

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## VERMONT REPORT CARD 2012

*Vermont's sex trafficking laws reach the criminal actions of traffickers, buyers and facilitators but critical investigative tools for law enforcement such as wiretapping are not statutorily authorized and training is not mandated, which could prevent aggressive enforcement.*

FINAL SCORE

64

FINAL GRADE

D



5

10

13.5

25

10

15

5.5

10

22.5

27.5

7.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Vermont's sex trafficking laws address sex trafficking of minors and 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. Individual laws within the trafficking chapter make it a crime to solicit commercial sex acts with a trafficking victim and to facilitate sex trafficking. The state commercial sexual exploitation of children (CSEC) laws include use of a child in a sexual performance and consenting to a sexual performance. Vermont's CSEC statutes, as well its prostitution law which makes minors immune, do not refer to the human trafficking statute to identify commercially sexually exploited minors as victims of trafficking. Vermont does not have a racketeering statute that can be used to prosecute trafficking enterprises.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

Vermont's sex trafficking laws make the purchase of commercial sex acts from sex trafficking victims a separate and distinct crime. However, the general solicitation laws do not distinguish between buying commercial sex acts with an adult versus a minor, making it possible for some buyers of sex with minors to be charged with this lesser offense and avoid the serious penalties of the sex trafficking solicitation law. No law specifically criminalizes the use of the Internet to purchase commercial sex acts from a minor, but the law prohibiting luring a child under 16 by any means, including the Internet, to engage in a sexual act might apply to buyers who use the Internet for this purpose. Buyers convicted under the solicitation of a sex trafficking victim law must pay victim restitution. The sex trafficking law does not prohibit a defense of age mistake, leaving the opportunity for buyers to assert this defense. Convictions for solicitation of a sex trafficking victim do not expressly require sex offender registration; however, buyers convicted of soliciting for prostitution when the person solicited is a minor and child pornography are required to register.

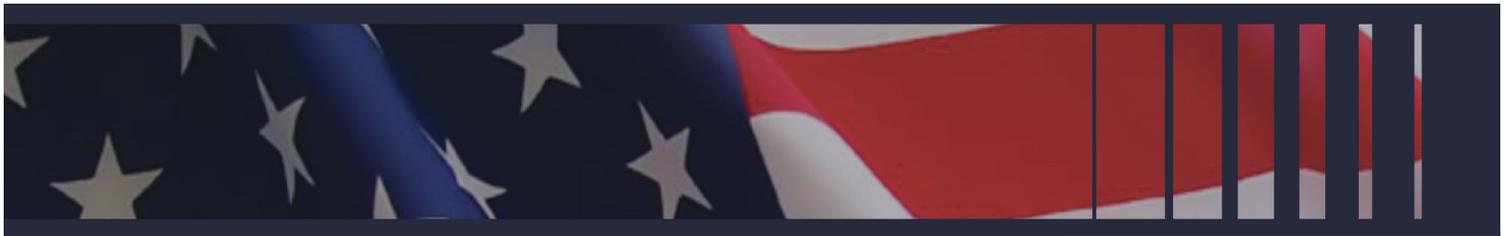
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking of a minor is punishable by 20 years–life imprisonment and/or a fine up to \$100,000. Traffickers convicted of a first offense of use of a child in a sexual performance, consenting to a sexual performance, or creating child pornography face up to 10 years imprisonment and/or a fine up to \$20,000. The law prohibiting luring a child under 16 by any means including the Internet to engage in a sexual act might apply to traffickers who use the Internet to recruit a minor for commercial sex acts. Traffickers convicted of sex trafficking are required to pay restitution to victims, and a court may order traffickers convicted of other crimes to pay victim restitution. Traffickers convicted of sex trafficking a minor, exploiting a minor to create pornography, and some CSEC offenses are required to register as sex offenders but convictions for patronizing or facilitating human trafficking or unlawful procurement do not require registration. Grounds for termination of parental rights do not include convictions of sex trafficking or CSEC, leaving children of traffickers at potential continuing risk.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Soliciting a sex trafficking victim (tit. 13, § 2655)	Felony	Max. 5 years	Max. \$100,000	○
Soliciting for prostitution (if minor not identified as sex trafficking victim) (tit. 13, § 2632)	Misdemeanor	Max. 1 year	Max. \$100	○
Possession of child pornography (tit. 13, § 2827)	Felony	Max. 5 years	Max. \$10,000	○

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

The sex trafficking law prohibits a defense to prosecution by an offender based on consent of the minor to the commercial sex acts; however, the CSEC statutes do not expressly prohibit such defense. No sex trafficking victim may be found in violation of the state’s prostitution laws, and a minor under 18 is immune from prosecution for prostitution in the Superior Court. The state has specific laws allowing the state to treat a minor under 18 involved in prostitution or a minor victim of sex trafficking as a child in need of care or supervision. Additionally, sex trafficking victims who commit crimes beyond prostitution as a result of their trafficking may raise an affirmative defense that the crime was committed due to force, fraud, or coercion by the trafficker. A victim found to be abused or neglected—defined to include a child involved in prostitution, but not expressly including sex trafficking or other CSEC crimes—by “a person responsible for a child’s welfare” may receive child welfare intervention. Although not limited to those with legal custody of the child and including any “adult residing in the child’s home who serves in a parental role,” the definition may not be broad enough to include a trafficker and therefore allow for child welfare intervention. Sex trafficking and CSEC victims are eligible for crime victims’ compensation, but filing is required within the time required to bring a criminal prosecution against the offender, unless good cause is shown, and there is a bar to recovery if the victim violated a criminal law that contributed to the injury. Victim-friendly court procedures are available to sex trafficking victims, including participation in the address confidentiality program and application of the “rape shield” law which reduces the trauma of cross-examination for testifying victims. However, the ability to testify via closed circuit television is limited to children under 12 who are victims of certain sex offenses not including CSEC or sex trafficking. Juvenile criminal records must be sealed two years after final discharge unless “rehabilitation has not been attained” or the minor was convicted of certain other offenses. Sex trafficking victims are entitled to mandatory restitution, and CSEC victims may also request restitution. Victims are also expressly able to pursue civil remedies against their offenders. Civil action against a sex trafficking offender must be brought within six years, whereas claims based on other CSEC crimes must be brought within three years. Vermont has eliminated the statute of limitations for criminal prosecution for sex trafficking; other CSEC offenses must be prosecuted within six years.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Vermont law does not mandate training on human trafficking or domestic minor sex trafficking, although the Vermont center for crime victim services is authorized to have a task force that assists law enforcement in developing protocols for human trafficking that may include education. Vermont’s statutes do not address whether single party or two-party consent to audiotaping is required, and the Vermont code does not address whether wiretapping is permitted for any criminal investigations, leaving law enforcement handicapped in their investigations. No law expressly authorizes the use of a decoy or the Internet in the investigation of prostitution or sex trafficking cases; however, relying on the law on luring a child under 16 by any means, including the Internet, to engage in a sexual act, law enforcement may be able to use these investigative tools in limited situations. Law enforcement in Vermont is required to report missing and recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state sex trafficking law includes the crime of financially benefitting from participation in the crime of sex trafficking with knowledge that force, fraud, or coercion was used to induce a victim to perform a commercial sex act. When a minor is involved this crime is punishable by 20 years–life imprisonment and/or a fine up to \$100,000. A separate law criminalizes facilitating human trafficking by allowing an owned or controlled place to be used for human trafficking. A conviction is punishable by up to 5 years imprisonment and/or a fine up to \$100,000. A conviction for the crime of use of a child in a sexual performance, which includes promoting the performance or promoting child pornography through exhibiting, manufacturing, distributing, or advertising is punishable by up to 10 years imprisonment and/or a fine up to \$20,000. Facilitators convicted under sex trafficking laws are required to pay restitution to the victim, and a court may order facilitators convicted of other crimes to pay victim restitution. No laws in Vermont address sex tourism, making the environment friendly for businesses who capitalize on commercial sex activity to sell travel.

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).

