child.²

Definition of Person Responsible for Welfare of Child: 3 pts.

Child's parent, guardian, foster parent, relative caregiver, person responsible in a public or private residential agency or institution, person responsible in a public or private child care facility, other person responsible at time of the alleged abuse or any person who came to know the child through an official capacity or position of trust.³

Recommendations: Illinois' mandate fails to explicitly mention children who have been commercially sexually abused, although a common sense reading of the mandate would seem to include these children. To ensure that such children are covered, the mandate should be amended to explicitly reference these children. The definition of abuse should also be expanded to specifically mention that abuse can be committed by any individual, not just those persons listed above. Additionally, the person responsible for welfare of child definition should be expanded to include anyone with physical custody of the child.

¹ 325 Ill. Comp. Stat. 5/2 (2013).

² 325 Ill. Comp. Stat. 5/3 (2013).

³ Id.

Name of CHINS Provision: “Minor Requiring Authoritative Intervention”

Definition of Eligible Child: 3 pts.

Any minor whose safety is in substantial or immediate danger due to running away from home or being beyond the control of parents/guardians/custodians and who refuses to return home or to another voluntary residential placement after being taken into limited custody and offered crisis intervention services.⁴

Who Can File: 2 pts.

Any adult person may file, any agency or association by its representative may file, or the court on its own motion may direct the filing through the state’s attorney of a petition in respect to a minor; however, it does not appear that a child is permitted to file directly for himself or herself.⁵

Process for Child Placement: 5 pts.

If an attempt to return a child home is unsuccessful, the child is placed in a crisis intervention service.⁶

Recommendations: The definition of child eligibility does not explicitly mention children who have been commercially sexually abused, although runaways are mentioned. To ensure that such children are covered, the definition of eligibility should be expanded to include commercially sexually exploited children. Additionally, a child should be able to file directly for himself or herself.

Category 3 – State Laws: A 10/10

Trafficking Statute: 5 pts.

The statute does not require a showing of force, fraud or coercion; however, sentences are generally longer if there is a showing of force or threat.⁷

Safe Harbor: 5 pts.

Illinois has safe harbor laws that keep commercially sexually exploited children safe from prosecution.⁸

Recommendations: At the moment, Illinois has one of the best safe harbor laws in the country and should serve as an example for other states.

⁴ 705 Ill. Comp. Stat. 405/3-3 et seq. (2013).

⁵ Id.

⁶ Id.

⁷ 720 Ill. Comp. Stat. 5/10-9(b) (2013).

⁸ 720 Ill. Comp. Stat. 5/11.10 et seq. (2013).

Indiana

Final Grade: D 30/50

Name of Agency: Department of Child Services

Category 1: Child Protective Services: D 15/25

State Mandate: 6 pts.

Indiana's Department of Child Services ("DCS") protects children from further abuse or neglect and prevents, remedies, or assists in solving problems that may result in abuse, neglect, exploitation, or delinquency of children. The mandate includes children who are victims of a sexual offense or living in a household with a victim of a sexual offense.¹

Definition of Abuse: 6 pts.

Abuse occurs when a victim is under 18 and the alleged perpetrator's relationship is that of parent, guardian, or custodian and would cause a reasonable person to believe that child abuse/neglect has occurred. In allegations involving sexual offenses the perpetrator can have any or no relationship to the child.²

Definition of Person Responsible for Welfare of Child: 3 pts.

Parent, guardian, or custodian: Custodians include any person with whom the child resides or a licensed center, caretaker, caregiver, or an individual who has direct contact on a regular and continuing basis with a child for whom care and supervision is provided. Only the parent, guardian, or custodian is responsible for abuse, unless the abuse is sexual in nature, in which case anyone can be responsible.³

Recommendations: Indiana's DCS mandate fails to specifically reference commercially sexually abused children but a common sense reading of the mandate would indicate that these children are covered; however, a specific reference would be preferred to ensure coverage. Indiana's acknowledgement that in cases of allegations of sexual offenses the perpetrator can have any or no relationship to the child is good. Also, the definition of persons responsible for the welfare of a child should be expanded to include anyone exercising custodial control.

¹ Ind. Code §§ 31-25-2-7, 31-33-1-1 (2013); Indiana Department of Child Services, Child Protective Services, available at <http://www.in.gov/dcs/2398.htm> (June 30, 2014).

² Ind. Dept. of Child Services Child Welfare Manual 3.8, available at <http://www.in.gov/dcs/2354.htm> (June 30, 2014); see also Ind. Code § 31-9-2-14 (2013).

³ Ind. Dept. of Child Services Child Welfare Manual 3.8, available at <http://www.in.gov/dcs/2354.htm> (June 30, 2014).

Name of CHINS Provision: Child in Need of Services

Definition of Eligible Child: 5 pts.

A child is in need of services when 1) the child's physical or mental condition is seriously impaired as a result of inability, refusal, or neglect of parent to supply child with necessary food, clothing, shelter, medical care, education, or supervision; 2) the child's physical or mental health is seriously endangered due to injury by act or omission of child's parent, guardian, or custodian; 3) child is a victim of a sex offense; 4) a child lives in the same household as another child who is victim of a sex offense; 5) child lives in same household as adult who committed a sex offense; 6) the child's parent, guardian, or custodian allows the child to participate in an obscene performance; 7) the child's parent, guardian, or custodian allows the child to commit a sex offense; 8) child substantially endangers the child's own health or health of another individual; 9) parent fails to participate in school disciplinary proceeding; 10) child is a missing child; 11) a child with a disability is deprived of intervention necessary to remedy or ameliorate a life threatening condition; 12) born with controlled substance in body; 13) a child suffers injury because use of alcohol or controlled substance during pregnancy AND all of these conditions requires that the child needs care, treatment, or rehabilitation that the child is either not receiving or unlikely to be provided or accepted without the coercive intervention of the court.⁴

Who Can File: 0 pts.

The department of children services files the petition of CHINS after attempting informal proceedings.⁵

Process for Child Placement: 5 pts.

Informal adjustments first with cooperation of parent, then if parent does not comply they process a formal petition.⁶ A child may be taken into custody if needed to protect the child's safety; otherwise, a child may be placed in various suitable dwellings including an in-home or out of home CHINS process.⁷

Recommendations: The definition of who is eligible for CHINS does not provide for children who have been commercially sexually exploited. Indiana should expand the definition to explicitly reference trafficked children. Currently only the department of children services can file a petition and this should be changed to allow a child to file for themselves.

Category 3: State Laws: F 5/10

Trafficking Statute: 5 pts.

Trafficking of minors requires no showing of force, fraud, or coercion.⁸

Safe Harbor: 0 pts.

There is currently no safe harbor law in Indiana.

Recommendations: Indiana should enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁴ Ind. Code §§ 31-34-1-1 – 31-34-1-11 (2014).

⁵ Ind. Code § 31-34-9-1 (2013); Ind. Dept. of Child Services Child Welfare Manual 5.9, 6.2, *available at* <http://www.in.gov/dcs/2354.htm> (June 30, 2014).

⁶ Ind. Dept. of Child Services Child Welfare Manual 5.9, *available at* <http://www.in.gov/dcs/2354.htm> (June 30, 2014).

⁷ Ind. Code §§ 31-34-2-3, 31-34-4-2 (2013).

⁸ Ind. Code § 35-42-3.5-1 (2014).

Iowa

Final Grade: C 36/50

Name of Agency: Department of Human Services – Division of Child and Family Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

The mission of Iowa’s Division of Child and Family Services (“CFS”) is to provide social welfare services for the protection and care of children who are homeless, dependent, neglected, in danger of becoming delinquent, or have a mental illness.¹

Definition of Abuse: 8 pts.

Abuse includes physical abuse; mental injury; sexual abuse; failing to provide adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare; child prostitution; presence of illegal drugs in the child’s body; manufacturing or possession of dangerous substances in the presence of a child; bestiality in the presence of a minor; allowing a person access to a child or minor, after knowing the person is required to register or is on the sex offender registry; or allowing a child access to obscene material. All of these must be the result of the act or omission of person responsible for care of child.²

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, guardian, or foster parent; a relative, or any other person with whom the child resides and who assumes care of, or supervises, the child; an employee or agent of any public or private facility that provides care for a child; or any person providing care for the child, but with whom the child does not reside, without reference to the duration of the care.³

Recommendations: The mandate seeks to provide services to children without displacing them from their homes. When that is not possible, it seeks to help in the least restrictive manner possible. The mandate, however, fails to specifically mention children who have been commercially sexually abused. CFS is able to investigate and intervene in cases of child abuse by any person responsible for the child’s welfare. The mandate should be expanded to specifically mention trafficked children. Traffickers should qualify as responsible for the welfare of the children they traffic, thus allowing CFS to intervene in trafficking cases. A clause in the mandate stating that children who have been commercially sexually abused fall under CFS’s jurisdiction is preferable, as it ensures that these children are covered. Also, the definition of Person Responsible for Welfare of Child should be expanded to include those persons who exercise control over the child.

¹ Iowa Code § 235.1 (2012).

² Iowa Code § 232.68 (2012).

³ *Id.*

Name of CHINS Provision: “Child in Need of Aid and Assistance”

Definition of Eligible Child: 5 pts.

A child who: 1) has been abandoned or deserted by a parent, guardian, or custodian; 2) has been or is imminently likely to be physically abused or neglected by a parent, guardian, custodian, or another member of their household; 3) has suffered or is imminently likely to suffer harmful effects as a result of mental injury, failure to exercise care by his or her parent, guardian, custodian, or another member of his or her household, or his or her parent, guardian, custodian, or person responsible for his or her care knowingly disseminating or exhibiting obscene material to him or her; 4) has been sexually abused by a parent, guardian, custodian, or another member of his or her household; 5) is in need of medical treatment or mental health treatment that his or her parent, guardian, or custodian is unwilling or unable to provide; 6) has a parent, guardian, or custodian who fails to exercise a minimal degree of care in supplying him or her with adequate food, clothing, or shelter; 7) committed a delinquent act as result of pressure, guidance, or approval by a parent, guardian, or custodian; 8) is the subject of, or a party to, sexual activities for hire or poses for live display or for photographic or other means of display of child pornography; 9) is without a parent, guardian, or custodian; 10) has a parent who desires to be relieved from his or her custody and care for the child for good cause; 11) is in need of treatment to cure or alleviate chemical dependency and whose parent is unwilling or unable to provide such relief; 12) has a parent, guardian, or custodian who is imprisoned, has a drug or alcohol problem, has a mental condition, or has diminished mental capacity which results in the child not receiving adequate care; 13) has an illegal drug present in his or her body as a direct and foreseeable consequence of the acts or omissions of the child’s parent, guardian, or custodian; 14) has a parent, guardian, or custodian whom manufactures a dangerous or unlawful substance in the presence of the child; or 15) is a newborn infant whose parent, guardian, or custodian has voluntarily released custody of him or her.⁴

Who Can File: 0 pts.

The Department of Human Services, a juvenile court officer, or a county attorney can file a petition.⁵

Process for Child Placement: 5 pts.

The child can either remain at home, where his or her parent, guardian, or custodian will be required to cooperate with CFS, or the child can be removed from home and his or her parent, guardian, or custodian be required to participate in services to regain custody.⁶

Recommendations: Iowa does not have a separate CHINS statute but does provide some procedural protection for children who would otherwise fall under a CHINS statute. Because this procedure allows the filing of a petition to initiate court action by someone other than by a parent, guardian, or custodian, it is functionally equivalent to a CHINS statute. Although Iowa’s Child in Need of Aid and Assistance explicitly references children who have engaged in prostitution, it should be expanded to cover all commercially sexually exploited children. In addition, children should be able file a petition on their own behalf.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The statute specifically bars the requirement of force, fraud, or coercion when a minor is trafficked.⁷

Safe Harbor: 0 pts.

There is currently no safe harbor law in Iowa.

⁴ Iowa Code § 232.2(6) (2012).

⁵ Iowa Code § 232.87(2) (2012).

⁶ Iowa Code § 232.101 (2012).

⁷ Iowa Code § 710A.1(4)(2) (2012).

Recommendations: Iowa's trafficking statute is in line with the federal mandate. Iowa must enact safe harbor laws to protect commercially sexually exploited children from prosecution.

Kansas

Final Grade: A 46/50

Name of Agency: Department for Children and Families

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The mandate covers all children in “need of care,” encourages the reporting of suspected child abuse and neglect, and will investigate reports of suspected child abuse and neglect thoroughly and promptly. This code is to be liberally construed and therefore, likely includes children who have been commercially sexually exploited.¹

Definition of Abuse: 10 pts.

Kansas’ definition of abuse includes the infliction of physical, mental, or emotional harm or the causing of a deterioration of a child; maltreatment or exploitation of a child to the extent that the child’s health or emotional well-being is endangered; and sexual abuse, which includes allowing, permitting, or encouraging a child to engage in the sale of sexual relations or commercial sexual exploitation of a child, or to be photographed, filmed, or depicted in pornographic material.²

Definition of Person Responsible for Welfare of Child: 7 pts.*

A parent, guardian, or any person who is liable by law to maintain, care for, or support a child.³

Recommendations: From a services standpoint, Kansas has done a relatively good job in responding to the problem of child trafficking and commercial sexual exploitation of children. Two of Kansas’ recent improvements include the creation of a crime of “commercial sexual exploitation of a child”⁴ and the establishment of a human trafficking victim assistance fund, to be used to support care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a children.⁵ Kansas should enact legislation linking its trafficking statute to its definition of abuse, and expand its definition of Person Responsible for Welfare the Child to include any person having control over the child.

*Full credit given, as definition of abuse does not require individual to be “person responsible for welfare of child.”

¹ Kan. Stat. Ann. §§ 38-2201, 38-2202(d), 38-2202(dd) (2013). Effective July 1, 2013, Kansas revised Kan. Stat. Ann. §§ 38-2201 *et seq.* (as amended, the “Revised Kansas Code for Care of Children”) to address the problem of commercially sexually exploited children.

² Kan. Stat. Ann. §§ 38-2202 (y), 38-2202(dd) (2013).

³ Kan. Stat. Ann. §§ 38-2202 (t), 38-2202 (u) (2013).

⁴ Kan. Stat. Ann. § 21-6422 (2013).

⁵ See Senate Sub. for H.B. No. 2034, available at http://www.kslegislature.org/li/b2013_14/measures/documents/hb2034_enrolled.pdf (June 30, 2014).

Name of CHINS Provision: “Child in Need of Care”

Definition of Eligible Child: 5 pts.

A child who: 1) is without adequate parental care, control, or subsistence; 2) is without care or control necessary for the child’s physical, mental, or emotional health; 3) has been physically, mentally, or emotionally abused or neglected, or sexually abused; 4) has been placed for care or adoption in violation of law; 5) has been abandoned or does not have a living known parent; 6) is not attending school; 7) commits a status offense; 8) is less than ten years old and commits an action that, if done by an adult, would be a felony or misdemeanor; 9) is willfully and voluntarily absent from home; 10) is absent at least a second time from court ordered placement; 11) has been residing in same residence with siblings or other persons under the age of eighteen who have been physically, mentally, emotionally, or sexually abused; 12) is under the age of ten and is in illegal possession of a firearm; or 13) has an appointed custodian who is no longer able or willing to serve as custodian.⁶

Who Can File: 5 pts.

Anyone is able to file.⁷

Process for Child Placement: 5 pts.

Kansas follows the same procedure for children in need of care as they do for abused or neglected children.⁸ The Revised Kansas Code for Care of Children authorizes law enforcement officials to take a child into custody when the officer reasonably believes the child is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation and to contact the Department for Children and Families to begin an assessment to determine the safety, placement, and treatment needs for the child.⁹ Kansas’ recently revised mandate also requires the Secretary of the Department for Children and Families to (1) use a rapid response team to begin the assessment for the child’s appropriate and timely placement, (2) use a “research-based” assessment tool to assess the needs of the child, and (3) make appropriate recommendations to the court.¹⁰

Recommendations: Kansas’ CHINS provisions are adequate to respond to victims of CSEC.

Category 3 – State Laws: B 8/10

Trafficking Statute: 5 pts.

The statute does not require a showing of fraud or coercion for trafficking of a minor.¹¹

Safe Harbor: 3 pts.

While Kansas does not provide a safe harbor law, the state has created an affirmative defense to any prosecution for selling sexual relations if the defendant was subjected to human trafficking, aggravated human trafficking or commercial sexual exploitation.¹²

Recommendations: This recently enacted legislation, once effective, would improve Kansas’ response to CSEC. Nevertheless, Kansas law should be amended to provide safe harbors for commercially exploited children and victims of child trafficking, as opposed to affirmative defenses.

⁶ Kan. Stat. Ann. § 38-2202(d) (2013).

⁷ Kan. Stat. Ann. § 38-2239 (2013).

⁸ Kan. Stat. Ann. § 38-2242 (2013).

⁹ Kan. Stat. Ann. §§ 38-2231, 38-2287 (2013).

¹⁰ Kan. Stat. Ann. § 38-2287 (2013).

¹¹ Kan. Stat. Ann. § 21-5426 (2013).

¹² Kan. Stat. Ann. § 21-6419(c) (2013).

Kentucky

Final Grade: A 48/50

Name of Agency: Cabinet for Health and Family Services¹

Category 1 – Child Protective Services: A 23/25

State Mandate: 8 pts.

Locate and help all children who are dependent, neglected, or abused; cooperate with and assist the Circuit Court and county courts by providing services to children; perform such other services as may be necessary for the protection of children.² The duties of the cabinet also now include investigating a report alleging a child is a victim of human trafficking.³

Definition of Abuse: 8 pts.

Inflicting physical or emotional injury, or allowing the infliction of such injury; creating a risk of physical or emotional injury, or allowing the creation of such risk; engaging in a pattern of conduct that renders one incapable of caring for the needs of a child; continuous or repeated failure or refusal to provide essential parental care; committing an act of sexual abuse, sexual exploitation, or prostitution upon the child, or allowing the commitment of such acts; creating a risk that an act of sexual abuse, exploitation, or prostitution will be committed upon the child, or allowing the creation of such risk; the abandonment or exploitation of a child; the failure to provide adequate care, supervision, food, clothing, shelter, education, or medical care necessary for the child's well-being; failure to make sufficient progress toward court-approved goals to allow for the safe return of the child to the parent, such that the child remains in foster care for 15 of the most recent 22 months; or when any person who is 21 years of age or older commits an act of sexual abuse, sexual exploitation, or prostitution upon a child under the age of 16, or allows any such act to be committed.⁴

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, guardian, person in a position of authority (i.e., a person who, by their position, is able to exercise undue influence over the minor) or other person or agency supervising child and assuming role of parent or guardian, though not necessarily have legal custody of the child.⁵

Recommendations: Kentucky has broadened the definition of child abuser to any person over 21, raised the age of those who can be prosecuted for prostitution from 16 to 18, and created a safe harbor protecting minors under the age of 18 from being prosecuted for prostitution.⁶ Kentucky's recent legislation establishes a human trafficking victim assistance fund, a portion of which is dedicated to serving minor victims of human trafficking,⁷ and requires law enforcement officials who take minors into custody for suspected prostitution or loitering for prostitution to make a report to the Cabinet for Health and Family Services.⁸ Kentucky also requires any person who knows or has reasonable cause to believe that a child is a victim of human trafficking

¹ Ky. Rev. Stat. Ann. § 600.020(6) (2013).

² Ky. Rev. Stat. Ann. § 605.130 (2013).

³ Ky. Rev. Stat. Ann. § 620.029 (2013).

⁴ Ky. Rev. Stat. Ann. § 600.020(1) (2013).

⁵ Ky. Rev. Stat. Ann. §§ 600.020(1)(a); 600.020(44); 532.045(1)(b) (2013).

⁶ Ky. Rev. Stat. Ann. § 529.120(1) (2013).

⁷ Ky. Rev. Stat. Ann. § 529.140(3) (2013).

⁸ Ky. Rev. Stat. Ann. § 529.120(2) (2013).

to inform local law enforcement or the Cabinet for Health and Family Services.⁹ In addition, Kentucky has adopted legislation to allow law enforcement officials to take a child into custody when the law enforcement officer reasonably believes the child is a victim of human trafficking.¹⁰ Other states should follow this example.

Category 2 – Child In Need of Services: Full Credit Given 15/15

Name of CHINS Provision: Kentucky does not have a current CHINS (or equivalent) statute.

Definition of Eligible Child: N/A

Who Can File: N/A

Process for Child Placement: N/A

Recommendations: Kentucky currently has no CHINS (or equivalent) statute. The state was given full credit, however, as its child protective services system should be broad enough to include all instances of CSEC. Furthermore, Kentucky recently implemented a “Child in Need of Care” program. Under this program, the Cabinet for Health and Family Services is required to provide treatment, housing, and services for children who are victims of human trafficking, when it is alerted to the presence of such children by, among other sources, law enforcement officials who take minors into custody for suspected prostitution or loitering for prostitution.¹¹ Because this legislation is new, as a practical matter, it remains unclear whether all such children who are referred to the Cabinet are placed according to their needs. To ensure that commercially sexually abused children are provided the necessary services, Kentucky should continue efforts to fully actualize the Child in Need of Care program, or enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria, provides trafficked children with the ability to file a petition for services under the CHINS provision, and sends children to protective services in lieu of detention.

Category 3 – State Laws: A 10/10

Trafficking Statute: 5 pts.

No requirement of force or coercion is required for a minor under the age of 18.¹²

Safe Harbor: 5 pts.

If a minor arrested for prostitution is found to be under the age of eighteen, they shall not be prosecuted for prostitution or loitering for prostitution offense.¹³

Recommendations: Kentucky’s recently enacted legislation protects commercially sexually exploited children from prosecution for prostitution.

⁹ Ky. Rev. Stat. Ann. § 620.030(3) (2013).

¹⁰ Ky. Rev. Stat. Ann. § 620.040(5) (2013).

¹¹ The information regarding this process was provided via phone call with a representative of the Cabinet for Health and Family Services. Because this legislation is new, as a practical matter, it remains unclear whether all such children who are referred to the Cabinet are placed according to their needs.

¹² Ky. Rev. Stat. Ann. § 529.010(5) (b) (2013).

¹³ Ky. Rev. Stat. Ann. § 529.120(1) (2013).

Louisiana

Final Grade: A 48/50

Name of Agency: Department of Child and Family Services

Category 1 – Child Protective Services: A 25/25

State Mandate: 8 pts.

Louisiana will investigate cases of child abuse and neglect, and will provide concrete services to children and families in need.¹ Since 2012, a child in need of care has included children who are victims of sex trafficking.²

Definition of Abuse: 10 pts.

Abuse includes any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child: (1) infliction, attempted infliction, or allowance of infliction of physical or mental injury to the child by a parent or any other person; (2) exploitation or overwork of a child by a parent or any other person; or (3) involvement of a child in any sexual act by any person, or tolerance by a parent or caretaker of sexual acts.³

Definition of Person Responsible for Welfare of Child: 7 pts.*

Any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or any other person providing a residence for the child.⁴

Recommendations: Currently, Louisiana's Department of Child and Family Services ("CFS") considers reports of sexual abuse that do not contain specific allegations of sexual abuse by a caretaker or parent as a non-report. In light of its new definitions of "a child in need of care" and "abuse," CFS should now consider such reports without specific allegations of sexual abuse by caretaker valid reports. Textually, the state mandate requires that all child trafficking victims be sent to child protective services. Until the state mandate is changed to include all commercial sexual exploitation, child victims may not receive the protective services they need. Although trafficking of a child for sexual purposes is considered a crime, such trafficking is not referenced in the definition of abuse. Thus, to be compatible with the other definitions related to "child in need of care," the definition of "abuse" should be changed to include trafficking.⁵ In addition, the definition of a person responsible for welfare of child should be expanded to cover anyone exercising care or control over a child.

* Full points given as the definition of abuse extends to any person, not just a person responsible for the welfare of a child.

¹ La. Rev. Stat. Ann. § 36:477 (2013).

² La. Child. Code. Ann. art. 606 (2013).

³ La. Child. Code. Ann. art. 603 (2013).

⁴ *Id.*

⁵ *Id.*

Name of CHINS Provision: “Family in Need of Services”

Definition of Eligible Child: 3 pts.

For a family to be in need of services, a child must fall into one of the following categories: (1) a child who is truant or has willfully and repeatedly violated lawful school rules; (2) a child who is ungovernable; (3) a child who is a runaway; (4) a child who has repeatedly possessed or consumed intoxicating beverages; (5) a child who has committed an offense applicable only to children; (6) a child under the age of ten who has committed an act which would be a crime if committed by an adult; (7) a child whose caretaker has caused, encouraged, or contributed to the child behaving in a fashion described elsewhere in this definition; (8) a child whose caretaker has willfully failed to attend a meeting regarding the child’s truancy; (9) a child who has been found incompetent due to delinquency; or (10) a child who is engaged in cyberbullying.⁶

Who Can File: 0 pts.

The district attorney shall file, or, if authorized by the court, CFS may file a petition to declare a child in need of care.⁷

Process for Child Placement: 5 pts.

Prior to petition, the state may authorize an informal adjustment, but only if approved by the district attorney or court.⁸ Upon the initial repealing of custody, the child must be placed in the least restrictive prehearing conditions possible consistent with the child's need for protection or control; such placement could be a secure detention facility, but only if the child can be detained separately from delinquent children.⁹ If adjudicated, a court can order that the child, caretaker, or both attend counseling, acquire services from the department, or be placed on probation.¹⁰

Recommendations: Louisiana’s definition of family in need of services fails to explicitly mention trafficked children; however, the definition indicates that runaways would qualify. To ensure that children who have been commercially sexually abused are considered eligible, the definition should be expanded to specifically include children who are sexually trafficked. Also, a child should be able to file for services on behalf of himself or herself. The child should never be sent to a detention facility; instead, he or she should be entered into a child protective services system.

** Louisiana was given full credit, as its child protective services system is broad enough to include all instances of CSEC; however, the CHINS procedure was still reviewed in case a child is not directed through the correct system.

⁶ La. Child. Code. Ann. art. 730 (2013).

⁷ La. Child. Code. Ann. art. 631 (2013).

⁸ La. Child. Code. Ann. art. 628 (2013).

⁹ La. Child. Code. Ann. art. 737 (2013).

¹⁰ La. Child. Code. Ann. art. 779 (2013).

Trafficking Statute: 5 pts.

The trafficking statute covers any trafficking of children for sexual purposes, with no requirement of force or coercion.¹¹

Safe Harbor Laws: 3 pts.

The trafficking statute explicitly states that no victim of trafficking will be prosecuted,¹² however, the prostitution section of the law gives an affirmative defense for victims of trafficking of children for sexual purposes.¹³

Recommendations: The current trafficking statute in Louisiana is in line with the Federal law prohibiting sex trafficking.¹⁴ Currently, the safe harbor law applies to trafficking victims but the prostitution statute gives an affirmative defense. This is confusing; instead all minors engaged in commercial sexual activity should be declared trafficking victims and immune from prosecution.

¹¹ La. Rev. Stat. Ann. § 14:46.3 (2013).

¹² *Id.*

¹³ La. Rev. Stat. Ann. § 14:82 (2013).

¹⁴ 18 U.S.C. § 1591(a) (2013).

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Maine

Final Grade: F 6/50

Name of Agency: Department of Health and Human Services – Office of Child and Family Services – Child Welfare Division

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

The Child Welfare Division has the responsibility to intervene on behalf of children suspected to be victims of abuse, neglect, sexual abuse, or exploitation, and their siblings.¹ A state representative mentioned that as long as the safety of a child is an issue the department will investigate.²

Definition of Abuse: 0 pts.

Any threat to a child's health or welfare through physical, mental, or emotional injury or impairment; sexual abuse or exploitation; deprivation of essential needs or lack of protection; or failure to ensure compliance with school attendance requirement by a person responsible for the child.³

Definition of Person Responsible for Welfare of Child: 3 pts.

Any person responsible for a child's health or welfare, regardless of whether the person is part of the child's household; or a facility which functions to provide care for the child.⁴

Recommendations: Maine's mandate fails to explicitly mention children who have been commercially sexually abused and a common sense reading of the mandate does not imply that these children are covered. The Office of Child and Family Services (the "Division") will investigate issues of abuse by persons responsible for the child's welfare; however, because the definition of "abuse" does not include sexual trafficking, this type of abuse may go unchecked. Although a department official indicated that the Division will investigate whenever the safety of a child is at issue, to ensure that children who are sexually trafficked are covered, the mandate should explicitly reference commercially sexually abused children. Furthermore, the mandate should state that anyone, regardless of relation or status, could abuse a child. Finally, the definition of person responsible for welfare of child should be expanded to cover anyone who has control of the child.

¹ Child and Family Services Policy § IV.A. Introduction, available at <http://www.maine.gov/dhhs/ocfs/cw/policy/index.html> (July 2, 2014).

² Phone call with representative from Maine Bureau of Health at (207) 287-9917.

³ Me. Rev. Stat. Ann. tit 22, § 4002 (1) (2013).

⁴ Me. Rev. Stat. Ann. tit 22, § 4002 (9) (2013).

Name of CHINS Provision: Maine does not currently have a CHINS (or equivalent) statute.

Definition of Eligible Child: -1 pt.

Who Can File: -1 pt.

Process for Child Placement: -1 pt.

Recommendations: Maine does not currently have a CHINS (or equivalent) statute. To ensure that commercially sexually abused children are provided the necessary services, Maine should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Category 3 – State Laws: F 0/10

Trafficking Statute: 0 pts.

A statute related to the trafficking of minors exists, but force or coercion by the trafficker is required for the trafficker to be in violation of the statute.⁵

Safe Harbor: 0 pts.

There is currently no safe harbor law in Maine.

Recommendations: Maine's trafficking statute should be amended to ensure that force, fraud, and coercion are not requirements for finding that a child has been trafficked. Maine should also enact safe harbor laws that protect commercially sexually exploited children from prosecution.

⁵ Me. Rev. Stat. Ann. tit. 5, § 4701 (2013).

Maryland

Final Grade: D 32/50

Name of Agency: Department of Human Resources – Social Services Administration – Child Protective Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

Child Protective Services provides a specialized social service for children believed to be neglected or abused and for their parents or other adults having permanent or temporary care, custody, or parental responsibility, or to household or family members to decrease the risk of continuing physical, sexual or mental abuse, or neglect.¹

Definition of Abuse: 8 pts.†

Physical injury, not necessarily visible, or mental injury of a child by a parent, caretaker, or household or family member under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or sexual abuse of a child by a parent, caretaker, or household or family member, regardless of whether the child has physical injuries.²

Definition of Person Responsible for Welfare of Child: 7 pts.

Parents, caretakers, and other household members of the child; persons who provide permanent or temporary care, custody, or those responsible for the supervision of the child.³

Recommendations: Although Maryland's mandate does seek to stop and prevent child abuse and neglect, the language in the code limits the neglect and abuse to that caused by parents, caretakers, and other household members. The code should be modified so that Child Protective Services can respond to any case of abuse.

†Maryland has established internal policies for identifying and responding to the needs of victims who are trafficked. It has done this by expanding its definition of caretakers to include a trafficker.⁴ Though commendable, these internal policies could easily be overturned by the next administration, thus they are not included in the above grading. Maryland should incorporate this new definition of a trafficker as a caretaker into its laws.

¹ Md. Code Regs. 07.02.07.01 (2014); Maryland Child Protective Services website, available at <http://www.dhr.state.md.us/blog/> (July 2, 2014).

² Md. Code Regs. 07.02.07.02(7) (2014).

³ Md. Code Regs. 07.02.07.02(4) (2014).

⁴ See Maryland Child Protective Services website, Child Welfare Policy Directive SSA-CW #14-15 (January 30, 2014), available at <http://www.dhr.state.md.us/documents/SSA%20Policy%20Directives/Child%20Welfare/SSA%2014-15%20Human%20Sex%20Trafficking%20Victims.pdf> (July 2, 2014).

Name of CHINS Provision: “Child in Need of Supervision”

Definition of Eligible Child: -1 pt.

A child who is habitually truant, arbitrarily disobedient, ungovernable, or beyond control of the person having custody over them; a child who departs himself to injure or endanger himself or others; or a child who has committed an offense applicable only to children.⁵

Who Can File: 5 pts.

Anyone can report abuse.⁶ Petitions are filed either by the state’s attorney in a delinquency proceeding, or the intake officer in a child in need of supervision case.⁷ A person or agency who has knowledge of facts which may cause a person to be subject to the jurisdiction of the court may file an initial complaint, but it is subject to the intake officer as to whether to proceed towards a petition.⁸

Process for Child Placement: 2 pts.

A child may be placed in a shelter, an approved Juvenile Services facility, or another suitable facility approved by the court.⁹ If required to protect the child or others; or if the child is likely to leave the jurisdiction of the court, a child may be placed in detention or community detention prior to a hearing.¹⁰

Recommendations: Maryland’s Child in Need of Services (CHINS) statute fails to include runaways and trafficked children in the definition of eligible child; however, both runaways and trafficked children could reasonably be implied under the current definition. To ensure that children who have been commercially sexually abused are provided with necessary services, Maryland should amend the statute to explicitly include runaways and trafficked children.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

A person may not knowingly take or cause another to be taken to any place for prostitution; place, or harbor another in any place for prostitution; persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution; a person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to perform a sexual act.¹¹ The statute assesses further penalties for the trafficking of minors.¹²

Safe Harbor: 0 pts.

There is currently no safe harbor law in Maryland.

Recommendations: Maryland needs to enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁵ Md. Code Ann. Cts. & Jud. Proc. § 3-8A-01(e) (2013).

⁶ Maryland Child Protective Services website, available at <http://www.dhr.state.md.us/blog/> (July 2, 2014).

⁷ Md. Code Ann. Cts. & Jud. Proc. § 3-8A-13 (2013).

⁸ *Id.*

⁹ Md. Code Ann. Cts. & Jud. Proc. § 3-8A-15 (2013).

¹⁰ *Id.*

¹¹ Md. Code Ann. Crim. Law § 11-303 (2013).

¹² *Id.*

Massachusetts

Final Grade: A 46/50

Name of Agency: Department of Children and Families (“DCF”)

Category 1 – Child Protective Services: A 23/25

State Mandate: 8 pts.

Ensure that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes, and to assure good substitute parental care in the event of the absence, temporary or permanent inability or unfitness of parents to provide care and protection for their children.¹ Additionally, DCF provides (1) child welfare services to sexually exploited children and (2) appropriate services to a child reasonably believed to be a sexually exploited child, in order to safeguard the child's welfare.²

Definition of Abuse: 8 pts.

(1) Any act upon a child under the age of eighteen by a parent or other “caretaker” (*i.e.*, a person responsible for the health and welfare of that child) that causes or creates substantial physical or emotional injury or (2) any sexual contact between a child and a parent or other caretaker.³

Definition of Person Responsible for Welfare of Child: 7 pts.

Any person considered to be a “caretaker” of a child, which includes: a parent, guardian, household member, or any other person responsible for a child’s health or welfare. These persons may be from a child’s home, relative’s home, school setting, a day care setting, a foster home, or any other comparable setting. This definition is meant to be construed broadly and inclusively to encompass all persons who are entrusted with any degree of responsibility for the child.⁴

Recommendations: Massachusetts recently changed the statutory mandate of the Department of Children and Families to include the welfare service needs of sexually exploited children.⁵ Before 2012, Massachusetts’s mandate provided protection only to children who were at risk of abuse or neglect from a parent or a “parent substitute” or “caretaker” (*i.e.*, a step-parent, guardian, or household member entrusted with the child’s care, or any other person responsible for the child’s health and welfare).⁶ However, it appears that the regulatory codes that control the actual actions of DCF have yet to be updated to reflect the expanded mandate. As they stand, it appears that the applicable regulations still require screening out from intake any children whose abuse was not inflicted by a “caretaker” as described above.⁷ Until the regulations are updated accordingly, some children who are sexually exploited might still lack protection.

¹ Mass. Gen. Laws Ch. 119 § 1 (2012).

² Mass. Gen. Laws Ch. 119 § 39K (2012).

³ 110 Mass. Code Regs. § 2.00 (2008).

⁴ *Id.*

⁵ Mass. Gen. Laws Ch. 119 § 39k (2012).

⁶ Mass. Gen. Laws Ch. 119 § 1 (2008); 110 Mass. Code Regs. § 4.21 (2009).

⁷ 110 Mass. Code Regs. § 4.21 (2009).

Name of CHINS Provision: “Child in Need of Services”

Definition of Eligible Child: 5 pts.

(1) Any child between the ages of six and eighteen who repeatedly runs away, repeatedly fails to obey the lawful and reasonable commands of a parent/guardian, is truant repeatedly from school, or fails to follow reasonable school regulations⁸ or (2) any child who has been sexually exploited.⁹

Who Can File: 5 pts.

Parents, guardians, supervisors of attendance who represent the child’s school district, law enforcement officials¹⁰ or the juvenile on behalf of himself or herself.¹¹

Process for Child Placement: 5 pts.

Child is taken into the custody of either the courts or DCF, who can then either allow the child to remain in the custody of his or her parent(s) or be placed with a relative, probation officer, or in the care of DCF.¹²

Recommendations: The age of eligibility should be expanded to include all children under the age of eighteen.

Category 3 – State Laws: B 8/10

Trafficking Statute: 5 pts.

Coercion is not a requirement to convict a trafficker of trafficking a minor for sexual servitude.¹³

Safe Harbor: 3 pts.

A child faced with a juvenile delinquency or criminal proceeding alleging a criminal prostitution charge under Massachusetts law is provided a presumption that a care and protection petition or a CHINS petition should be filed on behalf of the child. If the care and protection petition or CHINS petition is granted – and the prosecutor does not object – the court shall stay the proceedings against the child. However, the charges may be brought back if it is found that the child thereafter fails to comply with the requirements of provided services.¹⁴

Recommendations: Massachusetts’s trafficking statute recognizes that children in prostitution are inherently subjects of coercion. Nonetheless, the Massachusetts safe harbor statute does not entirely exempt sexually trafficked children from prosecution, but rather appears to give prosecutors discretion to prosecute such children, and also places conditions on continued application of the safe harbor. We suggest that Massachusetts exempt sexually trafficked children from prosecution, without conditions.

⁸ Mass. Gen. Laws Ch. 119 § 21 (2012).

⁹ *Id.*

¹⁰ Mass. Gen. Laws Ch. 119 § 39E (2012).

¹¹ Mass. Gen. Laws Ch. 119 § 39L (2012).

¹² Mass. Gen. Laws Ch. 119 § 39G (2012).

¹³ Mass. Gen. Laws Ch. 265 § 50 (2012).

¹⁴ Mass. Gen. Laws Ch. 119 § 39L (2012).

Michigan

Final Grade: F 16/50

Name of Agency: Department of Human Services – Children’s Protective Services

Category 1 – Child Protective Services: F 3/25

State Mandate: 0 pts.

To ensure that children are protected from further physical or emotional harm caused by a parent or other adult responsible for the child’s health and welfare and that families are helped, when possible, to function responsibly and independently in providing care for the children for whom they are responsible. By law, the department has the responsibility to receive and respond to any complaint of child abuse, child neglect, sexual abuse, sexual exploitation, or maltreatment by a person responsible for the child’s health or welfare.¹

Definition of Abuse: 0 pts.

Any harm or threatened harm to a child’s health or welfare through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy.²

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, legal guardian, person over age 18 who resides for any length of time in the same home in which the child resides, a licensed or registered child care organization/foster care family/group home; or a nonparent adult who meets all the following criteria: (1) has substantial and regular contact with the child, (2) has a close relationship with the child’s parent or with a person responsible for the child’s health or welfare and (3) is not the child’s parent or person otherwise related to the child.³

Recommendations: Michigan’s mandate does not explicitly include children who have been commercially sexually abused, nor does a common sense reading suggest that these children are covered. This should be amended to reference commercially sexually abused children and to expand the definition of abuse so that it applies to any person who abuses a child. The definition of a person responsible for welfare of child should also be expanded to include any person with physical control or custody of the child.

¹ Michigan Children’s Protective Services Manual, CPS Program Description (2009), available at <http://www.mfia.state.mi.us/olmweb/ex/PSM/711-1.pdf> (July 2, 2014).

² Michigan Comp. Laws § 722.622(f) (2005).

³ Michigan Comp. Laws § 722.622 (t)-(u) (2005).

Name of CHINS Provision: “Incorrigible/Runaway Child”

Definition of Eligible Child: 5 pts.

A child who: violated any municipal ordinance or law of the state or of the United States; has run away from home without sufficient cause; has repeatedly disobeyed the reasonable commands of parents to the extent that a court finds that intervention is necessary; is under the age of seventeen and habitually truant or disruptive at school;⁴ a child under the age of eighteen who is neglected or abandoned by parents or guardians or whose home environment is an unfit place to live;⁵ or a child between the ages of seventeen and eighteen who has been repeatedly addicted to drugs, associates with criminals, disorderly persons, thieves, prostitutes, pimps, or is found in a house of prostitution.⁶

Who Can File: -1 pt.

Only a parent or guardian for an “incorrigible” child under the age of seventeen in violation of 712A.2(a)(3).⁷ There does not appear to be any procedure for children between the ages of seventeen and eighteen.

Process for Child Placement: 2 pts.

A court decides where the child shall be placed. One option is detention; however, a child will not be placed in a detention facility unless that child violated a court order and there are no lesser means available.⁸

Recommendations: Although Michigan’s statute does not specifically reference trafficked children, it does mention runaways and children “found in a house of prostitution.” The latter, however, do not seem to fall in the “incorrigible” child procedure. A specific reference to commercially sexually abused children under 18 should be added. Children and non-guardians should be able to file for protection and trafficked children should not be eligible for detention since they are truly victims and not criminals. Instead, these children should be placed in a child protective services system.

Category 3 – State Laws: C 7/10

Trafficking Statute: 5 pts.

Any sexual abuse of a child qualifies under the statute, which explicitly states that a person is guilty of a felony if they knowingly recruit, entice, harbor, transport, provide, or obtain by any means a minor knowing that the minor will be used for child sexually abusive activity (or if they attempt to do any of the above).⁹

Safe Harbor: 2 pts.

There is currently no safe harbor law in Michigan. However, Michigan’s law states that a person who solicits prostitution must be sixteen years of age or older to be guilty of a crime.¹⁰

⁴ Mich. Comp. Laws § 712A.2 (a) (2002).

⁵ Mich. Comp. Laws § 712A.2(b) (2002).

⁶ Mich. Comp. Laws § 712A.2 (d) (2002).

⁷ Livingston County website, Court Policies/Preliminary Instructions for Incorrigibility Petition Signed by Parents (2014), available at http://www.livgov.com/courts/juvenile/Documents/Incorrigible_packet.pdf (July 2, 2014).

⁸ Mich. Comp. Laws § 712A.15 (1999).

⁹ Mich. Comp. Laws § 750.462g (2006).

¹⁰ Mich. Comp. Laws § 750.448 (2002).

Recommendations: Although broad enough to cover commercially sexually exploited children, Michigan’s trafficking statute should explicitly protect these children. Additionally, Michigan should enact safe harbor laws that protect all commercially sexually exploited children from prosecution, not just those under sixteen.

Minnesota

Final Grade: B 41/50

Name of Agency: Minnesota Department of Human Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

Child Protective Services (“CPS”) protects children from maltreatment or abuse by persons within both the family unit and facilities who are responsible for the child’s care.¹¹ CPS also protects children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.¹²

Definition of Abuse: 8 pts.

Infliction of physical or threatened injury by a person responsible for child’s care and sex abuse by a person responsible for the child’s care or with significant relationship or authority. Additionally maltreatment would cover an instance when the child was involved in an act of prostitution by a person with significant relationship to the child or in authority.¹³

Definition of Person Responsible for Welfare of Child: 7 pts.

Any individual functioning within the family unit, such as a parent, guardian, or other person having similar responsibilities; any individual outside the family unit that has responsibilities for the care of a child, such as any school employees or agents, or anyone else with full-time or short-term care responsibilities.¹⁴

Recommendations: Minnesota has an entirely decentralized system where counties are able to determine their own standards for protection and the investigation of abuse is split between multiple state agencies. Unified standards would help to ensure that every child in need is protected. Minnesota’s definition of abuse explicitly references prostitution which is good, but it should also include a reference to the trafficking statute. Minnesota provides greater protection through the definitions of Abuse and Person Responsible for Welfare of Child under Minnesota Statute 260C. 007 (2012); however, the definitions provided in the administrative codes are those that actually guide the day-to-day policy of Minnesota’s Department of Human Services.¹⁵ The definitions in the administrative codes should be altered to reflect the statutory definitions, thus avoiding certain uncovered situations such as when the abuse is not committed by someone falling within the relatively narrow administrative code definition of Person Responsible for Welfare of Child.

¹¹ Minn. R. 9560.0210 (2007); Minn. Stat. § 260C.001 (2012); Minn. Stat. § 626.556 (2012).

¹² Minn. Stat. § 626.556 (2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Minn. Stat. § 260C.007 (2012).

Name of CHINS Provision: “Child in Need of Protection or Services”

Definition of Eligible Child: 5 pts.

A child who: 1) is abandoned or without parent, guardian, or custodian; 2) has been a victim of physical or sexual abuse or resided with a victim or perpetrator of child abuse; 3) is without the necessary care because his or her parent, guardian, or custodian is unable or unwilling to provide such care; 4) is without the special care made necessary by a physical, mental, or emotional condition because his or her parent, guardian, or custodian is unwilling or unable to provide it; 5) is medically neglected; 6) has a parent, guardian, or custodian that, for good cause, desires to be relieved of the duty to care for him or her; 7) has been placed for adoption or care in violation of the law; 8) is without proper parental care; 9) has a parent, guardian, or custodian whose behavior, condition, or environment is injurious to the child; 10) is experiencing growth delays; 11) is engaged in prostitution; 12) has committed a delinquent act or petty offense before the age of ten; 13) is a runaway; 14) is habitually truant; 15) has been found incompetent to proceed by reason of mental illness or deficiency in connection with a delinquency proceeding; 16) has a parent, guardian, or custodian whose parental rights were involuntarily terminated or 17) qualifies as a sexually exploited youth.¹⁶

Who Can File: 5 pts.

Any reputable person, including but not limited to any agent of the commissioner of human services, having knowledge of a child in the state or of a child who is a resident of the state is able to file.¹⁷

Process for Child Placement: 2 pts.

A court decides where the child shall be placed. Detention is a possibility; however, the court is supposed to pursue the least restrictive option where the child may end up in a social services agency.¹⁸

Recommendations: Minnesota does a good job of ensuring that runaways and trafficked children are eligible for protection and allows children to file for protection on behalf of themselves. Although there are various specialized processes, there is not currently a specialized route for a victim of commercial sexual exploitation and this should be addressed. Protection could be improved if each eligible child was sent directly to child services rather than arrested or detained.

¹⁶ *Id.*

¹⁷ Minn. Stat. § 260C.201 (2012).

¹⁸ *Id.*

Trafficking Statute: 5 pts.

Coercion is not required for a finding of sex trafficking.¹⁹

Safe Harbor: 3 pts.

Sixteen and seventeen year old juveniles who have not been previously adjudicated delinquent and are found engaged in prostitution must either complete a diversion program or enter child services. If they successfully complete a diversion program, the charges will be dismissed.²⁰ A new section effective August 1, 2014 will exclude juvenile prostitutes under the age of sixteen from the definition of delinquent child or juvenile petty offender.²¹

Recommendations: Minnesota's safe harbor legislation should provide a procedure to address children who have been previously found engaged in prostitution (not just first time offenders). Moreover, all sexually exploited children should be recognized as victims, not as delinquents or offenders, as sixteen and seventeen year old juveniles are now classified, which would make the current "safe harbor" provision obsolete, and make all such children eligible for protection or services without the threat of prosecution. Minnesota's safe harbor legislation also states that the commissioner of public safety shall develop a victim services model to address this populations needs, however, this is contingent upon outside funds being donated. It would be better if the state did not rely on outside funds to respond to this population.

¹⁹ Minn. Stat. § 609.322 (2009).

²⁰ Minn. Stat. § 609.093 (2012).

²¹ Minn. Senate Bill S.F. No. 1 (2011) Article 4, available at

http://www.senate.leg.state.mn.us/departments/scr/billsumm/summary_display_from_db.php?ls=87&id=514 (July 2, 2014).

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Mississippi

Final Grade: D 31/50

Name of Agency: Department of Human Services – Division of Family and Children’s Services (“DFCS”) – Child Protective Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

DFCS’s mission is to “protect vulnerable children and adults from abuse, neglect, or exploitation; support family preservation and community living; [and] prevent family violence and disruption.”¹

Definition of Abuse: 8 pts.

An “abused child” means a child whose parent, guardian, custodian, or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused upon the child sexual abuse, sexual exploitation, emotional abuse, mental injury, non-accidental physical injury, or other maltreatment.²

Definition of Person Responsible for Welfare of Child: 7 pts.

A “person responsible for care or support” is one who is providing for the child at any given time, including but not limited to stepparents, foster parents, relatives, baby-sitters or other similar persons responsible for a child, and staff of residential care facilities and group homes licensed by the department.³

Recommendations: Mississippi’s mandate appears sufficient to cover children who have been commercially sexually exploited as it aims to protect children from “exploitation,” but a specific mention of these children would be ideal so as to ensure coverage. The definition of “abused child” should be expanded so that abuse is not dependent on the involvement of a person responsible for the welfare of the child.

¹ Mississippi Department of Human Services, Family and Children’s Services (2014), available at <http://www.mdhs.state.ms.us/family-childrens-services/> (July 2, 2014).

² Miss. Code Ann. § 43-21-105 (2012).

³ *Id.*

Name of CHINS Provision: “Child in Need of Supervision”

Definition of Eligible Child: 3 pts.

A “child in need of supervision” is a child who is at least seven years old and is in need of treatment or rehabilitation because the child is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; is habitually truant; runs away without good cause; or is a delinquent.⁴

Who Can File: 0 pts.

Only the youth court prosecutor can petition for CHINS unless the court has designated some other person to do so.⁵

Process for Child Placement: 2 pts.

A child may be initially detained for up to 48 hours in a youth detention facility before a hearing. The Division of Family and Children’s Services may investigate and make a recommendation. The court may then release the child; place the child in the custody of a parent, relative, or other person subject to any conditions or limitations as the youth court may prescribe; place the child under the supervision of the youth court; or give legal custody to the Department of Human Services or any private or public organization.⁶

Recommendations: Mississippi’s CHINS provision fails to classify trafficked children as eligible, although it does reference runaways as eligible. The provision should be amended to explicitly make eligible any child who has been commercially sexually abused. It should also cover children of all ages, not just those over the age of seven. Mississippi should revise the provision so that children are able to petition for protection, and update its Process for Child Placement so that a child should not be initially detained, but rather taken directly to protective services and placed in a facility that is separate from a standard detention.

Trafficking Statute: 5 pts.

The statute does not require coercion or deception if the crime involves a commercial sex act and the victim is a minor.⁷

Safe Harbor: 0 pts.

There is currently no safe harbor law in Mississippi.

Recommendations: Mississippi’s trafficking statute coincides with the federal definition of not requiring coercion for sexually trafficked minors. Mississippi should enact safe harbor laws that protect commercially sexually exploited children from prosecution.

⁴ *Id.*

⁵ Miss. Code Ann. § 43-21-451 (2012).

⁶ Miss. Code Ann. §§ 43-21-301, 607 (2012).

⁷ Miss. Code Ann. § 97-3-54.1 (2012).

Missouri

Final Grade: C 36/50

Name of Agency: State Department of Social Services – Children’s Division – Child Protective Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

Child Protective Services (“CPS”) promotes the safety of children and the integrity and preservation of their families by conducting investigations and family assessments, and providing services in response to reports of child abuse or neglect. The system shall coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.¹

Definition of Abuse: 8 pts.

Any physical injury, sexual abuse, or emotional abuse inflicted on a child by those responsible for the care, custody, and control of the child.²

Definition of Person Responsible for Welfare of Child: 7 pts.

Includes but is not limited to parents, guardians, members of the child’s household, or those exercising supervision over the child for any part of a twenty-four hour day, and any adult who, based on relationship to the parents of the child, members of the child’s household, or the family, has access to the child.³

Recommendations: Missouri’s mandate fails to explicitly reference children who have been commercially sexually exploited; however, the mandate could feasibly be interpreted as covering these children. To ensure that trafficked children are properly protected, the mandate should explicitly include children who have been commercially sexually exploited. The definition of “abuse” should be expanded so that abuse is not dependent on the involvement of a person responsible for the care, custody, or control of the child.

Category 2 – Child in Need of Services: D 10/15

Name of CHINS Provision: “In Need of Care and Treatment”

Definition of Eligible Child: 3 pts.

Any child seventeen years of age or younger who is in need of care and treatment because the parents (or other persons legally responsible for his or her care and support) have neglected the child or refused to provide proper care or support, education, medical, surgical or other care necessary for the child’s well-being; is otherwise without proper care, custody, or support ; is living in a room, building, or structure found to be a public nuisance; or is in need of mental health services and the parent, guardian, or custodian is unable to afford or access appropriate mental health treatment.

¹ Mo. Rev. Stat. § 210.109 (2014).

² Mo. Rev. Stat. § 210.110 (2014).

³ *Id.*

Also, any child under the age of seventeen who is repeatedly truant from school without justification; is beyond the control of a parent or custodian; is habitually absent from home without justification; is injurious to his or herself or others; or is charged with either an offense that is not classified as criminal, or with an offense applicable only to children.⁴

Who Can File: 5 pts.

Any person can inform the court that a child should be considered for care or treatment; however, a formal petition may only be made by a juvenile officer.⁵

Process for Child Placement: 2 pts.

Whenever anyone informs the juvenile court in person and in writing that a child appears to be subject to the jurisdiction of the court, that court makes a preliminary inquiry and recommends further action. This may include authorizing the filing of a formal petition by the juvenile officer or such informal adjustment as the court sees practicable.⁶ If the child is taken into custody for an offense, the child may go directly before a juvenile court, or may be detained, for no more than three days, until a detention hearing is held.⁷ If a formal petition is filed, the person who has custody of the child is summoned to appear before the court. If it appears that the child's welfare requires that his or her custody be immediately assumed by the court, then the child will be taken into custody at once.⁸ Pending disposition of a case, the juvenile court may order in writing the detention of a child in one of the following places: (i) a juvenile detention facility provided by the county; (ii) a shelter care facility, subject to the supervision of the court; (iii) a suitable place of detention maintained by an association having for one of its objects the care and protection of children; or (iv) such other suitable custody as the court may direct.⁹

If the court finds the child to be an eligible child, the court then may (i) release the child to his own home or in the custody of a relative or other suitable person upon such conditions as the court may require, (ii) commit the child to the custody of a public or private agency or institution authorized or licensed by law to care for children, (iii) commit the child to an institution in another state willing to receive the child if the appropriate state authorities approve such commitment; (iv) commit the child to the custody of the juvenile officer, (v) place the child in a family home, or (vi) cause the child to be examined and treated by a physician and placed in a public or private hospital or other institution for treatment and care.¹⁰

Recommendations: Missouri's Eligible Child definition fails to explicitly reference children who have been commercially sexually abused, but does reference runaways. The definition could be understood to mean a trafficked child; however, to ensure that trafficked children are covered, the definition should be expanded to explicitly mention these children and to include children eighteen years and younger, rather than only children under the age of seventeen. A child should also be able to file a complaint with Child Protective Services directly. Finally, rather than the possibility of detention, commercially sexually exploited children should be put into the care of Child Protective Services.

⁴ Mo. Rev. Stat. § 211.031 (2014).

⁵ Mo. Rev. Stat. § 211.081 (2014).

⁶ *Id.*

⁷ Mo. Rev. Stat. § 211.061 (2014).

⁸ Mo. Rev. Stat. § 211.101 (2014).

⁹ Mo. Rev. Stat. § 211.151 (2014).

¹⁰ Mo. Rev. Stat. § 211.181 (2014).

Trafficking Statute: 5 pts.

The statute has no requirement of force or coercion.¹¹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Missouri.

Recommendations: Missouri needs to enact a safe harbor law to protect commercially sexually exploited children from prosecution.

¹¹ Mo. Rev. Stat. § 566.212 (2014).

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Montana

Final Grade: F 15/50

Name of Agency: Department of Health and Human Services – Child and Family Services Division

Category 1 – Child Protective Services: F 11/25

State Mandate: 6 pts.

The mission of Montana’s Child and Family Services Division (“CFSD”) is to protect children who have been, or are at substantial risk of abuse, neglect, or abandonment. The mandate is to assure that all children have a family who will protect them from harm.¹

Definition of Abuse: 2 pts.

“Child abuse or neglect” means (i) actual physical or psychological harm to a child; (ii) substantial risk of physical or psychological harm to a child; or (iii) abandonment. The term includes (a) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child’s welfare; or (b) exposing a child to the criminal distribution, production, or manufacture of dangerous drugs.²

The definition of “physical or psychological harm to a child” includes the harm that occurs whenever the parent or other person responsible for the child’s welfare: inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect; commits or allows sexual abuse or exploitation of the child; or exposes or allows the child to be exposed to an unreasonable risk to the child’s health or welfare by failing to intervene or eliminate the risk.³ “Sexual exploitation” means allowing, permitting, or encouraging a child to engage in a prostitution offense, or allowing, permitting, or encouraging sexual abuse of children.⁴

Definition of Person Responsible for Welfare of Child: 3 pts.

Includes: (a) the child’s parent, guardian, foster parent, or an adult who resides in the same home in which the child resides; (b) a person providing care in a day-care facility; (c) an employee of a public or private residential institution, facility, home, or agency; or (d) any other person responsible for the child’s welfare in a residential setting.⁵

Recommendations: Montana’s mandate fails to explicitly mention children who have been commercially sexually abused. A common sense reading of the mandate would lead one to believe that trafficked children are covered; however, the mandate should be amended to explicitly include trafficked children. Furthermore, the definition of Person Responsible for Welfare of Child should be expanded to include anyone exercising custodial control over a child, and the definition of Child Abuse should explicitly include commercially exploited sexual children.

¹ Child and Family Services Division, Montana Official State Website (2014), available at <http://www.dphhs.mt.gov/cfsd/> (July 2, 2014).

² Mont. Code Ann. § 41-3-102 (7) (2013).

³ Mont. Code Ann. § 41-3-102 (21) (2013).

⁴ Mont. Code Ann. § 41-3-102 (28) (2013).

⁵ Mont. Code Ann. § 41-3-102 (2) (2013).

Name of CHINS Provision: “Youth in Need of Intervention”

Definition of Eligible Child: 3 pts.

A youth who is adjudicated as a youth and who: (a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who: (i) violates any Montana municipal or state law regarding alcoholic beverages; or (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth’s parents, foster parents, physical custodian, or guardian despite their attempt to exert all reasonable efforts to mediate, resolve, or control the youth’s behavior; or (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.⁶

Who Can File: 0 pts.

The county attorney.⁷

Process for Child Placement: 2 pts.

Upon finding a youth to be in need of intervention, the youth court can place the youth on probation, in a detention facility, out of home, or in the youth’s own home. The court can also order a variety of other restitutionary measures.⁸

Recommendations: Montana fails to explicitly mention commercially sexually abused children in its definition of an Eligible Child. It does, however, reference runaways. To properly ensure that children who have been commercially sexually abused are eligible, the definition of Eligible Child should be expanded to explicitly include these children. Also, children should be able to file for protection under the program without having to request that the county attorney file a petition on their behalf. A trafficked child should not be treated as a criminal nor should they be placed in the juvenile justice system; rather, trafficked children should be placed in the care of child protective services where their placement can be determined in collaboration with their parents.

Trafficking Statute: -1 pt.

Although covering involuntary servitude, the statute has no provision regarding the sex trafficking of a minor.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Montana.

Recommendations: The current statute has no provision addressing the sex trafficking of a minor. Montana should enact a trafficking statute that protects minors from prosecution and does not require force, fraud, or coercion. Finally, Montana should also enact safe harbor laws that protect commercially sexually exploited children.

⁶ Mont. Code Ann. § 41-5-103 (51) (2013).

⁷ Mont. Code Ann. § 41-5-1401 (2013).

⁸ Mont. Code Ann. § 41-5-1512 (2013).

⁹ Mont. Code Ann. § 45-5-306 (2013).

Nebraska

Final Grade: A 46/50

Name of Agency: Department of Health and Human Services – Division of Child and Family Services – Office of Juvenile Services

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The purpose of the Division of Children and Family Services (“DCFS”) is to ensure that abused, neglected, dependent, or delinquent children are safe from harm or maltreatment; are in a permanent, healthy, nurturing, and caring environment; with a stable family; and helped to heal from harmful effects on their lives.¹

Definition of Abuse: 10 pts.

Knowingly, intentionally, or negligently causing or permitting a minor child to be (i) placed in a situation that endangers his or her life or physical or mental health; (ii) cruelly confined or cruelly punished; (iii) deprived of necessary food, clothing, shelter, or care; (iv) placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; (v) placed in a situation to be sexually abused; or (vi) placed in a situation to be a trafficking victim.²

Definition of Person Responsible for Welfare of Child: 7 pts.

Any person who engages in the abuse or neglect of a child.³

Recommendations: Nebraska’s CFS mandate fails to explicitly include children who have been commercially sexually abused, although a common sense reading would indicate that these children are covered. Though Nebraska’s definition of abuse explicitly mentions prostitution by any person and trafficking victims, the mandate should be expanded to specifically reference children who have been sexually abused for commercial reasons to ensure their coverage under the definition.

¹ Division of Children and Family Services, Nebraska Department of Health and Human Services, available at http://dhhs.ne.gov/children_family_services/Pages/jus_jusindex.aspx (July 2, 2014).

² Neb. Rev. Stat. § 28-707 (2013).

³ Neb. Rev. Stat. § 28-710 (2013).

Name of CHINS Provision: “Child in Need of Services”

Definition of Eligible Child: 5 pts.

Any child (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such child; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the child; or who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such child; (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who departs himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school; or (c) who is mentally ill and dangerous as defined in section 71-908.⁴

Who Can File: 0 pts.

Only the county attorney can file a petition for a child to be declared a child in need of services.⁵

Process for Child Placement: 5 pts.

A neglected child may be placed in the direct care of child services. An adjudication process is exercised in which reunification with a parent will be sought if possible and proper.⁶ The county attorney can also seek mediation before filing the petition.⁷

Recommendations: Nebraska’s CHINS statute fails to specifically reference children who have been commercially sexually abused; however, trafficked children may be eligible under the “dangerous to self or others” provision. Explicitly providing for the eligibility of trafficked children is preferred to ensure that they are provided with necessary services. Additionally, it should be made clear that a child can file for services on his or her own instead of through the county attorney.

Category 3 – State Laws: B 8/10

Trafficking Statute: 5 pts.

There is no requirement of coercion for sex trafficking of a minor.⁸

Safe Harbor: 3 pts.

Being under the age of eighteen is an affirmative defense to a charge of prostitution and makes the person immune from prosecution.⁹

Recommendations: Nebraska’s trafficking statute coincides with the federal definition of not requiring coercion for sexually trafficked minors. Nebraska’s safe harbor law makes a minor immune from prosecution for prostitution crimes; it could be extended to all crimes while a victim of trafficking.

⁴ Neb. Rev. Stat. § 43-247(2013).

⁵ Neb. Rev. Stat. § 43-274 (2013).

⁶ Neb. Rev. Stat. § 43-247 (2013).

⁷ Neb. Rev. Stat. § 43-274 (2013).

⁸ Neb. Rev. Stat. § 28-831 (2013).

⁹ Neb. Rev. Stat. § 28-801 (2013).

Nevada

Final Grade: F 19/50

Name of Agency: Department of Health and Human Services – Division of Child and Family Services

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

The focus of Child Protective Services (“CPS”) is to protect the child from harm or risk of harm and to make it safe for the child to live with the parent or caretaker. Nevada child protective service agencies conduct activities in preventing, investigating, and treating child abuse and neglect in accordance with chapters 432 and 432B of the Nevada Revised Statutes (“NRS”), and Nevada’s Regulations for the Protection of Children From Abuse and Neglect, (NAC 432B).¹

Definition of Abuse: 0 pts.

Any physical or mental injury of a non-accidental nature, sexual abuse or exploitation, or negligent treatment or maltreatment of a child (abandonment; lack of proper care, control, supervision; or failure to provide subsistence, education, shelter, medical care, or other necessary care), caused or allowed by a person responsible for the welfare of the child.²

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, guardian, stepparent with whom the child lives; an adult continually or regularly found in the same household as the child; or a volunteer or employee or person directly responsible in a public or private home/institution/facility where the child resides or receives child care outside of the home for a portion of the day.³

Recommendations: Nevada’s CPS mandate fails to explicitly include children who have been commercially sexually abused or trafficked children. In addition, the definition of “persons responsible for the welfare of a child” should be expanded to include anyone with control or in a position of supervision/control of a child. This expanded definition would cover an individual who sexually exploits children as being a person responsible for a child’s welfare, and thus trafficked children would be covered under the mandate. Nevada could also expand the definition of abuse to include the abuse of a child by persons other than those responsible for the welfare of the child.

¹ Division of Child and Family Services, Nevada Department of Health and Human Services, available at http://www.dcfhs.state.nv.us/DCFS_ChildProtectiveSvcs.htm (July 2, 2014).

² Nev. Rev. Stat. § 432B.020 (2013).

³ Nev. Rev. Stat. § 432B.130 (2013).

Name of CHINS Provision: “Children in Need of Supervision”

Definition of Eligible Child: 3 pts.

Any child who is habitually truant from school; disobeys reasonable demands of parent or guardian; and is unmanageable, runs away from home, or uses devices to send sexual images of himself or herself.⁴ A child who falls under this definition is not considered to be a “delinquent” child.⁵

Who Can File: 0 pts.

Only the district attorney can file a petition.⁶

Process for Child Placement: 2 pts.

A child who is taken into custody by a police officer must either be released within 24 hours to his or her parents, guardian, or shelter care, or undergo a detention hearing.⁷ The child does not have to be released within 24 hours if the court holds a detention hearing; determines that the child has threatened to run away from home, is accused of violent behavior at home, or is accused of violating a supervision and consent decree; or determines that an alternative placement is necessary for the child.⁸ If a petition is filed, the child can be placed under either informal or formal supervision. If placed under informal supervision, children can receive services while at home.

Recommendations: The juvenile justice section should be amended to reflect Nevada’s criminal definition of a child in need of supervision, NRS 201.090, which includes several qualifying conditions not included in its juvenile justice section definition counterpart. However, the juvenile justice section does state that children in need of supervision cannot be considered delinquent. Filing procedures should be amended so that children can file for themselves and not have to go through the district attorney to file on their behalf. The process of CHINS can be improved by ensuring that children who are victimized are sent to CPS as opposed to amorphous services offered by the juvenile justice system.

Trafficking Statute: 5 pts.

Nevada’s trafficking law has no requirement of showing force, fraud, or coercion for minors.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Nevada.

Recommendations: Nevada’s pandering law is a good start towards criminalizing the commercial sexual exploitation of children. However, Nevada should enact a specific minor trafficking statute that has no requirement of force, fraud, or coercion and would include all commercial sexual exploitation, not just prostitution. Also, Nevada needs to enact a safe harbor law to protect commercially sexually exploited children from prosecution.

⁴ Nev. Rev. Stat. § 62B.320 (2013).

⁵ *Id.*

⁶ Nev. Rev. Stat. § 62C.100 (2013).

⁷ Nev. Rev. Stat. § 62C.050 (2013).

⁸ *Id.*

⁹ Nev. Rev. Stat. § 201.300 (2013).

New Hampshire

Final Grade: C 38/50

Name of Agency: Department of Health and Human Services – Children, Youth and Families – Bureau of Child Protection Services

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

New Hampshire's Child Protection Services ("CPS") works to protect children from abuse and neglect while attempting to preserve the family unit. CPS workers help prevent further harm to children from intentional physical or mental injury, sexual abuse, exploitation, or neglect by a person responsible for a child's health or welfare.¹ Additionally, the Department of Children, Youth and Families ("DCYF") will respond to reported instances of child trafficking.²

Definition of Abuse: 10 pts.

An "abused child" means any child who has been sexually abused, intentionally physically injured, psychologically injured, or physically injured by non-accidental means.³

Definition of Person Responsible for Welfare of Child: 7 pts.*

A parent, guardian or custodian, or a person who provides out-of-home care for the child including child day care, and any other settings in which children are given care outside of their homes.⁴

Recommendations: The mandate fails to explicitly include children who have been commercially sexually abused, though a CPS employee affirmed that the department would respond. New Hampshire should amend their mandate to specifically include children who have been commercially sexually abused by any individual. The definition of abuse is sufficiently broad to include these children, but the definition of "person responsible for a child's welfare" is probably too narrow to include abuse by an individual who sexually exploits children. To ensure coverage of commercially sexually abused children, the definition of a responsible person should be expanded to include anyone exercising physical control over a child.

* Full credit given, as definition of abuse does not require individual to be a "person responsible for a child's welfare."

¹ New Hampshire Division for Children, Youth & Families, New Hampshire Department of Health and Human Services, available at <http://www.dhhs.nh.gov/dcyf/> (July 2, 2014).

² Telephone interview with Deanna Baker, Staff Attorney for the DCYF.

³ N.H. Rev. Stat. Ann. § 169-C:3 (2013).

⁴ *Id.*

Name of CHINS Provision: “Child in Need of Services”

Definition of Eligible Child: 5 pts.

A child under the age of 18 who is habitually truant from school or home; habitually runs away from home; has exhibited repeated conduct that constitutes criminal violations if committed by an adult; has a diagnosis of severe emotional, cognitive, or other mental health issues who engages in fire setting, aggressive or sexualized behaviors that pose a danger to the child or others, and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C, or is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment, or rehabilitation.⁵

Who Can File: 2 pts.

A parent, legal guardian or custodian, school official, or law enforcement official can file a petition.⁶

Process for Child Placement: 2 pts.

An adjudication process gives a child the least restrictive option which may include permitting the child to remain with a parent, guardian, relative, or custodian under certain conditions such as counseling, treatment and supervision.⁷ There is a ban against placing a child in need of services in physically restricted placements unless those minors have been adjudicated juvenile delinquents pursuant to RSA 169-B or are awaiting the court’s disposition on such adjudication.⁸

Recommendations: New Hampshire’s definition of eligible child fails to specifically reference commercially sexually abused children, although these children could fall under the provision related to sexualized behaviors that pose a danger to the child. To ensure that trafficking children are eligible, the definition of eligible child should specifically reference these children. Additionally, children should be allowed for file a petition themselves. Finally, a child who is a victim of child trafficking should not be detained with juvenile delinquents.

Category 3 – State Laws: F 0/10

Trafficking Statute: 0 pts.

New Hampshire’s trafficking statute has increased penalties for minors but requires a showing of coercion.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in New Hampshire.

Recommendations: New Hampshire needs to amend its trafficking statute so that coercion is not required for minors. Also, they must enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁵ N.H. Rev. Stat. Ann. § 169-D:2 (2013).

⁶ N.H. Rev. Stat. Ann. § 169-D:5 (2013).

⁷ N.H. Rev. Stat. Ann. § 169-D:17 (2013).

⁸ N.H. Rev. Stat. Ann. § 169-D:9-c (2013).

⁹ N.H. Rev. Stat. Ann. § 633:7 (2013).

New Jersey

Final Grade: A 46/50

Name of Agency: Department for Children and Families

Category 1 – Child Protective Services: A 23/25

State Mandate: 8 pts.

Child Protection and Permanency (“CP&P”) is responsible for investigating allegations of child abuse and neglect and, if necessary, arranging for the child's protection and the family's treatment.¹ Additionally, the state now explicitly mandates ensuring “protection and a safe environment for those sexually exploited juveniles who are charged with prostitution or who are alleged to be victims of human trafficking; and to provide these juveniles with the appropriate shelter, care, counseling and crisis intervention services from the time they are taken into custody and for the duration of any legal proceedings.”²

Definition of Abuse: 8 pts.

Physical injury by other than accidental means; substantial or ongoing risk of physical injury by other than accidental means; sexual abuse; impairment of physical, mental or emotional condition (or imminent danger thereof); or willful abandonment by parent, guardian, or other person having custody and control.³

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, paramour of a parent, guardian, or any person who has assumed responsibility for care, custody, or control of a child or upon whom there is a legal duty for such care.⁴

Recommendations: The definition of abuse is too narrow as it only covers abuse by the hands of a parent, guardian, or person who custody and control; an individual who sexually exploits children may not be included in this definition. The definition of abuse and “person responsible for welfare of a child” should be expanded to also cover any individual exercising control/supervision over a child.

¹ Child Protection and Permanency, State of New Jersey Department of Children and Families, available at <http://www.state.nj.us/dcf/about/divisions/dcpp/> (July 2, 2014); N.J. Stat. Ann. § 30:4C-3 (2013).

² N.J. Stat. Ann. § 2A:4A-21(g) (2012).

³ N.J. Stat. Ann. § 9:6-8.9 (2013).

⁴ N.J. Stat. Ann. § 9:6-8.21 (2013).

Name of CHINS Provision: “Juvenile-Family Crisis”

Definition of Eligible Child: 5 pts.

Any child involved in a juvenile-family crisis. Juvenile-Family crisis means behavior, conduct, or a condition of a juvenile, parent, guardian, or other family member which presents or results in: 1) a serious threat to the well-being and physical safety of a juvenile; 2) a serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by a repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian; 3) unauthorized absence by a juvenile for more than 24 hours from his home; 4) a pattern of repeated unauthorized absences from school by a juvenile subject; or 5) an act which if committed by an adult would constitute prostitution or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.⁵

Who Can File: 2 pts.

Law enforcement,⁶ parent, juvenile, schools, or any public or private agency or organization can file.⁷

Process for Child Placement: 5 pts.

The court will determine placement. The child can be released back to the supervision of guardian, placed under care of a relative or any other qualified individual, placed under care of the Department of Children and Families (DCF), placed under custody of the children’s system of care for services, or committed to residential facility if juvenile is in need of involuntary commitment or ordered to counseling.⁸ However, no juvenile in a juvenile-family crisis shall be committed to or placed in any institution or facility established for the care of delinquent children.⁹

Recommendations: New Jersey’s CHINS law considers sexually exploited children to be children in need of services. These laws should be incorporated into the child protective services system.

Category 3 – State Laws: B 8/10

Trafficking Statute: 5 pts.

The current trafficking statute does not require coercion.¹⁰

Safe Harbor: 3 pts.

New Jersey’s law gives an affirmative defense to children found in prostitution.¹¹

Recommendations: The trafficking statute should be amended so that there is a separate, harsher penalty for domestic minor sex trafficking. New Jersey’s safe harbor law gives an affirmative defense for victims under the age of 18 found in prostitution. This could be improved by making children immune from prosecution for any sexual exploitation.

⁵ N.J. Stat. Ann. § 2A:4A-22 (2013).

⁶ N.J. Stat. Ann. § 2A:4A-80 (2013).

⁷ N.J. Stat. Ann. § 2A:4A-81 (2013).

⁸ N.J. Stat. Ann. § 2A:4A-46(a) (2013).

⁹ N.J. Stat. Ann. § 2A:4A-46(b) (2013).

¹⁰ N.J. Stat. Ann. § 2C:13-8 (2013).

¹¹ N.J. Stat. Ann. § 2C:34-1 (2013).

New Mexico

Final Grade: F 15/50

Name of Agency: Children, Youth, and Families Department

Category 1 – Child Protective Services: F -1/25

State Mandate: -2 pts.

The Children, Youth, and Families Department (“CYFD”) of New Mexico administers laws and exercises functions related to children, youth, and families; assists in development of state policies and plans for services to children, youth, and families; advocates for services for children, youth, and families; and provides leadership to other agencies which serve children, youth, and families to ensure a coordinated and integrated system of care and services.¹ Protective services are available to children based upon an assessment which considers safety of the child, risk to the child, protective capacities of the parent or guardian, and the availability of services.² A Protective Services official confirmed that a trafficked child would only fall within the purview of protective services if that child was already the subject of a departmental investigation into possible parental abuse.³ However, a CYFD representative revealed that, while there are no services which explicitly address the commercial sex trade, if a child is found being abused by a non-parent/guardian/custodian, the Department can undertake an “emergency 48-hour hold” of the child and attempt to place that child back in his/her home. If this is unsuccessful or the home is unfit, the Department can then seek a court order for emergency placement on an expedited basis.⁴

Definition of Abuse: 2 pts.

Suffering or risk of suffering serious harm because of the action or inaction of a parent/guardian/custodian; suffering physical, emotional or psychological abuse inflicted or caused by a parent/guardian/custodian; suffering sexual abuse or exploitation inflicted by parent/guardian/custodian; placement in a situation of danger to life or health by a parent/guardian/custodian; or intentional torture, cruel confinement or cruel punishment by parent/guardian/custodian.⁵

Definition of Person Responsible for Welfare of Child: -1 pt.

A parent, guardian, or custodian.⁶

Recommendations: A Protective Services official stated that the department would not investigate child sex trafficking unless it was in the context of parental abuse. The mandate must be amended specifically to include children who have been commercially sexually exploited. The definition of abuse should be expanded to cover anyone, in addition to parents, guardians or custodians, who sexually exploits a child commercially. More generally, New Mexico statutes should define the persons responsible for the welfare of a child (on its own and within the definition of abuse) to include anyone exercising control over a child.

¹ N.M. Stat. Ann. § 9-2A-2 (2013).

² N.M. Code R. § 8.8.2.12 (2012).

³ Interview with Megan Finno, Constituency and Immigration Liaison for Protective Services Division, Children, Youth and Families Department (July 16, 2010).

⁴ Interview with Kathleen Hardy, Public Records Custodian for the Children, Youth and Families Department (October 25, 2013).

⁵ N.M. Stat. Ann. § 32A-4-2 (2013).

⁶ *Id.* (Please note that there is no term called “person responsible for welfare of a child” – it is simply inferred from the definition of abuse.)

Name of CHINS Provision: “Families Services”⁷ and “Families in Need of Court-Ordered Services”⁸

Definition of Eligible Child: 3 pts.

A child whose behavior endangers his or her health, safety, education or well-being; is absent from the child’s place of residence for 24 hours or more without the consent of the parent/guardian/custodian; whose parent/guardian/custodian refuses to permit the child to live with the parent /guardian/custodian; or who refuses to live with the parent/guardian/custodian.⁹

Who Can File: 5 pts.

Any child or family member who has a reasonable belief that the child or family is in need of family services may request services.¹⁰ Any person who has reasonable belief that a child or family is in need of family services may submit a referral.¹¹ A petition for court-ordered services is filed by the child’s court attorney after determination that such a petition is in the best interests of the child and family.¹²

Process for Child Placement: 3 pts.

A child is placed outside of the home in lieu of detention if, upon application by a parent, guardian, or custodian, good cause is shown.¹³ A child may enter voluntary placement for up to 180 days and the department may petition for an additional 180 days.¹⁴ However, under no circumstances may a child remain in voluntary placement for a period in excess of 365 days in any two-year period.¹⁵

Recommendations: New Mexico’s definition of children eligible for CHINS fails specifically to mention trafficked children. To ensure that abused children in the commercial sex trade are provided with necessary services, the universe of eligible children should be expanded specifically to include trafficked children.

Trafficking Statute: 5 pts.

The statute has no explicit requirement of coercion for a minor.¹⁶

Safe Harbor: 0 pts.

There is currently no safe harbor law in New Mexico.

Recommendations: New Mexico needs to enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁷ N.M. Stat. Ann. § 32A-3A-1 (2013).

⁸ N.M. Stat. Ann. § 32A-3B-1 (2013).

⁹ N.M. Stat. Ann. § 32A-3A-2 (2013); *see also* § 32A-3B-2 (2013).

¹⁰ N.M. Stat. Ann. § 32A-3A-3 (2013).

¹¹ *Id.*

¹² N.M. Stat. Ann. § 32A-3B-10 (2013).

¹³ N.M. Stat. Ann. § 32A-3A-6 (2013).

¹⁴ N.M. Stat. Ann. § 32A-3A-7 (2013).

¹⁵ *Id.*

¹⁶ N.M. Stat. Ann. § 30-52-1 (2013).

New York

Final Grade: F 27/50

Name of Agency: Office of Children and Family Services

Category 1 – Child Protective Services: F 13/25

State Mandate: 8 pts.

The Office of Children and Family Services' purpose is to investigate child abuse and maltreatment reports, protect children from further abuse or maltreatment, and provide rehabilitative services to children, parents, and other family members involved.¹ The provision of child welfare services to sexually exploited children is required by N.Y. Soc. Serv. Law § 447-b.²

Definition of Abuse: 2 pts.

An "abused child" means any child under age 18 whose parent, or other person legally responsible for his or her care, inflicts or allows to be inflicted upon the child a physical or emotional injury, commits or allows a sexual offense against the child, or allows, permits, or encourages the child to engage in prostitution or other sexual acts.³

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, guardian, custodian, and any other person responsible for the child's care at the relevant time. A custodian may be any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.⁴

Recommendations: New York's mandate is sufficient in explicitly mentioning trafficked children. The definition of "abused child" should be expanded to include children abused by individuals other than those who are legally responsible for their care. The new definition of "sexually exploited child" should be extended and applied here. New York's current response to commercially sexually exploited children is through the PINS process, this should be amended so reports of abuse can be brought directly to the Office of Children and Family Services.

¹ N.Y. Soc. Serv. Law § 411 (2013); New York State Office of Children and Family Services, available at <http://www.ocfs.state.ny.us/main/cps/> (July 2, 2014).

² N.Y. Soc. Serv. Law § 447-b (2013).

³ N.Y. Soc. Serv. Law § 412 (2013); N.Y. Fam. Ct. Act § 1012(e) (2013).

⁴ N.Y. Fam. Ct. Act § 1012(g) (2013).

Name of CHINS Provisions: “Person in Need of Supervision (PINS)” and “Destitute Child”

Definition of Eligible Child: 5 pts.

Any child under age 18 who is beyond the control of a parent/guardian, is habitually truant from school, or is a sexually exploited child.⁵ Additionally, certain services related to guardianship and custody matters are available to any child under age 18 that is destitute or homeless.⁶

Who Can File: 2 pts.

A PINS petition can be filed by any parent or other person legally responsible for the child’s care, school district, or law enforcement official.⁷ A guardianship proceeding for a homeless or destitute child can be filed by an authorized agency, foster parent, or relative with care of custody of the child.⁸

Process for Child Placement: 5 pts.

Children that are subject to PINS proceedings may be placed in their own home, in the custody of a suitable relative or other private person, or in the custody of a commissioner of social services, which may include an authorized agency or, if the individual is a sexually exploited child, a long-term safe house.⁹ A guardianship proceeding for a homeless or destitute child includes the possible placement of guardianship in an authorized agent or foster parent.¹⁰

Recommendations: A child should be able to apply for the services without having to go through a parent, guardian, or other official.

Category 3 – State Laws: F 2/10

Trafficking Statute: 0 pts.

The statute has a requirement of coercion.¹¹

Safe Harbor: 2 pts.

New York’s safe harbor law provides services to sexually exploited children and defines sexually exploited children as victims. However, it does not explicitly stop prosecution.¹²

Recommendations: New York should pass trafficking statutes that meet the standards set by federal law with respect to not requiring coercion for minors. Also, New York’s safe harbor laws should be amended to explicitly exempt commercially sexually exploited children from prosecution. Currently, it is possible that a child can both be considered a victim and also prosecuted for prostitution.

⁵ N.Y. Soc. Serv. Law § 371 (2013); N.Y. Soc. Serv. Law § 447-a (2013).

⁶ N.Y. Soc. Serv. Law § 384-b (2013).

⁷ N.Y. Fam. Ct. Act § 733 (2013).

⁸ N.Y. Soc. Serv. Law § 384-b (2013).

⁹ N.Y. Fam. Ct. Act § 756 (2013).

¹⁰ N.Y. Soc. Serv. Law § 384-b (2013).

¹¹ N.Y. Pen. Law § 230.34 (2013).

¹² N.Y. Soc. Serv. Law §§ 447-a and 447-b (2013); N.Y. Fam. Ct. Act § 311.4 (2013).

North Carolina

Final Grade: D 34/50

Name of Agency: Department of Health and Human Services – Division of Social Services

Category 1 – Child Protective Services: F 11/25

State Mandate: 8 pts.

The purpose is to help prevent further harm to children from intentional physical or mental injury, sexual abuse, exploitation, or neglect by a person responsible for a child's health or welfare.¹ N.C. Gen. Stat. § 14-43.20 explicitly contemplates the provision of emergency services and assistance to victims of trafficking offenses.²

Definition of Abuse: 2 pts.

The infliction of serious non-accidental physical injury; the allowance or encouragement of certain illegal sexual activities, including prostitution; the creation of severe emotional damage; the encouragement of delinquent acts with moral turpitude; or the commission of any human trafficking, involuntary servitude or sexual servitude offenses, in each case by the parent, guardian, custodian, or caretaker of any juvenile under age 18. Such juveniles are deemed to be “abused juveniles” under North Carolina law.³

Definition of Person Responsible for Welfare of Child: 1 pt.

A parent, guardian, custodian, or other caretaker that has primary responsibility for supervising a child's health and welfare such as an adult relative entrusted with care, a house parent in a residential child care facility or educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services.⁴

Recommendations: North Carolina's definition of “abuse” includes human trafficking, involuntary servitude or sexual servitude offenses. However, the definition of “responsible person” only includes a parent, guardian, custodian, or other caretaker. This definition should be expanded so that a trafficker would be considered a person responsible for the welfare of a child, regardless of his or her relationship or status.

¹ North Carolina Child Protective Services, available at <http://www.dhhs.state.nc.us/dss/cps/index.htm> (July 2, 2014).

² N.C. Gen Stat. § 14-43.20(c) (2013).

³ N.C. Gen Stat. § 7B-101 (2013).

⁴ *Id.*

Name of CHINS Provision: “Undisciplined Juvenile”

Definition of Eligible Child: 3 pts.

An “undisciplined juvenile” is a juvenile who is less than 18 years old but at least 6 years old, and who is regularly disobedient and beyond the disciplinary control of his or her parent, guardian, or custodian; is regularly found in places where it is unlawful for a juvenile to be; has run away from home for more than 24 hours; or, in the case of a juvenile that is less than 16 years old, is unlawfully absent from school.⁵

Who Can File: 5 pts.

Anyone can file a complaint to initiate an investigation of whether the child needs services, but only the juvenile court counselor can actually file the petition.⁶

Process for Child Placements: 5 pts.

The child may enter into a diversion contract and/or be referred to certain resources which may include restitution, community service, counseling, and other options.⁷ The court may also require that the juvenile be supervised in his or her own home by social services; place the juvenile in the custody of a parent, guardian, custodian, relative, private agency, or other suitable person; place the juvenile in the custody of social services; or place the juvenile under protective supervision for 3 months. The process does not allow detention.⁸

Recommendations: North Carolina’s definition of “undisciplined juvenile” fails to specifically mention trafficked children, although it does mention runaways. The definition should be expanded to specifically mention children who have been commercially sexually abused. The definition should also include children younger than 6 years old. Also, a child should be able to file a petition for services on his or her own behalf rather than through a juvenile court counselor.

Category 3 – State Laws: A 10/10

Trafficking Statute: 5 pts.

The statute does not have a requirement of coercion for trafficking of minors.⁹

Safe Harbor: 5 pts.

Minors are immune from prosecution for the offense of prostitution and shall instead be taken into protective custody. A law enforcement officer that takes a minor into protective custody must immediately report an allegation of a violation of the human trafficking laws to the department of social services.¹⁰

Recommendations: North Carolina’s safe harbor law could extend to all trafficking related crimes, but it is currently adequate.

⁵ N.C. Gen. Stat. § 7B-1501(27) (2013).

⁶ N.C. Gen. Stat. §§ 7B-1700-1705 (2013).

⁷ N.C. Gen. Stat. § 7B-1706 (2013).

⁸ N.C. Gen. Stat. § 7B-2503 (2013).

⁹ N.C. Gen. Stat. §§ 14-43.10-13 (2013).

¹⁰ N.C. Gen. Stat. § 14-204(c) (2013).

North Dakota

Final Grade: F 23/50

Name of Agency: Child Protective Services

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

The purpose is to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected, providing adequate services for the protection and treatment of abused and neglected children and protecting them from further harm.¹

Definition of Abuse: 0 pts.

“Abused Child” means an individual under the age of eighteen years who is suffering from abuse caused by a person responsible for the child’s welfare.²

“Sexually abused child” means an individual under the age of eighteen years who is subjected by a person responsible for the child’s welfare, or by any individual who commits “sexual offenses” within the meaning of N.D. Cent. Code § 12.1-20-02, whether as the primary actor or secondary actor (*i.e.*, individuals who cause another to engage in sexual offenses).³

“Abuse” occurs when a parent, adult family or household member, guardian, or other custodian of any child, wilfully commits any of the following offenses:

- a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury or mental injury.
- b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health, or morals.
- c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
- d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child’s health or morals or the health or morals of others.⁴

Definition of Person Responsible for Welfare of Child: 3 pt.

A person who has responsibility for the care or supervision of a child and who is the child’s parent, an adult family member of the child, any member of the child’s household, the child’s guardian, or the child’s foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting.⁵

Recommendations: North Dakota’s CPS mandate fails to explicitly include children who have been commercially sexually abused, but a common sense reading would lead one to believe that trafficked children are covered. To ensure that commercially sexually abused children are covered, the mandate should explicitly reference trafficked children, and it should be acknowledged that anyone exercising control over a child or in a

¹ N.D. Cent. Code § 50-25.1-01 (2011).

² N.D. Cent. Code § 50-25.1-02 (2011).

³ *Id.*; N.D. Cent. Code § 12.1-20-12.2 (2011).

⁴ N.D. Cent. Code, § 14-09-22 (2013).

⁵ N.D. Cent. Code § 50-25.1-02 (2013).

position of supervision/control over a child is responsible for a child's welfare. Those changes would allow children who have been trafficked by a pimp to utilize CPS.

Category 2 – Child in Need of Services: D 9/15

Name of CHINS Provision: "Unruly Child"

Definition of Eligible Child: -1 pts.

Any child who is in need of rehabilitation, is ungovernable, is willfully in a situation dangerous to others, is habitually truant from school without justification, has committed a status offense, or has purchased or used tobacco.⁶

Who Can File: 5 pts.

A state's attorney, or any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true can file. A petition prepared by any person other than a state's attorney may not be filed unless the director, the court, or other person authorized by the court has determined the filing of the petition is in the best interest of the public and the child.⁷

Process for Child Placement: 5 pts.

At disposition, an unruly child can be remanded to a child's home or into a public or private agency but cannot be committed to a secure facility.⁸

Recommendations: North Dakota's definition of Eligible Child fails to specifically mention trafficked children or runaways. To guarantee eligibility for commercially sexually abused children, the definition should be expanded to specifically reference these children.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The statute does not require a showing of coercion for a minor.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in North Dakota.

Recommendations: North Dakota should enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁶ N.D. Cent. Code §§ 27-20-02 (2011).

⁷ N.D. Cent. Code §§ 27-20-20 (2011).

⁸ N.D. Cent. Code §§ 27-20-32 (2011).

⁹ N.D. Cent. Code § 12.1-40-01 (2011).

Ohio

Final Grade: A 46/50

Name of Agency: County Public Children Services Agencies

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

There is no specific mandate; however, various provisions could cover and protect trafficked children. The county public children services agencies are required to investigate reports of abuse, neglect or dependency, and provide services if necessary. Furthermore, a call with a representative affirmed that each county would be required to help a victim of child trafficking, regardless of whether the abuse came from a parent or another individual.¹

Definition of Abuse: 10 pts.

A child is considered abused when he or she (i) is a victim of sexual activity, (ii) is endangered, (iii) exhibits evidence of any physical or mental injury inflicted other than by accidental means or at variance with the history given of it, (iv) suffers physical or mental injury that harms or threatens to harm his or her health or welfare because of the acts of his or her parents, guardian, or custodian or (v) is subjected to out-of-home care child abuse.²

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, guardian, custodian, any foster caregiver, any institutional care provider, a coach, and any other person who has similar function or relationship to children.³

Recommendations: Ohio's lack of a single child service mandate results in ambiguity as to whether commercially sexually abused children are covered; however, a common sense reading of the multitude of provisions would lead one to believe that these children are covered. To ensure that commercially sexually abused children are covered, the mandate should explicitly include trafficked children.

¹ Ohio Rev. Code Ann. § 5153.16 (2013).

² Ohio Rev. Code Ann. § 2151.031 (1989).

³ Ohio Rev. Code Ann. § 2151.011 (2014).

Name of CHINS Provision: “Unruly Child”

Definition of Eligible Child: 3 pts.

An eligible child is any child who (i) does not submit to the reasonable control of the child’s parents, teachers, guardian or custodian, by reason of being wayward or habitually disobedient, (ii) is habitually truant, (iii) behaves in a manner as to injure or endanger the child’s own health or morals or the health or morals of others, or (iv) violates a law applicable only to children.⁴

Who Can File: 5 pts.

Any person having knowledge of a child who appears to be an unruly child may file a complaint.⁵

Process for Child Placement: 3 pts.

A child alleged to be or adjudicated unruly may be (i) detained in a certified foster home for a period of 60 days or until final disposition of the case, whichever comes first, (ii) received by a public children services agency or private child placing agency, (iii) placed with a private noncustodial agency for temporary care or (iv) assigned to an alternative diversion program for a period of 60 days or until final disposition of the case, whichever comes first.⁶

Recommendations: Ohio’s definition of eligible child fails to specifically mention commercially sexually abused children, although the definition can be read to imply these children are covered as well because they behave in a manner as to injure or endanger their own health or morals. The definition of eligible child should be expanded to specifically mention trafficked children to ensure these children are eligible. The definition of who can file could be read as being broad enough to include the children themselves but should be amended to specifically allow children to file on their own behalf.

Category 3 – State Laws: B 8/10

Trafficking Statute: 5 pts.

There is no requirement of force for sex trafficking of a minor.⁷

Safe Harbor: 3 pts.

A victim of trafficking may avoid prosecution if the court decides to send the child to a diversion program and the child complies with such program. However, it is possible for such victims to be charged with prostitution if they are denied, after a hearing, an opportunity to participate in a diversion program, or if they fail to complete such program.⁸

Recommendations: If a child is alleged to be a victim of trafficking, he or she may be allowed to go through a diversion program and avoid prosecution; however, the possibility of prosecution is not completely eliminated because the child may be denied an opportunity to participate in a diversion program or may fail to satisfactorily complete such program. The law should be amended to specifically state that children who are commercially sexually exploited are safe from prosecution.

⁴ Ohio Rev. Code Ann. § 2151.022 (2006).

⁵ Ohio Rev. Code Ann. § 2151.27 (2005).

⁶ Ohio Rev. Code Ann. § 2151.331 (2001).

⁷ Ohio Rev. Code Ann. § 2907.21 (2011).

⁸ Ohio Rev. Code Ann. § 2152.021 (2012).

Oklahoma

Final Grade: F 20/50

Name of Agency: Oklahoma Department of Human Services – Child Protective Services

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

Oklahoma's mandate seeks to identify, treat, and prevent child abuse and neglect.¹

Definition of Abuse: 0 pts.

Any harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health and safety, including but not limited to, non-accidental physical or mental injury, sexual abuse, or sexual exploitation.²

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, guardian, custodian, adult residing in the home of the child, or agent or employee of a public or private residential home/institution/facility.³

Recommendations: Oklahoma's mandate is too narrow; a child who is commercially sexually abused by someone who is not a parent, guardian, or person legally responsible for the child – such as a pimp – would likely not be covered. The mandate should be expanded to specifically cover child victims of human trafficking. The definition of abuse should be expanded to cover acts of abuse by anyone, regardless of relation or status. The definition of person responsible for welfare of child should also be expanded to cover anyone with control over the child, not just a parent or guardian.

Prior to 2013, the Oklahoma Attorney General's office worked in conjunction with a non-profit organization called Oklahomans Against Trafficking Humans ("O.A.T.H."). Through this process, children under the age of twelve were referred to CPS and children aged twelve through eighteen were referred to O.A.T.H. Youth Services or a Therapeutic Foster Care Agency. However, O.A.T.H. dissolved in July, 2013 citing lack of funding as the main reason for dissolving.

¹ Okla. Admin. Code § 340:75-3-100 (2014).

² Okla. Stat. Ann. tit. 10A, § 1-1-105 (2013).

³ *Id.*

Name of CHINS Provision: “Child or Juvenile in Need of Supervision”

Definition of Eligible Child: 3 pts.

Any child who leaves home without parent/guardian/custodial consent for a substantial length of time without intent to return; has repeatedly disobeyed reasonable and lawful commands of a parent/guardian/custodian; is truant from school; is homeless, destitute, lacks proper parental care or guardianship, or has been abused or neglected.⁴

Who Can File: 0 pts.

With the consent of the district attorney, an intake worker may authorize services following a preliminary inquiry; however, only the district attorney can formally file for CHINS.⁵

Process for Child Placement: 3 pts.

A preliminary inquiry is conducted to determine if court action is needed; if no court action is needed, and if the district attorney agrees, an intake worker may make informal adjustments without a petition, to provide services including the placement of a child into protective services; detention does not appear to be an option in this process.⁶

Recommendations: Oklahoma’s eligibility of “Juvenile in Need of Supervision” fails to specifically mention trafficked children, although a trafficked child could be covered under the provision mentioning abuse and neglect. However, to ensure that commercially sexually abused children are provided the necessary services, the definition of Eligible Child should be expanded to specifically mention these children. Children should also be able to file for themselves without having to go through the district attorney.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The statute covers all children under the age of eighteen engaged in prostitution regardless of a showing of coercion.⁷

Safe Harbor: 0 pts.

There is currently no safe harbor law in Oklahoma.

Recommendations: Oklahoma should enact a safe harbor law to protect commercially sexually exploited children from prosecution.

⁴ Okla. Stat. Ann. tit. 10A, § 2-1-103 (2013).

⁵ Okla. Stat. Ann. tit. 10A, § 2-2-106 (2013).

⁶ Okla. Stat. Ann. tit. 10A, § 2-2-104 (2013).

⁷ Okla. Stat. Ann. tit. 21 §§ 866, 1088 (2013).

Oregon

Final Grade: B 41/50

Name of Agency: Department of Human Services – Children, Adults and Families Division; Child Protective Services – Child Welfare

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

Oregon’s Child Protective Services (“CPS”) investigates reports of abuse, assesses the situation, and prepares service plans to assist children and families. The mandate appears broad enough to cover child victims of human trafficking; however, the mandate does not specifically cover such children.¹

Definition of Abuse: 10 pts.

Any assault, mental injury, rape, sexual abuse, sexual exploitation, negligent treatment, threatened harm, or buying or selling of an unmarried person under the age of eighteen.²

Definition of Person Responsible for Welfare of Child: 7 pts.

Any person can be held responsible for the welfare of a child.³

Recommendations: Oregon’s mandate fails to explicitly include children who have been commercially sexually abused; although a common sense reading of the mandate would lead one to believe that these children are covered. To ensure coverage, the mandate should be amended to explicitly include commercially sexually abused children. Although, Oregon has put into place a taskforce in certain counties in order to better respond to the issue of commercial sexual exploitation of children, it should expand the CPS’s mandate to explicitly include trafficked children.

¹ Or. Rev. Stat. § 409.185 (2012).

² Or. Rev. Stat. § 419B.005 (2012).

³ *Id.*

Name of CHINS Provision: Oregon does not have a current CHINS (or equivalent) statute.

Definition of Eligible Child: N/A

Who Can File: N/A

Process for Child Placement: N/A

Recommendations: Oregon does not currently have a CHINS (or equivalent) statute. The state was given full credit, however, as its child protective services system should be broad enough to include all instances of CSEC. Still, to ensure that commercially sexually abused children are provided the necessary services, Oregon should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Category 3 – State Laws: F 3/10

Trafficking Statute: 3 pts.

Sex trafficking of minors under the age of 15 has no requirement of force, fraud or coercion.⁴

Safe Harbor: 0 pts.

There is currently no safe harbor law in Oregon.

Recommendations: Oregon only has a statute against involuntary servitude. It should therefore, enact a specific trafficking statute that would additionally contain a coercion exception for minors. Oregon should also enact a safe harbor law to protect commercially sexually exploited children from prosecution.

⁴ Or. Rev. Stat. § 163.266 (2012).

Pennsylvania

Final Grade: F 26/50

Name of Agency: Pennsylvania Department of Welfare – Office of the Children, Youth and Families – Bureau of Child Welfare Services

Category 1 – Child Protective Services: B 21/25

State Mandate: 6 pts.

The Bureau of Child Welfare Services is primarily responsible for monitoring the delivery of child welfare services by county and private social service agencies.¹ Each county is responsible for administering a program of general protective services to children that is consistent with the following objectives: (1) keep children in their homes; (2) prevent abuse, neglect, and exploitation; (3) overcome problems that result in dependency; (4) provide temporary placement; (5) reunite children and families; (6) provide permanent families; and (7) provide services for children who have been adjudicated dependent.²

Definition of Abuse: 8 pts.

The term “child abuse” means any act or failure to act by a perpetrator (defined below) which causes non-accidental serious physical or mental injury to or sexual abuse or exploitation of a child or creates an imminent risk of serious physical injury to or sexual abuse or exploitation of a child under age eighteen, and any serious physical neglect constituting a prolonged or repeated lack of supervision or the failure to provide life’s essentials which endangers a child’s life or development or impairs a child’s functioning; provided, however, that certain acts or failures to act listed above must have occurred within the last two years.³

Definition of Person Responsible for Welfare of Child: 7 pts.

“Person responsible for the child’s welfare” includes any person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control, other than persons employed by a school. In addition, the term “perpetrator” means a person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child’s parent.⁴

Recommendations: Pennsylvania’s definition of “child abuse” should be expanded to include anyone who has commercially sexually exploited a child, not just a parent or one who resides in the same home as the child. The definition of “person responsible for the child’s welfare” could possibly include a trafficker but should be amended to explicitly include traffickers.

¹ Pennsylvania Department of Welfare, Office of the Children, Youth and Families, Bureau of Child Welfare Services, available at <http://www.dpw.state.pa.us/dpworganization/officeofchildrenyouthandfamilies/bureauofchildwelfareservices/index.htm> (July 2, 2014).

² 23 Pa. Cons. Stat. Ann. § 6373(a) (2013); *see also* 55 Pa. Code § 3490.2 (2013).

³ 23 Pa Cons. Stat. Ann. §§ 6303(b) (2013).

⁴ 23 Pa Cons. Stat. Ann. § 6303(a) (2013).

Name of CHINS Provision: “Dependent Child”

Definition of Eligible Child: -1 pts.

The definition of “dependent child” includes any child who is without a parent, guardian or custodian; is ungovernable and needs care, treatment, or supervision; is neglected or abandoned by his parents, guardian or custodian; or is habitually truant without justification.⁵

Who Can File: 5 pts.

Any person including a law enforcement officer may file a petition to declare a child dependent.⁶

Process for Child Placement: 2 pts.

A dependent child may be placed in a licensed foster home or a home approved by the court, a facility operated by a licensed child welfare agency or one approved by the court, or any other suitable place or facility, designated or operated by the court and approved by the Department of Public Welfare, but will not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses. A dependent child may be detained in the same shelter with delinquent children.⁷

Recommendations: Pennsylvania’s definition of “dependent child” fails to specifically reference trafficked children. To ensure trafficked children are provided with necessary services, the definition of eligibility should be expanded to specifically reference commercially sexually exploited children. Additionally, it should be ensured that dependent children are never detained with delinquent children.

Category 3 – State Laws: F -1/10

Trafficking Statute: -1 pt.

There is no sex trafficking statute. All that currently exists is a statute addressing forced labor or services, which does not explicitly mention trafficking offenses and does not have a coercion exception for minors.⁸

Safe Harbor: 0 pts.

There is no safe harbor law.

Recommendations: Pennsylvania’s current forced labor statute is not sufficient. A trafficking statute with no requirement of coercion for minors should be enacted. Also, Pennsylvania should pass a safe harbor law to protect commercially sexually exploited children from prosecution.

⁵ 42 Pa. Cons. Stat. Ann. § 6302 (2013).

⁶ 42 Pa. Cons. Stat. Ann. § 6334(a) (2013).

⁷ 42 Pa. Cons. Stat. Ann. § 6327(e) (2013).

⁸ 18 Pa. Cons. Stat. Ann. § 3002 (2013).

Puerto Rico

Final Grade: F 11/50

Name of Agency: Department of the Family of the Commonwealth of Puerto Rico

Category 1 – Child Protective Services: F 9/25

State Mandate: 6 pts.

Puerto Rico's Department of the Family investigates and attends to situations of abuse, institutional abuse, neglect, and institutional neglect. It is also responsible for instituting programs for the prevention, identification, investigation, and provision of necessary services, to address the needs of minors and their families in any situation of abuse, institutional abuse, neglect, or institutional neglect.¹

Definition of Abuse: 2 pts.

Any intentional act or omission by a father, mother, or person in charge of a minor of such a nature that it causes or puts a minor at risk of suffering damage or harm to his or her health or physical, mental, or emotional integrity, including sexual abuse. Abuse also includes engaging in obscene behavior and/or using the minor to carry out obscene acts; allowing another person to put the minor at risk of physical, mental, or emotional harm; willful abandonment; and exploitation, including but not limited to forcing or allowing another person to use the minor to engage in obscene acts for profit or in order to receive any other benefit.²

Definition of Person Responsible for Welfare of Child: 1 pts.

A father, mother, or other person in charge of the minor, including foster parents and employees of institutions that provide care, education, treatment, or detention services.³

Recommendations: The current definition of person responsible should be broadened to include those other than a father, mother, or other caretaker. The current definition of abuse could be read broadly to include exploitation at the hands of someone other than a father, mother, or person in charge of a minor, but this should be clarified. Finally any person with custody or control of a child should be included in the definition of person responsible for welfare of child.

¹ P.R. Laws Ann. Tit. 8 § 444a (2010).

² P.R. Laws Ann. Tit. 8 § 444 (2010).

³ *Id.*

Name of CHINS Provision: Puerto Rico does not have a current CHINS (or equivalent) statute.

Definition of Eligible Child: -1 pt.

N/A

Who Can File: -1 pt.

N/A

Process for Child Placement: -1 pt.

N/A

Recommendations: Puerto Rico does not currently have a CHINS (or equivalent) statute. To ensure that commercially sexually abused children are provided the necessary services, Puerto Rico should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pt.

Puerto Rico has a higher penalty for the trafficking of minors. This increased penalty does not require force or coercion.⁴

Safe Harbor: 0 pts.

There is currently no safe harbor law in Puerto Rico.

Recommendations: Puerto Rico should pass safe harbor laws to protect commercially sexually exploited children from prosecution.

⁴ P.R. Laws Ann. Tit. 33 §§ 4780-4781 (2010).

Rhode Island

Final Grade: F 29/50

Name of Agency: Department of Children, Youth, and Families

Category 1 – Child Protective Services: F 11/25

State Mandate: 6 pts.

Rhode Island's Department of Children, Youth, and Families provides protective services for children. In cases of child abuse and neglect, it mobilizes services to assist the child and the child's family, including, but not limited to day care, homemaking services, medical attention, social, psychological, and psychiatric evaluation and treatment, emergency shelters, transportation, and individual or group counseling.¹ Furthermore, a representative from the Department of Children, Youth, and Families explained that the Department will take custody of sexually abused children, including those who were abused by someone other than a parent, guardian, or custodian, and will then work to reunify the children with their parents or to place them in a suitable home.² The Department offers a full panel of services, including medical and psychological treatment.

Definition of Abuse: 2 pts.

Abuse consists of any harm or threatened harm to a child's physical or mental health at the hand of a parent or other person responsible for a child's welfare. It includes inflicting or allowing physical or mental injury, committing or allowing an act of sexual abuse, failing to provide for the child, abandoning or deserting the child, encouraging or permitting the child to engage in prostitution or pornography, or permitting sexual contact by a child who is coerced, impaired, or under fifteen years old.³

Definition of Person Responsible for Welfare of Child: 3 pts.

The child's parent or guardian; any individual that is eighteen years of age or older who resides in the home of a parent or guardian and has unsupervised access to a child; a foster parent; an employee of a public or private residential home or facility; or any staff person providing out-of-home care.⁴

Recommendations: Rhode Island's mandate fails to adequately cover commercially sexually abused children, and should be amended to specifically mention trafficked children. The definition of abuse also needs to acknowledge that anyone can abuse a child, regardless of familial relation or status and should be broadened in order to guarantee that children abused by the hands of a pimp are covered. Further, the definition of a person responsible for a child should be expanded to include anyone with care or custody of the child, not just parents and guardians or those who reside in the same home as the child.

¹ R.I. Gen. Laws § 42-72-11 (2013).

² Phone call with a representative of The Rhode Island Department of Children, Youth, and Families (July 29, 2013).

³ R.I. Gen. Laws § 40-11-2 (2013).

⁴ *Id.*

Name of CHINS Provision: “Wayward Child”

Definition of Eligible Child: 5 pts.

Any child who has deserted his or her home without good or sufficient cause, who habitually associates with immoral persons, who is leading an immoral life, who habitually disobeys reasonable commands of parents, guardians, or custodians, who is habitually truant or disobedient in school, or who has violated the law.⁵

Who Can File: 5 pts.

Any appropriate person having knowledge, information, or belief of the relevant facts, which includes a police officer, prosecutor, director of public welfare for a city or town, a truant officer, or a grandparent.⁶

Process for Child Placement: 3 pts.

A non-offender juvenile is initially held for identification and investigation in an unlocked multi-purpose room. The family court may place the child at a training school for youth, in a private licensed home, in any institution/agency licensed for childcare, or place the child into custody of the Department of Children, Youth, and Families.⁷

Recommendations: Rhode Island’s “Wayward Child” eligibility definition does not explicitly reference trafficked children; however, this may be implied by the provision’s reference to one who “habitually associates with immoral persons, [or] who is leading an immoral life.” It would be beneficial for the definition to specifically mention commercially sexually abused children to ensure eligibility.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The statute does not require force or coercion.⁸

Safe Harbor: 0 pts.

There is currently no safe harbor law in Rhode Island.

Recommendations: Rhode Island needs to enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁵ R.I. Gen. Laws § 14-1-3(9) (2013).

⁶ R.I. Gen. Laws §§ 14-1-3(2), 14-1-10, 14-1-11 (2013).

⁷ R.I. Gen. Laws §§ 14-1-26.1, 14-1-27 (2013).

⁸ R.I. Gen. Laws § 11-67-6 (2013).

South Carolina

Final Grade: F 14/50

Name of Agency: Department of Social Services – Child Protective Services

Category 1 – Child Protective Services: D 17/25

State Mandate: 2 pts.

South Carolina's Child Protective and Preventive Services ("CPS") seeks to protect children from abuse or neglect.¹ However, the mandate is too narrow, as it only seeks to protect children from abuse or neglect within their families, in foster care, or by persons responsible for the child's welfare.²

Definition of Abuse: 8 pts.

Child abuse, neglect, or harm occurs when a parent, guardian, or person responsible for the child's welfare: (a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present substantial risk of physical or mental injury, although the definition excludes certain corporal punishment or physical discipline perpetrated solely to correct a child and determined to be moderate in degree; (b) commits or allows to be committed a sexual offense, or engages in an act or omission that presents a substantial risk that a sexual offense would be committed against the child; (c) fails to supply the child with adequate food, clothing, shelter, education, appropriate supervision or development, or health care, even though financially able to do so, and the failure causes or presents a substantial risk of physical or mental injury; (d) abandons the child; (e) encourages or approves of delinquent acts by the child, and such encouragement or approval results in the delinquent acts; or (f) commits abuse or neglect as described as above such that a child who subsequently becomes part of person's household is at substantial risk of abuse.³

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, guardian, foster parent, operator, employee, or caregiver (any person whose duties include direct care, supervision, and guidance of children in a childcare facility) of a residential home, institution, agency or childcare facility, or any person or entity that has assumed the role or responsibility of a parent/guardian for the child, but who does not necessarily have legal custody of the child. The definition excludes any person whose contact with the child is only incidental, such as a babysitter.⁴

Recommendations: South Carolina's CPS mandate fails to explicitly or impliedly cover children who have been commercially sexually abused. As it is unlikely that a pimp would be considered a person responsible for the welfare of a child, the mandate would not cover children commercially sexually abused by a pimp. South Carolina's Human Services Policy and Procedure Manual states that CPS will only get involved if the abuser is a parent, guardian, caretaker, or someone otherwise defined as responsible for the child's care.⁵ To adequately cover these children, the mandate should be expanded to specifically reference trafficked children and should acknowledge that anyone can abuse a child, regardless of whether the person is responsible for the child's care.

¹ See S.C. Code Ann. § 63-7-960 (2012).

² Compare South Carolina Dept. of Social Services, Human Services Policy and Procedure Manual § 700 (2010), available at https://dss.sc.gov/content/library/manuals/child_protective.pdf with S.C. Code Ann. § 63-7-960 (July 2, 2012).

³ S.C. Code Ann. § 63-7-20 (2012).

⁴ *Id.*

⁵ See South Carolina Dept. of Social Services, Human Services Policy and Procedure Manual § 710 (2010), available at https://dss.sc.gov/content/library/manuals/child_protective.pdf (July 2, 2014).

Name of CHINS Provision: South Carolina does not have a current CHINS (or equivalent) statute.

Definition of Child Eligible: -1 pt.

N/A

Who Can File: -1 pt.

N/A

Process for Child Placement: -1 pt.

N/A

Recommendations: South Carolina does not currently have a CHINS (or equivalent) statute. To ensure that commercially sexually abused children are provided the necessary services, South Carolina should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Trafficking Statute: 0 pts.

South Carolina has a provision that would apply to minor victims of sex trafficking but it requires force.⁶

Safe Harbor: 0 pts.

There is currently no safe harbor law in South Carolina.

Recommendations: South Carolina needs to change its definition of sex trafficking so no showing of force is required for prosecuting traffickers of minors. South Carolina should also enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁶ S.C. Code Ann. § 16-3-2010(7) (2012).

South Dakota

Final Grade: F 15/50

Name of Agency: South Dakota Department of Social Services – Child Protective Services

Category 1 – Child Protective Services: F 5/25

State Mandate: 6 pts.

South Dakota’s Child Protective Services (“CPS”) provides services to children alleged or determined to be unsafe because of concerns about abuse or neglect. These services include assessment of child abuse and neglect reports, evaluation of whether children are exposed to threats of safety, assessment of a parent’s or caretaker’s ability to protect the children, establishment of protection plans and safety plans, provision of foster care, and services to change behaviors and conditions that make children unsafe.¹

Definition of Abuse: 0 pts.

An abused or neglected child is a child: 1) who has been abandoned or subjected to mistreatment or abuse by a parent, guardian, or custodian; 2) who lacks proper parental care; 3) whose environment is injurious; 4) whose parent, guardian, or custodian fails to provide care necessary for the child’s health; 5) who is homeless, without proper care, or not domiciled with a parent, guardian, or custodian through no fault of the parent, guardian, or custodian; 6) who is threatened with substantial harm; 7) who has sustained emotional harm; 8) who is subject to sexual abuse or exploitation by a parent, guardian, custodian, or other person responsible for the child’s care; 9) who was subject to prenatal exposure to any controlled substance not lawfully prescribed; or 10) who is knowingly exposed to an environment of any unlawfully manufactured controlled substance by a parent, guardian, or custodian.²

Definition of Person Responsible for Welfare of Child: -1 pt.

A parent, guardian, or custodian.³

Recommendations: South Dakota’s child protective services laws are too narrow. Currently, only a parent, guardian, or custodian is considered responsible for the welfare of a child. This should be expanded such that anyone exercising control of or in a position of supervision of a child be deemed responsible for the child’s welfare. Similarly, those portions of the definition of abuse that are limited to abuse by a parent, guardian, or custodian should be expanded to cover such abuse by anyone with physical control or custody of a child. Additionally, the laws need to explicitly cover trafficked children to ensure that commercially sexually abused children are covered.

¹ S. D. Admin. R. 67:14:30:01 (2013).

² S.D. Codified Laws § 26-8A-2 (2013).

³ *Id.*

Name of CHINS Provision: “Child in Need of Supervision”

Definition of Eligible Child: 3 pts.

Any child who has run away from home, is beyond the control of his or her parents, guardians, or custodians, is a danger to his or her self or others, is habitually truant from school, or has committed a status offense.⁴

Who Can File: 0 pts.

The state attorney may, after a preliminary investigation, either file a petition or refer the matter for an informal adjustment or action.⁵

Process for Child Placement: 2 pts.

An apparent or alleged child in need of supervision taken into temporary custody prior to a temporary custody hearing will be released to his or her parent, guardian, or custodian, unless the parent, guardian, or custodian cannot be located or are not suitable to receive the child, in which case the child will be placed in shelter, or, if other specific circumstances exists, the child may be placed in detention for up to twenty four hours, excluding weekends and holidays.⁶ If a child is found to be a child in need of supervision, the court should choose the least restrictive available placement option in keeping with the best interests of the child among one or more of the following: (1) place the child under probation (which may include as a condition participation in a supervised work program) and in the custody of a parent, guardian, custodian, relative, or other suitable person; (2) if the child has violated a valid court order, place the child in a detention facility for up to ninety days; (3) place the child in a juvenile correctional facility, foster home, or other community-based service; (4) place the child in an alternative educational program; and (5) impose a fine.⁷

Recommendations: South Dakota’s definition of CHINS eligibility fails to specifically mention trafficked children, although these children could be implied under the provision “including a child who is a danger to his or her self or others.” The statute should explicitly mention commercially sexually abused children to ensure their eligibility. Also, children should be able to file for themselves without having to wait for a preliminary investigation by the state attorney. Finally, children should be sent straight to the child protective services system and never be detained.

Trafficking Statute: 5 pts.

South Dakota has a sexual exploitation of minors statute that requires no coercion.⁸

Safe Harbor: 0 pts.

There is currently no safe harbor law in South Dakota.

Recommendations: South Dakota should enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁴ S.D. Codified Laws § 26-8B-2 (2013).

⁵ S.D. Codified Laws § 26-7A-10 (2013).

⁶ S.D. Codified Laws § 26-8B-3 (2013).

⁷ S.D. Codified Laws § 26-8B-6 (2013).

⁸ S.D. Codified Laws § 22-22-24.3 (2013).

Tennessee

Final Grade: C 38/50

Name of Agency: Department of Children's Services

Category 1 – Child Protective Services: D 15/25

State Mandate: 6 pts.

Tennessee's Department of Children's Services provides services to children who are unruly, delinquent, dependent, and neglected, as well as to their respective families. It also provides services for children who are at imminent risk and in need of services to prevent entry into state custody, children who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law.¹

Definition of Abuse: 6 pts.

Abuse occurs when a person under the age of 18 is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability, or physical or mental condition caused by brutality, neglect, or other actions or inactions of a parent, relative, guardian, or caregiver.² In addition, the definition of "child sexual abuse" includes the commission of certain enumerated acts involving the unlawful sexual abuse, molestation, fondling, or carnal knowledge of a child under the age of 13, including, without limitation, the sexual exploitation of a child. Additionally, if the aforementioned sex abuse acts are committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child, then these acts will be considered "child sexual abuse" so long as the child is under 18 years of age.³

Definition of Person Responsible for Welfare of Child: 3 pts.

A parent, guardian, relative, person residing in the child's home, and any other person responsible for the child's care or welfare, including, but not limited to: a legal custodian or foster parent; an employee of a public or private child care agency, public or private school; or any other person legally responsible for the child's welfare in a residential setting.⁴

Recommendations: Tennessee's mandate fails to explicitly include commercially sexually abused children, although a common sense reading would lead one to believe that these children are covered. The main point of confusion is whether a person that sexually exploits a child but is neither related to the trafficked child nor has any legal duty to provide care for the child, is responsible for the child's welfare under the statute.

To ensure coverage of commercially sexually abused children, the mandate should explicitly reference these children and should acknowledge that anyone who exercises control, or who is in a position of supervision or control, of a child is responsible for a child's welfare. The definition of abuse should be expanded to cover actions or inactions by anyone that abuses a child, regardless of his or her relationship or status. Also, any person with physical custody or control over the child should be a person responsible for the welfare of the child.

¹ Tenn. Code Ann. § 37-5-102 (2013).

² Tenn. Code Ann. § 37-5-103 (2013).

³ *Id.*

⁴ Tenn. Code Ann. § 37-1-602 (2013).

Name of CHINS Provision: “Unruly Child”

Definition of Eligible Child: 3 pts.

An “unruly child” is any child needing treatment and rehabilitation who has run away; habitually disobeys the reasonable and lawful commands of his or her parents, guardians, or other legal custodians to the degree that such child’s health and safety are endangered; is habitually truant from school without justification; or commits an offense only applicable to a child.⁵

Who Can File: 5 pts.

Anyone who has knowledge of the facts alleged or is informed of the facts and believes that they are true may make a petition with the juvenile court.⁶

Process for Child Placement: 5 pts.

A child ultimately found to be unruly may be subject to certain orders given to a dependent or neglected child, including permitting the child to remain with the child’s parents, guardian, or other custodian; or transferring temporary legal custody, or granting permanent guardianship to an individual who is found by the court to be qualified to receive and care for the child, the department of children’s services, or an agency or other private organization authorized by law to receive and care for the child. Furthermore, the child may be placed on probation under the supervision of the court probation officer or the department of children’s services. However, no unruly child may be placed on probation unless the child is also considered delinquent or is found to have violated a valid court order.⁷

Recommendations: Tennessee’s definition of “unruly child” fails to specifically mention trafficked children. To ensure coverage, this definition should be expanded to specifically reference children that have been commercially sexually abused.

Trafficking Statute: 5 pts.

There is no requirement of coercion for the offense of trafficking a person for a commercial sex act.⁸

Safe Harbor: 5 pts.

Tennessee’s safe harbor law states that if a minor is found in prostitution, he or she is immune from prosecution and may be released to the custody of a parent or legal guardian and will be provided with the telephone number for the national human trafficking resource center hotline.⁹

Recommendations: The trafficking statute is sufficient as it has no coercion requirement. The safe harbor law is also adequate as it protects commercially sexually exploited children from prosecution; however, these children should be provided services in addition to being released into the custody of their parents.

⁵ Tenn. Code Ann. § 37-1-102 (2013).

⁶ Tenn. Code Ann. § 37-1-119 (2013).

⁷ Tenn. Code Ann. §§ 37-1-130 to 132 (2013).

⁸ Tenn. Code Ann. § 39-13-309 (2013).

⁹ Tenn. Code Ann. § 39-13-513 (2013).

Texas

Final Grade: F 19/50

Name of Agency: Department of Family and Protective Services

Category 1 – Child Protective Services: F 7/25

State Mandate: 0 pts.

Texas's Department of Family and Protective Services ("DFPS") mandate covers substantiated cases of abuse, neglect, or exploitation and seeks to provide immediate protective services as needed. According to a DFPS official, DFPS would generally only investigate if the alleged perpetrator of the abuse or neglect is a person responsible for the child's care, custody, or welfare, but law enforcement would be responsible for investigating incidents of abuse where the alleged perpetrator is someone other than the child's parent or person responsible for the child's care.¹

Definition of Abuse: 4 pts.

An act or omission, including: causing or permitting the child to be in a situation where he or she sustains a mental or emotional injury; a physical injury that substantially harms the child or the genuine threat of substantial harm from physical injury; failure to make a reasonable effort to prevent an act of another that results in a physical injury that substantially harms the child; sexual conduct or failure to make a reasonable effort to prevent such sexual conduct; compelling or encouraging the child to engage in sexual conduct, including conduct that constitutes an offense of trafficking of persons, prostitution, or compelling prostitution; causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of a child where the person knows or should know that the resulting photograph, film, or depiction is obscene or pornographic; causing, expressly permitting, or encouraging a child to use a controlled substance; causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child or a child to be trafficked or failure to make a reasonable effort to prevent a child from being trafficked.²

However, child protective services only has authority to investigate abuse by a person responsible for the welfare of a child, a person with whom the child's parent lives, a member of the child's family or a member of the child's household, or when the alleged perpetrator is unknown and harm or threat could reasonably have resulted from an act or failure to act by a person responsible for the welfare of a child.³

Definition of Person Responsible for Welfare of Child: 3 pts.

A person traditionally responsible for a child's care, custody, or welfare, including a parent, guardian, managing or possessory conservator, foster parent, member of the child's family or household, a person with whom the child's parent cohabits, school personnel or a volunteer at the child's school, personnel or a volunteer at a public or private child-care facility that provides services for the child, and personnel or a volunteer at a public or private residential institution or facility where the child resides.⁴

¹ Tex. Hum. Res. Code Ann. § 42.001 (2013); Email from Darrell Azar, Communications Manager, Texas Department of Family and Protective Services, to Emily Hartman, Associate, Paul Hastings LLP (Aug. 5, 2010, 12:09 EST (on file at Paul Hastings LLP) (citing Tex. Fam. Code Ann. § 261.301 (2013)).

² Tex. Fam. Code Ann. § 261.001 (2013).

³ Texas Department of Family and Protective Services Handbook §§ 2121-22 available at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2120.asp#CPS_2121 (July 2, 2014)

⁴ Tex. Fam. Code Ann. § 261.001 (2013).

Recommendations: The mandate should include an explicit reference to commercially sexually abused children to ensure coverage for these children. Additionally, DFPS is not currently required to investigate abuse if it is done by a person other than a person responsible for the welfare of a child, instead referring such cases to law enforcement.⁵ This should be updated so that the department provides services to trafficking victims.

Category 2 – Child in Need of Services: F 7/15

Name of CHINS Provision: “Conduct Indicating a Need for Supervision”

Definition of Eligible Child: 5 pts.

Any child who: has run away from home for a substantial length of time or without intent to return; is truant on 10 or more days or parts of days within a 6 month period in the same school year or on 3 or more days or parts of days within a 4 week period in the same school year; engages in prostitution or electronic transmission of sexually explicit material; or violates school rules and has been expelled.⁶

Who Can File: 0 pts.

A petition may be made by a prosecuting attorney who has knowledge of the facts alleged or is informed and believes that they are true.⁷

Process for Child Placement: 2 pts.

The juvenile court has jurisdiction over children whose conduct indicates that they have a need for supervision. Recommendations may be made by an appointed referee.⁸ A child may be detained in an approved facility prior to adjudication.⁹ Upon adjudication the child may be placed on probation in the child’s own home, a foster home, or a post-adjudication secure correctional facility.¹⁰

Recommendations: Texas’s definition of eligible child fails to specifically mention trafficked children. The definition should be expanded to specifically mention trafficked children in order to ensure that these children are provided with necessary services. Also, a child should be able to file for services without requiring an attorney to file on his or her behalf. Finally, a child should be placed directly into protective services and should not be placed in a detention facility.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

Texas amended its trafficking law in 2011 to bring it in line with federal law.¹¹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Texas.

Recommendations: Texas must enact safe harbor laws to protect commercially sexually exploited children from prosecution.

⁵ Tex. Fam. Code Ann. § 261.301 (2013).

⁶ Tex. Fam. Code Ann. § 51.03 (2013).

⁷ Tex. Fam. Code Ann. § 53.04 (2013).

⁸ Tex. Fam. Code Ann. § 51.04 (2013).

⁹ Tex. Fam. Code Ann. § 51.12 (2013).

¹⁰ Tex. Fam. Code Ann. § 54.04 (2013).

¹¹ Tex. Penal Code Ann. § 20A.02 (2013).

Utah

Final Grade: C 37/50

Name of Agency: Department of Human Services – Division of Child and Family Services

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

The primary purpose of Utah’s Division of Child and Family Services (“CFS”) is to provide child welfare services. This includes providing preventive services and family preservation services in an effort to protect the child from the trauma of separation from his family, protect the integrity of the family, and the constitutional rights of the parents. However, when a child’s welfare is endangered or reasonable efforts to maintain or reunify a child with his family have failed, CFS shall act in a timely fashion to provide the child with a stable and permanent environment.¹

Definition of Abuse: 10 pts.

“Abuse” is defined as any non-accidental harm of a child, threatened harm of a child, sexual exploitation, or sexual abuse.²

Definition of Person Responsible for Welfare of Child: 7 pts.*

A “person responsible for a child’s care” means the child’s parent, guardian, or other person responsible for the child’s care, whether in the same home as the child, a relative’s home, a group, family, or center day care facility, a foster care home, or a residential institution.³

Recommendations: Utah’s CFS mandate fails to explicitly include commercially sexually abused children. To ensure coverage of commercially sexually abused children, the mandate should be expanded to specifically reference these children. Additionally, the definition of a “person responsible for a child’s care” should be expanded to cover anyone who has control over a child, regardless of his or her relationship or status.

*Full credit given because the definition of abuse is not dependent on a person’s responsibility for the welfare of the child and Utah’s CFS policy manual does not limit abuse to a person responsible for the welfare of a child.

¹ Utah Code Ann. § 62A-4a-103 (2013).

² Utah Code Ann. § 78A-6-105 (2013).

³ Utah Code Ann. § 62A-4a-402 (2013).

Name of CHINS Provision: Utah does not have a current CHINS (or equivalent) statute.

Definition of Eligible Child: N/A

Who Can File: N/A

Process for Child Placement: N/A

Recommendations: Utah does not currently have a CHINS (or equivalent) statute. The state was given full credit, however, as its child protective services system should be broad enough to include all instances of CSEC. Still, to ensure that commercially sexually abused children are provided the necessary services, Utah should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Category 3 – State Laws: F -1/10

Trafficking Statute: -1 pt.

There is no law specifically pertaining to the trafficking of minors and the general human trafficking statute requires the use of force, fraud, or coercion.⁴ Utah provides that it is a third degree felony to (1) patronize a prostitute who is younger than 18 years of age;⁵ or (2) sexually solicit a child.⁶ This may not apply to pimps and traffickers as they do not solicit or patronize.

Safe Harbor: 0 pts.

There is currently no safe harbor law in Utah.

Recommendations: Utah currently has a sexual exploitation law that could be amended to include prostitution of minors with no requirement of coercion. It currently only covers child pornography. Utah also needs to pass a trafficking law with no requirement of coercion for minors and must enact safe harbor laws to protect minor victims of commercial sexual exploitation from prosecution and provide them with specialized services, in recognition of their status as victims of crime.

⁴ Utah Code Ann. § 76-5-308 (2013).

⁵ Utah Code Ann. § 76-10-1303 (2013).

⁶ Utah Code Ann. § 76-10-1313 (2013).

Vermont

Final Grade: C 35/50

Name of Agency: Department of Children and Families

Category 1 – Child Protective Services: D 15/25

State Mandate: 6 pts.

The Family Services Division of the Vermont Department of Children and Families (“DCF”) is responsible for responding to reports of child abuse and neglect, providing ongoing services to families at risk, and working with families and community partners to make sure children are safe. The ultimate goal is for children to live in safe, supportive, and healthy environments where they can grow and thrive.¹

Definition of Abuse: 6 pts.

An “abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm, by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.²

“Sexual abuse” is defined to include any act or acts involving sexual molestation or exploitation of a child including incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. It also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.³

Definition of Person Responsible for Welfare of Child: 3 pt.

“A person responsible for a child’s welfare” includes a parent; guardian; foster parent; adult residing in the same home as the child who serves in a parental role; employee of a residential home; and any person responsible for the child’s welfare while in a residential, educational or child care setting, including a staff person.⁴

Recommendations: While Vermont’s mandate fails to explicitly include commercially sexually abused children, the department is able to intervene in these cases. It would be beneficial for the mandate to be expanded to specifically reference trafficked children and to define “a person responsible for a child’s welfare” as any person with physical custody or care of the child.

¹ Report on Child Protection in Vermont 2012, available at http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/2012_Child_Protection_Report.pdf (July 2, 2014).

² Vt. Stat. Ann. tit. 33 § 4912 (2013).

³ *Id.*

⁴ *Id.*

Name of CHINS Provision: “Child in Need of Care or Supervision”

Definition of Eligible Child: 5 pts.

A “child in need of care or supervision” is defined as a child who is: (1) beyond the control of his or her parents, guardians, or custodians; (2) habitually truant from school; (3) without proper parental care or subsistence, education, or medical care; or (4) abandoned or abused by his or her parent, guardian, or custodian.⁵ Additionally, under Vermont’s new safe harbor law, a victim of human trafficking that is under 18 years of age at the time of the offense may be treated as a child in need of care or supervision.⁶

Who Can File: 0 pts.

Only the state may file a petition alleging that a child is in need of care or supervision.⁷

Process for Child Placement: 5 pts.

A child can be taken into custody if there are reasonable grounds to believe that the child is in immediate danger. A child will be placed in a location designated by the department, generally a shelter.⁸ The long-term disposition of the child could include reunification with the parent, termination of parental rights, or guardianship,⁹ but the child shall not be put in an institution used solely to treat delinquent children.¹⁰

Recommendations: A child should not have to rely on the state to file for services; instead, he or she should be personally able to file.

Category 3 – State Laws: A 10/10

Trafficking Statute: 5 pts.

The trafficking statute has no requirement of coercion when the sexual trafficking victim is under the age of 18.¹¹

Safe Harbor: 5 pts.

Vermont’s safe harbor law explicitly states that those under the age of 18 shall be immune from a prostitution charge and may be treated as a delinquent or a child in need of care or supervision.¹²

Recommendations: Vermont’s trafficking statute matches the federal standards and its safe harbor law provides immunity for children against prostitution charges; however, a child being used for prostitution should not be treated as a delinquent and should have access to child protective services.

⁵ Vt. Stat. Ann. tit. 33 § 5102 (2013).

⁶ Vt. Stat. Ann. tit. 13 § 2652 (2013).

⁷ Vt. Stat. Ann. tit. 33 § 5309 (2013).

⁸ Vt. Stat. Ann. tit. 33 § 5303 (2013).

⁹ Vt. Stat. Ann. tit. 33 § 5318 (2013).

¹⁰ Vt. Stat. Ann. tit. 33 § 5322 (2013).

¹¹ Vt. Stat. Ann. tit. 13 § 2652 (2013).

¹² *Id.*

Virginia

Final Grade: F 23/50

Name of Agency: Virginia Department of Social Services – Child Protective Services

Category 1 – Child Protective Services: F 11/25

State Mandate: 6 pts.

The goal of Child Protective Services (“CPS”) is to identify, assess, and provide services to children and families in an effort to protect children, preserve families whenever possible, and prevent further maltreatment.¹

Definition of Abuse: 2 pts.

“Abused or neglected child” means any child less than 18 years of age, whose parents or other person responsible for the child’s care: (1) inflicts or allows to be inflicted a physical or mental injury or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions; (2) neglects or refuses to provide necessary care for the child’s health; (3) abandons the child; (4) commits or allows to be committed any act of sexual exploitation of the child, or any sexual act upon the child in violation of the law; (5) creates a substantial risk of physical or mental injury by knowingly leaving the child alone with a violent sexual offender; or (6) is unreasonably absent or mentally or physically incapacitated such that the child is without parental care or guardianship.²

Definition of Person Responsible for Welfare of Child: 3 pt.

“Caretaker” means any individual having the responsibility of providing care for a child and includes the following: (1) a parent or other person legally responsible for the child’s care; (2) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (3) a person responsible by virtue of their position of conferred authority; or (4) any adult person residing in the home with the child.³

Recommendations: Virginia’s CPS mandate fails to explicitly include children who have been commercially sexually abused. The main problem is that the definition of “abused or neglected child” generally would not include abuse by a pimp, as a pimp generally does not have legal responsibility for a child’s welfare.

To ensure coverage of commercially sexually abused children, the mandate should explicitly reference these children. Also, the mandate should acknowledge that anyone can abuse a child and that anyone in a position of physical control or supervision of a child is responsible for the child’s welfare.

¹ Child Protective Services webpage, available at <http://www.dss.virginia.gov/family/cps/index2.cgi> (July 2, 2014)

² Va. Code Ann. § 63.2-100 (2013).

³ 22 Va. Admin. Code § 40-211-10 (2013).

Name of CHINS Provision: “Child in Need of Supervision/ Child in Need of Services”

Definition of Eligible Child: 3 pts.

A child (1) whose behavior, conduct, or condition presents or results in a serious threat to his or her well-being and physical safety or, if the child is under the age of 14, a serious threat to the well-being and physical safety of another, or (2) who unreasonably abandons his or her family or lawful custodian on more than one occasion; provided, however, that the child’s conduct must present a clear and substantial danger to the life or health of the child or another, the child or his family must be in need of treatment, rehabilitation, or services that are not presently being received, and the intervention of the court must be essential to provide the treatment, rehabilitation, or services needed by the child or his or her family. The definition also includes children who are habitually, and without justification, absent from school.⁴

Who Can File: 5 pts.

Anyone is able to file a petition, including a trafficked child. However, the processing of petitions to initiate a case shall be the responsibility of an intake officer who may, depending on the circumstances, proceed informally, authorize the filing of a petition, or refuse to authorize the filing of a petition (in which case the officer’s decision is final).⁵

Process for Child Placement: 5 pts.

If a child is found to be in need of services or supervision, the child may (1) be permitted to remain with his or her parent; (2) be placed in a family home, child caring-institution, residential facility, or in an independent living arrangement with legal custody remaining with the parents or guardians, or (3) have his or her legal custody transferred to a relative or other individual, a child welfare agency or other organization, or the local board of social services.⁶

Recommendations: Although Virginia’s definition of children eligible for CHINS does not specifically mention trafficked children, it can be implied under the provision providing coverage for a child whose behavior, conduct or condition that presents or results in a serious threat to the child’s well-being and physical safety.⁷ It would, however, be beneficial for the eligibility definition to specifically mention children who have been commercially sexually abused.

Trafficking Statute: -1 pts.

The trafficking statute makes it a crime to take any person into, persuade, encourage, or cause any person to enter any place against his or her will for purposes of prostitution or unlawful sexual intercourse. The statute generally requires force, threats or persuasion.⁸

Safe Harbor: 0 pts.

There is currently no safe harbor law in Virginia.

⁴ Va. Code Ann. § 16.1-228 (2013).

⁵ Va. Code Ann. § 16.1-260 (2013).

⁶ Va. Code Ann. §§ 16.1-278.4 to 16.1-278.5 (2013).

⁷ Va. Code Ann. § 16.1-228 (2013).

⁸ Va. Code Ann. § 18.2-355 (2013).

Recommendations: Virginia should enact a new trafficking statute that does not require force, threats or persuasion. Also, Virginia needs to enact a safe harbor law to protect commercially sexually exploited children from prosecution.

Washington

Final Grade: F 25/50

Name of Agency: Washington Department of Social and Health Services – Child Protective Services

Category 1 – Child Protective Services: F 1/25

State Mandate: 0 pts.

Washington’s Department of Social and Health Services (“DSHS”) – Child Protective Services (“CPS”) may investigate reports of alleged child abuse or neglect; assess risk of abuse or neglect to children; provide and/or refer individuals to services to remedy conditions that endanger their health, safety, and welfare; refer cases to law enforcement when there are allegations that a crime against a child might have been committed; and petition courts for out of home placement when necessary to ensure the safety of children.¹

Children and families may receive child protective services when there is an allegation that a child has been abused or neglected: (1) by a parent, legal custodian, or guardian of the child; (2) in a DSHS licensed, certified, or state-operated facility; or (3) by persons or agencies subject to licensing under Washington law, including individuals employed by or volunteers of such facilities.²

Definition of Abuse: 0 pts.

“Abuse or neglect” means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which cause harm to the child’s health, welfare, or safety; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.³

In addition, a “sexually exploited child” is any person under the age of 18 who is a victim of the crime of commercial sex abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor.⁴

Children and families may receive child protective services when there is an allegation that a child has been abused or neglected by a person responsible for the welfare of a child, as defined below.⁵

Definition of Person Responsible for Welfare of Child: 1 pt.

Parents, legal custodians, guardians of the child, and DSHS licensed facilities or persons subject to licensing and their employees.⁶

Recommendations: Washington’s CPS now allows children to receive services, but the administrative code that governs the DSHS has not yet been updated to reflect the change.

¹ Wash. Admin. Code § 388-15-001 (2013).

² Wash. Admin. Code § 388-15-013 (2013).

³ Wash. Rev. Code § 13.32A.030 (2013).

⁴ *Id.*

⁵ Wash. Admin. Code § 388-15-013 (2013).

⁶ *Id.*

Name of CHINS Provision: “Child in Need of Services”

Definition of Eligible Child: 5 pts.

A “child in need of services” means a juvenile: (1) who is beyond the control of his or her parent such that the child’s behavior endangers the health, safety, or welfare of the child or other person; (2) who has been reported to law enforcement as absent without consent for at least 24 consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement ; (3) who is in need of necessary services, including food, shelter, health care, clothing, or education, or in need of services designed to maintain or reunite the family; or (4) who is a “sexually exploited child.”⁷

Who Can File: 5 pts.

A parent, child, or the department seeking adjudication of placement of the child may file a child in need of services petition.⁸

Process for Child Placement: 5 pts.

Upon filing of a child in need of services petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility or any other suitable residence other than a HOPE center to be determined by the department. The court may place a child in a crisis residential center for a temporary out-of-home placement as long as certain requirements are met.

If the child has been placed in a foster family home or group care facility, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the petition by the court. Any placement may be reviewed by the court within three judicial days upon the request of the juvenile or the juvenile’s parent.⁹

Recommendations: Washington has a comprehensive CHINS model that could be used as an example for other states.

Trafficking Statute: 5 pts.

Washington has commercial sex abuse and trafficking laws that do not require force, fraud, or coercion for minors.¹⁰

Safe Harbor: 4 pts.

Washington’s safe harbor law presumes that a minor arrested for prostitution has been coerced and treats the minor as a victim of commercial sex abuse.¹¹

Recommendations: Washington’s commercial sex abuse and trafficking laws are adequate because they do not require coercion for minors. The safe harbor law presumes that a minor arrested for prostitution has been coerced, but it should be revised to explicitly state that minors cannot be prosecuted for prostitution.

⁷ Wash. Rev. Code § 13.32A.030 (2013).

⁸ *Id.*

⁹ Wash. Rev. Code § 13.32A.160 (2013).

¹⁰ Wash. Rev. Code §§ 9.68a.100 and 9A.40.100 (2013).

¹¹ Wash. Rev. Code §§ 13.40.219 and 13.32A.270 (2013).

West Virginia

Final Grade: F 19/50

Name of Agency: West Virginia Department of Health and Human Resources – Bureau of Children and Families – Child Protective Services

Category 1 – Child Protective Services: D 17/25

State Mandate: 2 pts.

West Virginia’s Child Protective Services provides services to families on behalf of children who are neglected or abused by their parents or by the guardians or custodians responsible for their care.¹

Definition of Abuse: 8 pts.

“Child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.²

Definition of Person Responsible for Welfare of Child: 7 pts.

A parent, guardian, or custodian who is responsible for that child’s welfare.³ A “guardian” is a person who has care and custody of a child as a result of any contract, agreement, or legal proceeding.⁴ A “custodian” is a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement, or legal proceedings.⁵

Recommendations: Currently, abuse may only be perpetrated by a parent, guardian, or custodian. To ensure coverage of these children, the state’s mandate and the definition of “child abuse or neglect” should explicitly reference commercially sexually abused children.

¹ West Virginia Child Protective Services website, available at http://www.wvdhhr.org/bcf/children_adult/cps/ (July 2, 2014).

² W. Va. Code § 49-1-3 (2013).

³ *Id.*

⁴ W. Va. Code § 49-1-4 (2013).

⁵ *Id.*

Name of CHINS Provision: West Virginia does not currently have a CHINS (or equivalent) statute.

Definition of Eligible Child: -1 pt.

N/A

Who Can File: -1 pt.

N/A

Process for Child Placement: -1 pt.

N/A

Recommendations: West Virginia does not currently have a CHINS (or equivalent) statute. To ensure that commercially sexually abused children are provided the necessary services, West Virginia should enact a CHINS (or equivalent) statute that specifically mentions trafficked children in its eligibility criteria; provides trafficked children with the ability to file a petition for services under the CHINS provision; and sends children to protective services in lieu of detention.

Trafficking Statute: 5 pts.

“Sex trafficking of minors” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person under the age of eighteen by any means, for the purpose of causing the minor to engage in sexual acts. This provision has no force, threat, or coercion requirement.⁶

Safe Harbor: 0 pts.

There is currently no safe harbor law in West Virginia.

Recommendations: West Virginia should enact a safe harbor law to protect commercially sexually exploited children from prosecution.

⁶ W. Va. Code § 61-2-17 (2013).

Wisconsin

Final Grade: D 31/50

Name of Agency: Department of Children and Families – Child Protective Services

Category 1 – Child Protective Services: F 13/25

State Mandate: -2 pts.

Wisconsin's Department of Children and Families ("DCF") seeks to protect the health, safety, and welfare of children by encouraging the reporting of suspected child abuse and neglect; to assure that appropriate protective services are provided to abused and neglected children and their families and to protect children from further harm; to provide support, counseling, and other services to children and their families to ameliorate the effects of child abuse and neglect; and to promote the well-being of the child in his or her home setting, or in another safe and stable placement.¹ However, a state official explicitly abandoned responsibility for trafficked children, stating that such responsibility should be a law enforcement issue.²

Definition of Abuse: 8 pts.

The definition of "abuse" includes the following: physical injury inflicted on a child by other than accidental means; sexual assault or sexual contact; sexual exploitation; permitting, allowing, or encouraging a child to engage in prostitution; causing a child to view or listen to sexual activity; exposure of genitalia to a child; manufacturing methamphetamine in the child's home or vicinity; and emotional damage that the legal custodian has refused or neglected to ameliorate.³

Definition of Person Responsible for Welfare of Child: 7 pt.

The definition of "caregiver" includes any relative of the child; a person who resides or who has resided regularly or intermittently in the same dwelling as the child; an employee of a residential facility or residential care center for children and youth in which the child was or is placed; a person who provides care or who has provided care for the child inside or outside of the child's home; or any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child or any relative of the child. However, the neglect of emotional damage will only fall within the definition of "abuse" if it is perpetrated by a "legal custodian" which includes a parent, guardian, or an agency to whom legal custody has been transferred.⁴

Recommendations: At face value, Wisconsin's mandate allows trafficked children to be put into the care of child protective services; however, DCF considers trafficked children a state law enforcement issue in reality. This should be addressed and Wisconsin's mandate should be expanded to explicitly include children who have been commercially sexually abused. The definition of "abuse" includes action or inaction by a parent, guardian, or legal custodian of a child but this leaves out pimps in many cases as they may have no direct relation to children. This definition should be expanded to include abuse of a child by anyone, or at a minimum, by anyone with physical control of a child.

¹ Wisconsin Department of Children and Families, Child Abuse and Neglect Program website, available at <http://dcf.wisconsin.gov/children/CPS/index.htm> (July 2, 2014)

² Telephone interview with Department of Children and Families (unidentified representative) on September 30, 2010.

³ Wis. Stat. § 48.02(1) (2013).

⁴ Wis. Stat. §§ 48.02(11) and 48.981 (2013).

Name of CHINS Provision: Juveniles in Need of Protection or Services

Definition of Eligible Child: 3 pts.

Jurisdiction over a juvenile can be ordered by a court if any of the following applies: the parent or guardian signs a petition requesting jurisdiction and is unable to control the juvenile; the juvenile is habitually truant from school; the juvenile is a school dropout; the juvenile is habitually truant from home and the juvenile, a parent, or a guardian signs a petition requesting jurisdiction; the juvenile is under 10 years of age and has committed a delinquent act; or the juvenile is determined to be incompetent or not responsible for a delinquent act by reason of mental disease or defect.⁵

Who Can File: 5 pts.

Any of the following persons may file a petition requesting that the court take jurisdiction over a juvenile alleged to be in need of protection or services: the district attorney; corporation counsel; or the counsel or guardian ad litem for the parent, relative, guardian, or juvenile.⁶

Process for Child Placement: 5 pts.

A child adjudged to be in need of protection or services can be placed in counseling, given supervision by an adult or in the juvenile's home, sent to volunteer, be placed in a teen court program, or placed in a foster home, group home, residential treatment center, transferred to custody of the state or placed in other programs.⁷ The court may not place the juvenile in a serious juvenile offender program or in a juvenile detention facility.⁸

Recommendations: Wisconsin law should explicitly reference reasonable suspicion of commercial sexual exploitation as a reason to be judged not responsible or not competent to have committed a delinquent act.

Category 3 – State Laws: F 5/10

Trafficking Statute: 5 pts.

The minor trafficking law has no requirement of coercion.⁹

Safe Harbor: 0 pts.

There is currently no safe harbor law in Wisconsin.

Recommendations: Wisconsin's trafficking law aligns with the federal definition, which does not require force, fraud, or coercion for minors being trafficked for sex. In fact, the statutes explicitly enumerate trafficking one's own child for sex as a basis for the termination of parental rights. Wisconsin should incorporate its child trafficking statute into its child abuse statutes by reference. Wisconsin should also enact a safe harbor law to protect commercially sexually exploited children from prosecution.

⁵ Wis. Stat. § 938.13 (2013).

⁶ Wis. Stat. § 938.25 (2013).

⁷ Wis. Stat. § 938.34 (2013).

⁸ Wis. Stat. § 938.345 (2013).

⁹ Wis. Stat. § 948.051 (2013).

Wyoming

Final Grade: A 45/50

Name of Agency: Protective Services Division of the Department of Family Services

Category 1 – Child Protective Services: A 23/25

State Mandate: 6 pts.

Wyoming's Protective Services Division of the Department of Family Services ("DFS") investigates and provides services to children who have been abused and neglected.¹ Based on its purpose, protective services are presumably offered when necessary to prevent any harm to a child.²

Definition of Abuse: 10 pts.

Abuse means inflicting or causing physical or mental injury, harm, or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including by the commission or allowing the commission of a sexual offense against a child.³

Definition of Person Responsible for Welfare of Child: 7 pts.

A child's parent, noncustodial parent, guardian, custodian, step-parent, foster parent, or other person, institution or agency having the physical custody or control of the child.⁴

Recommendations: Wyoming has a mandate that, from a common sense reading, would include commercially sexually abused children. However, Wyoming should amend its mandate to explicitly include children who are commercially sexually abused by any person. Any person having the physical custody or control of a child can be an abuser under Wyoming's definition of abuse. This means that a pimp who has physical control of a child could be an abuser. The definition of person responsible for the child's welfare is exemplary because it includes persons with physical custody rather than being limited to individuals with legal custody. Thus, this definition is not limited to parents or other legal guardians, and depending on the circumstances, may extend to traffickers

¹ Wyo. Stat. Ann. § 14-3-206 (2013).

² Wyo. Stat. Ann. § 14-3-201 (2013).

³ Wyo. Stat. Ann. § 14-3-202a(ii) (2013).

⁴ Wyo. Stat. Ann. § 14-3-202(a)(i) (2013).

Name of CHINS Provision: Child in Need of Services

Definition of Child Eligible: -1 pt.

“Child in need of supervision” means a child who i) has not yet reached his eighteenth birthday and ii) who is habitually truant; habitually disobeys reasonable and lawful demands of his parents ; or is ungovernable or beyond control. The definition also includes any child under eighteen who has committed a status offense.⁵

Who Can File: 5 pts.

Anyone can file an initial complaint, but only the district attorney can file a full petition to the court.⁶

Process for Child Placement: 5 pts.

When a child is adjudged by the court to be in need of supervision the child is placed in the least restrictive environment consistent with what is suited to the public interest of preserving families, the physical, mental, and moral welfare of the child.⁷ The child shall not be committed to the Wyoming boys’ school or Wyoming girls’ school unless the child has attained the age of twelve years and is also found delinquent.⁸

Recommendations: Wyoming should change its definition of eligible child to specifically include children who are sold for sex, explicitly including prostitution and trafficked children. Also, the state should raise the age requirement to include to any child under the age of 18.

Category 3– State Laws: F 7/10

Trafficking Statute: 5 pt.

Wyoming’s law, sexual servitude of a minor, has no requirement of coercion.⁹

Safe Harbor: 2 pts.

Effective July 1, 2013 the prostitution penalties do not apply to victims of trafficking crimes.¹⁰

Recommendations: Wyoming’s safe harbor law should be amended not only to not apply to victims of trafficking, but to also explicitly disallow children from being arrested for prostitution crimes before they are identified as victims of trafficking.

⁵ Wyo. Stat. Ann. § 14-6-402a(iv) (2013).

⁶ Wyo. Stat. Ann. § 14-6-411 (2013).

⁷ Wyo. Stat. Ann § 14-6-429 (2013).

⁸ *Id.*

⁹ Wyo. Stat. Ann § 6-2-706(a) (2013).

¹⁰ Wyo. Stat. Ann § 6-4-101 (2013).