

# WEST VIRGINIA

## REPORT CARD | 2018

West Virginia's human trafficking law includes sex trafficking of minors without regard to force, fraud, or coercion, but West Virginia has limited options to prosecute demand. However, the human trafficking law expressly prohibits juveniles from being held criminally liable for an offense of prostitution, and sex trafficking is expressly identified as a type of child abuse.

Final Score

82

Final Grade

B



10

10



18.5

25



15

15



3.5

10



20

27.5



15

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. Commercial sexual exploitation of children (CSEC) laws include: "abduction of a person; kidnapping or concealing child," "detention of person in place of prostitution," "procuring for house of prostitution," "receiving support from prostitution; pimping," "employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct," "use of minors in filming sexually explicit conduct prohibited," and "soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity." While the prostitution law does not refer to the human trafficking statute, the human trafficking article acknowledges the intersection of prostitution with trafficking victimization by providing victims with immunity to prostitution offenses. West Virginia's racketeering law includes CSEC offenses as predicate crimes, but does not include human trafficking.

## Criminal Provisions for Demand

Following federal precedent, "human trafficking of an individual" could apply to buyers who "obtain" a minor to engage in sexual servitude, but the definition of "sexual servitude" limits applicability to those who maintain or make available a minor for commercial sex acts. However, "patronizing a victim of sexual servitude" specifically criminalizes buyer conduct; a violation is punishable by 3–15 years imprisonment and a fine up to \$300,000. Further, buyers can be prosecuted for soliciting a minor via a computer, a CSEC offense punishable by 2–10 years imprisonment and a fine up to \$5,000. West Virginia's general solicitation laws do not differentiate between soliciting sex with an adult versus a minor; if a computer is used, however, solicitation of a minor for prostitution is separately criminalized, resulting in an enhanced penalty for the buyer. West Virginia's buyer-applicable trafficking and CSEC laws do not prohibit an age mistake defense. Buyers convicted of commercial sex acts are subject to heavy fines, asset forfeiture, and restitution. Possessing images of child sexual exploitation (ICSE) is prohibited, but penalties do not reflect the seriousness of the offense. Buyers convicted of "patronizing a victim of sexual servitude," "soliciting, etc. a minor via computer," and possessing ICSE are required to register as sex offenders.

## Criminal Provisions for Traffickers

"Human trafficking of an individual" is punishable by 5–20 years imprisonment and a fine up to \$300,000 when the victim is a minor, while "sexual servitude" is punishable by 10–20 years imprisonment and a fine up to \$300,000. Traffickers convicted of felony abduction of a minor under 16 for prostitution face 3–10 years imprisonment. "Receiving support from prostitution; pimping" is punishable by up to 2 years imprisonment and a \$5,000 fine, while 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 a fine up to \$5,000. Creating ICSE carries penalties comparable to those for similar federal offenses. Using a computer to entice or lure a minor at least 4 years younger than the offender to commit prostitution is a felony. Depending on the prohibited conduct, traffickers face fines up to \$300,000, mandated restitution, and mandated or civil asset forfeiture. Traffickers convicted of child sex trafficking, creating ICSE, and certain CSEC offenses are required to register as sex offenders. Based on the definition of "abuse," child sex trafficking is a ground for terminating parental rights, which prevents traffickers from exploiting their parental rights as a form of control.

## Criminal Provisions for Facilitators

State human trafficking and sexual servitude laws include language that could reach some facilitators, but the offenses do not include benefitting from or aiding and assisting human trafficking. To the extent that facilitators can be convicted for child sex trafficking, a conviction is punishable by up to 20 years imprisonment and a fine up to \$300,000. Facilitators may also be convicted for aiding or abetting the abduction of a minor or indirectly detaining a minor in a place of prostitution. West Virginia's

general restitution statute may apply to facilitators in some instances, and asset forfeiture is permitted for trafficking convictions. Depending on the number of images or length of the video distributed, facilitators who distribute ICSE face 2–15 years imprisonment and a fine up to \$25,000, and they may be ordered to pay for a victim's medical, psychological, or psychiatric treatment. No law in West Virginia makes child sex tourism a crime.



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as human trafficking victims based on third party control requirements. West Virginia's "sexual servitude" law expressly prohibits a defense based on the willingness of the minor to engage in the commercial sex act. Although the prostitution law applies to minors, West Virginia's human trafficking article expressly prohibits juveniles from being held criminally liable for prostitution offenses. Further, West Virginia law mandates the referral of juvenile sex trafficking victims to child welfare, but services are not required to be specialized to the needs of these children. For purposes of child welfare intervention, child sex trafficking is expressly identified as a type of abuse and neglect regardless of the child's relationship to the perpetrator of the abuse. Crime victims' compensation is available for a trafficking victim, provided that he or she files an application within two years, is not considered an offender or an accomplice, and fully cooperates with appropriate law enforcement; child sex trafficking victims

are exempt from a requirement which would have required them to report the crime to law enforcement within 72 hours. Victim-friendly criminal justice procedures do not extend to all CSEC victims. Children 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. West Virginia law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be moved to a separate secure confidential place after a waiting period. Restitution is mandated in trafficking cases and may be available in other cases; further, civil remedies may also be available. 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 four years. No statute of limitations exists for felony prosecutions, but misdemeanors must be brought within one year.



## Criminal Justice Tools for Investigation and Prosecution

Training for law enforcement on human trafficking is specifically authorized under West Virginia law. Single party consent to audiotaping is legal, and wiretapping may be used in abduction and human trafficking investigations, but not other CSEC investigations. The soliciting a minor via computer statute, a CSEC offense, prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor, requiring only that the defendant believe the decoy to be a minor. The same law also au-

thorizes law enforcement to use the Internet as an investigative technique. West Virginia law requires both reporting and updating reports of missing children. Law enforcement must promptly enter information on missing children into the "Missing Children Information Clearinghouse" and notify the clearinghouse upon locating a missing child, allowing law enforcement to identify repeat runaways who are at high-risk for sex trafficking.



*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](http://www.sharedhope.org/reportcards).*