

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2012 Annual Report

The inaugural Protected Innocence Challenge report released on December 1, 2011, revealed the gaps in state legislative responses 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. The 2011 Protected Innocence Challenge was a call for state action to bring national change. Now, one year later, the legislative change accomplished during 2012 demonstrates that the call for change was answered—by advocates across the country who used the Protected Innocence tools to press for change, and state legislators who responded to the challenge and fixed gaps in state legislative frameworks that allowed trafficked children to remain vulnerable, unidentified and deprived of vital services and justice. Not only did the vast majority of states introduce legislation relating to domestic minor sex trafficking, but several states passed comprehensive legislation, impacting almost every area of law addressed by the Protected Innocence Framework.

One year after the release of the 2011 Protected Innocence Challenge:*

240 state and **38** federal bills were introduced that relate to domestic minor sex trafficking.

78 laws were passed that relate to domestic minor sex trafficking.

40 states had legislation introduced that relates to the Protected Innocence Framework.

33 states enacted legislation related to the Protected Innocence Framework.

*Statistics are based on Congressional Quarterly State Track accounting for legislation introduced or passed between August 1, 2011 and August 1, 2012.



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

The past year brought marked improvement in several states' ability to combat domestic minor sex trafficking, by adding or improving human trafficking laws, or by strengthening laws that criminalize commercial sexual exploitation of children (CSEC). Alaska, Florida, Indiana and Oklahoma all amended their trafficking laws to better protect minors by **removing force, fraud and coercion when the victim is a minor**, removing this substantial barrier to successful prosecutions in sex trafficking cases. South Carolina's new trafficking law criminalizes sex trafficking of minors but requires the use of force. In addition, Massachusetts and West Virginia enacted their states' **first trafficking laws**, both of which criminalize sex trafficking of minors without regard to use of force, fraud or coercion in commission of the offense. Indiana improved its human trafficking law by **removing the requirement of force, fraud or coercion** for minors under 16. In light of these legislative improvements, **32** states now **criminalize sex trafficking without requiring proof of force, fraud or coercion when a minor is involved**, although **2** of these states **do not protect all minors** under 18. Improvement is still needed in the trafficking laws of **15** states that **require proof of force, fraud or coercion even when a minor is involved**, and **4** states, Wyoming, Hawaii, Virginia and Maine, still **do not have a sex trafficking law**.

As gangs, motivated by easy profits, become increasingly involved in domestic minor sex trafficking, states have begun to respond by ensuring their organized crime laws are able to target sex trafficking enterprises. In 2012, Illinois enacted a **racketeering law that includes human trafficking and commercial sexual exploitation of children offenses as predicate offenses**, and Utah added human trafficking as a predicate offense under its racketeering law, **expanding the range of penalties that may be applied to convicted traffickers in these states**. Currently, **32 states have racketeering laws that include human trafficking or CSEC offenses as predicate crimes**, ensuring racketeering laws in those states are available to undermine the management and financial infrastructure of criminal enterprises that profit from domestic minor sex trafficking.



CRIMINAL PROVISIONS ADDRESSING DEMAND

Legislation across the country **adding or increasing penalties for buyers** demonstrates an **important shift in focus** toward criminalizing the conduct of buyers who purchase or attempt to purchase commercial sex acts with minors. Iowa amended its definition of human trafficking to **clearly include, as conduct constituting human trafficking, the purchase of sex with victims of human trafficking**, defined to include minors without regard to force, fraud or coercion. Oklahoma **added the term “purchase”** to its sex trafficking law, extending application of this law to buyers of sex with minors. Louisiana added several CSEC offenses to its criminal code that apply to buyers **providing heightened penalties when a minor under 18 is involved** and further penalty enhancements when the minor is under 14. Alaska amended its prostitution law to include the **offense of purchasing sex with a minor**.

With the 2012 improvements to state demand laws, **14 states now have human trafficking laws that could reach buyers of sex with minors** and 21 more could reach buyers pending the determination of the definition of “obtain” in the law. Additionally, **32 states have one or more CSEC offenses that criminalize solicitation of sex with minors**. Since **19 states have no law making it a crime in that state to purchase sex with a minor**, buyers remain able to avoid criminal liability in some jurisdictions while they continue to fuel demand—the profit motive for traffickers.

To promote successful prosecutions of buyers by preventing them from asserting a defense that they did not know a minor victim’s age, Louisiana **expressly prohibited a mistake of age defense in two of its new CSEC offenses**, and Iowa **expressly prohibited a mistake of age defense in prosecutions under the human trafficking law**, which now clearly applies to buyers.



CRIMINAL PROVISIONS FOR TRAFFICKERS

Since the 2011 Protected Innocence Challenge report cards were released, legislators and advocates have raised the stakes for traffickers who profit from domestic minor sex trafficking by expanding the range of financial penalties that may be imposed on convicted traffickers. South Carolina, Alaska, Illinois, Massachusetts, and Florida **enacted laws providing for asset forfeiture in human trafficking cases**. Louisiana **added several new CSEC offenses with heightened penalties** of 15–50 years imprisonment and a possible fine up to \$50,000 when a minor under 18 is involved, and 25–50 years’ imprisonment without probation or parole and a possible fine up to \$75,000 when the minor is under 14. Tennessee passed a bill that **enhances the penalty for human trafficking when the victim is a minor under 15 or the offense is committed within a proscribed distance from facilities where minors may be found**, including schools, day care centers, and libraries. Legislation passed in Nebraska distinguishes between pandering a minor and pandering an adult and **raises the penalty when pandering involves a minor**. Under Massachusetts’s **new trafficking law** convicted traffickers face up to life imprisonment and possible fines up to \$25,000.

Other legislation focuses on post-conviction protections for minors and the community. Hawaii and Utah passed bills that require **traffickers convicted under certain commercial sexual exploitation of children laws to register as sex offenders**, and Wisconsin passed legislation that allows the court to consider **terminating a trafficker’s parental rights**.



CRIMINAL PROVISIONS FOR FACILITATORS

By enacting human trafficking laws that include assisting or benefitting from sex trafficking of minors, Massachusetts’s new trafficking law **substantially raised the penalties applicable to facilitators of domestic minor sex trafficking**, including business entities which could be fined up to \$1,000,000 if convicted of facilitating sex trafficking under the new law. One year after the Protected Innocence Challenge inaugural release, **facilitators face criminal liability for assisting, enabling or benefitting from domestic minor sex trafficking in 32 states**.

Ahead of the 2013 Super Bowl which will draw thousands of tourists into the state, **Louisiana** amended its human trafficking law to **criminalize the sale and promotion of travel for the purpose of engaging in commercial sexual exploitation**. Louisiana’s comprehensive bill further bolstered its efforts to combat facilitators of sex trafficking by **amending its laws prohibiting maintaining or letting premises where prostitution is practiced** to provide enhanced penalties when a minor is involved.



PROTECTIVE PROVISIONS FOR CHILD VICTIMS

Across the country, states enacted a range of legislative measures that seek to ensure greater protections for minor trafficking victims. Comprehensive bills passed in Massachusetts, Ohio and Florida enhancing the protective provisions for victims of domestic minor sex trafficking by **avoiding a punitive response to trafficked minors, instead directing minor victims into specialized services and/or housing**. Acknowledging that victims are often forced to commit crimes as a result of their victimization, Tennessee, Washington, South Carolina, Louisiana and South Dakota all passed legislation establishing an **affirmative defense that may be asserted by trafficking victims**.

Legislation passed in Maryland and Massachusetts amended the **definition of a child in need of services (CHINS) and an abused child** to include minor victims of trafficking and prostitution offenses. Ohio and Massachusetts both established a **state fund for victims of human trafficking**, funded by fines paid or property forfeited by defendants convicted of trafficking offenses. South Carolina, Tennessee, Massachusetts, Colorado and Ohio created a **civil remedy** that allows trafficking victims to sue traffickers and South Carolina's legislation provides **restitution** for victims.

Louisiana's legislation prevents defendants charged under sex trafficking or several CSEC laws from asserting **consent of the child as a defense**, while Oklahoma and South Carolina amended their human trafficking laws to expressly prohibit a consent defense, eliminating the need for child victims to provide testimony to rebut this defense. Legislation in Massachusetts also **protects minor victims from traumatizing cross examination by extending the protections of the rape shield law** to the testimony of trafficking and CSEC victims. The protections of the rape shield law currently extend to trafficking victims in **only 19 states**, demonstrating the need for expanded protection of minor victim witnesses during the prosecution of their traffickers.

To support the restoration of minor victims of sex trafficking, Colorado, Louisiana, Ohio and Oregon all passed legislation that **permits minor trafficking victims to expunge prostitution charges on their juvenile records**. Florida, Iowa and South Carolina passed legislation ensuring domestic minor sex trafficking victims' access to **crime victims' compensation**, providing minor victims with some financial means to care for themselves, pursue education and move forward with their lives.



CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

In 2012, states also expanded the tools available to law enforcement in conducting investigations of human trafficking and commercial sexual exploitation of children. In Louisiana, **police decoys and wiretapping are now permitted to aid human trafficking and child sex trafficking investigations**, and Florida authorized wiretapping in human trafficking investigations. Louisiana and Ohio passed legislation **mandating that law enforcement receive training on human trafficking**, bringing the number of states that statutorily mandate training for law enforcement to 9; however another 17 states, including Massachusetts, provide non-mandatory training for law enforcement related to domestic minor sex trafficking.

Louisiana now requires **reporting of missing children who have been recovered**, enabling agencies to maintain accurate records regarding missing children so exploited and at-risk children may be more easily identified.

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