

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## VIRGINIA REPORT CARD 2012

Virginia does not have a human trafficking or sex trafficking law. The abduction law is used to prosecute cases of sex trafficking; however, minors are not considered abduction victims unless they are subject to force, intimidation or deception. Virginia also has limited options to prosecute demand and protect victims.

FINAL SCORE

46.5

FINAL GRADE

F



4.5

10

4.5

25

11.5

15

3.5

10

12

27.5

10.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Virginia does not have a human trafficking or sex trafficking law. Child sex trafficking can be prosecuted under the abduction for immoral purpose offense which includes for the purpose of prostitution and child pornography. However, the law requires force, intimidation or deception to be used to cause the abduction, even when the victim is a minor. The state commercial sexual exploitation of children (CSEC) laws include taking indecent liberties with children and receiving money for procuring a person. CSEC and prostitution laws do not refer to abduction for immoral purpose to identify commercially sexually exploited minors as sex trafficking victims. Under the racketeering law, abduction for immoral purpose is a predicate offense but taking indecent liberties is not.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. The plain language of the definition of abduction, the statute used to prosecute sex trafficking, does not appear to apply to buyers of commercial sex with minors and other CSEC laws do not include the crime of buying sex with a minor. Certain provisions of taking indecent liberties with children could be used to apply to some buyers but those provisions are not specific to commercial sexual exploitation. The prostitution statute does not distinguish between buying sex with minors versus adults. The state has enhanced penalties for using a computer to violate child pornography laws, and the statute on use of communication systems to facilitate certain offenses involving children might apply to buyers of commercial sex with minors. Defendants are not prohibited from asserting mistake of age as a defense to prosecution under any sexual offense law. A buyer must pay restitution for any medical expenses incurred by the victim as a result of the crime, and buyers face mandatory criminal asset forfeiture for child pornography offenses. A buyer convicted of possession of child pornography or any applicable sex offense is required to register as a sex offender.

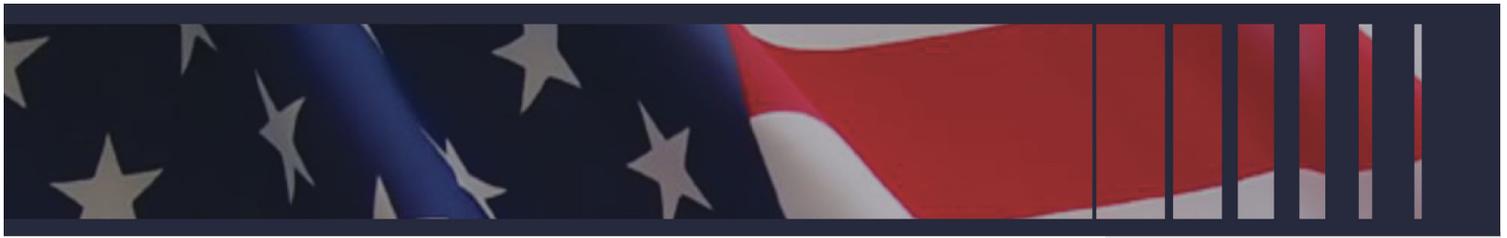
### CRIMINAL PROVISIONS FOR TRAFFICKERS

The abduction law provides a sentence (20 years–life imprisonment with a suspended sentence of 40 years to attach to any sentence less than life) as high as those for federal trafficking offenses (10 years–life), but other applicable crimes do not. Taking indecent liberties with a child prohibits receiving money for a child to perform in sexually explicit material and is punishable by imprisonment of 1–10 years (or up to 12 months in jail and/or a fine up to \$2,500). Display of child pornography or grooming videos to a child is punishable by imprisonment of 1–5 years (or up to 12 months in jail or a fine up to \$2,500). Producing child pornography is a felony punishable by 5–30 years imprisonment when the victim is under 15 and 1–20 years if the victim is 15–18. Penalties for child pornography crimes are heightened when the offender is older than the victim by seven years or more. Statutes tackling the growing use of computers by traffickers include use of a computer to produce child pornography or promote a child in an obscene performance and use of the Internet to recruit minors for illegal sex acts, which may include prostitution and pornography. A trafficker may be subject to non-mandatory asset forfeiture for violations of abduction and mandatory forfeiture for violations of prostitution related offenses. Restitution for any property loss or medical expenses incurred by a victim as a result of the trafficker's crime is mandatory. A trafficker is required to register as a sex offender if convicted of child pornography offenses or abduction for immoral purposes. Grounds for termination of parental rights do not include convictions for abduction or CSEC, leaving children of traffickers vulnerable to the continuing control of their trafficker-parent.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Prostitution (§ 18.2-346)	Class 1 misdemeanor	Max. 12 months	Max. \$2,500	●
Frequenting a place of prostitution (§ 18.2-347)	Class 1 misdemeanor	Max. 12 months	Max. \$2,500	●
Possession of child pornography (§ 18.2-374.1:1(A))	Class 6 felony	1–5 years (or up to 12 months in jail and/ or up to \$2,500)		●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking in Virginia continue to be vulnerable due to gaps in the laws. Abduction for immoral purposes and CSEC offenses do not prohibit a defense to prosecution based on consent of the minor, narrowing the ability to prosecute cases. The prostitution law is not limited in application to adults and does not identify a minor engaged in prostitution as a victim of sex trafficking and victims of child sex trafficking could be subject to arrest and charged for the crime committed against them. A victim of commercial sexual offenses is not defined as a child in need of services and the definition of abuse and neglect, although it includes the undefined term “sexual exploitation,” does not expressly include exploitation through abduction for immoral purposes, CSEC, or child pornography crimes. The definition of “caregiver” for the purposes of removing abused and neglected children from the home include only those with legal custody or those standing “in loco parentis” of the child, and thus is not sufficient to include a trafficker and allow for child welfare intervention. Victims of child sex trafficking are eligible for crime victims’ compensation but the program contains ineligibility criteria that could negatively affect their ability to recover compensation, including a requirement to cooperate with law enforcement and time requirements (waived for good cause). Virginia law provides several victim-friendly criminal justice provisions, including extending the “rape shield” law and the use of a two-way closed-circuit television for testifying victims of abduction for immoral purposes. The state law provides automatic expungement of juvenile records if the juvenile is 19 and five years have elapsed since the last hearing, but records will be maintained for felony offenses. Offenders for any crime must make at least partial restitution for damages or losses caused by the crime and medical costs, and victims of child pornography offenses are entitled to mandatory restitution. No civil actions specific to CSEC or abduction are authorized in the law but sexual abuse victims have a twenty year statute of limitations on civil actions for damages. Misdemeanor actions must be brought within one year but no statute of limitations exists for felonies.

## CRIMINAL PROVISIONS FOR FACILITATORS

While Virginia has no human trafficking law, aiding and assisting in abduction for prostitution is included in the abduction laws and is a felony punishable by 1–10 years imprisonment. Also, aiding in the production of child pornography, including through financing, is a felony punishable by 5–30 years imprisonment when the victim is under 15 and 1–20 years imprisonment when the victim is 15–17. Heightened penalties apply when the offender is older than the minor by seven years or more. Selling and distributing child pornography is a felony punishable by 5–20 years imprisonment. Intentionally operating websites that facilitate payment for access to child pornography is a felony punishable by 2–10 years imprisonment and a possible fine up to \$100,000. A facilitator may also be subject to criminal gang and racketeering laws resulting in greater penalties and civil forfeiture. No law in Virginia addresses sex tourism. Facilitators are subject to vehicle forfeiture for convictions of prostitution related offenses and mandatory asset forfeiture for child pornography offenses, but not for convictions of assisting abduction. A facilitator must pay restitution for any property loss or medical expenses incurred by a victim as a result of the facilitator’s crime.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Virginia law does not mandate training on domestic minor sex trafficking, but it does direct the Department of Criminal Justice Services to advise law enforcement on “the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia.” Single party consent to audiotaping is allowed by law, and wiretapping is authorized for most felony offenses related to domestic minor sex trafficking. Use of a law enforcement decoy in child sex trafficking or CSEC investigations is not specifically authorized by law; however, an investigation under use of a communications system to facilitate certain crimes involving children which could include CSEC offenses is protected from a defense that the “minor” was in fact over 15 by statutory language indicating culpability if the offender had reason to believe the person involved was less than 15. This same law can permit law enforcement to pose as a minor under 15 on the Internet to investigate CSEC cases as well. Law enforcement must report missing children into the “Missing Children Information Clearinghouse” and must notify the clearinghouse upon recovering a missing child.

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).

