- WARNING -

OBTAINING FORCED LABOR OR SERVICES
IS A CRIME UNDER TEXAS LAW.
CALL THE
NATIONAL HUMAN TRAFFICKING HOTLINE
1-888-3737-888
YOU MAY REMAIN ANONYMOUS.

- ADVERTENCIA -

LA OBTENCIÓN DE SERVICIOS O TRABAJO FORZADO ES UN DELITO SEGÚN LA LEY DE TEXAS. LLAME A LA LÍNEA DIRECTA NACIONAL DE TRÁFICO HUMANO AL
1-888-3737-888
USTED PUEDE PERMANECER ANÓNIMO.

BUSINESS & LABOR
EXHIBIT NO. 1
DATE 3-26-13
BILL NO. HB 488

PROTECTED INNOCENCE CHALLENGE

MONTANA REPORT CARD 2012

Montana's trafficking of persons law requires proof of force, fraud or coercion, even when the victim is a minor, limiting its utility and failing to align with federal law Commercial sexual exploitation of children (CSEC) laws are available to prosecute offenders; however, victims who are not identified or are deemed complicit in the prostitution may face barriers to accessing protection or justice.

FINAL SCORE
56

FINAL GRADE
F

3.5 / 10	14.5 / 25	12.5 / 15	6 / 10	12 / 27.5	7.5 / 15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Montana's trafficking of persons law criminalizes sex trafficking, but it requires proof of force, fraud or coercion in any case. The trafficking law includes a penalty enhancement for trafficking offenses involving sexual intercourse without consent, which minors under 16 are deemed incapable of providing. The state has the following CSEC laws: prostitution and promoting prostitution when a minor is involved, aggravated promotion of prostitution, and sexual abuse of children. However, the CSEC statutes do 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 is defined to include the CSEC crime of aggravated promotion of prostitution.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Although the state human trafficking law tracks the federal definition and following federal precedent might have been applicable to buyers who "obtain" a minor for commercial sex acts, the state law definition of "obtain" requires an ongoing relationship with the offender making application to buyers unlikely. The prostitution law, which criminalizes patronizing prostitution, could be used to combat demand. 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 12, leaving older minors unprotected. Sexual abuse of children includes solicitation of a minor under 16 through in-person or electronic communication, but does not specify solicitation for the purpose of commercial sex acts. Sexual abuse of children also includes possession of child pornography. The sex trafficking and CSEC laws do not prohibit a mistake of age defense to prosecution leaving this assertion available to buyers. Restitution is mandatory for victims who suffer a pecuniary or economic loss, but no specific civil actions against sex trafficking or CSEC offenders are authorized. Buyers of sex with minors are required to register as sex offenders if convicted of prostitution with a child under 12 years of age, or sexual abuse of children, which includes Internet solicitation and possessing child pornography.

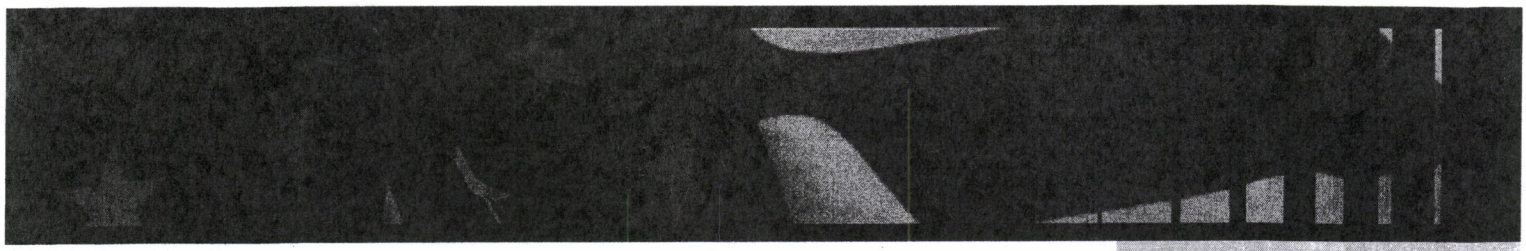
DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Sentence	Fine (possible)	Asset Forfeiture (available)
Prostitution (§ 45-5-601(2)(b))	Max. 1 year (1st offense)	Max. $1,000 (1st offense)	○
Prostitution (child under 12 (§ 45-5-601(3)(a))	Max. 100 years	Max. $50,000	○
Possession of child pornography—sexual abuse of children (§45-5-625)	Max. life sentence	Max. $10,000	○

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

CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker convicted under the state human trafficking law faces up to 15 years imprisonment and/or a fine up to $100,000. Promotion of prostitution of a child under 12 is punishable by up to 100 years imprisonment and aggravated promotion of prostitution is punishable by life or 4–100 years imprisonment and/or a fine up to $100,000. If convicted of either CSEC law, a trafficker shall be ordered to complete a sexual offender treatment program and may be subject to satellite-based monitoring for life. Sexual abuse of children, which criminalizes the creation of child pornography and use of the Internet to recruit or sell commercial sex acts with minors under the age of 16, is punishable by up to 100 years or life imprisonment and a possible fine of $10,000; a minimum sentence of 4 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 12 or younger. Victim restitution is mandatory. Asset forfeiture is not specified for trafficking or CSEC offenses. Traffickers must register as sex offenders if convicted of CSEC offenses, but not for a conviction under the trafficking law. In Montana grounds for termination of parental rights includes when a parent is convicted of "a felony in which sexual intercourse occurred" or committed sexual abuse against a child, which is defined to include the CSEC crime of sexual abuse of children.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking victims are vulnerable due to gaps in the laws. CSEC laws are silent on the permissibility of a defense based on consent of the minor to the commercial sex act; however, under Montana law a minor under the age of 16 is considered incapable of consenting to sexual intercourse, which is the predicate act for human trafficking. Prostitution offenses are not limited in application to adults, do not identify a juvenile involved in prostitution as a victim of sex trafficking, and do not provide an affirmative defense for victims of trafficking. A CSEC victim may be considered abused and neglected and/or a youth in need of care, a delinquent youth, or a youth in need of intervention and receive various responses ranging from a juvenile justice response to a child protective response. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation, defined as permitting or encouraging a minor to engage in prostitution. The definition of a person responsible for the child's welfare includes an adult who resides in the same home in which the child resides, a definition which could be sufficiently broad to permit child protective services to intervene. CSEC victims would likely be eligible for state crime victims' compensation, although several criteria may limit their eligibility, including a bar to recovery if the victim contributed to the injury or was the offender or an accomplice of the offender, and possible bar or reduction for refusal to cooperate with law enforcement. Also, the sexual offenses against minors must be reported within one year after the conduct was reported to a law enforcement agency or child welfare services, or within one year after the day the victim reaches 18, whichever occurs last, unless good cause is shown. Victim-friendly criminal justice procedures include permitting the testimony of a child-witness under 16 to be taken by two-way electronic audio-video communication; however, the "rape shield" law is limited to sex offenses, so it may not be available to reduce the trauma of cross examination for testifying sex trafficking victims. With few exceptions, formal youth court, law enforcement, and department records must be physically sealed on the youth's 18th birthday. Civil remedies are not expressly available to CSEC victims. Restitution is mandatory for victims who suffer a pecuniary or economic loss. Prosecutions for sexual abuse of children must be brought within five years after the minor turns 18 and civil actions for childhood sexual abuse, which include the crime of sexual abuse of children, must be commenced three years after the last injury occurred or was discovered.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking is not mandated by law. Single party consent to audiotaping is not permitted by law but 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, denying law enforcement a critical tool for investigation and evidence. No laws expressly authorize the use of a decoy or the Internet in sex trafficking investigations. Montana has established a statewide reporting and response system for missing children and requires the 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 state human trafficking law includes the crime of benefitting financially from human trafficking; a violation is punishable by up to 15 years imprisonment and/or a fine up to $100,000. The CSEC crime of promoting prostitution applies to facilitators who permit their premises to be regularly used for prostitution; if the victim is under 12 it is punishable by up to 100 years imprisonment and/or a fine up to $100,000. 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 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.

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