

What Should Judges Know About **Federal, Tribal, and State** Domestic Child Sex Trafficking Legislation?



Over the past 20 years, federal, tribal, and state governments have recognized through legislative enactment the need for particular and specialized prosecution of domestic child sex trafficking perpetrators and the need for particular and specialized identification, protection, and support of domestic child sex trafficking victims. This primer will briefly discuss those federal, tribal,¹ and state laws most pertinent to the judiciary who preside over these cases.

Trafficking Victims Protection Act of 2000 (TVPA)²

This landmark piece of legislation sets the tone for the federal government's response and addresses all forms of human trafficking, both domestic and international. It establishes protocols for the prosecution of perpetrators and outlines practices and procedures for the protection and prevention of trafficking victims. Specifically, in the area of domestic child sex trafficking, the TPVA makes clear the following:

- If the victim is a minor, force, fraud, or coercion do not need to be established; the sexual exploitation is automatically trafficking.
- The minor victim is a victim of trafficking even if the minor falsely represents himself or herself to be an adult.
- Minor victims are considered trafficking victims regardless of whether they are removed from or transported out of their communities.

Moreover, the TVPA focuses the federal government's efforts on prosecuting traffickers and buyers of commercial sex. These perpetrators are often prosecuted for violations under the Racketeer Influenced and Corrupt Organization Act (RICO),³ the Mann Act,⁴ and/or the TPVA.

Preventing Sex Trafficking and Strengthening Families Act of 2014⁵

Responding to the need to protect and prevent children and youth in foster care from becoming victims of sex trafficking, this federal enactment mandates states to identify, document, and determine services for children at risk of sex trafficking. Moreover, it requires states to report instances of sex trafficking, to locate and respond to children who run away from the foster care system, and to provide to those victims with appropriate services.

Justice for Victims of Trafficking Act of 2015 (JVTA)⁶

Under the JVTA, new resources, supports, and coordination between systems were created to care for domestic victims of trafficking. This law promotes increased training for law enforcement, child welfare, tribal governments, and juvenile justice, and encourages the state and tribal adoption of safe harbor laws. Additionally, the legislation prioritizes demand reduction efforts, imposes fines and penalties against offenders, and classifies those engaging in the production of child pornography as human traffickers. Using the penalties and fines collected, the JVTA established the Domestic Trafficking Victims' Fund to grant fund programs providing services to trafficking victims and victims of child pornography.

Juvenile Justice and Delinquency Prevention Act (JJDP)⁷

Reauthorized in 2018, this legislative enactment creates a federal-state partnership in the administration of juvenile justice and delinquency prevention. The JJDP recognizes the need for the federal government to establish standards of care and custody for

juveniles involved in the state criminal court system. Additionally, the law requires state juvenile justice facilities to screen all youth upon intake for trafficking and divert identified victims of trafficking to specialized programs and services.

Safe Harbor Laws⁸

Through the JVTa, the federal guidelines encourage states and tribes to create laws that are focused on both preventing minors from being prosecuted for prostitution, and directing juvenile sex trafficking victims to non-punitive specialized services. These laws ensure that trafficked minors are treated as victims and not as criminals and provided access to medical care, education, counseling services, and safe housing. Moreover, they redirect the arrest and prosecution of minors from juvenile delinquency proceedings to child welfare and protection proceedings. While a majority of states have adopted safe harbor laws, the laws vary from state to state and often only provide protection for trafficked minors charged with prostitution.

States with some form of safe harbor laws include:⁹

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Washington, D.C., West Virginia, and Wisconsin.

Endnotes

- 1 To determine whether the federal authorities, tribal authorities, state authorities or some combination of federal, tribal and state have jurisdiction over perpetrators, the court is required to analyze the following factors: (a) the location of the crime, (b) the political status of the victim (Indian or non-Indian), (c) the political status of the perpetrator (Indian or non-Indian) and (d) the nature of the criminal act. Until recently, federal regulations restricted the authority of tribal nations in holding non-Indian perpetrators accountable. However, with the reauthorization of the Violence Against Women Act and the Tribal Law and Order Act, tribal authorities have the power to prosecute non-Indians who commit certain criminal acts, like sex trafficking, on Native lands and/or victimize tribal members.
- 2 First enacted in 2000, the TPVA is codified under 18 U.S.C. §1591 et seq., 22 U.S.C. §7101 et seq., and 42 U.S.C. §14044 et seq. and has been reauthorized in 2003, 2005, 2008, 2013, and 2017.
- 3 18 U.S.C. §1961-1968 et seq.; Title IX of Organized Crime Control Act of 1970.
- 4 18 U.S.C. §2421 et seq. c
- 5 Pub. L. No. 113-183 (2014).
- 6 Pub. L. No. 114-22 (2015).

Tribes with some form of safe harbor laws include:¹⁰

Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Three Affiliate Tribes of the Fort Berthold Reservation (the Mandans, Hidatsa, and Arikaras Nation), Snoqualmie Indian Tribe, Oglala Sioux Tribe, Navajo Nation, Winnebago Tribe of Nebraska, Absentee Shawnee Tribe, and Prairie Band Potawatomi Nation.

Family First Prevention Services Act of 2018 (FFPSA)¹¹

This legislative enactment provides states and tribes, with an approved Title IV-E plan, with the option to use federal funding that was previously reserved for foster care placements to instead prevent foster care placement and support the reunification of children with their families. For those children that must be removed from their families, they must be placed in the least restrictive environment. Moreover, for those children and youth who have been found to be at risk of becoming or have been sex trafficking victims, the FFPSA provides funding for evidence-based, highly qualified and supportive services.

If you suspect a case of child sex trafficking, contact the National Center of Missing & Exploited Children at 1-800-THE-LOST (1-800-843-5678), visit www.cybertipline.org, or call 1-800-CALL FBI (1-800-225-5324).

- 7 Pub. L. No. 93-415, 42 U.S.C. § 5601 et seq. The JJDP Act was signed into law in 1974 and is the landmark legislation that established the OJJDP to support local and state efforts to improve the juvenile justice system. It was reauthorized in 1977, 1980, 1984, 1988, 1992, and 2002.
- 8 Safe harbor laws were synthesized from the National Council of Juvenile and Family Court Judges' National Judicial Institute on Domestic Child Sex Trafficking: Improving Outcomes for Vulnerable and Victimized Children through Judicial Action Curriculum Outline (2018).
- 9 Shared Hope International provides a 2018 comprehensive state report card on the legal framework of protection for the nation's children. They also have a downloadable toolkit to help states respond more effectively to the crime of domestic child sex trafficking. To locate your state's report card, please visit <https://sharedhope.org/what-we-do/bring-justice/reportcards/2018-reportcards/>.
- 10 This is not an exhaustive list of tribes with safe harbor statutes. For information regarding all federally recognized tribes' laws and codes, please visit <http://www.tribal-institute.org/lists/codes.htm> or <https://www.tribaltrafficking.org/tribal-trafficking-laws>.
- 11 42 U.S.C. §672.