

MONTANA

REPORT CARD | 2017

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

Final Score

92

Final Grade

A



8.5

10

25

25

15

15

7.5

10

23.5

27.5

12.5

15

Criminalization of Domestic Minor Sex Trafficking

Montana's trafficking of persons and sexual servitude laws do not require proof of force, fraud, or coercion when the victim is a minor. The state commercial sexual exploitation of children (CSEC) laws include: "prostitution," "promoting prostitution," "aggravated promotion of prostitution," and "sexual abuse of children." The state prostitution statute does not refer to the human trafficking law, but a related provision provides trafficking victims with an affirmative defense to prostitution charges, thereby acknowledging the intersection of prostitution with trafficking victimization. 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 child sex trafficking.

Criminal Provisions for Demand

The human trafficking and "sexual servitude" laws apply to buyers of sex with children following federal precedent through the term "obtain." Buyers may also be prosecuted under the "patronizing a victim of sexual servitude" law. The prostitution statute distinguishes between buying sex with adults versus buying sex with minors, providing a heightened penalty for the latter. Buyers convicted of child sex trafficking face 25–50 years imprisonment and a fine up to \$100,000, while convictions under the "prostitution" law carry penalties as high as 100 years imprisonment, for which the first 25 years cannot be suspended or made eligible for parole. 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" criminalizes the use of the Internet in a buyer's attempt to solicit a minor for commercial sex. "Sexual abuse of children" also criminalizes the possession of images of child sexual exploitation (ICSE). Financial penalties under the trafficking offenses are sufficiently high, making it difficult for buyers to hide the crime. Convicted buyers will be required to pay restitution to victims who suffer a pecuniary or economic loss. Buyers are required to register as sex offenders if convicted of trafficking and some CSEC offenses.

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 a fine up to \$100,000, and up to 25 years imprisonment and a fine 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 made 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 both the creation of ICSE and a trafficker's 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." 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.

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 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, a violation is punishable by up to 100 years imprisonment (the first 25 of which cannot be suspended or made eligible for parole) and a fine up to \$50,000.

Facilitators face asset forfeiture for human trafficking 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 ICSE, is punishable by up to 100 years imprisonment and a fine up to \$10,000; a minimum sentence of four years is imposed when the child is under the age of 16, and the defendant must serve at least 10 years when the child is 12 or younger. No laws in Montana address sex tourism.



Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Child 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. Montana’s “sexual servitude” statute expressly prohibits a defense based on the willingness of the minor to engage in 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 trafficking victimization. Although child sex trafficking victims are presumed to be a youth in need of care, Montana law does not mandate the provision of specialized services. The definition of abuse specifically includes CSEC, but not child sex trafficking. The definition of “a person responsible for the child’s welfare” seems too narrow to reach an exploiter who is not a family or household member; however, that definition should not limit access to protection by child welfare for child 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. Montana law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be sealed and destroyed after a waiting period. 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, ICSE, or prostitution-related offenses. The sex trafficking offense does not prohibit a defense based on the use of a law enforcement decoy posing as a minor in investigations; however, the “sexual abuse of children” 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 ICSE 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.



The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.