

# Kids Are Not For Sale in Virginia



**HB 1964, Chief Bill Patron: Delegate Timothy Hugo**  
**SB 1188, Chief Bill Patron: Senator Mark Obenshain**

## Bill Summary

HB 1964 and SB 1188 establish a standalone sex trafficking law that improves Virginia's statutory framework for combatting sex trafficking in 3 key ways:

1) **By eliminating the requirement to prove force, fraud or coercion when the victim is a minor.**

Eliminating force, fraud or coercion and providing minimum penalties when the victim is a minor are key to strengthening Virginia's ability to combat child sex trafficking. The requirement to prove force, fraud or coercion as an element of sex trafficking in cases involving a minor victim is inconsistent with the realities of child sex trafficking and fails to address the particular susceptibility of minors who are often subtly controlled and manipulated into sex trafficking, without the trafficker's conduct rising to the level of force, fraud or coercion.

Heightened penalties for offenses involving a minor victim offer additional deterrence and reflect the egregious nature of the offense of child sex trafficking. Currently, the most substantial penalties available under Virginia law for prosecuting sex trafficking are provided under the abduction for immoral purposes law (Va. Code Ann. § 18.2-48). This law requires prosecutors to prove that a child was abducted "by force, intimidation or deception." Not only does this fail to capture a trafficker's subtle control and manipulation of a child, but it is confusing for jurors who prosecutors report are often unaware of the type of manipulation employed by traffickers to keep minor victims under their control. The pandering law (Va. Code Ann. § 18.2-355(4)), which is also used to prosecute sex trafficking offenses, does not require proof of force, fraud or coercion when the victim is a minor; however, lower penalties apply, and child victims are branded as prostitutes, thereby diminishing juror sympathy for these victims due to stereotypes associated with prostitution offenses.



2) **By criminalizing aspects of sex trafficking that are not currently criminalized under Virginia law.**

Neither the pandering law nor the abduction law, which are most commonly used to prosecute sex trafficking offenses, and none of Virginia's commercial sexual exploitation of a child (CSEC) laws, criminalize the conduct of recruiting a person to engage in commercial sexual activity. However, this conduct is a fundamental component of a trafficker's illegal scheme of exploitation. Research shows that traffickers may recruit victims by pretending to be boyfriends or promising to take care of them. Then victims suddenly find themselves trapped in a situation where they feel compelled to do whatever they are told by their trafficker. This not uncommon scenario is challenging to prosecute as abduction. While the pandering statute may apply, it does not accurately reflect the nature of the exploitation occurring and fails to provide comparable penalties. Under Virginia law, the only laws that criminalize recruitment relate to recruitment by gangs. While gangs are increasingly turning to sex trafficking to fund their illegal activities, the failure to criminalize this conduct in other contexts leaves prosecutors without an important tool to prosecute a substantial portion of sex trafficking offenses in Virginia.

3) **By criminalizing sex trafficking under a single comprehensive statute that promotes victim identification.**

Sex trafficking is currently prosecuted in Virginia through a patchwork of existing laws that fail to comprehensively capture the insidious exploitation that occurs in sex trafficking offenses. This exploitation devastates victims. The failure to identify and assist victims compounds their trauma and undermines the efforts of dedicated service providers to reach and serve this population. For this reason, prosecuting sex trafficking offenses under prostitution laws stigmatizes victims and creates additional barriers to identifying sex trafficking crimes for what they are – serious crimes of exploitation.



## How is this trafficking bill different from the ones introduced in previous years?

A local prosecutor participated in drafting the bill, basing the changes on what is currently lacking in the law. This bill focuses on criminalizing sex trafficking, an issue researched by the Virginia Crime Commission in the October 2014 Human Trafficking and Juvenile Prostitution study which identified the need for legislative change to address particular gaps in Virginia's framework combatting this crime.

## Under what Virginia laws are sex trafficking cases currently tried?

Primarily under Pandering (Va. Code Ann. § 18.2-355(4)) and Abduction (Va. Code Ann. § 18.2-48) statutes. However, other CSEC statutes and general sex offense statutes are also sometimes used. CSEC Statutes include Va. Code Ann. §§:

- 18.2-346 (Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties)
- 18.2-370(B) (Taking indecent liberties with children)
- 18.2-3568 (Receiving money for procuring person)

## Why are these “substitute” laws insufficient?

Prosecutors have difficulty getting grand juries to indict under the abduction statute because the victim is not always in the presence of the trafficker. Also, when prosecuting under “substitute” laws, there is confusion as to what the underlying offense is, thereby resulting in misidentification of victims, weaker penalties, and a false portrayal of the very real presence of sex trafficking in Virginia.

## Why not just amend the abduction and pandering statutes?

Prosecutors have told us that they have difficulty getting a grand jury to indict under the abduction statute, so they do not like to prosecute under abduction. The pandering law does not capture the same conduct as a sex trafficking law and prosecuting sex trafficking under prostitution statutes is stigmatizing to victims. The sex trafficking language makes more sense as a standalone statute, as the DLS attorney who reviews all trafficking legislation confirmed.



**Why does it matter that 48 other states have a sex trafficking law? Should that be the reason that VA enacts a sex trafficking law when the Code already addresses commercial sex acts under related offenses?**

The reason Virginia needs a sex trafficking law is not just to say we are like the majority of other states; we need a sex trafficking law because the laws we have are not working. At the same time, a standalone trafficking law can provide a clear targeted approach to combatting sex trafficking in the Commonwealth of Virginia.

**This legislation also targets buyers. Why should buyers face the same harsh penalties as traffickers?**

Not only do buyers of sex with minors drive the demand for sex trafficked youth, but acknowledging buyers' crimes as sex trafficking crimes is critical to victim identification and clarifying that a commercially sexually exploited child is a victim of sex trafficking. See the Demanding Justice Report for further discussion of this issue and related statistics.

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## Section by Section Bill Analysis

§ 18.2-355.1 (Trafficking of persons for commercial sexual activity; penalties)	Impact on VA law
<p><i>A. For purposes of this section, "commercial sexual activity" means the promise, offer, or receipt of money or its equivalent by a person in exchange for sexual intercourse, cunnilingus, anilingus, fellatio, anal intercourse, inanimate or animate object sexual penetration, or feeling or fondling the sexual or genital parts of any person.</i></p>	<p>By defining commercial sexual activity broadly, the bill contemplates a broad range of circumstances under which sex trafficking may occur. The definition includes illegal sexual conduct that is not prohibited under the Virginia prostitution law and avoids stigmatizing victims by not referring to their victimization as prostitution.</p>
<p><i>B. Any person who recruits, transports, harbors, receives, provides, obtains, isolates, maintains, patronizes, solicits, or entices another person to engage in commercial sexual activity knowing or in reckless disregard of the fact that coercion or fraud will be used to cause such person to engage in commercial sexual activity is guilty of a Class 2 felony.</i></p>	<p>By including a broad range of prohibited conduct (recruiting, transporting, harboring, receiving, providing, obtaining, isolating, maintaining, patronizing, soliciting and enticing), the bill reaches all offenders involved in the sex trafficking offense—traffickers, buyers and facilitators. This ensures criminal liability for conduct such as recruitment and transportation that is not currently criminalized under Virginia law. This comprehensive approach promotes identification of victims who are often exploited by a range of bad actors and may be unwilling to expose their trafficker due to fear and trauma-bonding. The penalty for sex trafficking corresponds to the existing penalty under the abduction law and enhances deterrence by providing prosecutors with a powerful and targeted tool.</p>
<p><i>C. Any person who recruits, transports, harbors, receives, provides, obtains, isolates, maintains, patronizes, solicits, or entices a minor to engage in commercial sexual activity is guilty of a Class 2 felony.</i></p>	<p>This provision specifically criminalizes sex trafficking of a child without requiring proof of force, fraud or coercion, which is currently required to prosecute sex trafficking under the abduction law. The mandatory minimum sentences and</p>



*The punishment for such person shall include a mandatory minimum sentence of (i) 20 years if the minor is under 13 years of age, (ii) 15 years if the minor is 13 years of age or older but under 15 years of age, or (iii) 10 years if the minor is 15 years of age or older. The mandatory minimum terms of imprisonment prescribed for violations of this subsection shall be served consecutively with any other sentence.*

mandatory consecutive sentencing for sex trafficking of a child emphasize the seriousness of this offense. A strong penalty framework addresses the particular vulnerability and susceptibility of minors to being victimized through sex trafficking and establishes a powerful deterrent to any offender—whether a trafficker, buyer or facilitator—who plays a role in exploiting a vulnerable child through commercial sexual activity.

*D. Any person who receives money or its equivalent that he knows or has reason to know was derived from a violation of subsection B or C is guilty of a Class 3 felony.*

Ensures that all facilitators who benefit financially from a sex trafficking offense face criminal liability, even if they have not engaged in other prohibited conduct such as transporting or harboring victims (e.g., hotel operators).



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