

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## MONTANA REPORT CARD 2013







Montana's sex trafficking laws reach buyers, sellers and facilitators of sex trafficking of a minor and impose steep penalties. Victims who are not identified or are deemed complicit in the prostitution may face barriers to accessing protection or justice.

FINAL SCORE

66

FINAL GRADE

D

					
$\frac{6}{10}$	$\frac{22}{25}$	$\frac{12.5}{15}$	$\frac{6}{10}$	$\frac{12}{27.5}$	$\frac{7.5}{15}$

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Montana's sexual servitude of a child and patronizing of a child laws do not require proof of force, fraud or coercion. The state CSEC laws include: prostitution and promoting prostitution when a minor is involved, aggravated promotion of prostitution, and sexual abuse of children. However, the state prostitution statute does not reference the human trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. Criminal street gang laws enhance penalties when offenses are committed in furtherance of criminal gang activity, which includes the CSEC crime of aggravated promotion of prostitution but not the child sex trafficking crimes.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The sexual servitude of a child law, following federal precedent, is applicable to buyers who "obtain" a minor for commercial sex acts, and the patronizing of a child law further makes it a crime to buy commercial sex acts with a minor. The prostitution statute distinguishes between buying sex with minors versus buying sex with adults by providing a heightened penalty for soliciting or engaging in prostitution with a minor under 18. Sexual abuse of children includes solicitation of a minor under 16 through in-person or electronic communication, but does not specify solicitation for the purpose of commercial sex acts. Sexual abuse of children also includes possession of child pornography. A mistake of age defense is prohibited. Convicted buyers will be required to pay restitution to victims who suffer a pecuniary or economic loss. Buyers of sex with minors are required to register as sex offenders if convicted of sexual servitude of a child, patronizing of a child, prostitution with a child under 18 years of age, or sexual abuse of children, which includes Internet solicitation and possessing child pornography.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker convicted under the sexual servitude of a child law, promotion of prostitution of a child, or aggravated promotion of prostitution are face up to 100 years imprisonment (the first 25 of which cannot be suspended or eligible for parole), a possible fine up to \$50,000, mandatory sexual offender treatment, and may be subject to supervision for life. Sexual abuse of children, which criminalizes the creation of child pornography and use of the Internet to recruit or sell commercial sex acts with minors under the age of 16, is punishable by up to 100 years or life imprisonment and a possible fine of \$10,000; a minimum sentence of 4 years is imposed when the child is under the age of 16 and the defendant must serve at least 25 years when the child is 12 or younger. Victim restitution is mandatory. Asset forfeiture is not specified for trafficking or CSEC offenses. Traffickers must register as sex offenders if convicted of CSEC offenses, but not for a conviction under the trafficking law. Grounds for termination of parental rights include sexual abuse against a child, which is defined to include the CSEC crime of sexual abuse of children and sexual exploitation through prostitution.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Sentence	Fine (possible)	Asset Forfeiture (available)
Sexual servitude of child (§ 45-5-310)	25-100 years	Max. \$50,000	<input type="radio"/>
Patronizing of a child (§ 45-5-311)	25-100 years	Max. \$50,000	<input type="radio"/>
Prostitution (§ 45-5-601(3)(a)) (Child under 18, offender over 18)	25-100 years	Max. \$50,000	<input type="radio"/>
Possession of child pornography—sexual abuse of children (§45-5-625)	Max. life sentence	Max. \$10,000	<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 the laws. Neither the sex trafficking laws nor the CSEC laws expressly prohibit a defense based on consent of the minor to the commercial sex act. Prostitution offenses are not limited in application to adults and do not identify a juvenile involved in prostitution as a victim of sex trafficking. A CSEC victim may be considered abused and neglected and/or a youth in need of care, a delinquent youth, or a youth in need of intervention and receive various responses ranging from a juvenile justice response to a child protective response. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation, defined as permitting or encouraging a minor to engage in prostitution. The definition of a person responsible for the child's welfare includes an adult who resides in the same home in which the child resides, a definition which could be sufficiently broad to permit child protective services to intervene. CSEC victims would likely be eligible for state crime victims' compensation, although several criteria may limit their eligibility, including a bar to recovery if the victim contributed to the injury or was the offender or an accomplice of the offender, and possible bar or reduction for refusal to cooperate with law enforcement. Also, the sexual offenses against minors must be reported within one year after the conduct was reported to a law enforcement agency or child welfare services, or within one year after the day the victim reaches 18, whichever occurs last, unless good cause is shown. Victim-friendly criminal justice procedures include permitting the testimony of a child-witness under 15 to be taken by two-way electronic audio-video communication; however, the "rape shield" law is limited to sex offenses, so it may not be available to reduce the trauma of cross examination for testifying sex trafficking victims. With few exceptions, formal youth court, law enforcement, and department records must be physically sealed on the youth's 18th birthday. No specific civil remedies are available to sex trafficking or CSEC victims. Restitution is mandatory for victims who suffer a pecuniary or economic loss. Prosecutions for sexual abuse of children must be brought within five years after the minor turns 18 and civil actions for childhood sexual abuse, which include the crime of sexual abuse of children, must be commenced three years after the last injury occurred or was discovered.



## CRIMINAL PROVISIONS FOR FACILITATORS

The state sexual servitude of a child law includes the crime of benefitting financially from participation in a venture committing the crime; a violation is punishable by up to 100 years imprisonment (the first 25 of which cannot be suspended or eligible for parole) and a possible fine up to \$50,000. The CSEC crime of promoting prostitution applies to facilitators who permit their premises to be regularly used for prostitution; if the victim is under 18 it is punishable by up to 100 years imprisonment (the first 25 of which cannot be suspended or eligible for parole) and a possible fine up to \$50,000. Restitution is mandatory for victims who suffer a pecuniary or economic loss. The CSEC crime of sexual abuse of children, which criminalizes distributing, selling and advertising child pornography, is punishable by up to 100 years imprisonment, a possible fine up to \$10,000, or both; a minimum sentence of four years is imposed when the child is under the age of 16 and the defendant must serve at least 25 years when the child is 12 or younger. No laws in Montana address sex tourism.



## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking is not mandated or authorized by law. Single party consent to audiotaping is available to law enforcement in the course of investigations. Wiretapping is not expressly allowed in investigations for sex trafficking, pornography or prostitution-related offenses. No laws expressly authorize the use of a live decoy or the Internet in sex trafficking investigations. Montana has established a statewide reporting and response system for missing children and requires the reporting of missing and located children. When child pornography is discovered in a police investigation, the state also requires law enforcement to provide the discovered materials "to the law enforcement contact at the child victim identification program at the national center for missing and exploited children" to determine whether a previously identified child is depicted.

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).

