

Human Trafficking and Child Welfare: Scope of Agency Authority

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Introduction and Methods

Human trafficking of children and youth, defined as the exploitation of minors for forced labor or commercial sex, is increasingly recognized as a public health and social justice concern. In recent years, federal lawmakers have highlighted the important role of child welfare within a comprehensive systems-level response to human trafficking. Several federal policies have defined the child welfare system's role in identifying and responding to human trafficking involving children and youth.

As part of the Identifying and Addressing Human Trafficking in Child Welfare Agencies (IAHT) study, RTI International conducted primary data collection via one-time, cross-sectional qualitative telephone interviews with experts who lead human trafficking efforts in their state child welfare agencies across 25 states.¹ Interview questions were open-ended and covered topics related to identifying children and youth who have experienced trafficking, including types of cases accepted and allegations codes related to trafficking. All data were collected between March 2021 and February 2022. To analyze the response data, RTI used a qualitative content analysis approach, in which key points were summarized and organized by questions and domains. The results of this study are not designed to be representative of or generalizable to a given subpopulation.

¹ For full methods and findings, see Charm, S. C, Latzman, N. E., Gilot, B., & Dolan, M. (2022). *Identifying and addressing human trafficking in child welfare agencies: Final report* (OPRE Report # 2022-72). Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

The IAHT study was conducted by RTI through a contract from the Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF) and U.S. Department of Health and Human Services, in collaboration with ACF's Children's Bureau. The work was implemented as part of the [Domestic Human Trafficking and the Child Welfare Population](#) project.

This brief describes the key themes that arose from interviews with state child welfare leaders regarding how their agencies define the extent and range of their authority as it relates to child protective investigations of suspected human trafficking. These themes highlighted two key areas that affected this scope: the relationship between the youth and the alleged trafficker and labor trafficking allegation codes.

Relationship Between the Youth and Trafficker

Most families initially become involved with the child welfare system because of a report of suspected child abuse or neglect, or "child maltreatment." Child maltreatment is defined by the Child Abuse Prevention and Treatment Act (CAPTA) as serious harm caused to children by parents or primary caregivers² (Child Welfare Information Gateway, 2013). Although the child welfare system has historically only responded to child maltreatment committed by parents or primary caregivers, the Justice for Victims of Trafficking Act (JVTA) requires states to respond to all child sex trafficking victims (Administration for Children and Families, 2015). Specifically, the JVTA considers "any child who is identified by a state as a victim of sex trafficking ... as a victim of 'child abuse and neglect' and 'sexual abuse'" regardless of their relationship to the alleged perpetrator (Administration for Children and Families, 2015).

When asked to describe the scope of their agency's focus with respect to human trafficking, 20 participants reported that their agency accepted cases of child trafficking that are facilitated by a caregiver³ or a non-caregiver third-party, or when the facilitator is not known (see **Table 1**). All but one of those participants also noted their agencies accept cases when there is no clear facilitator. Of the five participants who reported that their agency only accepts cases involving caregivers, two reported actively seeking to expand jurisdiction via formal proposals. Two other agencies who do not accept child trafficking cases facilitated by non-caregivers described the service pathways they leverage for youth who fall outside of agency scope.

² The definition of the term "caregiver" can vary by state.

³ Hereafter, we use the term "caregiver" to describe both parents and primary caregivers.

Table 1 Scope of Child Welfare Agency Authority Related to Human Trafficking

State	Agency can accept cases of trafficking:		
	That are caregiver-facilitated ⁴	That are third party-facilitated	That have no facilitator or an unknown facilitator
California	X	X	X
Colorado	X	X	X
Connecticut+	X	-	-
Florida	X	X	X
Georgia	X	X	X
Hawaii+	X	X	X
Illinois*	X	-	-
Iowa	X	X	X
Kansas	X	X	X
Kentucky	X	X	X
Louisiana*	X	-	-
Minnesota+	X	X	X‡
Nebraska	X	X	X
Nevada	X	X	X
New Jersey	X	X	X
New York+	X	-	-
North Dakota	X	X	X
Ohio	X	X	X
Oregon	X	X	X
Rhode Island	X	X	X
Tennessee◇	X	X	X
Vermont	X	X	X
Virginia	X	X	X
Washington	X	-	-
West Virginia	X	X	X

* Participant noted potential plans to expand the scope.

+ Interviewee described pathways through child welfare/referral for youth whose cases are outside of agency scope to access services.

‡ Minnesota’s child welfare agency accepts cases with unknown facilitators, but not with no facilitator.

◇ Tennessee redefined all traffickers as caregivers, rather than expanding agency jurisdiction to include non-caregiver facilitator.

⁴ Caregiver culpability does not have to mean that the caregiver is part of the trafficking. It may also include abuse or neglect that allows trafficking to occur.

Considerations for Inclusion of Non-caregiver Third-Party Traffickers

The JVTAs' requirement that states respond to all youth who have experienced sex trafficking—regardless of whether the alleged perpetrator is a caregiver—was noted by participants as a significant paradigm shift. As stated earlier, the child welfare system has historically been responsible for responding only to child maltreatment involving parents or caregivers.

Factors discussed by participants that have influenced their agency's ability and approach to responding to cases involving alleged perpetrators who are not parents or caregivers are outlined below:

- **State statute or legislation.** In many states, expansion of child welfare jurisdiction has been dictated by state statute or legislation. In 2016, for example, Colorado HB 16-1224 expanded the jurisdiction of child welfare to “instances of third-party abuse or neglect as it relates to human trafficking” (Colorado General Assembly, 2016). In 2017, Tennessee took an alternative legislative approach via HB-615, expanding “caregiver” to also include any person who has “allegedly used the child for the purpose of commercial sexual exploitation of a minor, including as a trafficker” (State of Tennessee, 2016).
- **Resources.** Several participants discussed the increased resources required when expanding child welfare's jurisdiction to non-caregiver perpetrators, because this had (or would likely) increase the number of cases accepted for a child protective investigation. For example, Virginia's Department of Social Services reported a 100% increase in the number of trafficking investigations after expanding their maltreatment definitions to include third-party traffickers. This suggests that, especially for states with a high number of youth in foster care or who have experienced trafficking, this expansion may create a significant need for additional resources, including skilled personnel to investigate and support these cases.
- **Safety of child welfare staff.** Several participants expressed concerns about caseworker safety when investigating cases involving third-party facilitators. CAPTA requires states to interview or notify the person being investigated as the alleged perpetrator in child maltreatment cases (Administration for Children and Families, 2022). Participants noted that this requirement creates challenges in cases involving non-caregivers; third-party traffickers may have extensive criminal networks, and caseworkers may not have enough information about the case or alleged trafficker to create an effective safety plan when completing the notification requirement. Some state policies require that child welfare caseworkers should notify and conduct interviews with non-caregiver traffickers in coordination with law enforcement. Participants noted that although this coordination is both needed and appreciated, it is often challenging to implement given resource constraints. They also noted the concern that comparatively accelerated timelines of child welfare investigations could compromise ongoing criminal investigations.

Highlighted here are two state approaches to address challenges with investigating non-parent or non-caregiver perpetrators of alleged sex trafficking.

Labor Trafficking

Allegation Codes

At present, federal legislation outlining the child welfare system's responsibility and response to human trafficking of children and youth does not address labor trafficking. The JVTA and the Preventing Sex Trafficking and Strengthening Families Act (PSTSFA; Public Law 113–83) of 2014 require that states establish policies and procedures for their child welfare agencies related to “severe forms of human trafficking” more broadly but only reference portions of the Trafficking Victims Protection Act definition that are specific to sex trafficking (22 U.S.C.7102 (9)(A) and (10)).

As such, state and child welfare agencies vary in whether or how they include labor trafficking in their approach to addressing

human trafficking of youth. All participants noted that their agencies have an allegation category for sex trafficking or human trafficking more generally; however, only 15 have allegation categories for labor trafficking (see **Table 2**). Nine participants reported not having a specific code for labor trafficking, most of whom noted that labor trafficking would typically



Vermont's Department of Children & Families Safety Manager

- The Department of Children & Families was investigating non-caregiver perpetrators of sexual abuse before human trafficking legislation.
- The department has a staff safety manager who plans and coordinates with law enforcement as needed. Initially developed for responding to domestic abuse, this partnership allows the child safety manager to strategize the most appropriate next steps with the case worker and law enforcement, as needed, particularly if connecting with the perpetrator would create safety issues.



Minnesota Proposed Legislation and Department of Human Services Guidance

- Minnesota has introduced legislation (MN Revisors H.F. 1943 and companion bill SF 1729) (Minnesota Legislature, 2021) to establish a different, non-investigative track for sex trafficking reports involving a third-party perpetrator that would not include contact with the alleged offender.
- This track would not generate an investigation or an official determination of whether maltreatment occurred. Instead, it would initiate a needs assessment of services for the youth. This approach would both reduce resources required for cases and protect workers.
- In the meantime, the MN Department of Human Services provides guidance through their document *Best Practice Response to Trafficking and Exploitation of Children and Youth* regarding how and when to interview the alleged offender. It presents considerations for youth and worker safety and the impact on criminal investigations (Minnesota Department of Human Services, 2020).

be captured under neglect or physical abuse. An additional participant did not know if a specific labor trafficking code was used in their state.

Table 2. Human Trafficking Allegation Codes

State	<i>Sex trafficking allegation code (Yes/No; specific language if known)</i>	<i>Labor trafficking allegation code (Yes/No; specific language if known)</i>
California	Yes; Commercial Sexual Exploitation	No; Captured under Neglect
Colorado	Yes; Sex Trafficking	Yes
Connecticut	Yes; Child Sex Trafficking	Yes; Labor Trafficking, category under physical abuse
Florida	Yes; Human Trafficking – Commercial Sexual Exploitation	Yes; Human trafficking–Labor
Georgia	Yes; Sex Trafficking (Sexual Servitude)	Yes; Labor Trafficking (Labor Servitude)
Hawaii	Yes; Human Trafficking	Yes; Labor Trafficking
Illinois	<i>Human Trafficking—Single category that includes both sex and labor trafficking as well as blatant disregard of a caregiver’s responsibilities that resulted in a child being trafficked</i>	
Iowa	Yes; Sex Trafficking	No; Captured under Neglect
Kansas	Yes; Aggravated Human Trafficking as a type of Sexual Abuse	Yes
Kentucky	Yes; Sex Trafficking	Yes; Labor Trafficking
Louisiana	Yes; Sexual Exploitation/Juvenile Sexual Trafficking	Yes; Labor Trafficking, other than sexual
Minnesota	Yes; Sex Trafficking	No
Nebraska	Yes; Sex Trafficking	Yes
Nevada	Yes; Sex Trafficking	Not Known*
New Jersey	Yes; Human Trafficking—Sexual Exploitation	Yes; Human Trafficking—Servitude
New York	Yes; Sex Trafficking	No; Captured under neglect or maltreatment
North Dakota	Yes	Yes
Ohio	Yes; Trafficked Child—Sexual Abuse	Yes; Trafficked Child—Forced Labor
Oregon	Yes; Sex Abuse—Category Sex Trafficking	No
Rhode Island	Yes	Yes
Tennessee	Yes; Sex Trafficking (Commercial Sexual Exploitation of a Minor)	No; Captured under abuse and neglect
Vermont	Yes	No
Virginia	Yes	Yes
Washington	Yes; Commercial Sexual Exploitation of Children	No
West Virginia	Yes; Sex Trafficking by Parent, Sex Trafficking by Non-parent	Yes; Labor Trafficking by Parent or Labor Trafficking by Non-parent

Source(s): Participant Interviews. Some allegation category names came from the 2020 Child Maltreatment Report (U.S. Department of Health and Human Services Administration for Children and Families, Administration on Children, & Youth and Families, 2021) and state FY18 Annual Progress and Services Reports.

*Not known indicates that that participant was not certain whether the state has a specific labor trafficking allegation code.

Considerations for Inclusion of Labor Trafficking

Factors discussed by participants that have impacted agency approach to the inclusion (or exclusion) of labor trafficking-specific screening and response initiatives are outlined below.

State statute or legislation. Overwhelmingly, participants noted that formalizing a response to labor trafficking via state statute or legislation led to policy change at the agency level. Among participants from states without specific labor trafficking allegation codes, several expressed the desire to track and screen for labor trafficking.

Low volume. Some participants acknowledged that the low volume of labor trafficking cases identified in their state, especially when compared with other forms of maltreatment, made it unlikely that resources would be devoted to establishing a separate labor trafficking code and screening policies.

Youth work. A few participants described a continuum of youth work, ranging from exploitative to non-exploitative with appropriate protections in place, for which it may be helpful to better define the criteria of labor trafficking (e.g., youth helping at family-owned businesses, entertainment industry). These participants noted that policies seeking to identify and address labor trafficking must also take into account legitimate, age-appropriate work.

References

- A bill for an act relating to human services; modifying child welfare and maltreatment provisions; amending Minnesota Statutes 2020, sections 260.761, subdivision 2; 260C.007, subdivision 14; 260E.01; 260E.02, subdivision 1; 260E.03, subdivision 22, by adding subdivisions; 260E.14, subdivisions 2, 5; 260E.17, subdivision 1; 260E.18; 260E.20, subdivision 2; 260E.24, subdivisions 2, 7; 260E.33, subdivision 1; 260E.35, subdivision 6, (2021).
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