

# SECTION 3

## Recommendations for Statutory Changes

### Summary of Recommendations

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**Recommendation #1:** Enact Safe Harbor legislation regarding child victims of commercial sexual exploitation that includes an immunity provision for the charge of prostitution to go into effect on January 1, 2018.

- a) Include a 24-month implementation plan for Safe Harbor that will allow for improvements of the multiple systems that will be used to serve this victim population.
- b) Include a sunset provision with a post-enactment review that will take place two years after the immunity provision has gone into effect.

**Recommendation #2:** No further action recommended at this time regarding the creation of other legal protections for child victims of commercial sexual exploitation for offenses related to that exploitation. The legislature has already created an affirmative defense against a charge of prostitution (C.R.S. § 18-7.201.3)

**Recommendation #3:** Colorado's Safe Harbor law should utilize the existing temporary custody provisions in Title 19 for the assessment, placement and treatment of suspected child victims and identified child victims of commercial sexual exploitation.

- a) Temporary Custody should be based on least restrictive care up to and including staff secure placement, and add to the statute the option of hospitalization if criteria are met.
- b) Temporary Custody should include possible placement in a locked detention facility, as it currently exists in Title 19, for a period of not more than 24 hours.
- c) Add human trafficking of minors for sexual servitude and commercial sexual exploitation of a minor to the definition of child abuse when such conduct is committed by a third party and mandate a child welfare response in all suspected, high risk and identified cases of juvenile sex trafficking.

**Recommendation #4:** The Council recommends that the Legislative Task Force address the following issues in 2016:

- a) Continue discussions regarding the prosecution of or granting immunity to child victims of trafficking for offenses, other than prostitution, related to their exploitation;
  - b) Statutory changes related to labor trafficking;
  - c) Information sharing in trafficking cases between involved entities; and
  - d) Researching the need for any statutory changes that would aid in the prosecution and punishment of persons who engage in human trafficking.
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## Introduction

The Colorado General Assembly, in HB14-1273, tasked the Colorado Human Trafficking Council to consider and make recommendations to the Judicial Committees of the House of Representatives and the Senate concerning any statutory changes deemed necessary to facilitate the prosecution and punishment of persons who engage in, and to protect the victims of, human trafficking.<sup>36</sup> To accomplish this mandate, the Council formed a Legislative Task Force (LTF) to specifically examine:

- How are current statutes in Colorado working?
- Is there a need for criminal or civil statutory changes?
- What statutes have other states implemented related to human trafficking?
- Are there statutes at the Federal level that Colorado should consider implementing at the state-level?

Following the formation of this task force, the General Assembly passed HB15-1019, which directed the Council to examine issues regarding the response to juvenile victims of commercial sexual exploitation. The Council assigned this responsibility to the Legislative Task Force. HB15-1019 framed much of the task force's work in 2015 as the task force examined whether or not the General Assembly should enact legislation concerning:

- A. The prosecution of, or granting of immunity to, a child victim of commercial sexual exploitation for offenses related to that exploitation;
- B. The creation of other legal protections, including statutory defenses for child victims of commercial sexual exploitation for offenses related to that exploitation and the creation of any necessary changes to Title 19, C.R.S., to implement those legal protections or defenses;

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<sup>36</sup> C.R.S. § 18-3-505(4)(c).

- C. Standards, guidelines, or mandates regarding the appropriate assessment, placement, and treatment of child victims of commercial sexual exploitation through Title 19, C.R.S., including but not limited to the use of locked placement.<sup>37</sup>

The LTF made the intentional decision to focus their work exclusively on the complex task of providing recommendations to the General Assembly on whether they should enact Safe Harbor legislation. As a result, the LTF did not discuss the need for statutory changes to help facilitate the prosecution and punishment of persons who engage in human trafficking.

### **Safe Harbor Research – What Is Happening in Other States?**

To address the legislative mandates, a review of existing federal, state, and model Safe Harbor laws was conducted with a specific examination of their structure, effectiveness, and applicability for Colorado.<sup>38</sup> However, comprehensive research regarding efficacies in human trafficking<sup>39</sup> response in general and Safe Harbor laws in particular is challenging because the anti-trafficking field is rapidly evolving. Consequently, a quantitative approach was used to examine and categorize existing laws, and a qualitative approach was used to interview several individuals in four specific states selected because of their similarity to Colorado or their specific approach to Safe Harbor. Finally, and importantly, the Council relied heavily on the experience of Council and task force members who have worked extensively with juvenile victims of human trafficking.

While the legislative review and qualitative interviews informed some of the LTF's work, it also demonstrated that no consistent definition of Safe Harbor exists, the laws are relatively new, vary widely from state to state, and few outcome measures exist to evaluate the efficacy of different approaches, particularly varying approaches to protective custody and immunity provisions for crimes committed by trafficking victims. Additionally, immunity statutes typically refer to immunity from charges of prostitution only.

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<sup>37</sup> C.R.S. § 18-3-505(4)(a)(III)(A)-(C).

<sup>38</sup> An analysis of Safe Harbor statutes was conducted by the First Judicial District Attorney's office, the Colorado Attorney General's Office and Division of Criminal Justice staff.

<sup>39</sup> When used in this section of the report, the term "human trafficking" refers specifically and exclusively to juvenile sexual servitude and commercial sexual exploitation of a child.

The legislative review showed that roughly 75% of U.S. states have some form of Safe Harbor legislation.<sup>40</sup> Of that number, 38% offer some level of immunity for minors charged with prostitution and related offenses. The legal review yielded four general categories of Safe Harbor legislation:

1. Decriminalization statutes grant total immunity to minors found engaging in prostitution, though the age cut-off for said immunity ranges by state.
2. Diversion statutes give courts and prosecutors the option to either charge the minor with a crime, or to charge them and then divert them into another system/process, such as juvenile diversion, a stay or an abeyance.
3. Reclassification statutes do not charge the minor engaging in prostitution with a crime, but instead classify the minor into an existing category such as a dependent or neglected minor.
4. Affirmative defense statutes allow those charged with prostitution related offenses the opportunity to offer a defense, typically of coercion.

Some states have combined these statutory approaches, while others have built programs focused on just one form. Additionally, statutes vary in their specificity, with some prescribing clear procedures for courts and agencies to follow while others simply create broad contours.

In addition to examining existing laws, DCJ staff conducted informal qualitative interviews with government employees and non-governmental services providers in four states – Illinois, Ohio, Minnesota, and Connecticut – about existing Safe Harbor laws to gain a more detailed understanding of the practical application of statutory Safe Harbor laws. The interviews were

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<sup>40</sup> This number is an approximate because Safe Harbor statutes vary widely and some extrapolation of intent was required. Research sources included online research of current state statutes and two secondary sources: Shared Hope International. (2015). *JuST Response State System Mapping Report: a Review of Current Statutes, Systems, and Service Responses to Juvenile Sex Trafficking*. Retrieved on November 12, 2015 from [http://sharedhope.org/wp-content/uploads/2015/03/JuST-Response-Mapping-Report\\_Digital.pdf](http://sharedhope.org/wp-content/uploads/2015/03/JuST-Response-Mapping-Report_Digital.pdf) and Advocating Opportunity (2015) and *Fifty State Survey: Safe Harbor Laws and Expungement, Sealing, and Vacatur Provisions with Related Statutes Pertaining to Trafficked Persons*. Retrieved on November 12, 2015 from <http://advocatingopportunity.com/wp-content/uploads/2015/03/Fifty-State-Survey-Safe-Harbor-Laws-and-Expungement-Sealing-and-Vacatur-Provisions-with-Related-Statutes-for-Trafficked-Persons.pdf>

conducted to better understand how the states developed and implemented their laws, as well as the law's strengths and weaknesses.<sup>41</sup>

Illinois statute grants immunity but has no required referral to services; state and NGO officials have grappled with how to address service provision that adequately meets the needs of sex trafficking victims. Ohio's statute does not grant immunity but holds charges in abeyance if victims agree to access services. Their officials cited the challenges of implementing a consistent and reliable diversion process across 80 counties. Minnesota's statute grants immunity, has a referral to services, uses regional coordination, and also included a three-year implementation plan to develop their Safe Harbor service provision. Officials from Minnesota stated that, while this approach successfully provided opportunities for training and the creation of response protocols, the development of specialized treatment services has proven challenging. Connecticut statute grants immunity for youth under the age of 16 and a presumption of coercion for committing the offence for youth ages 16 and 17. Connecticut's Safe Harbor statute established a regional coordination system through their child welfare agencies to provide services. This approach to Safe Harbor, which is centralized within their child welfare system, has yielded a more consistent service approach throughout the state and better tracking of victims and outcomes.

The broad lessons learned from the interviews include:

- Training of all individuals involved in response to human trafficking, including judges, is essential.
- An implementation plan is helpful.
- Where used, regional coordination has been effective.
- The lack of specialized services for this population is pervasive and a challenging issue to address.

The legislative review was compiled into a state-by-state analysis (Table 2) that catalogued which states have some form of Safe Harbor law, whether their law provided immunity from prostitution offenses, and what form of "Safe Harbor" is provided. The table also flags states that have similar administrative structures for child welfare to Colorado and which do not.

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<sup>41</sup> Four states were interviewed: Illinois, Connecticut, Minnesota, and Ohio. These states were picked as they represented a range of responses to Safe Harbor policy and/or for their similarity to the decentralized human services system that exist in Colorado.

<b>Table 2 State-by-State Analysis of Safe Harbor Legislation</b>								
State-by-State Statutes			Form of Safe Harbor Provided				Child Welfare Administration Type***	
State	Safe Harbor Provision*	Possible Immunity	Diversion	Decriminalization for minors engaging in prostitution (age cut-off varies by state)	Possible re-classification of minors engaging in prostitution	Affirmative defense for those charged with prostitution	State Administered	County Administered States/hybrid State-county administered
AL	✓					✓	✓	
AK							✓	
AZ	✓					✓	✓	
AR	✓					✓	✓	
CA								✓
CT	✓					✓	✓	
DE	✓		✓		✓		✓	
FL	✓				✓		✓	
GA	✓					✓	✓	
HI							✓	
ID							✓	
IL	✓	✓		✓	✓		✓	
IN							✓	
IA	✓				✓		✓	
KS	✓				✓	✓	✓	
KY	✓	✓		✓	✓		✓	
LA	✓	✓		✓	✓		✓	
MA	✓				✓		✓	
MD	✓		✓			✓		✓
ME	✓						✓	
MI	✓	✓		✓			✓	
MN	✓	✓		✓				✓
MS	✓					✓	✓	
MO							✓	
MT	✓	✓		✓		✓	✓	
NE	✓	✓		✓	✓		✓	
NV	✓				✓			✓
NH	✓	✓		✓			✓	
NJ	✓		✓				✓	
NM							✓	

**Table 2** State-by-State Analysis of Safe Harbor Legislation

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NY	✓		✓					✓
NC	✓	✓		✓	✓			✓
ND	✓	✓		✓				✓
OH	✓		✓					✓
OK	✓				✓	✓	✓	
OR	✓					✓	✓	
PA								✓
RI							✓	
SC	✓	✓		✓		✓	✓	
SD							✓	
TN	✓	✓		✓			✓	
TX**	✓	✓	✓	✓		✓	✓	
UT	✓				✓		✓	
VT	✓	✓		✓		✓	✓	
VA								✓
WA	✓		✓				✓	
WV							✓	
WI								✓
WY	✓	✓		✓			✓	
<b>Total</b>	<b>37</b>	<b>14</b>	<b>6</b>	<b>14</b>	<b>13</b>	<b>14</b>	<b>38</b>	<b>11</b>

\*A Safe Harbor provision broadly refers to the existence of statute(s) that potentially protect a minor (and in some states, an adult or a minor) from criminal liability when sex trafficking is suspected.

\*\*In the case of Texas, its immunity provision was created by judicial opinion. *In re B.W.*, 313 S.W.3d 818 (Tex. 2010) the Texas Supreme Court had to reconcile conflicting provisions of Texas family and criminal laws as they related to a 13 year old convicted on a Class B misdemeanor charge of prostitution. The Court ruled that the state's anti-trafficking legislation (2003) demonstrated the legislature's intent to recognize that prostituted minors are victims not criminals, but its decision is limited to minors under 14.

\*\*\*Child Welfare Information Gateway. (2012). State vs. County Administration of Child Welfare Services. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Retrieved on December 4, 2015 from <https://www.childwelfare.gov/pubPDFs/services.pdf>

## Safe Harbor Recommendations

The Council began working on these issues by developing an agreed upon set of core concepts:

- A victim-centered approach should guide discussions.
- Trafficked individuals (including commercially sexually exploited children) should be identified as victims.
- The state should intervene to stop and/or prevent exploitation.
- To the extent possible, state, local, and non-governmental entities should collaborate to develop programs and provide appropriate victim services to human trafficking victims through the use of existing resources.
- A multidisciplinary approach that encompasses a variety of stakeholders is necessary to address the needs of this victim population.
- An implementation plan of task force recommendations will require adequate funding for service provision and training of relevant stakeholders.

Following the adoption of the core concepts and prior to addressing the specific mandates contained in HB15-1019, the Council discussed whether the Safe Harbor recommendations should include juvenile labor trafficking victims in addition to commercially sexually exploited children (CSEC). Following the discussion, and due to the acknowledged complexities of developing Safe Harbor for CSEC victims, the Council voted to limit the recommendations, at this time, to CSEC. The Council also committed to expanding their examination of Colorado's laws and Safe Harbor, in 2016, to include labor trafficking victims.

### The Question of Immunity

**Recommendation #1:** Enact Safe Harbor legislation regarding child victims of commercial sexual exploitation that includes an immunity provision for the charge of prostitution to go into effect on January 1, 2018.

- a) Include a 24-month implementation plan for Safe Harbor that will allow for improvements of the multiple systems that will be used to serve this victim population.
- b) Include a sunset provision with a post-enactment review that will take place two years after the immunity provision has gone into effect.

Broad agreement existed within the Council regarding the need for Colorado to develop a Safe Harbor response for child victims of commercial sexual exploitation. Safe Harbor, nationally



and in Colorado, intends to provide a victim-centered response for child trafficking victims, while also seeking to maximize the capacity of the criminal justice system's response to the traffickers.

The Council approached the issue of whether or not to grant immunity to trafficking victims for exploitation related offenses by dividing the offenses into three categories: 1) prostitution, 2) "victimless" crimes or crimes where the state is the named victim, and 3) all other offenses. The majority of the discussion focused on whether to grant immunity on prostitution charges.

***The arguments for granting immunity from the charge of prostitution:***

- Juvenile prostitution is an act of sexual assault; we should not charge sexual assault victims with a crime as no other child sexual assault victim faces criminalization for the abuse inflicted upon them. By charging victims with prostitution it sends a message that juvenile victims are responsible for their own exploitation.
- Trafficked individuals (including CSEC) should be treated as victims, not criminals.
- Arrest and criminal records resulting from charges and confinement in the juvenile justice system potentially have negative long-term impacts for victims with regard to obtaining future employment and housing.
- Arrest and charging victims with prostitution creates distrust of law enforcement and state agencies, thereby discouraging relationships with those who seek to help them. This can, in turn, strengthen the trauma bond between child and trafficker. It models coercion for the victims.
- Traffickers use the system to threaten their victims by telling them they will be arrested if they get caught.
- Detention incarcerates victims with, and treats them the same as, juvenile offenders. The use of detention results in deprivation of liberty, physical restraint, strip searches and other traumatizing and stigmatizing actions.
- Detention facilities may not be equipped to provide trauma-informed care, treatment, and resources to exploited youth. Detention facilities place victims with criminal offenders who possess a serious safety risk to the victim; conversely, the victim may develop relationships with criminal offenders and delve further into delinquency.
- There have only been six cases of youth charged with prostitution in two years in Colorado, therefore there may no longer be a need to have this statute available.

- Prostitution charges are used as leverage by prosecutors to gain victims' cooperation in the case against traffickers.
- Granting immunity forced other states into action and drove the creation of treatment options.
- There are potentially numerous treatment options available through the child welfare system for exploited and victimized youth. The proposed Safe Harbor provision will mandate a child welfare response to this population.
- In Colorado, charging minors with prostitution has not proven to be an effective deterrent for minors to exit the commercial sex industry following incarceration.

***The arguments against granting immunity for the charge of prostitution:***

- Without arrest, a locked placement option, and a mandate to services through the juvenile justice system some child victims will return to their trafficker, and further endanger themselves.
- Underlying criminal actions provide the authority for the state to order juveniles into treatment; without charges, service options are unavailable through the juvenile justice system.
- The juvenile justice system can be an alternative option for services. There are more options for service provision through the juvenile justice system, particularly the ability for out of state placement.
- Prosecutors use arrest and prostitution charges as leverage to gain victims' cooperation in cases against the traffickers. There will be a loss of leverage if immunity is passed.
- Providing immunity for the charge of prostitution could hinder the investigation of the traffickers.
- Decriminalizing juvenile prostitution could encourage pimps to use juveniles rather than adults in their operations.
- If juveniles are no longer able to be charged with prostitution, officers may be discouraged from contacting juveniles involved in that behavior; limiting contact will limit discovery of these crimes.
- Juveniles will recognize they cannot be prosecuted for behavior which may increase juvenile prostitution in Colorado.

- Statewide, over the last two years, only six juveniles were charged with prostitution. Five out of those six cases were dismissed upon the juvenile receiving appropriate referrals to services and treatment. Prosecutors use appropriate discretion.
- Immunity for the charge of prostitution will not grant immunity for all crimes associated with a youth’s victimization. Therefore, it will not yield greater access to victims for forensic interviewing purposes.
- If the charge of prostitution is no longer available, juveniles will more likely be charged with felony-level sex offenses. Prostitution charges may be preferable to other charges due to expungement/sealing options available on prostitution charges.
- The affirmative defense that is provided under C.R.S. § 18-7.201.3, which passed in 2015, adequately protects victims from prosecution for prostitution.

Through the discussions, Council members acknowledged two underlying issues: 1) the lack of specialized placements and service options currently available to meet the immediate treatment needs of this specific population; and 2) the lack of comprehensive research regarding the efficacy of charging or not charging child victims with prostitution.

**Vote:** Following extensive discussions, a majority of the Council (17-6, 4 abstentions) voted to include the recommendation that child sex trafficking victims be granted immunity for the charge of prostitution. Votes are highlighted in Table 3.

<b>Table 3. Council Vote on Immunity for the Charge of Prostitution</b>		
<b>For (17)</b>	<b>Against (6)</b>	<b>Abstain (4)</b>
Tom Acker	Janet Drake	Lawrence Hilton
Lester Bacani	Katie Kurtz	Patricia Medige
Jill Brogdon	Cara Morlan	Tammy Schneiderman
Maureen Cain	Sara Nadelman	Robert Werthwein
Claude d’Estrée	Jo-Ann O’Neil	
Mari Dennis	Justin Smith	
Amanda Finger		
Debi Grebenik		
Sterling Harris		
Angela Lytle		
Lynn Johnson		
Jason Korth		
Saida Montoya		
Don Moseley		
Michelle Salazar		
Dan Steele		
Marty Zaffaroni		

### *Implementation Plan, Sunset and Post-Enactment Review*

The Council approved an additional recommendation to include a sunset and post-enactment review of immunity granted for prostitution charges to mitigate the issue of unintended consequences. This review would take place two years after the immunity provision becomes state statute. The Council also voted that the immunity for prostitution provision should have a delayed effective date of January 1, 2018. The Council wanted to heed the advice of experts in other states and include a 24-month implementation plan before the immunity provision would go into full effect. During the implementation phase, it is the recommendation of the Council to develop and mandate a statewide screening tool with local adaptability. Once the assessment tool is developed it is recommended that law enforcement, departments of human services, probation/diversion, juvenile assessment centers, and prosecutors be required to utilize the tool. The screening tool would be used to identify juveniles who are at risk for sex trafficking (including CSEC) as well as to identify victims of sex trafficking (including CSEC). Additionally, during this implementation phase protocols for the various sectors involved in responding to this victim population would be created. The Council notes the vital role training plays in the success of Safe Harbor implementation. Therefore, the Council strongly recommends training standards and curricula to be developed and delivered to all professionals who would engage with this victim population, especially those individuals who participate on a response team. The training curricula development and execution would also occur during the 24-month implementation phase.

The Council expressed concern that victims of trafficking should not be incarcerated or penalized for any acts committed as a result of being trafficked, as victims may be compelled to commit a range of crimes besides prostitution by their trafficker. The Council discussed the issue of immunity from victimless crimes related to the victims' exploitation (e.g. forced drug sales, stealing, begging, larceny, immigration offenses, etc.). The Council members acknowledged that defining and enumerating "victimless crimes" would be a challenging task. As with the issue of immunity for prostitution charges, the Council was split on granting immunity for other crimes related to the victim's exploitation, regardless of how they were defined. Consequently, due to the differing opinions regarding immunity for prostitution, the Council decided to conduct further research and discussion regarding immunity for other crimes following the development of the initial Safe Harbor recommendations.

### Other Legal Protections

**Recommendation #2:** No further action is recommended at this time regarding the creation of other legal protections for child victims of commercial sexual exploitation for offenses related to that exploitation. The legislature has already created an affirmative defense against a charge of prostitution (C.R.S. § 18-7.201.3)

The passage of SB15-30 (C.R.S. § 18-7.201.3), which provides an affirmative defense against prostitution charges for human trafficking victims, addressed the initial need to explore other legal protections for child victims of commercial sexual exploitation (see full statute in Appendix 12, pg. 77). Consequently, the Council focused their discussions on creating a comprehensive Safe Harbor framework and tabled the issue of other legal protections for child victims of commercial sexual exploitation for offenses other than prostitution, which are related to their exploitation for deliberation in 2016.

### Assessment, Placement and Treatment of Child Victims

**Recommendation #3:** Colorado's Safe Harbor law should utilize the existing temporary custody provisions in Title 19 for the assessment, placement and treatment of suspected child victims and identified child victims of commercial sexual exploitation.

- a) Temporary Custody should be based on least restrictive care up to and including staff secure placement, and add to the statute the option of hospitalization if criteria are met.
- b) Temporary Custody should include possible placement in a locked detention facility, as it currently exists in Title 19, for a period of not more than 24 hours.

Add human trafficking of minors for sexual servitude and commercial sexual exploitation of a minor to the definition of child abuse when such conduct is committed by a third party and mandate a child welfare response in all suspected, high risk and identified cases of juvenile sex trafficking. The Colorado Human Trafficking Council's Standards and Certification Task Force will address the development of standards, guidelines, or mandates for appropriate assessment and treatment of suspected child sex trafficking victims (including CSEC) as part of their overarching task. The initial recommendations can be found in that section of this report (starting on pg. 47).

The focus, as it relates to the Safe Harbor components, were on the short-term needs of child trafficking victims, which are defined as the first 72 hours after initial contact with a suspected trafficking victim or a confirmed trafficking victim. The discussion included:

- Add human trafficking of a minor for sexual servitude (C.R.S. § 18-3-504) and sexual exploitation of a minor (C.R.S. § 18-6-403) when such conduct is committed by a third party as crimes defined in the Colorado's child abuse statutes.<sup>42</sup>
- Address the third party limitation of a child welfare response, including a mandate that child welfare respond in all juvenile suspected, identified as high risk, and human trafficking (including CSEC) victim cases<sup>43</sup> (interfamilial and third-party).
- Mandate immediate communication between child welfare and law enforcement following initial contact by either entity.
- Use locked detention facilities to hold juvenile trafficking victims. This would include adding the option to utilize hospitalization, if existing criteria is met, to the existing placement options for temporary custody.
- Use a response team comprised of law enforcement, child welfare, and victim advocate(s) to conduct the initial assessment.
- Use Children's Advocacy Center or like facility for forensic interviews of suspected victims.
- Use of forensic interviewers who are trained to conduct forensic interviews with victims of human trafficking.
- Develop of a regional navigator network.
- Mandate data collection, evaluation, reporting on outcomes, and on impact and efficacy of Safe Harbor.

Currently, child welfare agency response to juvenile human trafficking cases is inconsistent throughout the state. To improve consistency, the majority of the Council recommends adding human trafficking of minors for sexual servitude and the sexual exploitation of minors when such conduct is committed by a third party as crimes defined in the Colorado's child abuse

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<sup>42</sup> These crimes exist in the child abuse statute C.R.S. § 19-1-103(1)(a)(II) which references C.R.S. § 16-22-102(9) where the specific crimes of (j) human trafficking of a minor for sexual servitude and (k) sexual exploitation of children but not with a specific reference to such an act being committed by a third-party.

<sup>43</sup> All three categories are necessary to ensure an appropriate response. The term "suspected" guarantees a response to all reports of suspected trafficking from mandatory child abuse reporters and "high-risk" encompasses juveniles identified as such through the use of a screening tool.

definitions, while also mandating a child welfare response in all suspected, high-risk and identified juvenile human trafficking (including CSEC) cases, regardless of the relationship of the trafficker to the victim.

The locked detention facility discussion focused on the issues of victim safety and victim trauma. Members advocating the use of locked detention facilities noted that the use of such facilities was the one guaranteed method of ensuring that victims could not immediately return to their trafficker or other dangerous situations. Members advocating against the use of locked detention facilities noted that trafficking victims already experience a great deal of trauma and locking them up may add to their trauma. Additionally, locking up victims reinforces the message victims receive from their traffickers that law enforcement will arrest them. The final recommendation from the Council was to affirm that temporary protective custody should be based on the least restrictive setting up to and including staff secure placement with the additional option of utilizing hospitalization, if appropriate. Additionally, the majority of the Council wanted to ensure that the existing Title 19 option for using a locked placement for up to 24 hours remain available for trafficking victims.

The Council members agreed that the initial response should be multidisciplinary with early determinations that do not rely solely on one individual or agency perspective, but instead favor a group discussion and decision-making process involving law enforcement, child welfare and victim advocate(s). The Council further recommends that whenever possible a community-based victim advocate and law enforcement victim advocate be used. Community-based victim advocates, when available, are included in the initial response team to advocate for the victim and to provide a confidential contact for victims. Law enforcement victim advocates, when available, are also a critical member of the response team. Although law enforcement victim advocates do not have confidentiality, they are required to ensure compliance with the Victim Rights Act on behalf of the investigating law enforcement agency. This compliance includes providing VRA notifications and referrals (i.e. victim compensation) to the parent or legal guardian of the minor victim as per statute.<sup>44</sup> The Council also wants to ensure that other entities, such as prosecutors, defense attorneys, guardians ad litem, civil attorneys, non-governmental agencies, and others can be included in the response team as needed (at the discretion of the core team members).

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<sup>44</sup>C.R.S. § 22-4.1-302(5).

There was additional discussion on the development of a regional navigator network as part of the response team. The regional navigator would cover a specific region of Colorado and become deeply knowledgeable of the various service avenues available in that area. This extensive knowledge base would help the response team in making informed treatment, placement, and service recommendations. The regional navigators would also play a key role in the implementation phase of Safe Harbor, assisting with training delivery and protocol implementation. The Council notes that engaging multiple agencies and resources from the outset comprises a promising practice in the response to human trafficking victims. Additionally, because Children's Advocacy Centers have experience working with child victims of sexual assault, members encourage that the forensic interview occur, when possible and appropriate, at a Children's Advocacy Center or other appropriate facility by a trained forensic interviewer. It is further encouraged that, when possible, the forensic interviewer has received additional training on conducting interviews specifically with this victim population.

Council members also wanted to ensure that immediate communication occur between law enforcement and child welfare following initial contact with a suspected or identified trafficking victim. Initial contact is defined as the time at which a juvenile is identified as high-risk for human trafficking (including CSEC) or is identified as a human trafficking (including CSEC) victim by either law enforcement or child welfare through the use of the mandatory screening tool. Members acknowledged this concept already exists in law but wanted to ensure that communication would occur for high-risk cases as well as identified cases.

### **Focus Areas for 2016**

Due to the complexities involved in developing the initial Safe Harbor structure, several issues were tabled for discussion in 2016. Those issues include:

1. Statutory changes related to labor trafficking;
2. Immunity for trafficking victims from crimes other than prostitution;
3. Information sharing in trafficking cases between involved entities; and
4. Researching the need for any statutory changes that would aid in the prosecution and punishment of persons who engage in human trafficking.



While the topics for discussion in 2016 are not limited solely to this list, the Council wanted to ensure these topics would be addressed in the continuing effort to develop an appropriate and effective response to all forms of human trafficking.