

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Montana Report Card 2016

Montana's child sex trafficking laws do not require force, fraud, or coercion and reach buyers, sellers, and facilitators, imposing steep penalties for convictions. Juvenile sex trafficking victims are protected from prosecution for prostitution offenses. Child victims may access state services and benefits, including crime victim compensation, but specialized services are not statutorily mandated.

Final Score

90.5

Final Grade

A



8.5

10



25

25



15

15



7.5

10



24.5

27.5



10

15



### Criminalization of Domestic Minor Sex Trafficking

Montana's sexual servitude of a child and patronizing of a child laws do not require proof of force, fraud or coercion. The state CSEC laws include: prostitution and promoting prostitution when a minor is involved, aggravated promotion of prostitution, and sexual abuse of children. However, the state prostitution statute does not reference the human trafficking law to identify commercially sexually exploited minors as victims of sex 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 the child sex trafficking crimes.



### Criminal Provisions Addressing Demand

The trafficking of persons and sexual servitude laws apply to buyers following federal precedent through the term "obtain." Buyers of sex with minors may also be prosecuted under the patronizing a victim of sexual servitude law. The prostitution statute distinguishes between buying sex with minors versus buying sex with adults by providing a heightened penalty for soliciting or engaging in prostitution with a minor under 18. The sexual servitude, patronizing a victim of sexual servitude and prostitution laws prohibit buyers from asserting a mistake of age defense. Sexual abuse of children includes solicitation of a minor under 16 through in-person or electronic communication, making it a possible tool for prosecuting buyers who use the Internet to solicit sex acts with minors. Sexual abuse of children also includes possession of child pornography. A mistake of age defense is prohibited. Convicted buyers will be required to pay restitution to victims who suffer a pecuniary or economic loss. Buyers of sex with minors are required to register as sex offenders if convicted of sexual servitude, patronizing a victim of sexual servitude, prostitution with a child under 18 years of age, or sexual abuse of children, which includes Internet solicitation and possessing child pornography.



### Criminal Provisions for Traffickers

When the victim is a minor, a trafficker convicted under the trafficking of persons law faces imprisonment up to 50 years and possible a fine of up to \$100,000, and up to 25 years imprisonment and a possible fine of up to \$75,000 if convicted under the sexual servitude law. If convicted of promotion of prostitution of a child or aggravated promotion of prostitution, traffickers face up to 100 years imprisonment (the first 25 of which cannot be suspended or 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 the creation of child pornography and 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 offenses. Grounds for termination of parental rights include sexual abuse against a child, which is defined to include the CSEC crime of sexual abuse of children and sexual exploitation through prostitution.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Sentence	Fine (possible)	Asset Forfeiture (available)
Trafficking of persons (HB 89 §§ 2)	Max. 50 years	Max. \$100,000	●
Sexual servitude (HB 89 § 4)	Max. 25 years	Max. \$75,000	●
Patronizing a victim of sexual servitude (HB 89 § 5)	Max. 25 years	Max. \$75,000	●
Prostitution (§ 45-5-601(3)(a)) (Child under 18, offender over 18)	25-100 years	Max. \$50,000	○

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



## Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Juvenile 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. The sexual servitude statute expressly prohibits a defense based on consent of the minor to the commercial sex act but CSEC offenses do not expressly prohibit this defense. Children are not criminally liable for prostitution offenses as well as non-violent offenses committed as a direct result of being a victim of trafficking. Juvenile sex trafficking victims are presumed to be a youth in need of care, providing an avenue to services through child welfare, however specialized services are not statutorily mandated. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation, defined as permitting or encouraging a minor to engage in prostitution but the definition of a person responsible for the child's welfare seems too narrow to reach an exploiter who is not family or household member. However, this definition should not limit access to the protection of child welfare for juvenile sex trafficking victims who are presumed to be a youth in need of care. 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. With few exceptions, formal youth court, law enforcement, and department records must be physically sealed on the youth's 18th birthday and victims of human trafficking may have prostitution-related victims vacated. 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 statute of limitations for commencing prosecutions of trafficking and CSEC offenses is not eliminated or lengthened.



## 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 is available to law enforcement in the course of investigations. Wiretapping is not expressly allowed in investigations for sex trafficking, pornography or prostitution-related offenses. The sex trafficking offense does not prohibit a defense to the use of a decoy in investigations, however, the CSEC child sexual abuse 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 child pornography 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.



## Criminal Provisions for Facilitators

The trafficking of persons law includes the crime of benefitting financially from participation in a venture that subjected a person to sexual servitude; a violation is punishable by up to 50 years imprisonment and a possible fine up to \$100,000 when the victim is a child. The CSEC crime of promoting prostitution applies to facilitators who permit their premises to be regularly used for prostitution; if the victim is under 18 it is punishable by up to 100 years imprisonment (the first 25 of which cannot be suspended, nor eligible for parole) and a possible 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 child pornography, is punishable by up to 100 years imprisonment, a possible fine up to \$10,000, or both; 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 or 12 or younger. No laws in Montana address child sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org](http://www.sharedhope.org).