

PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

WEST VIRGINIA REPORT CARD

West Virginia does not have a human trafficking or sex trafficking law. Abduction of a minor under 16 for prostitution provides limited deterrence. However, in contrast to federal sex trafficking law, minors are not considered abduction victims unless they are subject to force, intimidation or deception. West Virginia also has limited options to prosecute demand and protect victims.

FINAL SCORE

38.5

FINAL GRADE

F



2.5

7.5

4.5

25

8.5

15

2

10

11.5

27.5

9.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

West Virginia does not have a human trafficking or sex trafficking law, leaving these crimes to be prosecuted under any one of the commercial sexual exploitation of children (CSEC) statutes, including abduction of a minor under 16 for prostitution, detention of a minor in a place of prostitution, procuring a minor for house of prostitution, receiving support from prostitution of a minor, use of a minor to produce obscene matter, use of minors in filming sexually explicit conduct, and soliciting or enticing a minor via computer to engage in prostitution. None of these CSEC crimes refer to the victims as sex trafficking victims, preventing their identification and possibly their access to special protections and services.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. CSEC laws do not include the crime of buying sex with a minor, unless a computer is involved. The solicitation of prostitution law does not distinguish between buying sex with an adult versus a minor unless a computer was used to solicit a minor at least four years younger than the offender to engage in prostitution; however, the soliciting a minor via a computer for purposes of prostitution statute does not prohibit defense based on age mistake, leaving this defense available to buyers. West Virginia's general restitution statute permits the court to order a convicted buyer of commercial sex acts and child pornography to pay restitution for physical, psychological or pecuniary loss to victims. Buyers convicted of soliciting a minor via a computer for prostitution and of possessing child pornography are required to register as sex offenders, but those convicted of solicitation of prostitution, even when a minor is solicited, are not required to register as sex offenders.

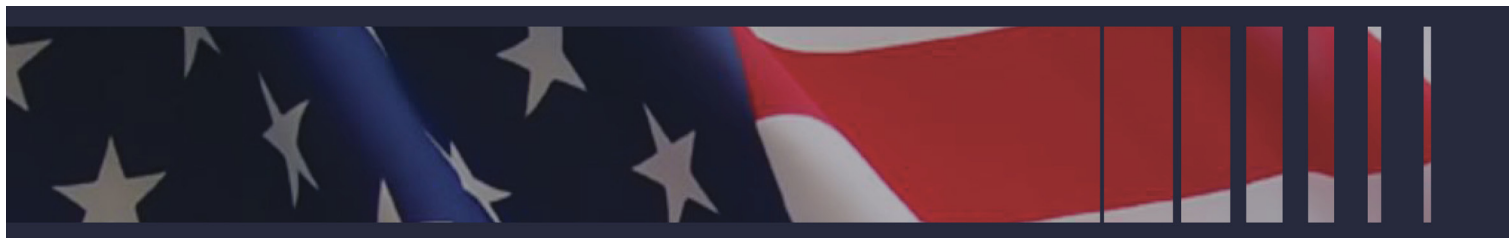
CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers convicted of felony abduction of a minor under 16 for prostitution face 3–10 years imprisonment. Detaining a minor in a place of prostitution and procuring a minor for a house of prostitution are felonies punishable by 2–5 years imprisonment and/or fines up to \$5,000. Using a minor to create child pornography is a felony punishable by up to 10 years imprisonment and/or a fine up to \$10,000 and use of a minor to produce obscene matter is a felony punishable by up to 10 years imprisonment and/or a fine not to exceed \$50,000. CSEC predicate offenses could lead to organized criminal enterprise charges with additional penalties. Using a computer to entice or lure a minor at least 4 years younger than the offender to commit prostitution is a felony, addressing this growing means of trafficking. In some instances convicted traffickers may be required to pay restitution to victims for physical, psychological, or economic injury, and specific restitution for medical, psychological, or psychiatric treatment for a victim of a child pornography offense. No law subjects traffickers to asset forfeiture. Traffickers convicted of abduction for prostitution and certain other CSEC offenses are required to register as sex offenders. A conviction for CSEC does not expressly constitute grounds for the the termination of parental rights, potentially leaving children of convicted traffickers under parent-trafficker control and at risk.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Classification | Sentence | Fine | Asset Forfeiture (available) |
|---|----------------|------------------|------------------|------------------------------|
| Soliciting a minor via computer for prostitution (§ 61-3C-14b) | Felony | 2–10 years | (and/or) \$5,000 | <input type="radio"/> |
| Houses of ill fame (solicitation of prostitution) (§ 61-8-5(b)) | Misdemeanor | 60 days–6 months | (and) \$50–\$100 | <input type="radio"/> |
| Possession of child pornography (§61-8C-3) | Felony | Max. 2 years | (and/or) \$2,000 | <input type="radio"/> |

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking victims are vulnerable due to gaps in West Virginia’s laws. A defendant in a CSEC case is not prohibited from raising consent of the minor as a defense. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. No protective provisions are statutorily mandated specifically for sex trafficking or CSEC victims, therefore victims can enter the juvenile justice system as delinquents. However, a victim found to be abused or neglected—defined to include coercing a minor to commit sexual acts, but not expressly including CSEC or pornography offenses—might receive protection through child protective services if the definition of “custodian,” which includes those in physical possession of the child, is determined to include a trafficker, thereby permitting child welfare intervention. Crime victims’ compensation is only available to victims who suffer personal injury or death, and eligibility criteria, such as filing an application within two years and reporting the crime within 72 hours unless good cause is shown, could limit a victim’s ability to recover. Victim-friendly criminal justice procedures do not extend to all CSEC victims. Only children under 13 may testify via closed circuit television and the “rape shield” law which reduces the trauma of cross-examination for testifying victims is not applicable in CSEC trials. On the later of turning 19 or one year after the child is released from the court’s jurisdiction all juvenile records are sealed. Victims may receive restitution from their exploiter and traffickers convicted of child pornography offenses will be required to pay for medical, psychological, or psychiatric care. Civil damages are expressly available to victims of soliciting a minor via a computer, but not to other CSEC victims. Civil actions generally have a two year statute of limitations, but minors injured through tort violations must file within five years, and sexual abuse victims have 20 years. No statute of limitations exists for felony prosecutions, but misdemeanors must be brought within one year.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Law enforcement officers in West Virginia are not statutorily mandated to complete training on human trafficking or domestic minor sex trafficking; however, to the extent CSEC qualifies as a criminal enterprise, some training might be included in the required training on organized crime investigations. Single party consent to audiotaping is legal and wiretapping may be used in abduction investigations, but not other CSEC offenses. While no specific statutory language permits the use of a decoy in CSEC or sex trafficking investigations, law enforcement officers might be able to use the Internet to investigate these cases relying on the soliciting a minor via a computer law, though a defense is possible that the officer is not, in fact, a minor. West Virginia law requires reporting and updating reports of missing children. Law enforcement must promptly enter information on missing children into the “Missing Children Information Clearinghouse” and must notify the clearinghouse upon recovering a missing child, allowing law enforcement to identify repeat runaways who are at high-risk for sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators who aid or abet the abduction of a minor under 16 for prostitution are guilty of a felony punishable by 3–10 years imprisonment. Facilitators who indirectly detain a minor in a place of prostitution commit a felony punishable by 2–5 years imprisonment and/or a fine up to \$5,000 and could be subject to organized crime laws. Facilitators who distribute child pornography face up to two years imprisonment and a mandatory fine up to \$2,000, and may be ordered to pay for a victim’s medical, psychological or psychiatric treatment. West Virginia’s general restitution statute may apply to facilitators in some instances when the victim suffers physical, psychological or economic injury. Asset forfeiture actions are not prescribed for any facilitation crimes. No law in West Virginia makes sex tourism a crime, leaving sex tour operators to operate with impunity in West Virginia.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.aspx.

