

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

West Virginia Report Card 2016

West Virginia's human trafficking law includes sex trafficking of minors without regard to force, fraud, or coercion, but requires that two or more persons be trafficked in one year. West Virginia has limited options to prosecute demand and lacks laws designed to protect minor victims, who potentially face a punitive response for crimes committed as a result of their victimization.

Final Score

68.5

Final Grade

D



7.5

10



18

25



12

15



3.5

10



13

27.5



14.5

15



Criminalization of Domestic Minor Sex Trafficking

West Virginia's human trafficking law includes sex trafficking of minors without requiring proof of force, fraud, or coercion, but requires that the offense be committed against two or more victims within a one year period. Commercial sexual exploitation of children (CSEC) statutes include abduction of a minor under 16 for prostitution, detention of a minor in a place of prostitution, procuring a minor for house of prostitution, receiving support from prostitution of a minor, use of a minor to produce obscene matter, use of minors in filming sexually explicit conduct, and soliciting or enticing a minor via computer to engage in prostitution. The prostitution law does not refer to the human trafficking statute. West Virginia's racketeering law includes human trafficking and CSEC offenses as predicate crimes, allowing for the prosecution of sex trafficking enterprises.



Criminal Provisions Addressing Demand

Following federal precedent, the human trafficking law applies to buyers who "obtain" a minor for commercial sex acts. However, the buyer would have to purchase sex with at least two victims within one year. West Virginia criminalizes using a computer to solicit the minor to engage in prostitution. The general solicitation of prostitution law, which applies when a computer is not used, does not distinguish between buying sex with adults versus minors. Neither the human trafficking law nor the offense of soliciting a minor via computer for prostitution prohibits an age mistake defense. Buyers convicted of commercial sex acts and child pornography may be required to pay victim restitution. Buyers who solicit a minor via computer for prostitution may face civil asset forfeiture. Buyers convicted of soliciting a minor via a computer for prostitution or of possessing child pornography are required to register as sex offenders, but those convicted of sex trafficking of a minor or solicitation of prostitution without use of a computer, even when a minor is solicited, are not.



Criminal Provisions for Traffickers

Traffickers must have committed the offense against two or more victims within one year to be convicted of human trafficking; when convicted, traffickers face 3–15 years imprisonment and a possible fine not to exceed \$200,000. Traffickers convicted of felony abduction of a minor under 16 for prostitution face 3–10 years imprisonment. Detaining a minor in a place of prostitution and procuring a minor for a house of prostitution are punishable by 2–5 years imprisonment and/or fines up to \$5,000. Using a minor to create child pornography is punishable by up to 10 years imprisonment and/or a fine up to \$10,000, and use of a minor to produce obscene matter is punishable by up to 10 years imprisonment and/or a fine not to exceed \$50,000. Using a computer to entice or lure a minor at least 4 years younger than the offender to commit prostitution is a felony. Traffickers may face civil asset forfeiture for child pornography offenses and soliciting a minor via computer for prostitution. Traffickers are required to register as sex offenders for most CSEC offenses, but not human trafficking. A conviction for CSEC does not expressly constitute grounds for termination of parental rights.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human trafficking (§ 61-2-17(b))	Felony	3-15 years	(and/or) \$200,000	○
Soliciting a minor via computer for prostitution (§ 61-3C-14b(a)); if accompanied by an overt act (§ 61-3C-14b(a))	Felony	2–10 years; 5–30 years, respectively	(and/or) \$5,000; (and /or) \$25,000, respectively	●
Houses of ill fame (solicitation of prostitution) (§ 61-8-5(b))	Misdemeanor	60 days– 6 months	(and) \$50–\$100	○
Possession of child pornography (§ 61-8C-3)	Felony	2–15 years (depending on the number of images or length of the video)	(and/or) \$2,000– \$25,000	●

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



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as human trafficking victims because the human trafficking law requires the defendant to commit at least two instances of sex trafficking within a one year period. West Virginia's trafficking law does not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. No protective provisions are statutorily mandated specifically for sex trafficking or CSEC victims; therefore, victims can enter the juvenile justice system as delinquents. Although child sex trafficking is not expressly identified as a type of abuse and neglect, the definition of abuse includes sexual exploitation, which in turn includes occurrences where a custodian "for financial gain . . . persuades, induces, entices, or coerces a child to engage in sexually explicit conduct;" this definition would bring victims of child sex trafficking within the definition of abuse. The definition of "custodian," which includes those in physical possession of the child, is broad enough to apply in non-familial trafficking cases, thereby permitting child welfare intervention. Crime victims' compensation is only available to victims who suffer personal injury or death, and eligibility criteria, such as filing an application within two years and reporting the crime within 72 hours unless good cause is shown, could limit a victim's ability to recover. Victim-friendly criminal justice procedures do not extend to all CSEC victims. Children may testify via closed circuit television, and the "rape shield" law, which reduces the trauma of cross-examination for testifying victims, is not applicable in sex trafficking or CSEC trials. On the later of turning 19 or one year after the child is released from the court's jurisdiction, all juvenile records are sealed. Victims may receive restitution from their exploiter, and traffickers convicted of child pornography offenses will be required to pay for medical, psychological, or psychiatric care. Civil damages are expressly available to victims of human trafficking and victims of soliciting a minor via a computer, but not to other CSEC victims. Civil actions generally have a two year statute of limitations, but minors injured through tort violations must file within five years, and sexual abuse victims have four years. No statute of limitations exists for felony prosecutions, but misdemeanors must be brought within one year.



Criminal Justice Tools for Investigation and Prosecution

Training for law enforcement on human trafficking is specifically authorized under West Virginia law. Single party consent to audiotaping is legal, and wiretapping may be used in abduction investigations, but not human trafficking or CSEC investigations. The soliciting a minor via computer statute, a CSEC offense, prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor, requiring only that the defendant believe the decoy to be a minor. The same law also authorizes law enforcement to use the Internet as an investigative technique. West Virginia law requires both reporting and updating reports of missing children. Law enforcement must promptly enter information on missing children into the "Missing Children Information Clearinghouse" and notify the clearinghouse upon recovering a missing child, allowing law enforcement to identify repeat runaways who are at high-risk for sex trafficking.



Criminal Provisions for Facilitators

The human trafficking law does not include benefitting from or aiding and assisting human trafficking. Under the prostitution laws, facilitators who aid or abet the abduction of a minor under 16 for prostitution face 3–10 years imprisonment and facilitators who indirectly detain a minor in a place of prostitution face 2–5 years imprisonment and/or a fine up to \$5,000. Facilitators who distribute child pornography face, depending on the number of images or length of the video distributed, up to 2–15 years imprisonment and a possible fine of \$2,000–25,000, and may be ordered to pay for a victim's medical, psychological or psychiatric treatment. West Virginia's general restitution statute may apply to facilitators in some instances when the victim suffers physical, psychological or economic injury. Asset forfeiture actions are not prescribed for any facilitation crimes. No law in West Virginia makes sex tourism a crime.

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.