

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

1st Quarter (January - March) 2012 Report

The inaugural Protected Innocence Challenge report released on December 1, 2011 revealed the gaps in America's state legislative response to domestic minor sex trafficking. The comprehensive analysis of each state's existing laws was based on six areas of law critical to protecting children from and responding to domestic minor sex trafficking. When measured against the Protected Innocence standard, only ten states' laws received grades of "B" and "C," and most received an "F." The 2011 Protected Innocence Challenge was a call for state action to bring national change. Advocates in states across the country have used the Protected Innocence tools and state legislators have responded to the challenge, pledging to fix the gaps in state legislative frameworks that allow trafficked children to remain vulnerable, unidentified and deprived of vital services and justice.

Since the release of the Protected Innocence Challenge in December 2011*:

- 37 States had legislation introduced relating to the Protected Innocence framework
- 192 Total bills have been introduced across the country relating to domestic minor sex trafficking
- 11 States passed legislation relating to the Protected Innocence framework



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Since the completion of the Protected Innocence framework analysis for 2011, two states passed their first human trafficking laws—**Massachusetts** and **West Virginia**. Both states' laws identify the specific crime of sex trafficking, and follow federal law by not requiring force, fraud, or coercion when a victim is a minor (although West Virginia requires two or more victims to be a crime of human trafficking). Similarly, **Indiana** amended their human trafficking law to remove force, fraud or coercion when the victim is a minor under the age of 16.



CRIMINAL PROVISIONS ADDRESSING DEMAND

Efforts around the country to address the demand for commercial sex demonstrates a key shift in legislative focus toward the buyers who solicit commercial sex acts with minors. In **Massachusetts**, the law now includes increased penalties for buyers of commercial sex with all minors under 18. Most notably, the law addresses demand by identifying a separate crime in using the Internet to buy or sell sex with minors. In other passed legislation, **Washington** added the crime of commercial sexual abuse of a minor to the criminal profiteering and criminal gang statutes. Legislation introduced in **Kentucky** would amend the criminal law on patronizing prostitution to include a distinct crime for buying sex with a minor under 18, making it a felony and substantially raising penalties.

Louisiana introduced a strong package of laws that seek to greatly increase the penalties for buyers by increasing fines to \$50,000, raising sentences from 15 to 50 years, and mandating buyers' registration as a sex offender. In **Kansas**, the first buyer-specific crime for soliciting sex with minors was recently introduced. In **New York**, legislation was introduced to change the age of the minor victim of prostitution from 14 to 17 years, making it a crime to buy commercial sex with a minor under 17 and providing felony punishment for more buyers. In **Maryland**, an amendment to the human trafficking law was introduced that would prohibit a defense based on mistake of age.

Hawaii introduced legislation that would significantly raise financial penalties for buying commercial sex with a minor, with fines diverted toward a special fund to provide social services to victims. **Mississippi** and **Virginia** both introduced bills that would have created a specific crime for purchasing sex with minors, but unfortunately both bills failed to pass in their respective legislatures.

*Evaluations of state laws are based on legislation enacted before August 1, 2011. Statistics are based on Congressional Quarterly State Track summarized on March 22, 2012. This document does not reflect all pending and passed legislation.



CRIMINAL PROVISIONS FOR TRAFFICKERS

A handful of states have introduced varying responses in prosecuting the act of sex trafficking. Through passing anti-trafficking laws, both **Massachusetts** and **West Virginia** have criminalized the act of sex trafficking. **Wisconsin** recently passed legislation that allows the courts to consider the termination of a trafficker's parental rights, protecting the children of a convicted trafficker from possible victimization. In **Maryland**, legislation was introduced for the third consecutive year that would allow asset forfeiture in cases of human trafficking, with **California** proposing similar legislation. In **Nebraska**, proposed legislation would also aim to raise penalties for pandering a minor and apply asset forfeiture to traffickers.

In **Alaska**, recently introduced legislation would change terminology from promoting prostitution to sex trafficking, demonstrating greater awareness of human trafficking. The bill also differentiates trafficking of minors and adults, providing greater penalties for the trafficking of minors. Many states also introduced or passed legislation that address child pornography crimes, further tightening the framework for deterrence and punishment of sex traffickers.

In addition, many states also introduced or passed legislation that would address additional child pornography issues.



CRIMINAL PROVISIONS FOR FACILITATORS

In **Washington State**, pioneering legislation was passed that bans the advertising of commercial sex with minors through online facilitators. Similar legislation introduced in **Connecticut** will also attempt to hold online facilitators accountable. **Tennessee** recently introduced an amendment to their human trafficking statute that would also hold facilitators accountable within their sex trafficking law. Last, as a part of **Louisiana's** big package of laws, a much-needed sex tourism law was introduced ahead of the 2013 Superbowl in New Orleans.



PROTECTIVE PROVISIONS FOR CHILD VICTIMS

The beginning of 2012 marked an inspired response by state legislatures to enhance protective provisions for victims of domestic minor sex trafficking. In recently passed legislation, **Washington** offers an affirmative defense for prostitution charges if the person is a victim of human trafficking. Just recently, **Wisconsin** passed legislation that extends the statute of limitations for prosecutions of human trafficking of minors to be equal to other sex crimes involving children. **Maryland** introduced legislation that would prohibit a defendant from asserting a defense based on a minor's "consent," and **Ohio** recently introduced a bill package to provide services to child victims.

A flurry of pending legislation in numerous states could dramatically enhance victim protections, permit expungement of prostitution records for child victims and provide allocation of special funds using fines acquired from prosecutions. In **Hawaii**, pending legislation would ensure child victims receive immunity for prostitution charges, instead diverting them into child protective custody. Similarly, **Florida** passed legislation that provides an affirmative defense for prostitution and establishes specific specialized services for sexually exploited minors.

California, Colorado, Louisiana, Oregon and **Vermont** have all introduced legislation that permits expungement of prostitution records for minors. In **Colorado**, proposed legislation would provide restitution for victims and civil remedies, with similar legislation passed in **Tennessee** that allows victims to sue the trafficker. **South Carolina** has a comprehensive bill package (a carryover bill with stronger cosponsorship in 2012) that includes restitution for victims and additional victim protections. In **New Jersey**, a bill was passed that provides access to services instead of arrest. In both **Kansas** and **Kentucky**, proposed legislation would provide a human trafficking fund for victim services. In **South Dakota**, a law passed that provides human trafficking victims with an affirmative defense to charges of prostitution, with similar legislation pending in **Louisiana**.

In **Kentucky**, proposed legislation would ensure a speedy trial, provide victim advocates and a civil cause of action for victims of trafficking, and allow multidisciplinary response teams to include human trafficking advocates. In **Florida**, legislation would allow crime victims' compensation for sexually exploited minors.



CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

Much needed tools for law enforcement are being pursued in several states. **West Virginia** and **Florida** passed legislation that mandates law enforcement training. In addition, **Florida** passed legislation that allows wiretapping in investigations of sex trafficking. **Illinois** is considering legislation that would create an exception to a violation of eavesdropping charges for law enforcement investigating domestic minor sex trafficking. In **Louisiana**, law enforcement training would become compulsory and police decoys and wiretapping could be provided to aid human trafficking investigations. In **Nebraska** and **Kentucky**, proposed legislation would mandate law enforcement training on human trafficking.