

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## VIRGINIA REPORT CARD 2015

*Virginia criminalizes child sex trafficking without requiring proof of force, fraud or coercion but the sex trafficking law does not reach buyers of sex with minors. While defendants convicted of sex trafficking face sex offender registration and asset forfeiture, minor victims still face delinquency and detention for prostitution charges.*

FINAL SCORE

66

FINAL GRADE

D



7.5

10

17

25

12.5

15

5

10

11.5

27.5

12.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Virginia criminalizes child sex trafficking without requiring proof of force, intimidation or deception when the victim is a minor. The state commercial sexual exploitation of children (CSEC) laws include abduction for immoral purpose, commercial exploitation of a minor, taking indecent liberties with children, taking or detaining a person for prostitution, receiving money from earnings of male or female prostitute, and receiving money for procuring a person. Prostitution laws do not refer to the sex trafficking law to identify commercially sexually exploited minors as sex trafficking victims. The racketeering law includes sex trafficking, some CSEC offenses and child pornography offenses as predicate offenses, allowing law enforcement and prosecutors to use this important tool to combat criminal enterprises engaged in child sex trafficking.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The plain language of the sex trafficking law does not appear to apply to buyers of commercial sex with minors. Buyers may be prosecuted for commercial exploitation of a minor under the prostitution law which distinguishes between buying sex with minors versus adults. Buyers may also be prosecuted for the offense of taking or detaining a person for prostitution. Certain provisions of taking indecent liberties with children could be used to apply to some buyers, but these provisions are not specific to commercial sexual exploitation. 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 sex trafficking or CSEC laws. Buyers face mandatory asset forfeiture if convicted of soliciting sex with a minor under the prostitution law, taking or detaining a person for prostitution or child pornography offenses and vehicle forfeiture for second and subsequent commercial exploitation of a minor offenses. A buyer must pay restitution for any medical expenses incurred by the victim as a result of the crime. Buyers convicted of solicitation of prostitution involving a minor, taking or detaining a person for prostitution, and possession of child pornography are required to register as sex offenders.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking, taking or detaining a person for prostitution, receiving money for procuring a person and receiving money from earnings of male or female prostitute are Class 3 felonies when the victim is a minor and are punishable by imprisonment for 5–20 years and a possible fine of up to \$100,000. Abduction for immoral purposes, a Class 2 felony, provides a sentence of 20 years–life imprisonment with a suspended sentence of 40 years to attach to any sentence less than life. Taking indecent liberties with a child 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. 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 is subject to asset forfeiture for abduction offenses, mandatory asset forfeiture for sex trafficking, CSEC and child pornography offenses, and vehicle forfeiture for violations of abduction and prostitution laws. Victim restitution is mandatory. A trafficker is required to register as a sex offender if convicted of sex trafficking, some CSEC offenses and child pornography offenses. Grounds for termination of parental rights do not include convictions for sex trafficking or CSEC.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Commercial exploitation of a minor (§ 18.2-346(B))	Class 6 felony (minor 16 years or older)	1-5 years	Max. \$2,500	●
	Class 5 felony (minor younger than 16 years)	1-10 years	Max. \$2,500	
Taking, detaining, etc., person for prostitution, etc. (Va. Code Ann. § 18.2-355(4))	Class 3 felony	5-20 years	Max. \$100,000	●
Possession of child pornography (§ 18.2-374.1:1(A))	Class 6 felony	1–5 years (or up to 12 months in jail)	Max. \$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. Sex trafficking and CSEC offenses do not prohibit a defense to prosecution based on consent of the minor. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. 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 sex trafficking, CSEC, or child pornography crimes. The definition of “caregiver” for purposes of juvenile sex trafficking victims accessing services through child welfare includes only exploiters with legal custody or those standing “in loco parentis” of the child, limiting child welfare intervention in cases of non-familial trafficking. 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, but these protections do not extend to victims of sex trafficking and other CSEC offenses. 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 JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

Virginia law directs 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.” The Department must publish and disseminate a model policy or guideline for law-enforcement on human trafficking. Single party consent to audiotaping is allowed by law, and wiretapping is authorized for 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.



## CRIMINAL PROVISIONS FOR FACILITATORS

The sex trafficking law does not specifically criminalize assisting, enabling or financially benefitting from child sex trafficking. While the trafficking law references offenders who act with the intent of benefitting financially or helping another to benefit financially, a facilitator must engage in the same prohibited conduct as a trafficker in order for the trafficking law to apply. Facilitators face penalties under CSEC laws, including aiding and assisting in abduction for prostitution under the abduction for immoral purposes law, which is a Class 5 felony punishable by 1–10 years imprisonment, and taking or detaining a person for prostitution, receiving money from earnings of male or female prostitute, and receiving money for procuring a person which are punishable as Class 3 felonies by 5–20 years imprisonment and a possible fine of up to \$100,000. 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. Selling and distributing child pornography is 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. Facilitators face mandatory criminal asset forfeiture, including vehicle forfeiture, if convicted of sex trafficking or certain CSEC offenses. Facilitators face mandatory restitution for certain pornography offenses but not CSEC or sex trafficking offenses. No law in Virginia addresses sex tourism.

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).