



PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK

METHODOLOGY

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The original legal analysis of the 50 states and the District of Columbia that laid the foundation for the Protected Innocence Legislative Framework application and resulting Protected Innocence Challenge Report Cards was accomplished through a partnership between Shared Hope International and the American Center for Law & Justice (ACLJ), which focuses on constitutional and human rights law worldwide. The legal analysis for the 2012 Protected Innocence Challenge was implemented under the direction of Samantha Healy Vardaman, Esq., and Christine Raino, Esq., and was greatly assisted by Shared Hope law fellows: Megan Veith, Carmen Green, Carmen Murphy, Carol Wu, Charity Ramsey, and Ryan Dalton. All Shared Hope staff were involved in key ways in the research and writing of the Protected Innocence Challenge and the implementation of the Protected Innocence Initiative.

Introduction

The Protected Innocence Challenge is based on the Protected Innocence Legislative Framework which was informed by research performed by Shared Hope International and compiled in “The National Report on Domestic Minor Sex Trafficking.” Domestic minor sex trafficking is the prostitution, pornography, or sexual performance of U.S. citizens or lawful permanent residents under the age of 18 in the United States.

Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, the Protected Innocence Legislative Framework sets out the basic policy principles required to create a safer environment for children. The steps necessary to create this safer environment include the following: preventing domestic minor sex trafficking through reducing demand, rescuing and restoring victims through improved training on identification, establishing protocols and facilities for victim placement, mandating appropriate services and shelter, and incorporating trauma-reducing mechanisms into the justice system. Broken systems of criminal justice and child welfare responses to victims must also be fixed to ensure that commercially sexually exploited children are treated as victims and provided with remedies through the law to recapture their lives and their futures.

Background

Domestic minor sex trafficking is the commercial sexual exploitation of American children within U.S. borders and is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children (CSEC). Congress, in the federal Trafficking Victims Protection Act (TVPA), has made sex trafficking of a minor a crime.¹ Federal law defines sex trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”² When considering the crime of domestic minor sex trafficking, under the TVPA, the victim’s age is the critical issue—there is no requirement to prove that force, fraud, or coercion was used to secure the victim’s actions if the victim is a minor. Experts estimate that at least 100,000 American juveniles are victimized through prostitution in America each year.³

Shared Hope International first actively addressed the sex trafficking of American children by researching the demand for commercial sex that encourages the commercial sexual exploitation of women and girls. The DEMAND project investigated buyers, facilitators, and traffickers in four countries: Jamaica, Japan, the Netherlands, and the United States. The startling findings from this project highlighted the fact that sex trafficking is demand-driven and that the product for sale is most commonly local (domestic) children.⁴

Recognizing that a strategic response to sex trafficking required a comprehensive understanding of the local situation, Shared Hope International aligned with the U.S. Department of Justice human trafficking task forces to assess domestic minor sex trafficking and the access to victim services in ten U.S. locations: Dallas, Texas; San Antonio, Texas; Fort Worth, Texas; Salt Lake City, Utah; Buffalo, New York; Baton Rouge and New Orleans, Louisiana; Independence, Missouri; Las Vegas, Nevada; Clearwater, Florida; and The Commonwealth of the Northern Mariana Islands (U.S. Territory). The assessments investigated three areas identified by the TVPA and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as the key components necessary to effectively combat trafficking in persons: Prevention, Prosecution, and Protection. The assessments involved qualitative interviews of professionals who were likely to come into contact with victims of domestic minor sex trafficking, as well as quantitative data collection when available.

Shared Hope identified and targeted for interviews seven professional groups as likely to come into contact with victims of domestic minor sex trafficking: federal, state, and local law enforcement; federal and state prosecutors; juvenile court personnel; juvenile probation and detention personnel; public defenders; child protective services personnel; and social services/non-governmental organizations. Shared Hope conducted a total of 297 interviews and requested statistics from relevant agencies, which were not always available, and where available, typically did not provide separate data on domestic minor sex trafficking—a term and crime with which many interviewees were not yet familiar. In those cases, Shared Hope reviewed the statistics to determine the numbers of suspected domestic minor sex trafficking victims. For example, juvenile detention facility statistics reflecting the number of youth detained under charges of prostitution could be properly counted toward the number of domestic minor sex trafficking victims in that facility since juveniles in prostitution are, by definition, victims of sex trafficking under the federal TVPA.⁵ The reliance on extrapolated data reflects the overall lack of effective identification of domestic minor sex trafficking victims and highlights the need for training, as well as data collection, regarding domestic minor sex trafficking.

Shared Hope documented the information gathered from each assessed location in area-specific reports outlining the problem’s scope, how victims of domestic minor sex trafficking accessed the justice and social services systems, how victims were labeled, and whether, as a result of that label, victims of domestic minor sex trafficking were able to access (or were barred from accessing) services as victims of a violent crime. The findings from these ten site assessments formed the foundation of “The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children.” Later, Shared Hope performed four additional rapid assessments in South Florida, Virginia, Arizona, and Washington.

¹ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

² 22 U.S.C. § 7102(9).

³ LINDA SMITH, SAMANTHA HEALY VARDAMAN, & MELISSA A. SNOW, SHARED HOPE INTERNATIONAL, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED YOUTH 4 (2009) [hereinafter NATIONAL REPORT] (quoting Ernie Allen, National Center for Missing and Exploited Children in DVD: Prostituted Children in the United States: Identifying and Responding to America’s Trafficked Youth (Shared Hope International 2008) (on file with author)), available at http://www.sharedhope.org/Portals/0/Documents/SHL_National_Report_on_DMST_2009.pdf.

⁴ SHARED HOPE INT’L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 2 [hereinafter DEMAND], available at <http://www.sharedhope.org/Portals/0/Documents/DEMAND.pdf>.

⁵ 18 U.S.C. § 1591(a); 22 U.S.C. § 7102(8), (14).

These findings were further substantiated at Shared Hope International's 2008 National Training Conference on the Sex Trafficking of America's Youth, which brought together nearly 200 first responders from across the nation, as well as experts on trauma-based services and shelter, to share their experiences and offer guidance as to the best practices for responding to domestic minor sex trafficking.

Based on the research findings, within an overarching framework that identifies minors exploited through sex trafficking as victims, four primary policy issues must be addressed to combat domestic minor sex trafficking: 1) eliminating demand; 2) prosecuting traffickers; 3) identifying victims; and 4) providing protection, access to services, and shelter for victims.

1. **Eliminating Demand.** Despite the fact that demand is the primary driver of the commercial sex industry and the commercial sexual exploitation of children, buyers are often not recognized as critical participants in the victimization of children through domestic minor sex trafficking.⁶ All buyers of sex with children—whether they be classified as preferential (pedophiles), opportunistic (thrill seekers), or situational (do not care about the age of the person being prostituted)—are committing a serious crime for which significant punishment is appropriate.

2. **Prosecuting Traffickers.** Frequently, the arrest and prosecution of the trafficker are based solely on the victim's cooperation in the investigation and testimony at trial.⁷ While victim cooperation with law enforcement is important, this approach can place a heavy burden on a domestic minor sex trafficking victim, who typically requires a lengthy amount of time before he or she will disclose the facts of his or her victimization. Therefore, it is critical for law enforcement officers to pursue innovative or alternative investigation techniques to corroborate the victims' allegations in domestic minor sex trafficking cases.

3. **Identifying Victims.** One of the primary barriers to victim identification is that laws often label minors engaging in commercial sex acts as criminals rather than victims. Misidentification causes a chain reaction of negative outcomes, the most significant of which is the failure to deliver the necessary services to interrupt and treat the trauma these children have endured. The problem occurs at all levels of first response from law enforcement arrests on the street, to the intake processes of homeless and runaway youth shelters, to court adjudication of victims as juvenile delinquents for offenses committed in connection with the prostitution of the child. Adjudicating the victim as delinquent and detaining him or her in a juvenile facility is a too frequent outcome and contributes to the return and retention of minors in commercial sexual exploitation. Law enforcement officers reported to Shared Hope International that another barrier to proper identification of victims is that prostituted juveniles are trained by their traffickers to lie to authorities and are provided with excellent fraudulent identification. This results in their registration in the arrest records as adults—an identification that follows them through their years as minors unless and until it is corrected by the insight of a law enforcement officer who recognizes that a victim is a minor and pursues a correct identification. Using tools to flag high risk children, such as chronic runaways and other status offenders, as well as youth who have fled from foster care, group homes, or other residential programs, as likely victims of domestic minor sex trafficking would greatly improve the identification process.

4. **Providing Protection, Access to Services and Shelter for Victims.** Law enforcement officers expressed frustration that they are often compelled to charge a domestic minor sex trafficking victim with a delinquency offense, such as prostitution, to detain the child and to keep the child safe from the trafficker. Detention, however, is detrimental to the victim in that the victim rarely receives any services in detention, much less services specific to the trauma endured through sex trafficking. Due to the unique trauma bonding that occurs between victims and their traffickers, these children often run from juvenile facilities right back to the people who exploited them. Also, in some states, a victim's entry into the delinquency system can disqualify him or her from accessing crime victim funds for services. Establishing protective shelters and services for domestic minor sex trafficking victims would provide law enforcement officers or juvenile courts with an alternative placement for prostituted minors. Protective shelters also provide a more conducive environment for breaking the cycle of destructive trauma bonding between a victim and the trafficker and restoring a victim to the point where the victim can assist in an investigation and trial. Despite the need for protective shelters, fewer than one hundred beds in facilities appropriate for and specializing in treating domestic minor sex trafficking victims exist across the country. Establishing these protective shelters is critical for creating an effective strategy to combat domestic minor sex trafficking.

⁶ DEMAND, *supra* note 6, at 3.

⁷ In contrast, 22 U.S.C. § 7105(b), prohibits requiring child victims of severe forms of trafficking to cooperate with law enforcement in order to receive assistance.

Methodology

The purpose of the Protected Innocence Legislative Framework is to elaborate the key policy principles that have been identified as critical to making the proper response to domestic minor sex trafficking. These principles, as elaborated above, are eliminating demand, prosecuting the traffickers, identifying the victims, and providing protection, access to services, and shelter for victims. These principles can be grouped into six areas of law:

1. Criminalization of Domestic Minor Sex Trafficking
2. Criminal Provisions Addressing Demand
3. Criminal Provisions for Traffickers
4. Criminal Provisions for Facilitators
5. Protective Provisions for the Child Victim
6. Criminal Justice Tools for Investigation and Prosecution

Each area of law may have several laws that affect the policy within the state's code. As such, specific questions must be asked to determine whether state laws sufficiently address the policy need.

Analysis

Each state will be graded on the basis of the following points of law:

1. Criminalization of Domestic Minor Sex Trafficking

- 1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.

Note: The vast majority of states have human trafficking laws. Within these statutes, however, there are variations in coverage; some do not expressly cover the sex trafficking of minors. State human trafficking laws that are consistent with each other and with federal law in scope and penalty will prevent migration of the crime to more lenient states or onto tribal lands, many of which are close to densely populated areas and contain attractions for this activity, such as casinos.

- 1.2 Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.

Note: In the absence of a clear and specific child sex trafficking statute, CSEC laws become critical to punish the crime of commercial sexual exploitation of a child. CSEC statutes are those that make the sexual exploitation of a minor a criminal offense. These offenses range from prostitution to live or recorded sexual performance. Also, sexual offenses can be committed in the course of commercial sexual exploitation and, in some cases, establish the predicate offense for certain trafficking or CSEC offenses. Sexual offense statutes may also be used to prosecute CSEC offenses, although this is not preferred due to the potential resulting failure to identify the victim as a trafficking or CSEC victim.

- 1.3 Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.

Note: Language referring to human trafficking is necessary to ensure that CSEC victims are properly identified as human trafficking victims and thus may access the protections and benefits outlined under federal and some state statutes. This is also necessary to further the collection of data on human trafficking, which is critical to countering domestic minor sex trafficking.

- 1.4 The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.

2. Criminal Provisions Addressing Demand

- 2.1 The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.

Note: Language capturing the entire trafficking circle from trafficker to buyer to victim is necessary to mount a comprehensive attack on domestic minor sex trafficking.

- 2.2 Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.

Note: Anti-demand provisions are critical. State laws on commercial sex abuse of a minor, child prostitution, commercial sexual exploitation of minor, etc. must cover the crime of buying sex with a minor. These provisions will ideally refer to the human trafficking statute to make it clear that buying sex with a minor is domestic minor sex trafficking.

- 2.3 Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.

Note: This can be accomplished by amending traditional solicitation and prostitution laws to make them inapplicable to buying sex with a minor along with amending CSEC or trafficking laws to ensure that buyers of sex acts with minors are included. This is important to ensure that crimes of domestic minor sex trafficking are separated from crimes of solicitation and/or prostitution and that buyers are never allowed to proceed with diversion programs, such as a “John School” or other treatment programs.

- 2.4 Penalties for buyers of commercial sex acts with minors are as high as federal penalties.

Note: Under federal law, sex trafficking of a child is punishable by 10 years to life imprisonment.⁸ Consistency in sentencing between states will prevent the crime from migrating to more lenient states. Also, stiff penalties are just and are critical to deter demand.

- 2.5 Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.

- 2.6 No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.

- 2.7 Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.

Note: Under federal law, sex trafficking of a child is punishable by 10 years to life imprisonment.⁹ State laws that set lower criminal penalties for sexual offenses against older minors are ignoring the definition of a minor and perpetuating the false perception that a victim aged 16 or 17 is a lesser victim. This, however, is not to be confused with enhanced penalties for offenses against a minor below a certain age that are considered especially egregious. For example, 18 U.S.C. § 1591 provides an enhanced penalty of a minimum of 15 years to life imprisonment for trafficking a minor under 14.¹⁰

- 2.8 Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.

Note: Meaningful fines, asset forfeiture, restitution and fees can make it difficult for buyers to hide the crime they have committed from family and community. Directing the fines to a dedicated account can simultaneously offset the costs of investigating, prosecuting, and restoring the victims of the crime. Impound fees must be significant to act as a deterrent.

- 2.9 Buying and possessing child pornography carries penalties as high as similar federal offenses.

Note: Child pornography is defined in federal law as any visual depiction involving the use of a minor engaging in sexually explicit conduct, or a visual depiction that has been created or modified to appear as a minor engaging in sexually explicit conduct.¹¹ Child pornography is actually an image of sexual abuse perpetrated on a child. The most common forum for child pornography today is the Internet and once images are on the Internet, they cannot be removed completely and can continue to circulate revictimizing the child each time they are viewed. Child pornography is also frequently encountered in combination with other sexual offenses against children and may serve as a gateway to acting out the images of sexual abuse on children.¹² Therefore, possessing child pornography should be viewed as a serious crime meriting meaningful prosecution.¹³

- 2.10 Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.

Note: The exchange of money or something of value does not sanitize the buyer of commercial sex with a minor from the sex offender registration requirements; domestic minor sex trafficking is a sexual offense. Buyers convicted of human trafficking with a sexual purpose or of a CSEC offense should be required to register as sex offenders.

3. Criminal Provisions For Traffickers

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.

- 3.2 Creating and distributing child pornography carries penalties as high as similar federal offenses.

- 3.3 Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.

- 3.4 Financial penalties for traffickers, including asset forfeiture, are sufficiently high.

Note: Financial penalties may include asset forfeiture, restitution, and fines for the crimes of human trafficking and commercial sexual exploitation of children. Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by the convicted trafficker. Asset forfeiture laws

⁸ 18 U.S.C. § 1591(a), (b)(2).

⁹ Id.

¹⁰ Id. § 1591(a), (b)(1).

¹¹ Id. § 2256.

¹² ALEXANDRA GELBER, U.S. DEP’T OF JUSTICE, CHILD EXPLOITATION AND OBSCENITY SECTION, CRIMINAL DIVISION, RESPONSE TO “A RELUCTANT REBELLION” 5–6 (2009), available at <http://www.justice.gov/criminal/ceos/ReluctantRebellionResponse.pdf>.

¹³ Id. at 14–15.

have been very effective in fighting drug trafficking¹⁴ and should be viewed as an effective tool in the fight against domestic minor sex trafficking. Asset forfeiture is commonly tied to Racketeer Influenced and Corrupt Organizations (RICO) statutes in many states and thus requires prosecutors to charge these crimes in addition to human trafficking. Restitution is important to provide victims of sex trafficking with the funds to access treatment and to restart their lives. States should follow the federal model of requiring restitution for all victims of human trafficking¹⁵ and CSEC. Lastly, meaningful mandatory fines can be a deterrent and help to fund the programs necessary to serve victims.

3.5 Convicted traffickers are required to register as sex offenders.

3.6 Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.

Note: Traffickers may impregnate their victims, including minor victims, with the intent of maintaining control. The effect is to have second generation victims within a criminal “family.” Breaking the bonds between victim and pimp include freeing their child from a continuing relationship with the trafficker parent. Also, children of traffickers can become victims of trafficking at the hands of their trafficker-parents.

4. Criminal Provisions for Facilitators

4.1 The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.

Note: Facilitators are those people or entities that knowingly enable domestic minor sex trafficking or benefit from sex trafficking in any way. State sex trafficking laws must also make the act of facilitation a crime.

4.2 Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.

Note: Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by a person or an entity convicted of knowingly benefitting from sex trafficking, such as hotels or online classified businesses.

4.3 Promoting and selling child sex tourism is illegal.

Note: Businesses and individuals selling travel based on or containing components of commercial sexual exploitation of children are committing the crime of child sex tourism and driving demand for sex with children. Laws prohibiting child sex tourism should apply to a natural person as well as a corporation, and the penalty prescribed for the crime must be sufficiently serious to present substantial risk and deterrence, and should be comparable with the gravity of the crime.

4.4 Promoting and selling child pornography is illegal.

5. Protective Provisions for the Child Victims

5.1 A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims’ compensation and other victim benefits.

Note: Language defining a minor who has been used in a commercial sex act (prostitution, pornography, or sexual performance) as a victim of sex trafficking or CSEC can lead to improved identification and responses at all levels.

5.2 The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.

Note: Many states allow a minor to consent to sex at an age lower than the age of majority. But a minor used in a commercial sex act is a victim of adult criminal behavior; the child’s consent, therefore, cannot mitigate such acts. For this reason, consent must not be used as a defense to the crime of domestic minor sex trafficking.

5.3 Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.

Note: This is consistent with defining a minor in prostitution as a victim of domestic minor sex trafficking. This also establishes that a prostituted minor will not be charged as an offender, in either juvenile or adult criminal court, but rather, will be protected as a victim.

¹⁴ Asset Forfeiture, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/programs/af.htm> (last visited Sept. 21, 2011).

¹⁵ 18 U.S.C. § 1593.

- 5.4 Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.

Note: Establishing a child protection response is critical to ending the arrest and detention of domestic minor sex trafficking victims and ensuring instead that they are provided crime victim protections, services, and benefits. Protective shelter is far preferable to the current practice of charging the minor with an offense in order to detain him or her for his or her own safety and to assist in investigating a criminal case. Service providers struggle with case management when these victims are ordered to inappropriate placements, such as ill-equipped foster care, group homes, and detention facilities, or they are returned to poor home environments. Laws are needed to establish and financially support residential programs to treat domestic minor sex trafficking victims in three stages: intervention, restoration, and transitional living. Debate exists over the level of security in and duration of these placements, as well as the size and location of such shelters; however, agreement exists as to the need for a variety of approaches from long-term shelters to home-based care to specialty foster homes, etc.

- 5.5 Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.

Note: Expanding or interpreting the definition of “abuse and neglect” in the child protection statutes to include sex trafficking and commercial sexual exploitation would allow child protective services to include it as a specific type of maltreatment and bring situations of domestic minor sex trafficking within the investigative and protective functions of child protective services.

- 5.6 The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.

Note: Child protective services is often precluded from intervening in a case of non-familial domestic minor sex trafficking because the agency’s mandate is limited to cases in which a parent or legal guardian is the cause of danger to the child. Defining such a person to include the person in custody or control of a minor, such as a trafficker, can bring greater protections to domestic minor sex trafficking victims through the intervention of child protective services.

- 5.7 Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.

Note: Ineligibility criteria contained in state crime victims’ compensation programs often result in child sex trafficking victims being denied funds. Victims may be determined ineligible due to, among other things, their “involvement in the underlying crime” for which they are claiming the compensation, i.e. prostitution, or for failure to cooperate in a law enforcement investigation. This must be remedied with direct language specifically identifying these minors as victims.

- 5.8 Victim-friendly procedures and protections are provided in the trial process for minors under 18.

Note: Trauma reduction tools can increase the victim’s successful participation through safety and protection. Some examples include:

- a. Court appointment of an attorney for the domestic minor sex trafficking victim, serving, as appropriate, as the child’s legal counsel or as a guardian ad litem, could help protect the child from court system-related trauma and help better assure that their rights and legal interests were protected.*
- b. Victim-witness coordinators, who have received training on child trafficking issues, are needed to shepherd the domestic minor sex trafficking victims and families through the criminal justice process.*
- c. Rape shield laws limit a defendant’s ability to cross-examine victims about their past sexual behavior.*
- d. Prohibition on publication of an alleged rape victim’s identity.*
- e. Closed courtrooms for minor victim testimony can help with the problem of intimidation by defendant traffickers’ friends and family packing the courtroom.*
- f. Closed circuit television testimony can reduce re-traumatization of a domestic minor sex trafficking victim and assist in securing his or her testimony against an offender.*

- 5.9 Expungement or sealing of juvenile arrest or criminal records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.

Note: Victims of domestic minor sex trafficking (and adult sex trafficking) report being hampered in attempts to restore their lives through employment or education because they have criminal records. Criminal records can prevent survivors from obtaining academic scholarships, securing certain employment, and working with children in some cases. Saddling the victim of sex trafficking with a criminal record is contrary to his or her legal definition as a victim and can inhibit full reintegration into the community.

- 5.10 Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.

Note: Criminal restitution is an important part of the punishment for a convicted offender of trafficking and can provide funds for a victim to recover from the victimization. Restitution should be mandatory in any case of domestic minor sex trafficking and a means of calculating the typically unquantifiable costs of the victimization should be determined in the law. As an example, criminal restitution is mandated in the federal trafficking law.¹⁶ Often though, criminal cases are not pursued, or a convicted offender is not able to pay the restitution. Therefore, victims of domestic minor sex trafficking must be allowed to pursue civil remedies for the damages they have suffered as a result of the victimization. These might include compensatory damages, attorney’s fees, and punitive damages. The continuing effects of sex trafficking on a young person can lead

¹⁶ U.S.C. §§ 1593(b)(1), (b)(3), 2259(b)(4).

to future medical costs and other costs as they regain control over their life. Opportunities to access both criminal restitution and civil damages are means to pay for these needs.

- 5.11 Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Note: Because of the traumatic effects of sex trafficking on a child, lengthening or eliminating the statutes of limitations on criminal and civil actions for child sex trafficking and CSEC crimes and the injurious effects on the person is important to allow the victims full access to justice. It is preferable to follow the federal model of eliminating the statute of limitations altogether in criminal actions for sex crimes involving children.¹⁷

6. Criminal Justice Tools for Investigation and Prosecution

- 6.1 Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.

Note: Laws requiring training of law enforcement officers are important to the response to domestic minor sex trafficking victims. Due to the unique conditions of DMST, specialized training is ideal; however, this training might be combined with general human trafficking training. Training in victim identification, the definition of domestic minor sex trafficking, investigative techniques, and victim-witness management is critical to increased identification of and improved responses to the victims. Training has resulted in demonstrable increases in investigations of domestic minor sex trafficking in many places around the country.

- 6.2 Single party consent to audiotaping is permitted in law enforcement investigations

Note: Requiring two-party consent to audiotaped conversations makes undercover domestic minor sex trafficking investigations difficult and dangerous. Allowing for single party consent empowers law enforcement to more efficiently investigate and better prepare cases for prosecution while providing greater protection for the investigating officers interacting with traffickers and buyers.

- 6.3 Wiretapping is an available tool to investigate domestic minor sex trafficking.

Note: Access to wiretapping can be a decisive factor in initiating domestic minor sex trafficking investigations. The evidence obtained can lead to better prosecutions and could alleviate the need for victim testimony in domestic minor sex trafficking cases. The growing use of text messages to perpetrate sex trafficking makes it even more important to allow access to wiretapping in these investigations as access to text messages are governed by wiretapping laws.

- 6.4 Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.

- 6.5 Using the Internet to investigate buyers and traffickers is a permissible investigative technique.

- 6.6 Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.

Note: Identifying the missing and exploited child leads to identifying the domestic minor sex trafficking victim and provides an opportunity to intervene. The National Crime Information Center (NCIC), a computerized index of criminal justice information, relies on the entry of reports of missing and exploited children by local law enforcement. Also, immediate reporting to local police, the NCIC, and the National Center for Missing and Exploited Children (NCMEC) whenever a child goes missing is critical to identification and intervention, especially given the high correlation between missing children and trafficked children.¹⁸ At the same time, it is critical that first responders check the NCIC database and report to NCMEC whenever any domestic minor sex trafficking victim is rescued to see if the victim has been entered into those systems as a reported missing child.

¹⁷ Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (codified as amended at 18 U.S.C. § 3283).

¹⁸ SARA ANN FRIEDMAN, ECPAT-USA, INC., WHO IS THERE TO HELP US? HOW THE SYSTEM FAILS SEXUALLY EXPLOITED GIRLS IN THE UNITED STATES: EXAMPLES FROM FOUR AMERICAN CITIES 3 (2005), available at <http://ecpatusa.org/wp-content/uploads/2010/11/Who-Is-There-to-Help-Us.pdf>.

Grading

The Protected Innocence Legislative Framework will assign a point value of 0 to 2.5 based on a written point allocation scheme accounting for the critical elements of each of the components of law discussed above. The points will be totaled for each of the six areas of law. The six totals will be added to determine the final number for each state, which will translate to the corresponding letter grade as follows:

A		90 - 100
B		80 - 89
C		70 - 79
D		60 - 69
F		< 60

These letter grades will reflect the level of protection available through law in a domestic minor sex trafficking case in the respective state. A short analysis of each state's legislation will follow with recommendations.

It is important to note that the methodology looks solely at the laws in place in a given state and their de jure compliance with the Protected Innocence Legislative Framework at the time of the review. This analysis does not review how states enforce or implement their laws, though enforcement is critically important. Where obtained, statistics that demonstrate enforcement are noted in the state analysis but are not considered in the grade a state receives due to the inconsistency in content, collection, and maintenance of statistical data from state to state. A de facto assessment may be undertaken through the Shared Hope International Rapid Assessment of Domestic Minor Sex Trafficking Methodology and Tool, developed and implemented in fourteen locations around the country with funding from the U.S. Department of Justice (see www.sharedhope.org/Resources/Research.aspx).