

MARYLAND

REPORT CARD | 2018



Maryland's sex trafficking law makes it a crime to exploit a minor under 18 through commercial sex acts and does not require use of force, fraud, or coercion. However, state law does not prohibit the criminalization of minors for prostitution, and victims may face barriers to treatment and victims' compensation to fund their recoveries.

Final Score

80

Final Grade

B

					
10	18.5	15	7.5	14	15
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

Maryland's sex trafficking law 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. Maryland's commercial sexual exploitation of children (CSEC) laws include: "child kidnapping for the purpose of committing a sexual crime," "sexual solicitation of minor," and "child pornography." Maryland's prostitution law refers to the sex trafficking law by providing an affirmative defense to prostitution charges for sex trafficking victims. Maryland's criminal gang law includes human trafficking and abduction as predicate offenses, allowing use of this law to prosecute sex trafficking enterprises; penalties include imprisonment up to 15 years and a fine up to \$1,000,000. If the victim dies, penalties include imprisonment up to 25 years and a fine up to \$5,000,000.

Criminal Provisions for Demand

The state sex trafficking law does not criminalize purchasing sex acts with a minor, leaving buyers subject only to the CSEC offense of "sexual solicitation of minor." "Sexual solicitation of minor" distinguishes between solicitation of minors versus adults for prostitution. Buyers convicted of CSEC face 0–10 years imprisonment and a fine up to \$25,000. Offenders prosecuted for "sexual solicitation of minor" are not expressly prohibited from asserting an age mistake defense to this crime. Buyers who use the Internet to purchase commercial sex acts with a minor could be prosecuted under the "sexual solicitation of a minor" offense. Asset forfeiture is very limited in application for offenses committed by buyers. Buyers of sex with minors are required to register as sex offenders if convicted of possessing images of child sexual exploitation (ICSE), "sexual solicitation of minor," or sex trafficking under federal law.

Criminal Provisions for Traffickers

Sex trafficking of a minor is a felony punishable by imprisonment up to 25 years and a fine up to \$15,000. "Child kidnapping for the purpose of committing a sexual crime" is a felony punishable by imprisonment up to 25 years and a fine up to \$5,000, while "sexual solicitation of a minor" is a felony punishable by imprisonment up to 10 years and a fine up to \$25,000. Creating and promoting ICSE is punishable by imprisonment up to 10 years and a fine up to \$25,000, or by imprisonment up to 20 years and a fine up to \$50,000 for subsequent convictions. "Sexual solicitation of a minor," which includes using the Internet to solicit a minor to engage in sexual contact with another person, might apply to traffickers who use the Internet for this purpose. Although not mandatory, the court may order a trafficker to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. Asset forfeiture is available for trafficking and CSEC offenses. Traffickers must register as sex offenders for convictions of sex trafficking, CSEC offenses, and prostitution offenses involving a minor. Grounds for termination of parental rights include convictions for "kidnapping" and "sexual abuse," which is defined to include juvenile sex trafficking.



Criminal Provisions for Facilitators

Human trafficking, which includes the crime of benefitting from sex trafficking a child, is punishable by imprisonment up to 25 years and a fine up to \$15,000. Using a computer to disseminate information and facilitate unlawful sexual conduct with a minor is a felony punishable by imprisonment up to 10 years and a fine up to \$25,000 (20 years and a fine up to \$50,000 for subsequent convictions). Promoting or selling ICSE is a felony punishable by imprisonment up to 10 years and a fine up to \$25,000. Providing online storage of graphics, images, or videos and failing to

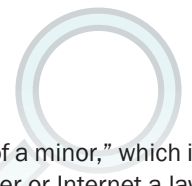
report or remove ICSE found on the server is a misdemeanor punishable by a fine up to \$5,000 for a first conviction, \$20,000 for a second conviction, or \$30,000 for each subsequent conviction. Although not mandatory, the court may order a facilitator to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. Facilitators are subject to asset forfeiture. No laws in Maryland address sex tourism specifically.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. The sex trafficking and CSEC laws are silent regarding the availability of a defense based on the willingness of the minor to engage in the commercial sex act, so a defendant may seek to assert such a defense. Prostitution laws apply to minors under 18, meaning juvenile sex trafficking victims may face criminalization for commercial sex acts resulting from their victimization. Further, Maryland law does not provide juvenile sex trafficking victims with a statutory avenue to specialized services. For purposes of child welfare intervention, however, the definition of sexual abuse includes “sex trafficking of a child by any individual.” CSEC victims who have suffered physical injury, or psychological injury if a victim of “sexual solicitation of a minor” or “child pornography,” are eligible for crime victims’ compensation; however, if determined to have knowingly participated in the conduct giving rise to the injury and if uncooperative with law enforcement investigating the crime, a child sex trafficking vic-

tim could be barred from receiving an award. Victim-friendly trial procedures, including the ability to testify through closed circuit television and a “rape shield” law protecting witnesses from the trauma of cross examination, apply only in child abuse and sexual offense proceedings, potentially foreclosing these options to testifying sex trafficking victims. Maryland law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a waiting period. Although not mandatory, a court may order convicted offenders to pay restitution if the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. No statute of limitations applies to felony offenses, but prosecutions for misdemeanors must be brought within 1 year except possession of ICSE, which must be brought within 2 years. Civil actions for sexual abuse of a minor must be commenced within 20 years of the minor turning 18 or within 3 years of the offender’s conviction; otherwise, the general 3 year statute of limitations on civil actions applies.



Criminal Justice Tools for Investigation and Prosecution

Maryland law authorizes law enforcement training on human trafficking. Single party consent to audiotaping is permitted when an officer’s safety is in jeopardy; however, such communications cannot be recorded or used in a criminal proceeding. Wiretapping is allowed for investigations of sex trafficking, “kidnapping,” ICSE, and “sexual solicitation of a minor,” giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Use of a decoy and use of the Internet are permit-

ted in an investigation of “sexual solicitation of a minor,” which is violated when a defendant solicits by computer or Internet a law enforcement officer posing as a minor; accordingly, a defendant would be prohibited from asserting a defense based on the fact that an actual minor was not involved in the investigation. Maryland law requires law enforcement to report missing children, but does not mandate reporting of located children.

The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.