

# **SURVIVOR PROTECTION:**

**REDUCING THE RISK OF TRAUMA TO CHILD SEX TRAFFICKING VICTIMS  
JANUARY 2018**





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Rights4Girls works to change the narrative and policies that result in girls being criminalized for their own victimization; and advocates for approaches and interventions that provide girls and young women with access to physical and emotional healing and support. Our strategic approach includes advocacy at the federal, state, and local levels as well as public awareness campaigns, coalition building, research, and technical assistance. We center the voices and experiences of our most marginalized girls to ensure that our work is far-reaching and intersectional.

We achieve policy change through education, engagement, and movement building. We focus on policy because we believe in transformation that is comprehensive, lasting, and generational. Policy reform does not impact just one girl but establishes recognition in law that provides safety and services to thousands of exploited and abused girls. It is our emphasis on policy reform that is improving the lives of thousands of young women and girls.

Through our award-winning No Such Thing as a “child prostitute” campaign, we educate media outlets and the public about child sex trafficking and the need to ethically and accurately represent the stories and experiences of survivors of child sex trafficking. We provide training and technical assistance to judges, youth-serving agencies, law enforcement, and community-based stakeholders about the need to extend services and support to survivors of sex trafficking and sexual violence, to avoid punitive responses toward victims, and to institute trauma-informed, survivor-centered approaches to justice.

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# INTRODUCTION





# INTRODUCTION

Domestic child sex trafficking is a persistent problem in the United States. Under federal law, child sex trafficking occurs any time a minor under the age of eighteen is induced to perform a commercial sex act.<sup>1</sup> Historically, domestic victims<sup>2</sup> have received gravely insufficient protection and support due to a lack of awareness about domestic trafficking and the hidden nature of this crime. When information about human trafficking first gained traction in the United States, it was commonly believed that sex trafficking victims in the U.S. were primarily foreign nationals. However, according to the U.S. Department of Justice, from January 2008 to June 2010, eighty-three percent of confirmed sex trafficking victims identified in the United States were U.S. citizens, and approximately fifty-four percent were minors under the age of eighteen.<sup>3</sup> Despite these children being subjected to violence, manipulation, and torture, the public still viewed victims of domestic child sex trafficking as criminals willingly engaged in prostitution, rather than as victims of violence and exploitation.<sup>4</sup>

In recent years, advocates have been working to shift both the law and public perception to ensure that survivors of domestic child sex trafficking are understood to be victims of gender-based violence<sup>5</sup> and child abuse, rather than seen as “child prostitutes.”<sup>6</sup> Congress has played a significant role in working to advance greater protections for victims of domestic sex trafficking and increasing public awareness about the plight of American victims, and particularly, U.S. born children. Between 2013 and 2015, Congress passed a number of federal laws aimed at protecting domestic victims and assisting them in accessing many of the services and resources available to other victims of trafficking and sexual violence.

Although the federal law has long been clear that child sex trafficking should be viewed as a severe form of trafficking in persons,<sup>7</sup> victims of child sex trafficking are still denied the full scope of protections afforded to other victims of violence, and specifically child abuse, including protections that prevent re-traumatizing children who cooperate as victim witnesses in criminal prosecutions. This paper will provide an overview of the legal justifications for extending existing protections for child abuse victim witnesses to domestic child sex trafficking victim witnesses, and highlight various states that have passed legislation to this effect. Although this paper focuses on the use of Closed Circuit Television as a protection mechanism, we

also identify other methods that can and should be utilized to protect child victim witnesses in human trafficking cases.

The scope and landscape of protections for survivors of child sex trafficking is broad, but ensuring protections during human trafficking prosecutions is an area that has received little attention outside of victim advocacy spaces. The goal of this paper is to describe the legal framework that justifies extending courtroom protections that are offered to other victim witnesses to survivors of child sex trafficking testifying in criminal prosecutions. We encourage all systems officials working with this population, including judges, legislators, prosecutors, defense attorneys, and victim advocates to use the information provided to ensure that victims of child sex trafficking are afforded necessary protections, services, and support during trial. In doing so, the strength and success of prosecutions may improve. Most importantly, prioritizing the psychological, emotional, and physical protection of victim witnesses will bring us one step closer to achieving justice on behalf of survivors.

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# LEGAL RECOGNITION OF DOMESTIC CHILD SEX TRAFFICKING VICTIMS AS CHILDREN IN NEED OF PROTECTION





## LEGAL RECOGNITION OF DOMESTIC CHILD SEX TRAFFICKING VICTIMS AS CHILDREN IN NEED OF PROTECTION

The seminal federal legislative vehicle that upholds the rights of trafficking victims is the Trafficking Victims Protection Act (TVPA). When originally passed in 2000, the law failed to contemplate domestic victims of human trafficking. As a result of this inattention, domestic victims were and continue to be denied the protections and remedies afforded to foreign victims of trafficking in the U.S., including dedicated prevention and intervention services, housing,<sup>8</sup> access to civil legal remedies,<sup>9</sup> and protection from criminalization for prostitution and related offenses.<sup>10</sup> Subsequent reauthorizations of the TVPA, in 2005, 2008, and 2013, required that programs be developed specifically to support U.S. citizen and lawful permanent resident victims, and in particular, victims of domestic child sex trafficking.<sup>11</sup>

The past four years have seen a significant expansion of the legislative protections for survivors of child sex trafficking. The 2013 reauthorization of the Violence Against Women Act (VAWA) clarified the law to recognize child sex trafficking as a form of sexual violence,<sup>12</sup> thus making young sex trafficking victims eligible for the remedies provided under certain VAWA programs. One year later, after significant research and advocacy demonstrating the unique vulnerability of children in the foster care system to sex trafficking, Congress passed the Preventing Sex Trafficking and Strengthening Families Act of 2014.<sup>13</sup> Data revealed that in several states, many, if not most, child sex trafficking victims had histories of child welfare involvement.<sup>14</sup> During Congressional hearings leading up to the legislation's passage, advocates and survivors testified about the need for jurisdictions to develop multi-disciplinary protocols that wrap victims of child sex trafficking with comprehensive, gender-responsive, trauma-informed services and improve collaboration between various child-serving systems and agencies.<sup>15</sup> The Preventing Sex Trafficking and Strengthening Families Act of 2014 addressed these vulnerabilities by mandating that state child welfare agencies report children who have gone missing from care to law enforcement and to the National Center for Missing and Exploited Children, and requiring that any state child welfare agencies that receive federal funding build their capacity to screen, identify, and support victims of child sex trafficking within their care.<sup>16</sup> In order to implement these laws, a growing number of jurisdictions have relied on Child Advocacy Centers (CACs) to help coordinate the implementation of multi-disciplinary team models that promote cross-agency collaboration to protect victims of child sex trafficking, minimize the number of times a child victim is interviewed, identify community-based

and agency resources to ensure safety and healing, and increase the likelihood of successful prosecutions by utilizing forensic interviews.<sup>17</sup> CACs have been helpful in these efforts because of their particular expertise in administering forensic interviews for children who have experienced extreme forms of abuse and violence.<sup>18</sup>

The passage of these critical pieces of legislation reflects an evolving national understanding about the nature of domestic child sex trafficking and the clear correlations between child sexual abuse and child sex trafficking. However, even after the passage of the Preventing Sex Trafficking and Strengthening Families Act, both federal law and state laws still did not recognize domestic child sex trafficking as a form of child abuse, and consequently most victims could only access services either through community-based interventions or through the juvenile court system, often after being arrested and criminalized for their own abuse.<sup>19</sup> In many states, the absence of an explicit statutory inclusion of domestic child sex trafficking in the definition of child abuse prevents state agencies from responding to domestic child sex trafficking unless the trafficking occurred at the hands of a parent or caretaker.<sup>20</sup> In 2015, Congress passed the Justice for Victims of Trafficking Act (JVTA), the first piece of federal legislation to focus specifically on the needs of domestic human trafficking victims.<sup>21</sup> In addition to creating funding streams to support victims, encouraging jurisdictions to develop methods to divert victims away from the juvenile justice system, and clarifying the law to make clear that buyers of child sex could be held liable under federal criminal human trafficking statutes, the JVTA clarified the Child Abuse Prevention and Treatment Act (CAPTA) to designate child sex trafficking as a form of abuse and neglect under federal law.<sup>22</sup>

The CAPTA amendment in the JVTA signaled clear recognition from the federal government that child sex trafficking is a form of child sexual abuse. It opened the door for a range of protections offered to victims of child abuse to be extended to victims of child sex trafficking, including a child protective services (CPS) response that avoids punishing the victim, forensic interviews that minimize re-traumatization,<sup>23</sup> mental health services, and shelter.<sup>24</sup> As a result of a shift in the legislative framework and public recognition of victims of domestic child sex trafficking as children in critical need of services, states and jurisdictions across the country have passed a range of measures to better identify, serve, and protect child trafficking victims.<sup>25</sup>

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A photograph of a group of people holding hands in a circle, symbolizing support and solidarity. The image is cropped to focus on the lower half of the individuals, showing their legs and hands. The people are wearing casual clothing like jeans and a denim jacket. The background is slightly blurred, emphasizing the group's unity.

# EXISTING PROTECTIONS FOR CHILD ABUSE VICTIM WITNESSES



# EXISTING PROTECTIONS FOR CHILD ABUSE VICTIM WITNESSES

Testifying in court does not necessarily cause children trauma. In fact, the limited research assessing the potential risk of emotional trauma to children testifying in all adversarial court proceedings, including probate, domestic relations, or dependency courts, is inconclusive.<sup>26</sup> In some cases, testifying can be affirming and cathartic for children and youth and a necessary part of their healing process.<sup>27</sup> However, research has shown that child abuse victims who testify can experience significant and heightened stressors and trauma.<sup>28</sup> Testifying in adult criminal proceedings places the highest emotional and psychological burdens on children because the defendant is typically someone the child knows, and the defendant's liberty often hinges on a child's testimony.<sup>29</sup> The few studies undertaken by child trauma experts and psychologists on this topic also show that child abuse victims face a potential for re-traumatization when called to testify against their abusers in court because they may be forced to face an abuser or publicly recount deeply personal and violent experiences of abuse in an unfamiliar and intimidating environment.<sup>30</sup> Because it is impossible to determine how testifying will impact an individual child's psychological well-being in the long term, experts who work with child witnesses recommend instituting protocols and policies that minimize the potential risk of causing children significant emotional distress and re-traumatization.<sup>31</sup>

Research about the risks children incur when testifying against their abusers in child abuse cases, coupled with concerns raised by mental health and criminal justice professionals, has resulted in successful advocacy to pass legislation, institute protocols, and promote best practices that reduce the risk of abuse victims experiencing re-traumatization when called to testify, while still upholding defendants' Sixth Amendment rights to confront and question witnesses.<sup>32</sup> Common practices have included allowing prosecutors to phrase questions at a developmentally appropriate level so that children are not confused by what is being asked of them, and to use hearsay exceptions to admit children's statements of abuse.<sup>33</sup> However, these protections are not universal, and are often dependent on a prosecutor's initiative to make these requests, and on each particular judge's level of education about child trauma and abuse.

Certain jurisdictions have developed measures that institutionalize efforts to reduce the risk of emotional and psychological harm to victims of child abuse while still ensuring reliability of testimony. These measures include using CACs to conduct forensic interviews in a child-friendly setting that reduces the number of times a child is asked to discuss their abuse, offer therapeutic support to the child and non-involved family members before and after the interview, and ensure that the person questioning the child is skilled in asking questions that are neither leading nor

suggestive to preserve the integrity of the testimony.<sup>34</sup> Because testimony given during a forensic interview at a CAC is considered testimonial hearsay, the child can still be required to corroborate the testimony at trial.<sup>35</sup> To mitigate harm to a victim witness in child abuse cases, many district attorneys' offices use victim witness advocates who are trained to provide holistic support to victims.<sup>36</sup> Victim witness advocates assist the child and family in understanding the process of a criminal proceeding, connect a child victim with therapeutic support that can extend beyond the trial, help the child in addressing basic needs and immediate safety concerns, and facilitate communication between prosecutors and victims.<sup>37</sup> Victim witness advocates can also support the family in accessing crime victims' compensation funds.<sup>38</sup> In some instances, the victim witness advocates can actually sit next to the witness stand during questioning so that the child has support during the testimony.<sup>39</sup> To further reduce physical and psychological risks to victims of child abuse, some jurisdictions provide alternative methods for victim witnesses to testify, such as Closed Circuit Television or videotaped deposition, instead of forcing them to be physically present in the same room as the defendant.<sup>40</sup>

Victims of child sex trafficking should have access to the array of protections afforded other child victim witnesses who have experienced similar forms of violence. Child sex trafficking involves psychological, sexual, and often physical abuse of victims by both traffickers and sex buyers.<sup>41</sup> When child sex trafficking victims are called to testify in prosecutions against their exploiters, they can experience much of the same re-traumatization experienced by victims of child sexual abuse.<sup>42</sup> Testifying can be traumatic even when a victim is willing to testify or believes they will be safer if a trafficker or buyer is prosecuted.<sup>43</sup> Researchers and advocates posit that the lessons learned from research and efforts to support child abuse victims should be applied to child victim witnesses in other contexts.<sup>44</sup> Victims services and criminal justice experts encourage the utilization of a broad range of strategies that reduce a victim's anxiety and risk of re-traumatization, and that can be employed on a case-by-case basis.<sup>45</sup> They also acknowledge the unique vulnerabilities experienced by all child witnesses, and encourage the use of courtroom protections that include alternative methods of testimony.<sup>46</sup>

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CLOSED CIRCUIT  
TELEVISION AS A  
FORM OF PROTECTION  
FOR CHILD VICTIM  
WITNESSES IN SEX  
TRAFFICKING CASES





# CLOSED CIRCUIT TELEVISION AS A FORM OF PROTECTION FOR CHILD VICTIM WITNESSES IN SEX TRAFFICKING CASES

Closed Circuit Television (CCTV) is a video system that securely transmits signals from a video camera to specified television monitors.<sup>47</sup> In the context of child victim witnesses, it is used to limit the number of individuals in the room when the child is testifying, thereby creating a less intimidating environment. Victims of child abuse typically experience denial of the abuse, helplessness, a lack of self-worth, and an inability to trust adults.<sup>48</sup> Subjecting children who have experienced a multitude of these emotions to “adversarial testing” in open court in front of a room full of other adult authority figures, such as a defense attorney and a judge, can aggravate their mental and emotional distress.<sup>49</sup> Existing research indicates that, for some children, testifying by CCTV can alleviate significant stressors and lower levels of anxiety pre-trial.<sup>50</sup>

District attorneys who prosecute human trafficking cases face difficulty because victims of child sex trafficking are often unwilling or too afraid to testify against their traffickers.<sup>51</sup> There are a range of reasons for their refusal to testify, including a general mistrust of the justice system, fear of retaliation, and trauma-bonds that make victims feel as though they must protect their traffickers and exploiters.<sup>52</sup> Because of the deep psychological manipulation and trauma that trafficking victims experience, CCTV must be considered as an option when these children are called to testify against their exploiters.

## One-Way Versus Two-Way CCTV

One-way CCTV involves the use of one video camera that transmits images and audio of the child’s testimony to those watching in the courtroom.<sup>53</sup> Two-way CCTV involves a second camera that transmits recording of the courtroom to a second monitor in the room where the child testifies, meaning that others who are in the room with the child can view the defendant during the child’s testimony.<sup>54</sup>

## CCTV CAN RESULT IN STRONGER PROSECUTIONS AND INCREASE WITNESS RELIABILITY

According to victim services and criminal justice experts, the use of trauma-informed tactics that reduce the risk of psychological and emotional harm to victim witnesses are a critical component of successful prosecutions.<sup>55</sup> Prior to the institution of specific protections for child victim witnesses, defense attorneys experienced the windfall of benefits from victim testimony that was often impacted by victims' fear, intimidation, or traumatic history with the defendant. Traumatized or fearful victims forced to face their abusers in open court sometimes leave out details they might have previously reported, recant testimony, or have trouble remembering facts in a particular order.<sup>56</sup> These inconsistencies make it easier for defense attorneys to discredit witnesses.<sup>57</sup> Because of the high burden of proof in criminal proceedings, a successful conviction sometimes depends on a child's testimony.<sup>58</sup> This is especially true in instances of child sexual abuse, because sexual abuse often goes unreported for long periods of time and does not always leave physical evidence.<sup>59</sup> Consequently, convictions in these cases can often be based on evaluating the truth of a child victim's word against an adult defendant's claims of innocence.<sup>60</sup>

Given the current challenges in prosecuting human trafficking cases without a victim's testimony, the use of CCTV serves as a critical protection mechanism for child victim witnesses in human trafficking prosecutions. When child victim witnesses feel safe and as though they are being treated with empathy, they are more willing to cooperate with prosecutions against their abusers.<sup>61</sup> Furthermore, CCTV does not compromise the reliability and evidentiary strength of the testimony because it is still subject to cross-examination.<sup>62</sup> Research indicates that as a result of a reduction in emotional stress, children's testimony by CCTV is sometimes more accurate than testimony given in open court.<sup>63</sup>

CCTV is especially useful for children who refuse to testify as the result of trauma or fear. In open court, the prosecution has no control over the defendant's, or other participants', behavior in the courtroom. Testifying by CCTV can reduce the risk of trauma by increasing the predictability of what actually may occur during the course of the child's testimony, thereby allowing prosecutors and victim witness advocates to manage the child's expectations and better prepare them for what to expect when testifying. While the prosecution cannot control what defendants do, protections that prevent the child from seeing or hearing the defendant during their testimony insulate the child from any unexpected behavior or trauma that may result from being in the presence of the defendant.

## CCTV DOES NOT VIOLATE THE CONFRONTATION CLAUSE

The Sixth Amendment of the Constitution is clear that any defendant whose liberty is at stake has a right to confront witnesses called against them.<sup>64</sup> Thus, courts have sought to find a balance between protecting defendants' rights of confrontation and protecting victim witnesses from further trauma. Testimonial hearsay is a term originated by the Supreme Court that refers to "hearsay that has 'a primary purpose of creating an out-of-court substitute for trial testimony.'" <sup>65</sup> It includes any out-of-court statement made as part of a formal interrogation by state actors in order to obtain evidence for a trial.<sup>66</sup> Generally, testimonial hearsay is inadmissible unless a witness is available to corroborate the out-of-court statements, because the defendant must have an opportunity to confront a witness. In the context of child abuse cases, courts have held that a forensic interview with a child victim is considered testimonial hearsay.<sup>67</sup> Consequently, these interviews are often inadmissible in court unless the child testifies to corroborate what was shared

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in the interview.<sup>68</sup> Because success of a child abuse prosecution often depends on a child's testimony, it is imperative that children are afforded courtroom protections that minimize trauma while testifying.

The Supreme Court has upheld the constitutionality of CCTV. In *Maryland v. Craig*, the Court held that the use of one-way CCTV in child abuse cases does not violate the Confrontation Clause.<sup>69</sup> Specifically, the Court held, "a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured."<sup>70</sup> The Court articulated that the government's interest in protecting child witnesses in child abuse cases from the trauma of testifying meets the public policy standard set forth, as long as the State proves its necessity in each individual case.<sup>71</sup> The Court determined that denial of face-to-face confrontation is not necessary in every instance where a child is testifying against an alleged abuser, but that when the presence of the defendant causes emotional distress for the child that is more than *de minimis*, or more than "mere nervousness or excitement, or some reluctance to testify," the prosecution can justifiably move to preclude a face-to-face confrontation.<sup>72</sup>

Since the *Craig* decision, a number of cases have sought to limit the ability of prosecutors to bring in out-of-court statements, but none has overturned the Court's affirmation that the use of CCTV is entirely constitutional.<sup>73</sup> In *Crawford v. Washington*, the necessity of CCTV was reaffirmed when the Supreme Court overruled *Ohio v. Roberts*.<sup>74</sup> Prior to *Crawford*, the determination as to whether hearsay evidence could be admitted, in light of the defendant's rights under the Confrontation Clause, was assessed under *Roberts*.<sup>75</sup> In *Roberts*, the Court held that in the absence of a witness, testimonial hearsay was only admissible if admitting the statement was firmly rooted in a hearsay exception or had "particularized guarantees of trustworthiness."<sup>76</sup> Under this standard, a child's statements made during a forensic interview were sometimes admitted at trial when the child failed to testify.<sup>77</sup> However, in *Crawford*, the Court reasoned that the Confrontation Clause was not about substance, but procedure.<sup>78</sup> Therefore, at issue was whether the person who made the out-of-court statement could be called a witness and whether the defendant was given a chance to confront them, rather than the truthfulness of the witness' statement.<sup>79</sup> Given *Crawford's* holding that it violates the Confrontation Clause to admit testimonial hearsay from a witness the defendant can't cross-examine, the decision deterred many prosecutors from seeking to introduce testimonial hearsay of child witnesses, where the child was unavailable, and ultimately led to a reversal of convictions in which a child's hearsay had been admitted after the child failed to testify.<sup>80</sup> Typically, these reversals occurred in cases where the child was expected to testify and refused to do so at the last minute.<sup>81</sup> The *Crawford* decision highlighted the importance of measures, such as CCTV, that mitigate the stress and anxiety that might cause a victim witness to refuse to testify.

After the Supreme Court decision in *Craig*, Congress codified the use of CCTV in federal prosecutions by passing the Victims of Child Abuse Act as part of the Crime Control Act of 1990. This legislation allowed for testimony given by two-way CCTV or videotaped deposition upon a court finding that the child victim or witness is "unable to testify in open court in the presence of a defendant because they might experience fear, the substantial likelihood of emotional trauma from testifying, knowledge that the victim suffers a mental or other infirmity, or conduct by the defendant and defense counsel that causes the child to be unable to continue testifying."<sup>82</sup>

Despite the Supreme Court and Congress clearly upholding the use of CCTV in certain circumstances, the constitutionality of CCTV does vary by state. Typically, state challenges have arisen as a result of the confrontation clauses in state

constitutions that explicitly afford the defendant the right to face-to-face confrontation of witnesses, as opposed to the Sixth Amendment's more general right to confront witnesses.<sup>83</sup> Some states have upheld these challenges, resulting in dissonance between federal and state protections for child victim witnesses.<sup>84</sup> Only by an amendment to state constitutions, superseding legislation, or legal precedent offering a broader interpretation of these provisions would these states be insulated from legal challenges to the use of CCTV.

## **"FORFEITURE BY WRONGDOING" AS AN ADDITIONAL METHOD OF PROTECTION**

To deter defendants from engaging in misconduct or witness intimidation, the Federal Rules of Evidence and the majority of state evidentiary rules include a hearsay exception for "forfeiture by wrongdoing."<sup>85</sup> According to the Federal Rules of Evidence, a defendant forfeits his right to confront a witness if he engages in misconduct to prevent that witness from appearing to testify against him.<sup>86</sup> In *Giles v. California*, the Court held that "a defendant forfeits his right to confront an unavailable hearsay declarant if the court finds that he engaged in wrongdoing that was designed to and did in fact cause the declarant's unavailability."<sup>87</sup> The facts in *Giles* are particularly relevant when considering whether to extend these protections to victims of child sex trafficking. In *Giles*, the Court held that repeated acts of domestic violence against a victim are "highly relevant" to the analysis of whether "forfeiture by wrongdoing" occurred, because abusers often exert psychological and physical control over their victims in order to prevent them from seeking help, including use of the judicial process.<sup>88</sup> Lower courts have found that where there is a pre-existing relationship of affection or authority, outward threats to deter a witness from disclosing abuse are not necessary to demonstrate that a defendant sought to render a victim witness unavailable.<sup>89</sup> Under such an analysis, behavior would amount to "forfeiture by wrongdoing," if the victim would experience such significant emotional distress by testifying in the presence of the defendant that the victim would be effectively unavailable.

The "forfeiture by wrongdoing" jurisprudence recognizes the way in which psychological, emotional, and physical abuse can result in a victim's refusal or inability to testify, and provides clear justification for the use of CCTV, videotaped depositions,<sup>90</sup> and other protections that limit the victim's interaction with the defendant. The *Giles* rationale should therefore be applicable in cases involving child sexual abuse, exploitation, and trafficking, as abusers and traffickers seek to control their victims and prevent disclosure. The psychological violence and manipulation that victims of child sex trafficking experience is not unlike that experienced by victims of child sexual abuse or domestic violence.<sup>91</sup> It is common for both victims of child sex trafficking and of sexual abuse to experience trauma-bonds, or feelings of affinity towards their abusers.<sup>92</sup> It is probable that these trauma bonds, coupled with the shame and discomfort that comes with experiencing sexual violence, can make testifying in open court so intimidating, humiliating and traumatic for a child, that the child is effectively unavailable to testify.

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### Emerging Theory: “Forfeiture by Exploitation”

Some legal scholars argue that the “forfeiture by wrongdoing” rationale should be expanded to include “forfeiture by exploitation,” or the admission of testimonial hearsay when a “defendant exploited a child’s vulnerabilities such that he could reasonably anticipate that the child would be unavailable to testify.”<sup>93</sup> Exploiting these vulnerabilities might include choosing victims due to their filial dependency or immaturity, or engaging in actions that exacerbate those vulnerabilities.<sup>94</sup> In considering the specific dynamics of child sexual abuse, including the fact that typically abusers seek out children who are emotionally, physically, or psychologically vulnerable, scholars have argued that the intent to commit child sexual abuse includes the intent to seek out children who will be less likely to disclose their abuse, or to see themselves as victims.<sup>95</sup> The same arguments could be made to extend a “forfeiture by exploitation” theory to victims of child sex trafficking.

Oftentimes, traffickers, exploiters, or buyers will purposely choose child victims based on the strong likelihood that their selected victims will be too bonded, too vulnerable, or too afraid of them to provide testimony.<sup>96</sup> For example, some traffickers and buyers prey on individuals from communities where they are less likely to report due to a fear or mistrust of police.<sup>97</sup> Such fears are pervasive in communities of color and immigrant or undocumented communities.<sup>98</sup> Traffickers are aware of these fears as well as the fact that children of color—and in particular, African-American children—are more vulnerable to criminalization for their victimization.<sup>99</sup> Criminalizing victims of child sex trafficking is harmful in a multitude of ways, including perpetuating the pandemic of trafficking by fueling a mistrust of the police that benefits traffickers and buyers by making victims less willing to seek help from law enforcement or cooperate with investigations and prosecutions against exploiters.<sup>100</sup> Thus, it is no coincidence that children from communities of color are overrepresented among child trafficking victims.<sup>101</sup>

In the absence of clearly legislated protections and legal precedent solidifying the “forfeiture by exploitation” rationale, out-of-court statements made by victims of child sex trafficking are not always admissible and these victims can still be called to testify against their exploiters, regardless of the risk to their emotional, psychological, and physical safety.



CURRENT LEGAL  
FRAMEWORKS THAT  
EXTEND CCTV AND OTHER  
ALTERNATIVE METHODS OF  
TESTIFYING TO VICTIMS OF  
CHILD SEX TRAFFICKING



# CURRENT LEGAL FRAMEWORKS THAT EXTEND CCTV AND OTHER ALTERNATIVE METHODS OF TESTIFYING TO VICTIMS OF CHILD SEX TRAFFICKING

Many states provide general protections to all victim witnesses, or victims of a particular crime. These protections include being able to wait in separate rooms from the defendant's family or the public and ensuring the confidentiality of the victim's contact information.<sup>102</sup> However, most states do not extend the protections that exist for other child abuse victim witnesses to victims of child sex trafficking. There are currently nineteen states that provide child sex trafficking victims with the option to testify via CCTV.<sup>103</sup> In lieu of CCTV, a handful of other states offer children the option of testifying via videotaped deposition, rather than having to appear in court during criminal proceedings. Even where these protections exist, age limits can be a barrier. While most identified victims of child sex trafficking fall between the ages of thirteen and seventeen, the age limit for children who qualify for these protections varies by state.<sup>104</sup> The following section outlines statutory frameworks that enable states to better protect child victim witnesses in human trafficking prosecutions, and offers recommendations for states seeking to strengthen such protections.

## STATES THAT OFFER CCTV IN LIEU OF DIRECT TESTIMONY

Of the nineteen states that offer CCTV as an option for child sex trafficking victims, eight states extend the option to child victims regardless of the nature of the defendant's offense and eleven states explicitly extend the option to victims of child sex trafficking.<sup>105</sup> The eight states that offer CCTV as an option to children testifying in any criminal proceeding are Arizona, Arkansas, Florida, Iowa, Kansas, Louisiana, Pennsylvania, and Wisconsin.<sup>106</sup> The eleven states that explicitly offer CCTV to victims of domestic child sex trafficking called to testify against traffickers and exploiters or about their exploitation are California, Delaware, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, Oregon, Tennessee, Texas, and Washington.<sup>107</sup>

In order for the child victim witness to testify by CCTV in any of these nineteen states, a motion must be filed. Typically, the motion can be filed by the prosecution or the defense, but some states also permit the victim witness, or someone acting on their behalf, such as a parent or guardian, to make such a motion. In some of these states, the court itself can make a determination that CCTV

is necessary to protect a child victim witness. In nine of these states, the court must find that the child would experience such serious emotional harm or distress that the child could not reasonably communicate or the child's truthfulness would be impaired.<sup>108</sup> Other states require a demonstration that the child would experience significant emotional or psychological trauma<sup>109</sup> and sometimes require corroboration by a psychiatrist, psychologist, or physician to that effect (e.g., Indiana).<sup>110</sup> A few states give the court more than one basis on which it can grant CCTV to victim witnesses. For example, in Kansas, the court must find that testifying in open court would traumatize the child so that the child could not reasonably communicate or the child would be rendered unavailable.<sup>111</sup>

### A Closer Look at CCTV: Iowa

Iowa's CCTV law applies to all minors, i.e., all children under the age of eighteen testifying in any criminal proceeding.<sup>112</sup> The court must find that testimony via CCTV is necessary to protect the minor from trauma that would "impair the minor's ability to communicate."<sup>113</sup> Iowa specifies that the only people who can be in the room with the child during the testimony are the judge, defense attorney, prosecuting attorney, necessary equipment operators, and any person whose presence contributes to the child's well-being.<sup>114</sup> The judge must notify the child that the defendant will be viewing the testimony via CCTV, and the defendant has a right to communicate with defense counsel during the course of questioning.<sup>115</sup>

## AGE LIMITS

In all but three of the nineteen states that offer CCTV to minor victim witnesses, the protections do not extend to all minors—instead there are varying age limits ranging from age ten to age seventeen.<sup>116</sup> In over half of these states, these protections cap at age fourteen or younger.<sup>117</sup> In most states, the statutory age limit refers to the child's age at the time of the testimony (e.g., Oregon),<sup>118</sup> but in some states it refers to the age of the victim at the time the crime was committed (e.g., Tennessee).<sup>119</sup> In Arizona, Arkansas, California, Delaware, Florida, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Minnesota, New Jersey, Pennsylvania, Tennessee, Washington and Wisconsin, any child who is a witness in a sex trafficking case, or testifying about sex trafficking acts, is eligible to testify by CCTV, even if they are not the alleged victim.

## SIGHT AND SOUND SEPARATION FROM THE DEFENDANT

Some state statutes include specific language mandating that the child must not be able to see or hear the defendant during the testimony.<sup>120</sup> Many states also specify who can be present with the child in the room where the testimony is being taken.<sup>121</sup> Typically, such individuals include the prosecution, the defense attorney, the equipment operators, and a person whose presence is for the child's well-being.<sup>122</sup> Certain states require that the defendant be allowed in the room with the child, however, some of these states also either require that the defendant be obstructed from the child's sight or hearing, or permit the court to exclude the defendant from the room if it can be shown that testifying in the defendant's presence would traumatize the child or impact the child's testimony.<sup>123</sup> In states where the defense attorney is allowed in the room but the defendant is not, courts are required to ensure that the defendant is able to communicate with their attorney during the examination.<sup>124</sup>

## CCTV AND *PRO SE* DEFENDANTS

Not all states explicitly address whether or not a minor victim or witness may testify via CCTV if a defendant acts as an attorney *pro se*.<sup>125</sup> The states that do address this situation take different approaches. For example, Delaware expressly prohibits the use of CCTV when a defendant is *pro se*.<sup>126</sup> However, in Texas, CCTV is still permitted.<sup>127</sup> In Texas, *pro se* defendants are prohibited from being with the child in the room where the testimony is being given, and the child must be protected from seeing or hearing the defendant.<sup>128</sup> If the defendant cannot obtain counsel, the court must appoint counsel to represent the defendant at the CCTV proceeding.<sup>129</sup> In Tennessee, where defendants typically are not permitted to enter the room with the child either physically or via CCTV, *pro se* defendants are permitted to cross-examine the child witness via CCTV.<sup>130</sup>

## RECENT CHANGES IN STATE LAW: CALIFORNIA

California is one of the most recent states to pass legislation specifically extending testimony by CCTV to child witnesses in human trafficking prosecutions.<sup>131</sup> California's law extends the option of CCTV to any minor witness under the age of sixteen whose testimony will involve "a recitation of the facts of an alleged offense of human trafficking," upon a motion from the prosecution or the court.<sup>132</sup> The prosecution must give notice at least three days prior to the testimony. It is important to note that the minor does not have to be the victim to testify by CCTV.<sup>133</sup>

In other states, a judge must find that a child victim witness will experience emotional distress or psychological trauma from testifying in the defendant's presence in order for a child to access the CCTV protection. However, in California, a judge may also make a finding in favor of a child's testimony via CCTV based on the defendant's conduct.<sup>134</sup> In order for a child witness to testify via CCTV, the court must find:

1. The minor's testimony will involve a recitation of the facts of an alleged offense of human trafficking, as defined in Section 236.1.
2. (A) The impact on the minor of one or more of the factors enumerated in clauses (i) to (v), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used.
  - i. Testimony by the minor in the presence of the defendant would result in the minor suffering serious emotional distress so that the minor would be unavailable as a witness.
  - ii. The defendant used a deadly weapon in the commission of the offense.
  - iii. The defendant threatened serious bodily injury to the minor or the minor's family, threatened incarceration or deportation of the minor or a member of the minor's family, threatened removal of the minor from the minor's family, or threatened the dissolution of the minor's family in order to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged sexual offense, or from assisting in criminal prosecution.
  - iv. The defendant inflicted great bodily injury upon the minor in the commission of the offense.
  - v. The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.
- (B) In making the determination required by this paragraph, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor's testimony.
3. The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.<sup>135</sup>

## STATES THAT OFFER VIDEOTAPED DEPOSITIONS, VIDEOTAPED TESTIMONY, AND OTHER METHODS AS AN ALTERNATIVE TO DIRECT TESTIMONY

In four states where CCTV is not an option, victims of child sex trafficking are still offered an alternative method of testifying through a videotaped deposition or testimony that ensures similar protections to CCTV.<sup>136</sup> New Hampshire permits videotaped testimony of child victims and witnesses in any criminal proceeding and Nebraska allows these methods in any criminal felony proceeding, including prosecution of sex trafficking offenses.<sup>137</sup> Colorado and Missouri explicitly extend the option of videotaped deposition to child sex trafficking victims.<sup>138</sup> In Colorado, victims of child sex trafficking who were under the age of fifteen at the time of the offense can testify by videotaped deposition.<sup>139</sup> In addition, Colorado law requires that prior to taking the videotaped deposition, the prosecution must make a motion and the court must preliminarily find that the child would likely be medically or otherwise unavailable at the time of trial.<sup>140</sup> At trial, the court must find that “further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable” in order to admit the video tape as former testimony.<sup>141</sup> States that allow for a videotaped deposition may also require a separate motion and/or finding to exclude the defendant from being present during the deposition.<sup>142</sup> Finally, Idaho, Nevada and North Carolina generally offer an alternative method of testifying for any child witness in a criminal proceeding but do not specify the method.

### ***In-Camera* Videotaped Depositions as an Alternative to Direct Testimony: Missouri**

Missouri’s law offers *in-camera* videotaped depositions for alleged trafficking victims under the age of seventeen.<sup>143</sup> In order to grant the *in-camera* videotaped deposition request, the court must find that “significant emotional or psychological trauma to the child which would result from testifying in the personal presence of the defendant exists, which makes the child unavailable as a witness” at the hearing or trial.<sup>144</sup> The defendant is not automatically excluded from the deposition—either the prosecution can move to exclude the defendant or the court can do so of its own accord.<sup>145</sup>

# RECOMMENDATIONS



# RECOMMENDATIONS

Child sex trafficking prosecutions often involve complex legal issues and investigative tactics. A range of expertise and skill sets is necessary to gather facts and provide support for victims. When victims have appropriate care and services, they are much more likely to be able to participate effectively in a prosecution.<sup>146</sup> As more jurisdictions are developing multi-disciplinary, cross-agency responses to identify and aid victims of domestic child sex trafficking, the need for policies and protocols specifically intended to protect child victim witnesses in human trafficking prosecutions have become especially urgent.

## RECOMMENDATIONS FOR STATES

Given that there are only twenty-six states that currently protect victims of child sex trafficking from the trauma of having to face their traffickers, exploiters, and buyers in open court, it is necessary that advocates and policymakers work to pass legislation in states where these protections do not exist. In at least eighteen states, testifying by CCTV, videotaped deposition or some alternate method is an option for some victims of child abuse, but this protection has yet to be extended to victims of domestic child sex trafficking.<sup>147</sup>

In order to ensure the full range of protections is afforded to victims of child sex trafficking who testify against exploiters, states should:

1. Extend existing protections that minimize harm and trauma to victims of child sexual abuse to victims of child sex trafficking, including the use of forensic interviews at CACs, the opportunity to have specially trained victim witness advocates, and the option of testifying by an alternative method such as CCTV or videotaped deposition;
  2. Enact laws that offer these protections to child sex trafficking victims in states where no such laws currently exist and amend state constitutions and laws that pose a barrier to offering these protections;
  3. Extend the age limit for protections offered to victims of child sex trafficking testifying in human trafficking cases to age eighteen;
  4. Expand the category of individuals who can move for CCTV and other victim witness protections to include adults charged with the care, advocacy, and protection of the child, including victim witness advocates, parents, guardians, and Guardians Ad Litem;
-

5. Prioritize child well-being by basing the determination of whether or not to permit CCTV and other victim witness protections on whether the absence of such protections would result in trauma to the child. In some states, the trauma must impact the child's ability to communicate in order for the court to grant use of the protective method. Under such a standard, if the trauma does not prevent the child from providing intelligible responses during examination, children can still be required to testify under traumatic circumstances, even when the risk of trauma is established before the court. Thus, the focus must shift from limiting the impact of the child's trauma on the child's testimony to more broadly limiting the risk of trauma to the child;
6. Prohibit defendants from being in the room with the child during the child's testimony, and protect the child from seeing and hearing the defendant; and
7. Promote education and training for prosecutors, defense attorneys, judges, and victim witness advocates who are involved in human trafficking prosecutions so that they can work collaboratively to uphold defendants' constitutional rights while mitigating the potential for harm, danger, and traumatization of child witnesses.

## FEDERAL RECOMMENDATIONS

Currently there are no federal standards, laws, or guidance about how to effectively protect child victim witnesses in human trafficking prosecutions, conduct investigations and prosecutions that minimize the need for victim witness testimony, and apply best practices for the treatment of victim witnesses in domestic violence and child abuse cases to human trafficking prosecutions.<sup>148</sup> In order to promote better protection of child witnesses in sex trafficking prosecutions, the federal government can:

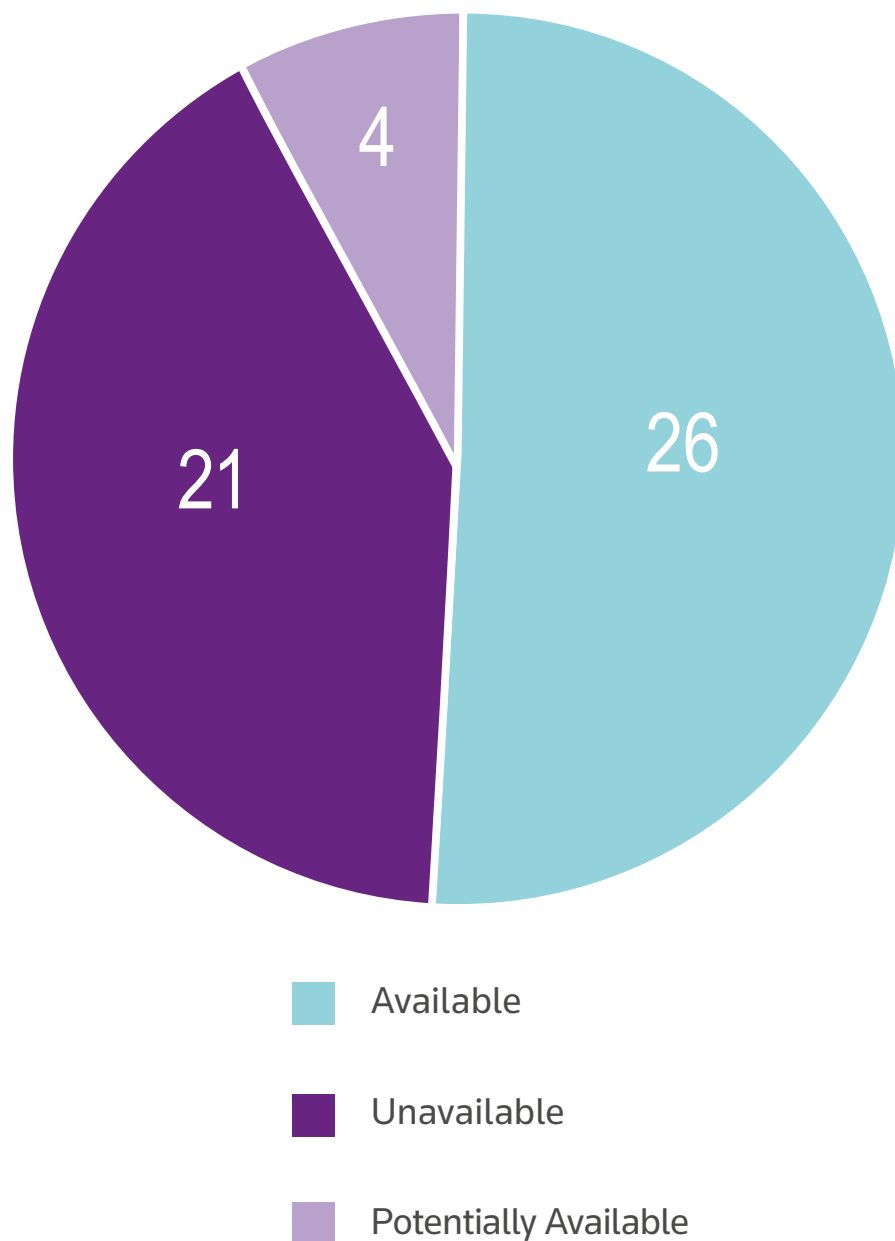
1. Issue guidance from the Attorney General directing prosecutors to institute specific protocols that strengthen protections for children testifying against abusers, exploiters, and traffickers. This guidance should be based on the expertise of organizations like AEquitas and the National District Attorneys Association, as well as victims' advocacy groups, experts in child sex trafficking, and child trauma experts who specialize in ensuring victim safety;
  2. Enforce and track the implementation of the Preventing Sex Trafficking and Strengthening Families Act of 2014 and the Justice for Victims of Trafficking Act, both of which encourage states to update their child welfare laws and responses to contemplate child sex trafficking as a form of child abuse that warrants child welfare and child protective services intervention regardless of who carries out the abuse;
  3. Pass legislation encouraging and providing support to states to strengthen their protections for witnesses in human trafficking prosecutions, particularly victims of child sex trafficking; and
  4. Provide technical assistance and funding to train prosecutors, defense attorneys, and judges on best practices for working with child victim witnesses in human trafficking investigations and prosecutions.
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# FIGURES



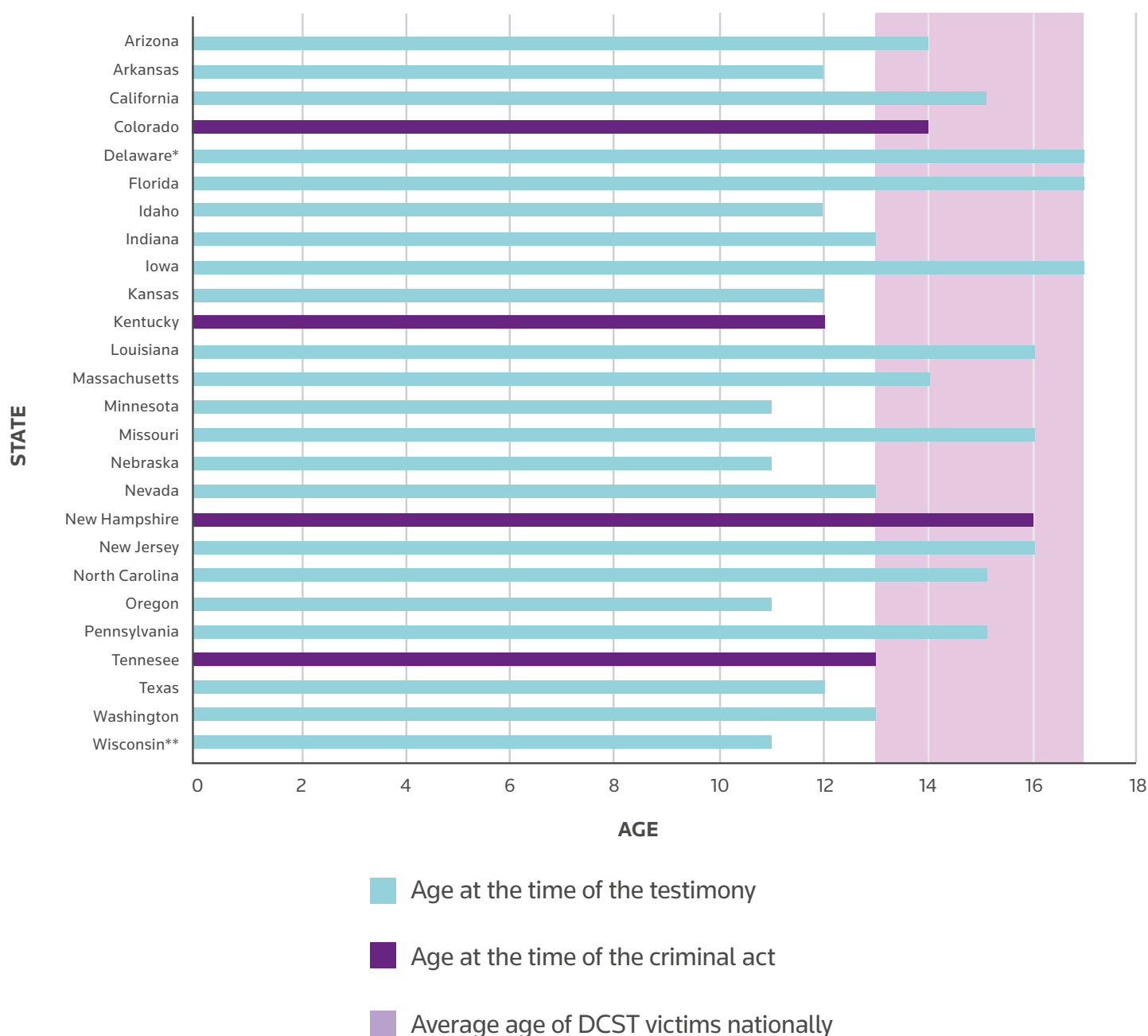
- | State    | Availability of CCTV to minor victim witnesses  | Availability of CCTV to minor victim witnesses of some forms of abuse   | Availability of alternative methods of testifying to minor victim witnesses   |
|----------|---|---|---|
| Alabama  | CCTV is available to minor victim witnesses testifying in any criminal proceeding.  | CCTV is not available to minor victim witnesses of any offense; videotaped deposition/testimony is explicitly made available to minor DCST victim witnesses.                  | CCTV is available to minor victim witnesses of some forms of abuse but not to minor DCST victim witnesses.<br><i>*In Ohio, CCTV is available to DCST victim witnesses only during preliminary hearings.</i> |
| Arizona  | CCTV is explicitly made available to minor DCST victim witnesses.   | Alternative methods of testifying are available to minor victim witnesses testifying in any criminal proceeding; the state statute does not specify what method must be used. | CCTV is not available to minor victim witnesses of any offense; videotaped deposition/testimony is available to minor victim witnesses of some forms of abuse but not to minor DCST victim witnesses.       |
| Arkansas | CCTV is not available to minor victim witnesses of any offense; videotaped deposition/testimony is available to minor victim witnesses testifying in any criminal proceeding.<br><i>** In Nebraska, the offense must be a felony.</i> | CCTV is available to certain victim witnesses and may potentially be available to minor DCST victim witnesses.  | No alternative method of testifying is available to minor victim witnesses testifying in any criminal proceeding.   |

FIGURE 2.  
NUMBER OF STATES\* THAT OFFER ALTERNATIVE  
METHODS OF TESTIFYING TO DCST VICTIM WITNESSES



\*Includes the District of Columbia

## FIGURE 3. MAXIMUM AGE MINOR DCST VICTIM WITNESSES CAN TESTIFY VIA AN ALTERNATE METHOD, BY STATE



\*In a few of states, the age requirement is different for witnesses who are not also victims of a crime. In Delaware, these witnesses must be 10 or younger compared to victim witnesses who can be any age. In Kentucky, these witnesses must be 12 or younger at the time of their testimony compared to victim witnesses who must have been 12 or younger at the time of the criminal act.

\*\*Available to children as old as 15 where warranted by interests of justice.

## FIGURE 4.

# INDIVIDUALS PERMITTED IN THE ROOM WITH THE MINOR DCST VICTIM WITNESS DURING TESTIMONY

	Defendant	Defense Attorney	Equipment Operators	Judge	Person for the Child's Wellbeing	Prosecuting Attorney	Additional People Permitted in the Room
Arizona	X	X	X		X	X	
Arkansas		X	X	X	X	X	1) The child's attorney 2) A court-appointed judicial officer may be present instead of the judge
California			X		X		1) A non-uniformed bailiff 2) A representative appointed by the court
Colorado*							
Delaware		X	X		X	X	
Florida	X	X	X	X	X	X	An interpreter
Idaho**							
Indiana		X	X		X	X	A court representative or bailiff
Iowa		X	X	X	X	X	
Kansas	X	X	X		X	X	The child's attorney
Kentucky	X	X	X		X	X	
Louisiana		X	X	X	X	X	
Massachusetts****	X	X		X		X	"[S]uch other persons as the court may allow"
Minnesota	X	X	X	X	X	X	
Missouri*							
Nebraska***	X	X				X	Any other person the court deems necessary
Nevada**							
New Hampshire	X	X		X		X	1) "[S]uch other persons as the court allows" 2) If the child is 16 or younger, a parent, another appropriate adult, or both
New Jersey*							
North Carolina**							
Oregon	X	X	X	X	X	X	
Pennsylvania		X	X	X	X	X	A court reporter
Tennessee		X	X		X	X	1) A parent, therapist or counselor 2) Court security personnel, if required 3) An interpreter, if necessary
Texas		X	X	X	X	X	A court reporter
Washington	X	X		X		X	A "neutral and trained victim's advocate"
Wisconsin			X		If the parent, guardian or legal custodian is unavailable or if the custodian is an agency		1) The child's parent, guardian or legal custodian 2) A person designated by the state, with court approval 3) A person designated by the defense, with court approval

\*The statute does not specify which individuals may be in the room with the child during testimony.

\*\*A court order determines which individuals may be in the room with the child during testimony.

\*\*\*They must be present unless the court requires otherwise.

\*\*\*\*If the finding is based solely on trauma from testifying in front of the defendant, the court can order testimony in the courtroom and the defendant is hidden from the child's sight and hearing

The child must be protected from seeing or hearing the defendant or equipment operators. Often, equipment operators can be in a room adjacent to the room in which the child will testify. States that require the use of one-way CCTV or that prevent the defendant from entering the room via CCTV are included in this category.

The use of one-way CCTV may be an option.

The statute also provides a way for the defendant to be excluded from the room. If the defendant is excluded from the room, the child must be protected from seeing or hearing the defendant. This category includes states in which the determination to testify by alternative method is separate from the determination to exclude the defendant from the room. It also includes states where, when the defendant is excluded from the room, the use of one-way CCTV is required or the defendant is prevented from entering the room via CCTV.

Prosecution and defense attorneys can only be present if the defendant has an attorney and the attorney from the other side is present.

The statute provides a way for the defendant to be excluded from the room. This category includes states in which the determination to testify by alternative method is separate from the determination to exclude the defendant.

The statute provides an option for the defendant to remain in the room blocked from the child's sight and sound or to be excluded from the room blocked from the child's sight and sound.

The court may direct the child to "be in a position to see the defendant live or on camera."

# ENDNOTES





# ENDNOTES

1. Trafficking Victims Protection Act, 22 U.S.C. § 7102(9)-(10) (2017).
2. Author's Note: While we prefer to refer to those who have experienced child sex trafficking and child abuse as survivors, we use the term "victim" as a legal term of art to refer to an individual harmed by an alleged defendant in a criminal prosecution. Our use of this term should in no way be construed as a disregard for the resilience, power, and respect that survivors of human trafficking deserve.
3. See DUREN BANKS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010, at 6 (Vanessa Curto & Jill Thomas eds., 2011).
4. RIGHTS4GIRLS, DOMESTIC CHILD SEX TRAFFICKING AND THE JUVENILE JUSTICE SYSTEM 1, *available at* <http://rights4girls.org/wp-content/uploads/r4g/2016/08/JJ-DCST-Nov-17-final.pdf>.
5. The vast majority of victims of sex trafficking are female. BANKS & KYCKELHAHN, *supra* note 3.
6. See, e.g., Yasmin Vafa, *California Agrees: There's No Such Thing as a Child Prostitute*, HUFFINGTON POST (Sept. 25, 2016, 7:39 PM), [http://www.huffingtonpost.com/yasmin-vafa/california-agrees-theres\\_b\\_12204448.html](http://www.huffingtonpost.com/yasmin-vafa/california-agrees-theres_b_12204448.html).
7. See Trafficking Victims Protection Act, 22 U.S.C. § 7102(9)(A) (2017).
8. HEATHER J. CLAWSON ET AL., ICF INT'L & ADVOCATES FOR HUMAN POTENTIAL, STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS 34 (2009); See *generally*, DOORS WIDE SHUT: BARRIERS TO THE SUCCESSFUL DELIVERY OF VICTIM SERVICES FOR DOMESTICALLY TRAFFICKED MINORS IN A SOUTHERN U.S. METROPOLITAN AREA 20, ISSUE 1-2 (2010).
9. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875.
10. HUMAN SMUGGLING & TRAFFICKING CTR., DEP'T HOMELAND SEC., DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE 2, 10 (2008); CLAWSON ET AL., *supra* note 8 at vi.
11. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 202-203, 119 Stat. 3558, 3569-3570 (2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, §§ 212-213, 122 Stat. 5044, 5063-5066; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, §§ 3, 302, 901, 1241, 127 Stat. 54, 62, 84, 118, 149.
12. Violence Against Women Reauthorization Act of 2013 § 3.
13. Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919; Testimony of Ernie Allen, President & CEO, National Center for Missing and Exploited Children, *Hearing: Domestic Minor Sex Trafficking, Before the Subcomm. On Crime, Terrorism, Homeland Sec., and Investigations, H. Comm. On the Judiciary*, 111<sup>th</sup> Cong. (Sept. 15, 2010); Testimony of Withelma "T" Ortiz Walker Pettigrew, *Hearing: Innocence for Sale: Domestic Minor Sex Trafficking, Before the Subcomm. On Crime, Terrorism, Homeland Sec., and Investigations, H. Comm. On the Judiciary*, 113<sup>th</sup> Cong. (Mar. 26, 2014).
14. RIGHTS4GIRLS, CHILD WELFARE AND DOMESTIC CHILD SEX TRAFFICKING 1, *available at* <http://rights4girls.org/wp-content/uploads/r4g/2016/08/JJ-DCST-Nov-17-final.pdf>.
15. E.g., *Preventing and Addressing Sex Trafficking of Youth in Foster Care: Hearing Before the Subcomm. on Human Res. of the H. Comm. on Ways & Means*, 113<sup>th</sup> Cong. 24-25, 33 (2013) (statements of Withelma "T" Ortiz Walker Pettigrew, Board Member, Human Rights Project for Girls & Justice Bobbe J. Bridge, ret., CEO, Center for Children & Youth Justice).
16. Preventing Sex Trafficking and Strengthening Families Act of 2014 § 102.
17. See, e.g., REBECCA EPSTEIN & PETER EDELMAN, CTR. ON POVERTY AND INEQUALITY, GEORGETOWN LAW, BLUEPRINT: A MULTIDISCIPLINARY APPROACH TO THE DOMESTIC SEX TRAFFICKING OF GIRLS 14-17, *available at* <https://traffickingresourcecenter.org/sites/default/files/Blueprint%20-%20GL.pdf> (describing how the Children's Advocacy Center of Suffolk County worked with the local district attorney's office to form Massachusetts's first multidisciplinary, anti-trafficking team).
18. See *How the CAC Model Works*, NAT'L CHILDREN'S ALLIANCE, <http://www.nationalchildrensalliance.org/cac-model> (last visited Nov. 20, 2017).

19. See SHARED HOPE INT'L, STATE IMPACT: PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (PSTSFA) AND JUSTICE FOR VICTIMS OF TRAFFICKING ACT (JVTA) 3 (2016) (describing the Justice for Victims of Trafficking Act's impact on federal and state definitions of child abuse and access to child welfare services).
20. See *id.*
21. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227.
22. *Id.*
23. C. NEWLIN ET AL., U.S. DEP'T OF JUSTICE, OFFICE OF JUV. JUSTICE & DELINQUENCY PREVENTION, CHILD FORENSIC INTERVIEWING: BEST PRACTICES 3 (2015).
24. See SHARED HOPE INT'L, *supra* note 19 (discussing the impact of the CAPTA amendments). See also, CHILDREN'S BUREAU CHILD WELFARE INFORMATION GATEWAY, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, CHILD WELFARE AND HUMAN TRAFFICKING 11 (2015).
25. See SHARED HOPE INT'L, *supra* note 19 (discussing state legislative implementation following enactment of the Preventing Sex Trafficking and Strengthening Families Act and the Justice for Victims of Trafficking Act).
26. See Debra Whitcomb, *Legal Interventions for Child Victims*, 16 J. TRAUMATIC STRESS 149, 151-52 (2003) (describing the findings of research studies that assess the impact of testifying on children). Author's note: This article was published prior to *Crawford v. Washington*, 541 U.S. 36 (2004). As discussed in more detail in this report, since the *Crawford* decision, more children have had to testify in criminal proceedings regarding their abuse due to decreased likelihood of having their out-of-court statements admitted in court. Since the publication of the Whitcomb article, a number of jurisdictions have seen fit not only to make CCTV available to child abuse victims, but also to extend the protection to survivors of child sex trafficking.
27. THE CHILD SEXUAL ABUSE COMM., NAT'L CHILD TRAUMATIC STRESS NETWORK, CHILD SEXUAL ABUSE: COPING WITH THE EMOTIONAL STRESS OF THE LEGAL SYSTEM 2 (2009).
28. Whitcomb, *supra* note 26, at 154.
29. *Id.* at 149-50; Thomas D. Lyon & Julia A. Dente, *Child Witnesses and the Confrontation Clause*, 102 J. CRIM. L. & CRIMINOLOGY 1181, 1203 (2012).
30. Whitcomb, *supra* note 26, at 154.; Charles Putnam & David Finkelhor, *Mitigating the Impact of Publicity on Child Crime Victims and Witnesses*, in HANDBOOK OF CHILDREN, CULTURE AND VIOLENCE 113, 115 (N.E. Dowd, D.G. Singer & R.F. Wilson eds., 2006).
31. See, e.g., ALLIE PHILLIPS & SUSANNE WALTERS, NAT'L DIST. ATTORNEY'S ASS'N, NAT'L CHILD PROT. TRAINING CTR., & GUNDERSEN HEALTH SYS., A COURTROOM FOR ALL: CREATING CHILD- and ADOLESCENT-FAIR COURTROOMS 2 (2013).
32. Victims of Child Abuse Act of 1990, Pub. L. No. 101-647; OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 48-55 (2005), available at [https://www.justice.gov/archive/olp/ag\\_guidelines.pdf](https://www.justice.gov/archive/olp/ag_guidelines.pdf); *Child Witness Testimony by Alternative Methods Act Summary*, Unif. Law Comm'n, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Witness%20Testimony%20by%20Alternative%20Methods%20Act> (last visited Nov. 20, 2017); See, e.g., C. NEWLIN ET AL., *supra* note 23; OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUSTICE & NAT'L CTR. FOR VICTIMS OF CRIME, NATIONAL CRIME VICTIMS' RIGHTS WEEK RESOURCE GUIDE: NEW CHALLENGES, NEW SOLUTIONS § 5, at 7 (2013), [https://victimsofcrime.org/docs/ncvrv2013/2013ncrvr\\_5\\_landmarks.pdf?sfvrsn=0](https://victimsofcrime.org/docs/ncvrv2013/2013ncrvr_5_landmarks.pdf?sfvrsn=0); JANET RENO ET AL., U.S. DEP'T OF JUSTICE, OFFICE FOR VICTIMS OF CRIME, BREAKING THE CYCLE OF VIOLENCE: RECOMMENDATIONS TO IMPROVE THE CRIMINAL JUSTICE RESPONSE TO CHILD VICTIMS AND WITNESSES 15 (1999), available at <https://www.ovc.gov/publications/factsheets/monograph.htm>; Ann E. Tobey et al., *Balancing the Rights of Children and Defendants: Effects of Closed-Circuit Television on Children's Accuracy and Jurors' Perceptions*, in MEMORY AND TESTIMONY IN THE CHILD WITNESS 214-239 (Maria S. Zaragoza et al. eds., 1995).
33. Whitcomb, *supra* note 26, at 150.
34. *How the CAC Model Works*, *supra* note 18.
35. Lyon & Dente, *supra* note 29, at 1183-84.
36. See *What is a Victim Advocate*, NAT'L CTR. FOR VICTIMS OF CRIME <http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/what-is-a-victim-advocate-> (last visited Nov. 20, 2017). It should be noted that there is still a dearth of research on the practice of using victim witness advocates, however, many jurisdictions have passed legislation allowing for a support person either in the form of a victim witness advocate or a parent or guardian. Bradley D. McAuliff et al., *Supporting Children in U.S. Legal Proceedings: Descriptive and Attitudinal Data from a National Survey of Victim/Witness Assistants*, 19 Psychol. Pub. Pol'y & L. 98 (2013).
37. *What is a Victim Advocate*, *supra* note 36.
38. *Id.*
39. E.g., IDAHO CODE ANN. § 19-3023 (2016) (allowing certain people, including a person who has "a supportive relationship with the child" to remain at the witness stand during the child's testimony).
40. NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE, NAT'L DIST. ATTORNEY'S ASS'N, CLOSED-CIRCUIT TELEVISION STATUTES 1 (2012), available at [http://www.ndaa.org/pdf/CCTV%20\(2012\).pdf](http://www.ndaa.org/pdf/CCTV%20(2012).pdf).
41. LINDA A. SMITH, SAMANTHA HEALY VARDAMAN & MELISSA A. SNOW, SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING OF MINORS: AMERICA'S PROSTITUTED CHILDREN 17-18, 37 (2009).

42. OFFICE FOR VICTIMS OF CRIME & BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, *The Victim as a Witness*, OFFICE FOR VICTIMS OF CRIME TRAINING & TECHNICAL ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/54-landing-a-successful-prosecution/the-victim-as-a-witness/> (last visited Nov. 20, 2017) (“[F]or a human trafficking victim, recounting the victimization, participating in any court process, or even hearing the trafficker’s name may trigger re-traumatization.”).
43. OFFICE FOR VICTIMS OF CRIME & BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, *Using a Trauma-Informed Approach*, OFFICE FOR VICTIMS OF CRIME TRAINING & TECHNICAL ASSISTANCE CTR., <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/> (last visited Nov. 20, 2017).
44. *E.g.*, Whitcomb, *supra* note 26, at 156; SHARED HOPE INT’L, ISSUE BRIEF: PROTECTED INNOCENCE CHALLENGE COMPONENT 5.8, at 1 (2016), [http://sharedhope.org/wp-content/uploads/2015/11/Issue\\_Briefs/Issue\\_Briefs\\_5.8.pdf](http://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_5.8.pdf) (“The statutes enacted by states must have an adequate focus on all victims of sexual exploitation or abuse to ensure equal protection for those minors who pursue prosecution of their trafficker under a range of criminal laws.”).
45. *E.g.*, PHILLIPS & WALTERS, *supra* note 31, at 2, 4.
46. *E.g.*, Unif. Law Comm’n, *supra* note 32; ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE, *supra* note 32, at 48, 54-55.
47. NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE, *supra* note 40.
48. David Crump, *Child Victim Testimony, Psychological Trauma, and the Confrontation Clause: What Can the Scientific Literature Tell Us*, 8 J. C.R. & Econ. Dev. 83, 93 (1992).
49. *See id.*
50. Tobey et al., *supra* note 32, at 238.
51. Jennifer Gentile Long & Teresa Garvey, *No Victim? Don’t Give Up: Creative Strategies in Prosecuting Human Trafficking Cases Using Forfeiture by Wrongdoing and Other Evidence-Based Techniques*, STRATEGIES (Aequitas, D.C.), Nov. 2012, at 1, 1, available at [http://www.aequitasresource.org/S\\_Issue\\_7\\_No\\_Victim-Dont\\_Give\\_Up.pdf](http://www.aequitasresource.org/S_Issue_7_No_Victim-Dont_Give_Up.pdf).
52. *Id.*
53. NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE, *supra* note 40.
54. *Id.*
55. *The Victim as a Witness*, *supra* note 42; PHILLIPS & WALTERS, *supra* note 31, at 16.
56. Mary Fan, *Adversarial Justice’s Casualties: Defending Victim-Witness Protection*, 55 B.C. L. REV. 775 (2014), available at [http://bclawreview.org/files/2014/05/02\\_fan.pdf](http://bclawreview.org/files/2014/05/02_fan.pdf); *See also* David P.H. Jones & J. Melbourne McGraw, *Reliable and Fictitious Accounts of Sexual Abuse to Children*, 2 J. INTERPERSONAL VIOLENCE 27 (1987); Alan A. Stone, *Post-Traumatic Stress Disorder and the Law: Critical Review of the New Frontier*, 21 BULL. AM. ACAD. PSYCHIATRY & L. 23, 28 (1993), available at <http://jaapl.org/content/jaapl/21/1/23.full.pdf>; John E.B. Meyers et al., *Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 23-25 (1996), available at <http://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1068&context=facultyarticles>.
57. Alan A. Stone, *supra* note 56, at 27.
58. Whitcomb, *supra* note 26, at 149.
59. *Id.* at 150
60. *Id.*
61. *See Using a Trauma-Informed Approach*, *supra* note 43; *See* PHILLIPS & WALTERS, *supra* note 31, at 2 (“[W]hen a child feels comfortable, s/he will have better recall, testify more accurately and efficiently, and experience less re-traumatization.”).
62. NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE, *supra* note 40 (noting that a child is subject to cross examination as part of the process of testifying via CCTV).
63. Tobey et al., *supra* note 32, at 238.
64. *Maryland v. Craig*, 497 U.S. 836, 844 (1990).
65. Lyon & Dente, *supra* note 29, at 1186.
66. *Id.* at 1183.
67. *Id.* at 1188-89.
68. *See id.* at 1183-84, 1188-89.
69. 497 U.S. 836.
70. *Id.* at 850.
71. *Id.* at 855.
72. *Id.* at 856.

73. In *White v. Illinois*, 502 U.S. 346 (1992), the Defendant was on trial for sexually assaulting a four-year-old girl. Crump, *supra* note 48, at 85 (contextualizing *White*). The girl made statements to her mother, her babysitter, an investigating officer, a doctor and an emergency room nurse regarding her assault. *Id.* The trial court admitted these out-of-court statements under hearsay exceptions for “statements made during the course of securing medical treatment” and “spontaneous declarations.” *Id.* at 86. The Defendant argued that under *Ohio v. Roberts*, 448 U.S. 56 (1980), the Confrontation Clause required the trial court to first find that the witness was unavailable before relying on a hearsay exception to admit the statements. *See id.* The Court concluded that the Confrontation Clause does not require the Prosecution to demonstrate that the witness is unavailable before a trial court can admit testimony under a hearsay exception. *Id.* at 86, 97. *White* had no bearing on the *Craig* holding except to affirm the notion that the Confrontation Clause does not prevent trial courts and prosecutors from instituting certain provisions to prevent victims of child abuse from experiencing significant trauma or emotional distress, and that the government has a significant interest in protecting children from the trauma of facing an abuser in open court.
74. *See Lyon & Dente, supra* note 29, at 1186 (citing *Whorton v. Bockting*, 549 U.S. 406, 419 (2007)).
75. *Id.* at 1185.
76. *Id.* (discussing the holding in *Ohio v. Roberts*, 448 U.S. 56, 66 (1980)).
77. *See id.* at 1187-89.
78. *Id.* at 1186 (discussing the impact of *Crawford v. Washington*, 541 U.S. 36 (2004), on prosecutions).
79. *Id.*
80. *Id.* at 1187-89.
81. *Id.* at 1188.
82. 18 U.S.C. §§ 403, 2258, 3509 (2017). *See also* THE VICTIMIZATION OF CHILDREN: EMERGING ISSUES 243 (Janet Mullings, James Marquart & Deborah Hartley eds., Routledge 2013) (2003).
83. THE VICTIMIZATION OF CHILDREN: EMERGING ISSUES, *supra* note 82, at 240.
84. *Id.*
85. *E.g.*, FED. R. EVID. 804(b)(6). In the Federal Rules of Evidence and some states, the hearsay exception may be referred to differently though it applies the same doctrine.
86. *Id.*
87. Lyon & Dente, *supra* note 29, at 1184 (analyzing the impact *Giles v. California*, 554 U.S. 353 (2008) had on the “forfeiture by wrongdoing” doctrine).
88. *Id.* at 1194.
89. *Id.* at 1196.
90. A deposition is “the taking and recording of testimony of a witness under oath before a court reporter, in a place away from the courtroom before trial.” *Legal Dictionary*, THE FREE DICTIONARY, <http://legal-dictionary.thefreedictionary.com/deposition> (last visited Nov. 20, 2017).
91. DEV. SERV. GRP. INC., COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN/SEX TRAFFICKING 3 (2014), available at <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.
92. The term “trauma bond” refers to a victim’s dysfunctional attachment to their trafficker that results from the trafficker’s alternate behavior of “caring for” and dehumanizing the victim. SMITH ET AL., *supra* note 41, at 43-44; Chitra Raghavan & Kendra Doychak, *Trauma-coerced Bonding and Victims of Sex Trafficking: Where Do We Go from Here?*, 17 INT’L J. EMERGENCY MENTAL HEALTH & HUM. RESILIENCE 583 (2015), available at <https://www.omicsonline.com/open-access/traumacoerced-bonding-and-victims-of-sex-trafficking-where-do-we-go-from-here-1522-4821-1000223.php?aid=55771>; Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 CLINICAL PSYCHOL. REV. 271 (2002), available at <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1058&context=psychfacpub>.
93. *E.g.*, Lyon & Dente, *supra* note 29, at 1185.
94. *Id.*
95. *Id.* at 1205, 1232.
96. *See* SMITH ET AL., *supra* note 41, at 31.
97. *See* Cheryl Nelson Butler, *The Racial Roots of Human Trafficking*, 62 UCLA L. REV. 1464, 1483-84 (2015).
98. *Id.*; Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 870-71 (2016) (finding that publicized stories of police violence against black men results in reduced calls to police in black communities).
99. Fifty-seven percent of juvenile prostitution arrests are Black or African-American children. *Crime in the United States 2016*, FED. BUREAU INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-21> (last visited Dec. 15, 2017).
100. SMITH ET AL., *supra* note 41, at 38-39, 60-61.
101. Nelson Butler, *supra* note 97, at 1482.
102. *See* PHILLIPS & WALTERS, *supra* note 31, at 5-6; *Address Confidentiality Programs*, STALKING RES. CTR., <https://victimsofcrime.org/our-programs/stalking-resource-center/help-for-victims/address-confidentiality-programs> (last visited Nov. 20, 2017).

- <sup>103</sup> These states may also provide other alternative methods by which victim witnesses can testify but, for purposes of this paper, if a state extends CCTV to child sex trafficking victims, other alternative methods of testimony the state offers are not discussed.
- <sup>104</sup> See *infra* Figure 3.
- <sup>105</sup> See *infra* Figure 1.
- <sup>106</sup> See *infra* Figure 1.
- <sup>107</sup> See *infra* Figure 1.
- <sup>108</sup> See, e.g., KY. REV. STAT. ANN. § 421.350(2), (5) (2017).
- <sup>109</sup> See, e.g., MASS. GEN. LAWS ch. 278, § 16D(b)(1) (2016).
- <sup>110</sup> IND. CODE § 35-37-4-8(e)(1)(B) (2016).
- <sup>111</sup> KAN. STAT. ANN. § 22-3434(b) (2017).
- <sup>112</sup> See, e.g., IOWA CODE 599.1, 915.38(1)(a) (2017).
- <sup>113</sup> §§ 915.38(1)(a).
- <sup>114</sup> *Id.*
- <sup>115</sup> § 915.38(1)(a)-(b).
- <sup>116</sup> See *infra* Figure 3
- <sup>117</sup> See *infra* Figure 3
- <sup>118</sup> See *infra* Figure 3
- <sup>119</sup> See *infra* Figure 3
- <sup>120</sup> See *infra* Figure 4.
- <sup>121</sup> See *infra* Figure 4.
- <sup>122</sup> See *infra* Figure 4.
- <sup>123</sup> See, e.g., MINN. STAT. § 595.02(4)(c)(1)-(2) (2016).
- <sup>124</sup> See, e.g., IOWA CODE § 915.38(1)(b) (2017).
- <sup>125</sup> A pro se defendant is a defendant who represents themselves rather than utilizing legal counsel. Legal Information Institute, Wex, CORNELL U. L. SCH., [https://www.law.cornell.edu/wex/pro\\_se](https://www.law.cornell.edu/wex/pro_se) (last visited Nov. 20, 2017).
- <sup>126</sup> DEL. CODE ANN. tit. 11, § 3514(c) (2017).
- <sup>127</sup> TEX. CODE CRIM. PROC. ANN. art. 38.071 (2015).
- <sup>128</sup> *Id.* at § 3(a).
- <sup>129</sup> *Id.* at § 11.
- <sup>130</sup> TENN. CODE ANN. § 24-7-120(b)(7) (2017).
- <sup>131</sup> See Assemb. 1276, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
- <sup>132</sup> CAL. PENAL CODE § 1347.1(a)-(a)(1) (n.d.).
- <sup>133</sup> § 1347.1(a).
- <sup>134</sup> § 1347.1(a)(2).
- <sup>135</sup> § 1347.1(a)(1)-(3).
- <sup>136</sup> See *infra* Figure 1.
- <sup>137</sup> See *infra* Figure 1.
- <sup>138</sup> See *infra* Figure 1.
- <sup>139</sup> COLO. REV. STAT. § 18-3-413(1) (2016).
- <sup>140</sup> § 18-3-413(1), (3).
- <sup>141</sup> § 18-3-413(4).
- <sup>142</sup> See *infra* Figure 4.
- <sup>143</sup> MO. REV. STAT. §§ 491.678, 680(1) (2016). In camera, means the deposition takes place privately (i.e., no public or press) before the judge. Legal Information Institute, Wex, CORNELL U. L. SCH., [https://www.law.cornell.edu/wex/in\\_camera](https://www.law.cornell.edu/wex/in_camera) (last visited Nov. 20, 2017).
- <sup>144</sup> § 491.680(2).

<sup>145</sup> §§ 491.680(3), 685(1).

<sup>146</sup> Gentile Long & Garvey, *supra* note 51, at 2.

<sup>147</sup> See *infra* Figure 1.

<sup>148</sup> Prosecutorial experts such as AEQUITAS and the National District Attorneys Association have a plethora of resources for prosecutors seeking to better support vulnerable victim witnesses, particularly those who have experienced sexual violence, child abuse, and intimate partner violence. See generally AEQUITAS, <http://www.aequitasresource.org/> (last visited Nov. 20, 2017); NAT'L DISTRICT ATTORNEYS ASS'N, <http://www.ndaa.org/index.html> (last visited Nov. 20, 2017).

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