

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Maryland Report Card 2016

Maryland's sex trafficking law makes it a crime to exploit a minor under 18 through commercial sex acts and does not require use of force, fraud or coercion, but minors are not statutorily protected from prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

Final Score

76

Final Grade

C



10

10

18.5

25

12.5

15

7.5

10

12.5

27.5

15

15



Criminalization of Domestic Minor Sex Trafficking

Maryland's sex trafficking law clearly defines a minor under the age of 18 used in a commercial sex act as a human trafficking victim without regard to use of force, fraud, or coercion. Maryland's commercial sexual exploitation of children (CSEC) laws include a child kidnapping for the purpose of committing a sexual crime, sexual solicitation of a minor, and child pornography. Maryland's prostitution law refers to the sex trafficking law by providing an affirmative defense to prostitution charges for sex trafficking victims. Maryland's criminal gang law includes human trafficking and abduction as predicate offenses, allowing use of this law to prosecute sex trafficking enterprises; penalties include imprisonment up to 15 years and/or a fine up to \$1,000,000. If the victim dies, penalties include imprisonment up to 25 years and/or a fine up to \$5,000,000.



Criminal Provisions Addressing Demand

The state sex trafficking law does not make the purchase of commercial sex with minors a trafficking crime, leaving buyers subject only to the CSEC offense of sexual solicitation of a minor, which applies to buyers who solicit a minor for prostitution. Sexual solicitation of a minor distinguishes between solicitation of minors versus adults for prostitution. However, defendants prosecuted for sexual solicitation of a minor are not expressly prohibited from asserting an age mistake defense to this crime. Buyers who use the Internet to purchase commercial sex acts from a minor could be prosecuted under either the statute on disseminating indecent material to minors in the first degree or the statute penalizing use of a computer for the purpose of luring or inducing a person under 17 to engage in sexual conduct. Asset forfeiture is very limited in application for offenses committed by buyers. Buyers of sex with minors are required to register as sex offenders if convicted of possessing child pornography or for any degree of patronizing a prostitute when a minor under 17 is involved.



Criminal Provisions for Traffickers

Sex trafficking of a minor is a felony punishable by imprisonment up to 25 years and/or a fine up to \$15,000. Child kidnapping for the purpose of committing a sexual crime is a felony punishable by imprisonment up to 25 years and/or a fine up to \$5,000, and sexual solicitation of a minor is a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000. Creating and promoting child pornography is punishable by imprisonment up to 10 years and/or a fine up to \$25,000, or by imprisonment up to 20 years and/or a fine up to \$50,000 for subsequent convictions. Sexual solicitation of a minor, which includes using the Internet to solicit a minor to engage in sexual contact with another person, might apply to traffickers who use the Internet for this purpose. Although not mandatory, the court may order a trafficker to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. Asset forfeiture is available for trafficking and CSEC offenses. Traffickers must register as sex offenders for convictions of sex trafficking, CSEC offenses, and prostitution offenses involving a minor. Grounds for termination of parental rights include convictions for kidnapping, but not for sex trafficking, CSEC offenses, or child pornography offenses.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Sexual solicitation of a minor (§3-324(b))	Felony	Max. 10 years	Max. \$25,000	○
Child pornography (online solicitation of a minor) (§11-207(a))	Felony	Max. 10 years; 20 years subsequent conviction	Max. \$25,000; \$50,000 subse- quent conviction	○
Possession of child pornography (§11- 208(a))	Misdemeanor; felony for subsequent conviction	Max. 5 years; 10 years subsequent conviction	Max. \$2,500; \$10,000 subse- quent conviction	○

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 juvenile sex trafficking victims because the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. The sex trafficking and CSEC laws are silent on availability of a defense based on the willingness of the minor to engage in the commercial sex act, so a defendant may seek to assert such a defense. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization for commercial sex acts committed resulting from their victimization. As a result, a juvenile victim may face detention as a child in need of supervision or a delinquent child. However, a CSEC victim may also be deemed a child in need of assistance, which includes victims of human trafficking and those who engaged in child prostitution or child pornography, but the definitions of “person who has permanent or temporary care or custody or responsibility for supervision of a child” and “household member” are not broad enough to include all third party offenders, thus excluding some juvenile sex trafficking victims from accessing the protection of child welfare. CSEC victims who have suffered physical injury, or psychological injury if a victim of sexual solicitation of a minor or child pornography, are eligible for crime victims’ compensation; however, if determined to have knowingly participated in the conduct giving rise to the injury and if uncooperative with law enforcement investigating the crime, a child sex trafficking victim could be barred from receiving an award. Victim-friendly trial procedures, including the ability to testify through closed circuit television and a “rape shield” law protecting witnesses from the trauma of cross examination, apply only in child abuse and sexual offense proceedings, potentially foreclosing these options to testifying sex trafficking victims. Juvenile criminal records may be sealed at any time upon motion of any party or the court and shall be sealed upon motion by any party or the court after the minor has reached 21 years of age. Although not mandatory, a court may order convicted offenders to pay restitution if the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. No statute of limitations applies to felony offenses, but prosecutions for misdemeanors must be brought within one year, except possession of child pornography which must be brought within 2 years. Civil actions for sexual abuse of a minor must be commenced within seven years of turning 18; otherwise, the general three year statute of limitations on civil actions applies.



Criminal Justice Tools for Investigation and Prosecution

Law enforcement must receive training on sexual abuse and exploitation of children, but not specifically on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping is permitted, and wiretapping is permitted for investigations of sex trafficking, kidnapping, child pornography, and sexual solicitation of a minor, giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Use of a decoy and use of the Internet are permitted in an investigation of sexual solicitation of a minor, which is violated when a defendant solicits by computer or Internet a law enforcement officer posing as a minor; accordingly, a defendant would be prohibited from asserting a defense based on the fact that an actual minor was not involved in the investigation. Maryland law requires law enforcement to report missing children, but does not mandate reporting of recovered children.



Criminal Provisions for Facilitators

Human trafficking, which includes the crime of benefitting from sex trafficking of a child, is punishable by imprisonment up to 25 years and/or a fine up to \$15,000. Using a computer to disseminate information and facilitate unlawful sexual conduct with a minor is a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000 (20 years and/or a fine up to \$50,000 for subsequent convictions). Promoting or selling child pornography is a felony punishable by imprisonment up to 10 years and/or a fine up to \$25,000. Providing online storage of graphics, images, or videos and failing to report or remove child pornography found on the server is a misdemeanor punishable by a fine up to \$5,000 for a first conviction, \$20,000 for a second conviction, or \$30,000 for each subsequent conviction. Although not mandatory, the court may order a facilitator to pay restitution when the victim has suffered pecuniary loss, including loss of earnings, incurred medical expenses, and other expenses. Facilitators are subject to asset forfeiture. No laws in Maryland address sex tourism specifically.

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.