

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

WEST VIRGINIA REPORT CARD 2012

West Virginia's newly enacted human trafficking law includes sex trafficking of minors without regard to force, fraud or coercion, but requires that two or more persons be trafficked in one year to establish the offense. West Virginia has limited options to prosecute demand and lacks laws designed to protect minor victims, who potentially face a punitive response for crimes committed as a result of their victimization.

FINAL SCORE

59.5

FINAL GRADE

F



7.5
10

17
25

11
15

3
10

11.5
27.5

9.5
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

West Virginia's human trafficking law includes sex trafficking of minors without requiring proof of force, fraud or coercion, but requires that the trafficker commit the offense against two or more victims within one year to establish the offense of trafficking. Commercial sexual exploitation of children (CSEC) statutes include 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. Neither these CSEC crimes nor the prostitution law refer to the human trafficking statute to identify commercially sexually exploited minors as sex trafficking victims. West Virginia's racketeering law includes human trafficking and CSEC offenses as predicate crimes, allowing use of this offense to prosecute sex trafficking enterprises.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking law does not expressly include the purchase of sex acts with a minor; however, following federal precedent, the term "obtain" in the law could be interpreted to include the conduct of buyers. However, the buyer would have to commit the purchase of sex with at least two victims within one year. A CSEC law includes the crime of buying sex with a minor when a computer is used to solicit the minor to engage in prostitution. The general solicitation of prostitution law, which applies when a computer is not used, does not distinguish between buying sex with adults versus minors. Neither the human trafficking law nor the offense of soliciting a minor via computer for prostitution prohibits an age mistake defense. 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 who solicit a minor via computer for prostitution may face civil asset forfeiture. 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 sex trafficking of a minor or solicitation of prostitution without use of a computer, even when a minor is solicited, are not required to register as sex offenders.

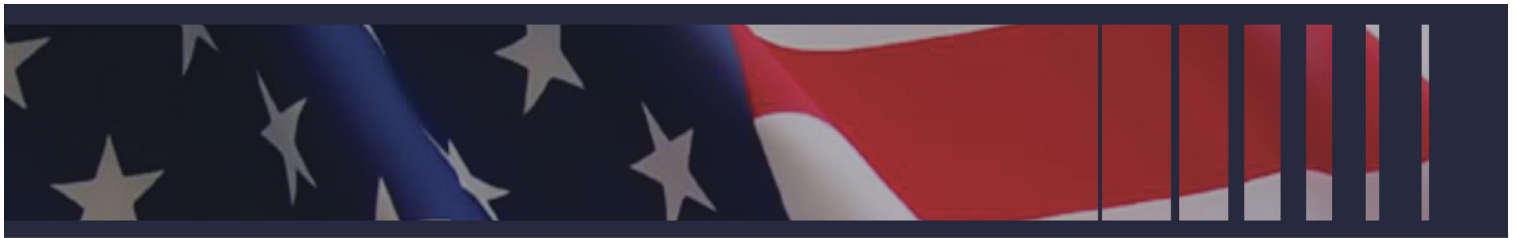
DEMAND | SELECTED COMMERCIAL SEX CRIMES

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	●
Houses of ill fame (solicitation of prostitution) (§ 61-8-5(b))	Misdemeanor	60 days-6 months	(and) \$50-\$100	○
Possession of child pornography (§61-8C-3)	Felony	Max. 2 years	(and/or) \$2,000	●

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

CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers must have committed the offense against two or more victims within one year to be convicted of human trafficking; when convicted they face 3-15 years imprisonment and a possible fine not to exceed \$200,000. 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 punishable by 2-5 years imprisonment and/or fines up to \$5,000. Using a minor to create child pornography is 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 punishable by up to 10 years imprisonment and/or a fine not to exceed \$50,000. 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. Traffickers may face civil asset forfeiture for child pornography offenses and soliciting a minor via computer for prostitution. Traffickers are required to register as sex offenders for most CSEC offenses but not human trafficking. A conviction for CSEC does not expressly constitute grounds for termination of parental rights, potentially leaving children of convicted traffickers under parent-trafficker control and at risk.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking and CSEC victims are vulnerable due to gaps in West Virginia’s laws. A defendant in a sex trafficking or 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 sex trafficking, 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 sex trafficking or 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

Training for law enforcement on human trafficking is specifically authorized but not mandated under West Virginia law. Single party consent to audiotaping is legal and wiretapping may be used in abduction investigations, but not human trafficking or CSEC offenses. The use of a decoy in CSEC or sex trafficking investigations is not statutorily provided and law enforcement officers using the Internet to investigate these cases relying on the soliciting a minor via a computer law face a defense 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

The human trafficking law does not include benefitting from or aiding and assisting human trafficking. Under the prostitution laws, facilitators who aid or abet the abduction of a minor under 16 for prostitution face 3–10 years imprisonment and facilitators who indirectly detain a minor in a place of prostitution face 2–5 years imprisonment and/or a fine up to \$5,000. Facilitators who distribute child pornography face up to 2 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.

