

Montana's child sex trafficking laws do not require force, fraud, or coercion and reach buyers, traffickers, and facilitators, imposing steep penalties for convictions. Child sex trafficking victims are not criminally liable for prostitution, promoting prostitution, and non-violent offenses and may access specialized services and state benefits, including crime victims' compensation.

Final Score	97
Final Grade	A

8.5	25	15	7.5	26	15
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

Montana's trafficking of persons and sexual servitude laws do not require proof of force, fraud, or coercion when the victim is a minor. The state commercial sexual exploitation of children (CSEC) laws include: "prostitution—patronizing a prostitute—exception," "promoting prostitution," "aggravated promotion of prostitution," and "sexual abuse of children." The state prostitution statute refers to the human trafficking law by providing for an enhanced penalty when the person patronized is a victim of human 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 "trafficking of persons."

Criminal Provisions for Demand



"Trafficking of persons" and "sexual servitude" apply to buyers of sex with children following federal precedent through the term "obtain." Buyers may also be prosecuted under "patronizing a victim of sexual servitude." The prostitution statute distinguishes between soliciting sex with adults versus soliciting sex with minors, providing a heightened penalty for the latter. Buyers convicted of child sex trafficking face up to 50 years imprisonment and a fine up to \$100,000, while "prostitution" convictions carry penalties as high as 100 years imprisonment, for which the first 25 years cannot be suspended or made eligible for parole. "Sexual servitude," "patronizing a victim of sexual servitude," and "prostitution" prohibit buyers from asserting a mistake of age defense. "Sexual abuse of children" criminalizes the use of the Internet in a buyer's attempt to solicit a minor for commercial sex. "Sexual abuse of children" also criminalizes the possession of child sexual abuse material (CSAM). Financial penalties under the trafficking offenses are sufficiently high, making it difficult for buyers to hide the crime. Convicted buyers will be required to pay restitution to victims who suffer a pecuniary or economic loss. Buyers are required to register as sex offenders if convicted of trafficking or certain CSEC offenses.

Criminal Provisions for Traffickers



When the victim is a minor, a conviction under "trafficking of persons" is punishable by up to 50 years imprisonment and a fine up to \$100,000, while a conviction under "sexual servitude" is punishable by up to 25 years imprisonment and a fine up to \$75,000. If convicted of "promotion of prostitution" or "aggravated promotion of prostitution," traffickers face up to 100 years imprisonment (the first 25 of which cannot be suspended or made eligible for parole), a possible fine up to \$50,000, mandatory sexual offender treatment, and post-release supervision for up to life. "Sexual abuse of children" criminalizes both the creation of CSAM and a trafficker's use of the Internet to recruit or lure minors under the age of 16 to engage in sexual conduct. Victim restitution is mandatory. Asset forfeiture is required for "trafficking of persons" and "sexual servitude" offenses. Traffickers must register as sex offenders if convicted of CSEC and "sexual servitude." Grounds for termination of parental rights include sexual abuse against a child, which is defined to include sexual exploitation.



Criminal Provisions for Facilitators

“Trafficking of persons” includes the crime of benefitting financially from facilitating trafficking conduct or from participation in a venture that subjected a person to sexual servitude; a violation is punishable by up to 50 years imprisonment and a fine up to \$100,000 when the victim is a child. The CSEC crime of “promoting prostitution” applies to facilitators who participate in transporting minors or permit their premises to be regularly used for prostitution; if the victim is under 18, a violation is punishable by up to 100 years imprisonment (the first 25 of which cannot be suspended or made eligible for parole) and a fine up to \$50,000.

Facilitators face asset forfeiture for “trafficking of persons” and “sexual servitude” offenses. 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 CSAM, is punishable by up to 100 years imprisonment and a fine up to \$10,000; 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.

Protective Provisions for the Child Victims



All commercially sexually exploited children are defined as juvenile sex trafficking victims. “Sexual servitude” expressly prohibits a defense based on the willingness of the minor to engage in the commercial sex act; consent is also ineffective for other CSEC and trafficking offenses. State law prohibits the criminalization of minors for prostitution; further, a minor who has been identified as a trafficking victim will also be protected from criminalization for “promoting prostitution” and non-violent offenses. Juvenile sex trafficking victims are entitled to specialized services and care. The definition of abuse specifically includes child sex trafficking and CSEC. The definition of “a person responsible for the child’s welfare” seems too narrow to reach an exploiter who is not a family or household member; however, that definition should not limit access to protection by child welfare for child sex trafficking victims because the definition of “child abuse and neglect” does not require there to be a relationship between the child and exploiter in trafficking cases. Child sex trafficking victims are eligible for services and benefits, including crime victims’ compensation, and sex trafficked minors are specifically

exempt from ineligibility factors that would reduce or eliminate a compensation award. 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, a “rape shield” law that protects human trafficking victims in both criminal prosecutions and civil proceedings, non-disclosure of confidential victim information, and no contact orders for victims and their family members. Montana law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be sealed and destroyed after a waiting period. Restitution is mandatory for victims who suffer a pecuniary or economic loss. Trafficking victims may bring civil claims for damages, including punitive damages, and other appropriate relief. The statute of limitations is specifically lengthened for civil actions brought by human trafficking victims to 10 years after their 18th birthday or the end of their trafficking, whichever is later. The criminal statute of limitations for sexual servitude and certain CSEC offenses is eliminated.

Criminal Justice Tools for Investigation and Prosecution



While training on human trafficking is not mandated for law enforcement, Montana has established a human trafficking education account that may be used to educate law enforcement on prevention and detection of trafficking. Single party consent to audiotaping and wiretapping are broadly available to law enforcement during the course of investigations. The sex trafficking offense does not prohibit a defense based on the use of a law enforcement decoy posing as a minor in investigations; however, the “sexual abuse of children” offense seems to prohibit

the defense and permit law enforcement to use the Internet to investigate the crime. Montana has established a statewide reporting and response system for missing children and requires prompt reporting of missing and located children. When CSAM 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 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.