

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## MARYLAND REPORT CARD 2012

Maryland's sex trafficking law makes it a crime to exploit a minor under 18 through commercial sex acts and does not require use of force, fraud or coercion, but minors are not statutorily immune from prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

FINAL SCORE

64

FINAL GRADE

D



7  
10

16  
25

10.5  
15

5.5  
10

14  
27.5

11  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Maryland's sex trafficking law clearly defines a minor under the age of 18 used in a commercial sex act as a human trafficking victim without regard to use of force, fraud, or coercion. The state commercial sexual exploitation of children (CSEC) laws include abduction of a child under 16 for prostitution, sexual solicitation of a minor, and child pornography. Maryland's CSEC and prostitution laws do not refer to the sex trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. Maryland's criminal gang law includes human trafficking and abduction as predicate offenses, allowing use of this law to prosecute sex trafficking enterprises.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law does not make the purchase of commercial sex with minors a trafficking crime, leaving buyers subject only to the CSEC offense of sexual solicitation of a minor which applies to buyers who solicit a minor for prostitution. Sexual solicitation of a minor distinguishes between solicitation of minors versus adults for prostitution. However, defendants prosecuted for sexual solicitation of a minor are not expressly prohibited from asserting an age mistake defense to this crime. Buyers who use the Internet to purchase commercial sex acts from a minor could be prosecuted under the statute on disseminating indecent material to minors in the first degree, or the statute penalizing use of a computer for the purpose of luring or inducing a person under 17 to engage in sexual conduct, although these are not defined to include commercial sex acts specifically. Asset forfeiture is not available for offenses committed by buyers. Buyers of sex with minors are required to register as sex offenders if convicted of possessing child pornography or any degree of patronizing a prostitute when a minor under 17 is involved.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

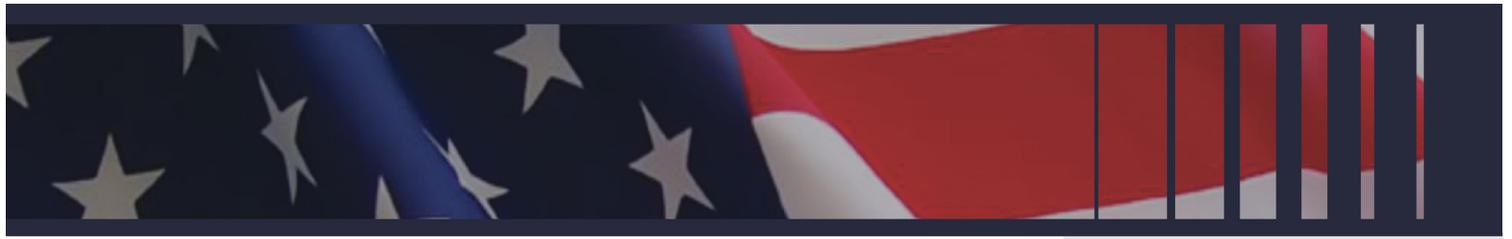
| Crime (name of law abridged)                                    | Classification                                | Sentence                                      | Fine (possible)                               | Asset Forfeiture (available) |
|---|---|---|---|------------------------------|
| Sexual solicitation of a minor (§3-324(b))                      | Felony  | Max. 10 years                                 | Max. \$25,000                                 | <input type="radio"/>        |
| Child pornography (online solicitation of a minor) (§11-207(a)) | Felony  | Max. 10 years; 20 years subsequent conviction | Max. \$25,000; \$50,000 subsequent conviction | <input type="radio"/>        |
| Possession of child pornography (§11-208(a))                    | Misdemeanor; felony for subsequent conviction | Max. 5 years; 10 years subsequent conviction  | Max. \$2,500; \$10,000 subsequent conviction  | <input type="radio"/>        |

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



### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking of a minor is a felony punishable by imprisonment up to 25 years and/or a fine up to \$15,000. Abduction of a child under 16 for prostitution is a misdemeanor punishable by imprisonment up to 10 years and/or a fine up to \$5,000, and sexual solicitation of a minor is a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000. Creating and promoting child pornography is punishable by imprisonment up to 10 years and/or a fine up to \$25,000, or by imprisonment up to 20 years and/or a fine up to \$50,000 for subsequent convictions. Sexual solicitation of a minor, which includes using the Internet to solicit a minor to engage in sexual contact with another person, might apply to traffickers who use the Internet for this purpose. Although not mandatory, the court may order a trafficker to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, or incurred medical or other expenses, but asset forfeiture is not available for trafficking or CSEC offenses. Traffickers must register as sex offenders for convictions of sex trafficking, CSEC offenses, and prostitution offenses involving a minor. Grounds for termination of parental rights include convictions for kidnapping, but not for sex trafficking, CSEC offenses or child pornography offenses.



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

The sex trafficking and CSEC laws are silent on availability of a defense based on consent of the minor, potentially permitting a defendant to assert this defense. Prostitution offenses are not limited in application to adults and there is no affirmative defense to prostitution for trafficking victims, so a minor victim might be arrested and charged with prostitution despite being a victim. If identified as commercially sexually exploited, a CSEC victim may be deemed a child in need of assistance—defined to include human trafficking and engaging a child in prostitution or child pornography—and receive a protective response. If not so identified, a victim faces possible detention as a child in need of supervision or a delinquent child. The definition of abuse for purposes of child welfare intervention includes sexual exploitation by a household member, which may be broad enough to reach non-familial traffickers. CSEC victims who have suffered physical injury, or psychological injury if a victim of sexual solicitation of a minor or child pornography are eligible for crime victims' compensation; however, if determined to have knowingly participated in the conduct giving rise to the injury and if uncooperative with law enforcement investigating the crime, a child sex trafficking victim could be barred from receiving an award. Victim-friendly trial procedures, including the ability to testify through closed circuit television and a "rape shield" law protecting witnesses from the trauma of cross examination, apply only in child abuse and sexual offense proceedings, potentially foreclosing these options to testifying sex trafficking victims. Juvenile criminal records may be sealed at any time upon motion of any party or the court, and shall be sealed upon motion by any party or the court after the minor has reached 21 years of age. Although not mandatory, a court may order convicted offenders to pay restitution if the victim has suffered pecuniary loss, including loss of earnings, or incurred medical or other expenses. No statute of limitations applies to felony offenses, but prosecutions for misdemeanors must be brought within one year, except possession of child pornography which must be brought within 2 years. Civil actions for sexual abuse of a minor must be commenced within seven years of turning 18; otherwise the general three year statute of limitations on civil actions applies.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking or domestic minor sex trafficking is not mandated through law in Maryland. Single party consent to audiotaping is permitted and wiretapping is permitted for investigations of sex trafficking, kidnapping, child pornography, and sexual solicitation of a minor, giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Use of a decoy and use of the Internet are permitted in an investigation of sexual solicitation of a minor, which is violated when a defendant solicits by computer or Internet a law enforcement officer posing as a minor. Maryland law requires law enforcement to report missing children, but does not mandate reporting of recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law includes the crime of benefitting from sex trafficking of a child and is punishable by imprisonment up to 25 years and/or a fine up to \$15,000. A facilitator who uses a computer to disseminate information and facilitate unlawful sexual conduct with a minor is guilty of a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000 (20 years and/or a fine up to \$50,000 for subsequent convictions). Promoting or selling child pornography is a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000. A person who provides online storage of graphics, images or videos and fails to report or remove child pornography found on the server is a facilitator and guilty of a misdemeanor punishable by a fine up to \$5,000 for a first conviction, \$20,000 for a second conviction, or \$30,000 for each subsequent conviction. Although not mandatory, the court may order a facilitator to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, or incurred medical or other expenses but asset forfeiture is not available. No laws in Maryland address sex tourism specifically.

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](http://www.sharedhope.org).

