

VIRGINIA

REPORT CARD | 2018

Virginia criminalizes child sex trafficking without requiring proof of force, intimidation, or deception, 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

71

Final Grade

C



7.5

10

17

25

12.5

15

5

10

14.5

27.5

14.5

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. Commercial sexual exploitation of children (CSEC) laws include: “abduction with the intent to extort money or 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. The racketeering law includes sex trafficking and certain CSEC 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 for Demand

The sex trafficking law does not apply to buyers of commercial sex with minors. Buyers may be prosecuted for commercial sexual exploitation of a minor under the “prostitution” law, which distinguishes between soliciting sex with minors versus adults, or for taking or detaining a person for prostitution. “Prostitution” is a Class 6 felony punishable by 1–5 years imprisonment and a fine up to \$2,500 (or a Class 5 felony punishable by 1–10 years imprisonment and a fine up to \$2,500 when the victim is under 16), while “taking, detaining, etc., person for prostitution” is a Class 3 felony punishable by 5–20 years imprisonment and a fine up to \$100,000. “Use of communications systems to facilitate certain offenses involving children” is a distinct offense. Defendants are not prohibited from asserting an age mistake defense under Virginia’s trafficking and CSEC laws. Buyers face mandatory asset forfeiture if convicted of “prostitution” or taking or detaining a person for prostitution 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. Possessing images of child sexual exploitation (ICSE) is prohibited, but penalties do not reflect the seriousness of the offense. Buyers convicted of “prostitution,” “taking, detaining, etc., person for prostitution,” or possession of ICSE are required to register as sex offenders.

Criminal Provisions for Traffickers

“Commercial sex trafficking,” “taking, detaining, etc. person for prostitution,” “receiving money for procuring person,” and “receiving money from earnings of male or female prostitute” are Class 3 felonies punishable by 5–20 years imprisonment and a fine up to \$100,000. “Abduction with intent to extort money or for immoral purposes” is a Class 2 felony punishable by 20 years to life imprisonment, while “taking indecent liberties with children” is punishable by 1–10 years imprisonment and a fine up to \$2,500. Making ICSE carries penalties comparable to those for similar federal offenses. Statutes tackling the growing use of computers by traffickers include use of a computer to produce ICSE, to promote a child in an obscene performance, and to recruit minors for illegal sex acts, which may include prostitution. A trafficker is subject to asset forfeiture for abduction offenses, mandatory asset forfeiture for sex trafficking, CSEC, and ICSE 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 “commercial sex trafficking,” “receiving money for procuring person,” “receiving money from earnings of a male or female prostitute” and certain other CSEC and ICSE offenses. Grounds for termination of parental rights do not include convictions for sex trafficking or CSEC.

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 “taking, detaining, etc. person for prostitution,” “receiving money from earnings of male or female prostitute,” and “receiving money for procuring person,”

which are punishable as Class 3 felonies by 5–20 years imprisonment and a fine up to \$100,000. Selling and distributing ICSE or intentionally operating a website that facilitates payment for access to ICSE carry penalties comparable to those for similar federal offenses. Facilitators face mandatory criminal asset forfeiture, including vehicle forfeiture, if convicted of sex trafficking or certain CSEC offenses. Facilitators face mandatory restitution for certain offenses. No law in Virginia addresses sex tourism.

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. Virginia’s sex trafficking and CSEC offenses do not prohibit a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. The prostitution law applies to minors under 18, meaning juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. Further, Virginia law does not provide a statutory avenue to specialized services. Child sex trafficking is included within Virginia’s definition of abuse and neglect; specifically, the definition of “abused and neglected child” includes victims of child sex trafficking as defined by the TVPA and the JVTVA regardless of the child’s relationship to the perpetrator of the abuse. 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 unless waived for good cause. In addition to

allowing child sex trafficking victims to use designated addresses, 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. Virginia law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization; however, juvenile records will be expunged automatically after a waiting period. Offenders for any crime must make at least partial restitution for damages or losses caused by the crime and medical costs, and victims of ICSE are entitled to mandatory restitution. Victims of domestic minor sex trafficking and CSEC have a civil cause of action with a lengthened statute of limitations of 7 years. Sexual abuse victims have a 20 year statute of limitations on civil actions for damages. Misdemeanor actions must be brought within 1 year; however, that time frame is tolled for several sex offenses committed against minors. 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 establish training standards and 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. No sex trafficking or CSEC law prohibits a defense to prosecution based on the use of a law en-

forcement decoy posing as a minor, but the statute that prohibits the use of a communications system to facilitate certain crimes involving children, a non-CSEC offense, does prohibit such a defense; under that statute, the defendant need only believe the decoy to be under 15. Additionally, this same law permits law enforcement to pose as a minor under 15 on the Internet to investigate CSEC cases. Law enforcement must report missing children into the “Missing Children Information Clearinghouse” and notify the clearinghouse upon locating a missing child.

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.