

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Virginia Report Card 2016

Virginia criminalizes child sex trafficking without requiring proof of force, intimidation, or deception, but the sex trafficking law does not reach buyers of sex with minors. While defendants convicted of sex trafficking face sex offender registration and asset forfeiture, minor victims still face delinquency and detention for prostitution charges.

Final Score

71

Final Grade

C



7.5

10



17

25



12.5

15



5

10



14.5

27.5



14.5

15



Criminalization of Domestic Minor Sex Trafficking

Virginia criminalizes child sex trafficking without requiring proof of force, intimidation, or deception when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include abduction with the intent to extort money or for immoral purpose, commercial exploitation of a minor, taking indecent liberties with children, taking or detaining a person for prostitution, receiving money from earnings of male or female prostitute, and receiving money for procuring a person. Prostitution laws do not refer to the sex trafficking law. The racketeering law includes sex trafficking, some CSEC offenses, and child pornography offenses as predicate offenses, allowing law enforcement and prosecutors to use this important tool to combat criminal enterprises engaged in child sex trafficking.



Criminal Provisions Addressing Demand

The sex trafficking law does not expressly apply to buyers of commercial sex with minors. Buyers may be prosecuted for commercial sexual exploitation of a minor under the prostitution law, which distinguishes between buying sex with minors versus adults, or for taking or detaining a person for prostitution. Certain provisions of taking indecent liberties with children could be used to apply to buyers, but these provisions are not specific to commercial sexual exploitation. Virginia has enhanced penalties for using a computer to violate child pornography laws, and the statute on use of communication systems to facilitate certain offenses involving children might apply to buyers of commercial sex. Defendants are not prohibited from asserting an age mistake defense under the sex trafficking or CSEC laws. Buyers face mandatory asset forfeiture if convicted of soliciting sex with a minor under the prostitution law, taking or detaining a person for prostitution, or child pornography offenses and vehicle forfeiture for second and subsequent commercial exploitation of a minor offenses. A buyer must pay restitution for any medical expenses incurred by the victim as a result of the crime. Buyers convicted of solicitation of prostitution involving a minor, taking or detaining a person for prostitution, and possession of child pornography are required to register as sex offenders.



Criminal Provisions for Traffickers

Sex trafficking, taking or detaining a person for prostitution, receiving money for procuring a person, and receiving money from earnings of male or female prostitute are Class 3 felonies when the victim is a minor and are punishable by imprisonment for 5–20 years and a possible fine of up to \$100,000. Abduction for immoral purposes, a Class 2 felony, is punishable by 20 years–life imprisonment with a suspended sentence of 40 years to attach to any sentence less than life. Taking indecent liberties with a child is punishable by 1–10 years imprisonment (or up to 12 months in jail and/or a fine up to \$2,500). Display of child pornography or grooming videos to a child is punishable by 1–5 years imprisonment (or up to 12 months in jail or a fine up to \$2,500). Producing child pornography is a felony punishable by 5–30 years imprisonment when the victim is under 15, with a mandatory minimum of 5 years if the offender is at least 7 years older than the subject of the child pornography, and 1–20 years if the victim is 15–18, except if the offender is at least 7 years older than the child in which case the sentence is 3–30 years. Statutes tackling the growing use of computers by traffickers include use of a computer to produce child pornography or promote a child in an obscene performance and use of the Internet to recruit minors for illegal sex acts, which may include prostitution and pornography. A trafficker is subject to asset forfeiture for abduction offenses, mandatory asset forfeiture for sex trafficking, CSEC, and child pornography offenses, and vehicle forfeiture for violations of abduction and prostitution laws. Victim restitution is mandatory. A trafficker is required to register as a sex offender if convicted of sex trafficking, receiving money for procuring persons, receiving money from prostitute's earnings, some CSEC offenses, and child pornography offenses. Grounds for termination of parental rights do not include convictions for sex trafficking or CSEC.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Commercial exploitation of a minor (§ 18.2-346(B))	Class 6 felony (minor > 16 years)	1-5 years	Max. \$2,500	●
	Class 5 felony (minor < 16 years)	1-10 years	Max. \$2,500	
Taking, detaining, etc., person for prostitution, etc. (Va. Code Ann. § 18.2-355(4))	Class 3 felony	5-20 years	Max. \$100,000	●
Possession of child pornography (§ 18.2-374.1:1(A))	Class 6 felony	1–5 years (or up to 12 months in jail)	Max. \$2,500	●

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. Virginia's sex trafficking and CSEC offenses do not prohibit a defense to prosecution 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. Child sex trafficking is included within Virginia's definition of abuse and neglect; specifically, the definition of "abused and neglected child" includes victims of child sex trafficking as defined by the TVPA and the JVTa regardless of the child's relationship to the perpetrator of the abuse. Victims of child sex trafficking are eligible for crime victims' compensation but the program contains ineligibility criteria that could negatively affect their ability to recover compensation, including a requirement to cooperate with law enforcement and time requirements unless waived for good cause. Virginia law provides several victim-friendly criminal justice provisions, including extending the "rape shield" law and the use of a two-way closed-circuit television for testifying victims of abduction for immoral purposes, but these protections do not extend to victims of sex trafficking and other CSEC offenses. Virginia law provides automatic expungement of juvenile records if the juvenile is 19 and five years have elapsed since the last hearing, but records will be maintained for felony offenses. Offenders for any crime must make at least partial restitution for damages or losses caused by the crime and medical costs, and victims of child pornography offenses are entitled to mandatory restitution. Victims of domestic minor sex trafficking and CSEC have a civil cause of action with a lengthened statute of limitations of seven years. Sexual abuse victims have a twenty year statute of limitations on civil actions for damages. Misdemeanor actions must be brought within one year; however, that timeframe is tolled for several sex offenses committed against minors. No statute of limitations exists for felonies.



Criminal Justice Tools for Investigation and Prosecution

Virginia law directs the Department of Criminal Justice Services to advise law enforcement on "the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia." The Department must establish training standards and publish and disseminate a model policy or guideline for law enforcement on human trafficking. Single party consent to audiotaping is allowed by law, and wiretapping is authorized for felony offenses related to domestic minor sex trafficking. No sex trafficking or CSEC law prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor, but the use of a communications system to facilitate certain crimes involving children statute, a non-CSEC offense, does prohibit such a defense; under that statute, the defendant need only believe the decoy to be under 15. Additionally, this same law permits law enforcement to pose as a minor under 15 on the Internet to investigate CSEC cases as well. Law enforcement must report missing children into the "Missing Children Information Clearinghouse" and notify the clearinghouse upon recovering a missing child.



Criminal Provisions for Facilitators

The sex trafficking law does not specifically criminalize assisting, enabling, or financially benefitting from child sex trafficking. While the trafficking law references offenders who act with the intent of benefitting financially or helping another to benefit financially, a facilitator must engage in the same prohibited conduct as a trafficker in order for the trafficking law to apply. Facilitators face penalties under CSEC laws, including aiding and assisting in abduction for prostitution under the abduction for immoral purposes law, which is a Class 5 felony punishable by 1–10 years imprisonment, and taking or detaining a person for prostitution, receiving money from earnings of male or female prostitute, and receiving money for procuring a person, which are punishable as Class 3 felonies by 5–20 years imprisonment and a possible fine of up to \$100,000. Also, aiding in the production of child pornography, including through financing, is a felony punishable by 5–30 years imprisonment when the victim is under 15 and 1–20 years imprisonment when the victim is 15–17. Selling and distributing child pornography is a felony punishable by 5–20 years imprisonment. Intentionally operating websites that facilitate payment for access to child pornography is a felony punishable by 2–10 years imprisonment and a possible fine up to \$100,000. Facilitators face mandatory criminal asset forfeiture, including vehicle forfeiture, if convicted of sex trafficking or certain CSEC offenses. Facilitators face mandatory restitution for certain pornography offenses, but not CSEC or sex trafficking offenses. No law in Virginia addresses 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.