



PROTECTED INNOCENCE  
LEGISLATIVE FRAMEWORK

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METHODOLOGY



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# Protected Innocence Legislative Framework and Report Card

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## Introduction

The Protected Innocence Legislative Framework is based on research performed by Shared Hope International and compiled in “The National Report on Domestic Minor Sex Trafficking.” Domestic minor sex trafficking is the prostitution, pornography, or sexual performance of U.S. citizens or lawful permanent residents under the age of 18 in the United States.

Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, the Protected Innocence Legislative Framework sets out the basic policy principles required to create a safe environment for children. The steps necessary to create this safe environment include: prevention of domestic minor sex trafficking through reducing demand; rescue and restoration of victims through improved training on identification; establishment of protocols and facilities for placements; mandating appropriate services and shelter; and incorporating trauma-reducing mechanisms into the justice system. Broken systems of response to victims must also be fixed to ensure that the commercially sexually exploited children are treated as victims and provided with remedies through the law to recapture their lives and their futures.

## Acknowledgments

The legal analysis of the 50 states and the District of Columbia was accomplished through a partnership between Shared Hope International and the American Center for Law & Justice (ACLJ), which focuses on constitutional and human rights law worldwide. The legal analysis was implemented under the direction of Tessa Dysart, Associate Counsel, ACLJ, and Samantha Healy Vardaman, Esq., Senior Director, Shared Hope International. Shared Hope law fellows Christen Price and Tabatha Mansfield, and Regent University law clerks with ACLJ assisted greatly in designing the Protected Innocence Legislative Framework. The methodology was reviewed by several experts in the anti-trafficking field, and their comments contributed to the final framework and analysis —thanks to Ambassador Mark Lagon (U.S. Department of State, Office to Monitor and Combat Trafficking in Person 2007-09), Chair, International Relations and Security and Visiting Professor, Master of Science in Foreign Service Program, Georgetown University; Suzanna Tiapula, Esq., Director, National Center for Prosecution of Child Abuse, a program of the National District Attorneys Association; Howard Davidson, Esq., Director, American Bar Association (ABA) Center on Children and the Law and Acting Director, ABA Commission on Youth at Risk; Mohamed Mattar, S.J.D., Executive Director, The Protection Project at Johns Hopkins University School of Advanced International Studies; Carol Smolenski, Executive Director, and Christine Fantacone, Policy Coordinator, both of ECPAT-USA; Mandi Sheridan Kimball, Director of Public Policy and Government Affairs, and Jennifer Michel Solak, Esq., Senior Staff Attorney, both of Children at Risk, Houston, Texas; and Kaffie McCullough, Campaign Director, A Future. Not a Past, Atlanta, Georgia.

## Background

Domestic minor sex trafficking is the commercial sexual exploitation of American children within U.S. borders. It is the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” where the person is a U.S. citizen or lawful permanent resident under the age of 18 years.<sup>1</sup> When considering the crime of domestic minor sex trafficking, the age of the victim is the critical issue—there is no requirement to prove force, fraud, or coercion was used to secure the victim’s actions. In fact, the law recognizes the effect of psychological manipulation by the trafficker, as well as the effect of the threat of harm that traffickers (pimps) use to maintain control over their young victims.<sup>2</sup> Experts estimate that at least 100,000 American juveniles are victimized through prostitution in America each year.<sup>3</sup> Domestic minor sex trafficking is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children (CSEC).

Shared Hope International first actively addressed the sex trafficking of American children by researching the markets that create the demand for commercial sex and that thereby encourage the commercial sexual exploitation of women and girls. The DEMAND project investigated buyers, facilitators, and traffickers in four countries: Jamaica, Japan, the Netherlands, and the United States. The startling findings highlighted the fact that sex trafficking is demand-driven and that the product for sale is most commonly local (domestic) children. Dedicated to ending the human rights abuse of sex trafficking internationally and domestically, Shared Hope International received a grant from the U.S. Department of Justice to perform field research on domestic minor sex trafficking.

Recognizing that a strategic response to sex trafficking required a comprehensive understanding of the local situation, Shared Hope International aligned with the U.S. Department of Justice human trafficking task forces to assess domestic minor sex trafficking and the access to victim services in ten U.S. locations: Dallas, Texas; San Antonio, Texas; Fort Worth, Texas; Salt Lake City, Utah; Buffalo, New York; Baton Rouge and New Orleans, Louisiana; Independence, Missouri; Las Vegas, Nevada; Clearwater, Florida; and The Commonwealth of the Northern Mariana Islands (U.S. Territory).

The assessment investigated three areas identified by the Trafficking Victims Protection Act (TVPA) and the United Nations Protocol as the key components necessary to effectively combat trafficking in persons: Prevention, Prosecution, and Protection (“three Ps”). The assessments involved qualitative interviews of professionals likely to come into contact with victims of domestic minor sex trafficking, as well as quantitative data collection when available. Seven professional groups were identified as likely to come into contact with victims of domestic minor sex trafficking and targeted for interviews: federal, state, and local law enforcement; federal and

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<sup>1</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, div. A, § 103(8), (9), 114 Stat. 1464 (signed into law on October 29, 2000); codified as amended at 22 USC 7102 § 103(8), (9).

<sup>2</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. 106-386, div. A, § 112(a)(2), 114 Stat. 1487 (signed into law on October 29, 2000); codified as amended at 18 USC § 1591(e)(4), Sex Trafficking of Children or by Force, Fraud, or Coercion.

<sup>3</sup> Smith, Linda, Samantha Healy Vardaman and Melissa A. Snow. “The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Youth” (Shared Hope International: July 2009), pg. 4, quoting Ernie Allen, National Center for Missing and Exploited Children, in “Prostituted Children in the United States: Identifying and Responding to America’s Trafficked Youth,” Seg. 1. Prod. Shared Hope International and Onanon Productions. DVD. Washington, D.C.: Shared Hope International, 2008.

state prosecutors; juvenile court; juvenile probation and detention; public defenders; child protective services; and social services/non-governmental organizations. A total of 297 interviews were conducted. Statistics were requested but were not always available. In many cases, the statistics provided did not provide separate data on domestic minor sex trafficking—a term and crime with which most interviewees were not yet familiar. In those cases, the statistics were reviewed to determine the numbers of suspected domestic minor sex trafficking victims. For example, juvenile detention facility statistics reflecting the number of youth detained under charges of prostitution could be properly counted toward the number of domestic minor sex trafficking victims in that facility since juveniles in prostitution are, by definition, victims of sex trafficking under the federal TVPA. The reliance on extrapolated data reflects the overall lack of effective identification of domestic minor sex trafficking victims and highlights the need for training, as well as data collection regarding domestic minor sex trafficking.

The information from each assessed location was documented in an area-specific report outlining the scope of the problem, how victims of domestic minor sex trafficking accessed the system, how they were labeled, and whether, as a result of that label, victims of domestic minor sex trafficking were able to access (or were barred from accessing) services as victims of a violent crime. The findings from these ten site assessments formed the foundation of “The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children.” Later, four additional rapid assessments were performed in South Florida, Virginia, Arizona and Washington. These findings were further substantiated through Shared Hope International’s National Training Conference on the Sex Trafficking of America’s Youth held September 15-16, 2008, in Dallas, Texas. The Conference brought together nearly 200 first responders from across the nation, as well as experts on trauma-based services and shelter, to share their experiences and offer guidance as to the best practices for responding to domestic minor sex trafficking.

Four primary policy issues must be addressed in order to combat domestic minor sex trafficking: 1) eliminating demand; 2) prosecuting traffickers; 3) identifying victims; and 4) providing protection, access to services, and shelter for victims.

1. *Eliminating Demand.* Despite the fact that demand is the primary driver of the commercial sex industry and the commercial sexual exploitation of children, buyers are often not recognized as a critical component in the victimization of children through domestic minor sex trafficking. All buyers of sex with children—whether they be classified as preferential (pedophiles), opportunistic (thrill seekers), or situational (do not care how old the person being prostituted is)—are committing a crime.

2. *Prosecuting Traffickers.* Frequently, the arrest and prosecution of the trafficker is based solely on the victim’s cooperation in the investigation and testimony at trial. This approach, however, can place a heavy burden on a domestic minor sex trafficking victim, who typically requires a lengthy amount of time before they will disclose the facts of their victimization. Therefore, it is critical for law enforcement officers to pursue innovative and/or alternative investigation techniques to corroborate the victims’ allegations in domestic minor sex trafficking cases.

3. *Identifying Victims.* Misidentification of victims is the primary barrier to victim rescue and law enforcement response to domestic minor sex trafficking. It causes a chain reaction of negative outcomes, the most significant of which is the failure to deliver the necessary services to interrupt and treat the trauma these children have endured. The problem occurs at all levels of first response from law enforcement arrests on the street, to the intake processes of homeless and runaway youth shelters, to court adjudication of victims as juvenile delinquents for offenses committed in connection with the prostitution of the child. The adjudication of the victim as a delinquent and detention in juvenile facilities is a too frequent outcome. Law enforcement reported another barrier to proper identification is that prostituted juveniles are trained by their trafficker to lie to authorities and are provided with excellent fraudulent identification. This results in their registration in the arrest records as an adult—an identification that follows them through their years as a minor unless and until it is corrected by the insight of a law enforcement officer who recognizes that the victim is a minor and pursues a correct identification. The use of high risk indicator tools that would flag chronic runaways and other status offenders as likely victims of domestic minor sex trafficking would greatly improve the identification process.

4. *Providing Protection, Access to Services, and Shelter for Victims.* Law enforcement officers expressed frustration with the fact that they are often compelled to charge a domestic minor sex trafficking victim with a delinquency offense, such as prostitution, in order to detain her and to keep her safe from the trafficker. Detention, however, is detrimental to the victim in that she rarely receives any services in detention, much less services specific to the trauma endured through sex trafficking. Due to the unique trauma bonding that occurs between a victim and her trafficker, these children often run from juvenile facilities right back to the person that exploited them. Also, in some states, a victim's entry into the delinquency system can disqualify her from accessing victim of crime funds for services. The establishment of protective shelters and services for domestic minor sex trafficking victims would provide law enforcement officers or juvenile courts with an alternative placement for prostituted minors. Protective shelters also provide a more conducive environment for breaking the cycle of destructive trauma bonding between a victim and her trafficker and restoring a victim to the point where she can assist in an investigation and trial. Despite the need for protective shelters, less than one hundred beds in facilities appropriate for and specializing in treating domestic minor sex trafficking victims exist across the country. Establishing these protective shelters is critical for creating an effective strategy to combat domestic minor sex trafficking.

## Methodology

The purpose of the Protected Innocence Legislative Framework is to elaborate key policy principles that are critical to making the proper response to domestic minor sex trafficking. These can be grouped into six areas of law:

- Criminalization of Domestic Minor Sex Trafficking
- Criminal Provisions for Demand
- Criminal Provisions for Traffickers
- Criminal Provisions for Facilitators
- Protective Provisions for the Child Victims
- Law Enforcement and Criminal Justice Tools to Effectuate Investigation and Prosecutions

Each area of law may have several laws that impact the policy within the state's code. As such, specific questions must be asked to determine the sufficiency of a state's laws to address the policy need.

## Analysis

Each state will be assessed on the basis of the following points of law:

### 1. Criminalization of Domestic Minor Sex Trafficking

- 1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.

*Note: The vast majority of states have laws criminalizing trafficking in persons for labor or sexual exploitation. Within these statutes, however, there are variations in coverage; some do not cover the sex trafficking of minors. State human trafficking laws that are consistent to each other and to federal law in scope and penalty will prevent migration of the crime to more lenient states and/or onto tribal lands, many of which are close in proximity to densely populated areas and/or contain attractions for this activity, such as casinos.*

- 1.2 Commercial sexual exploitation of children (CSEC) is identified as a separate offense from non-commercial sex offenses.
- 1.3 CSEC statutes reference the human trafficking statute in order to clarify the status of the victim as a trafficking victim.

*Note: This is necessary to ensure access by the minor to the protections and benefits outlined under federal and some state statutes. This is also necessary to further the collection of data that is critical to countering domestic minor sex trafficking.*

## 2. Criminal Provisions for Demand

- 2.1 The state human trafficking law can be applied to the buyers of sex from a victim of domestic minor sex trafficking.

*Note: Language capturing the entire trafficking circle from trafficker to buyer to victim is necessary to mount a comprehensive attack on domestic minor sex trafficking.*

- 2.2 CSEC laws and/or sexual offense laws include the crime of buying sex with a minor and/or refer to the human trafficking statute.

*Note: Anti-demand provisions are critical. State laws on commercial sex abuse of a minor, child prostitution, commercial sexual exploitation of minor, etc. must cover the crime of buying sex with a minor. These provisions will ideally refer to the human trafficking statute making it clear that buying sex with a minor is domestic minor sex trafficking.*

- 2.3 Solicitation laws differentiate between buying sex with an adult and buying sex with a minor.

*Note: This can be accomplished by amending solicitation and prostitution laws to make them inapplicable to situations in which sex is being purchased from a minor. This is important to ensure that crimes of domestic minor sex trafficking are separated from crimes of solicitation and/or prostitution and that buyers are never allowed to proceed with diversion programs, such as a “John School” or other treatment programs.*

- 2.4 Penalties for buyers of commercial sex with minors are as high as those for federal trafficking offenders of domestic minor sex trafficking.

*Note: Consistency in sentencing will prevent the crime from migrating to a more lenient state. Also, stiff penalties are critical to deterring demand.*

- 2.5 Use of the Internet to lure, entice, recruit or purchase commercial sex acts with a minor is a separate crime and/or results in an enhanced penalty for buyers.

- 2.6 No age mistake defense is permitted for a buyer of commercial sex with any minor under 18.

<p>Example: Louisiana R.S. 14:46.3, Trafficking of children for sexual purposes, contains a provision within the criminal statute on trafficking children for sexual purposes stating simply that “[l]ack of knowledge of the victim’s age shall not be a defense to a prosecution” under this law.</p>
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- 2.7 Penalties for buying sex with a minor are sufficiently high for all minors under 18 and not reduced for older minors.



*Note: Under federal law, the definition of domestic minor sex trafficking is the use of a child under 18 in a commercial sex act. State laws that set lower criminal penalties for sexual offenses against older minors are ignoring the definition of a minor and perpetuating the false perception that a 16 or 17-year-old is a lesser victim. This is not to be confused with enhanced penalties for offenses against a minor below a certain age that is considered especially egregious. For example, 18 USC §1591 provides an enhanced penalty for trafficking a minor under 14 years of age. If the base penalty for trafficking any minor is sufficiently high, then a staggered age approach does not result in an injustice to the older minors.*

2.8 Significant financial penalties are in place for buyers of sex with minors.

*Note: Meaningful fines and impound fees make it difficult to hide the crime. Directing the fines to a dedicated account can simultaneously offset the costs of investigating, prosecuting, and restoring the victims of the crime. Impound fees must be significant in order to act as a deterrent.*

Example: Washington's SB 6476 mandates the impounding of vehicles used to commit commercial sex abuse of a minor if owned or rented by the defendant and raises the fee to release the car from \$500 to \$2,500, which will be deposited into the Prostitution Prevention and Intervention Account with statutory priority to fund a crisis residential shelter in Seattle.

2.9 Buying and possessing child pornography carries penalties as high as those for sex trafficking of a minor and commercial sexual exploitation of a child, as well as similar federal offenses.

2.10 Convicted buyers of sex with minors are required to register as sex offenders.

*Note: The exchange of money or something of value should not sanitize the buyer of commercial sex with a minor from the sex offender registration requirements; domestic minor sex trafficking is a sexual offense.*

### 3. Criminal Provisions for Traffickers

3.1 Penalties for trafficking a child for sexual exploitation are as high as for federal trafficking offenders.

3.2 Creating and distributing child pornography carries penalties as high as those for sex trafficking of a minor and commercial sexual exploitation of a child, as well as similar federal offenses.

3.3 Use of the Internet to lure, entice, recruit or purchase commercial sex acts with a minor is a separate crime and/or results in an enhanced penalty for traffickers.

Example: Virginia Code §18.2-374.3 makes it a Class 6 felony (1-5 years, \$2500 fine) to use the Internet to procure or promote the use of a minor under 15 in a sexual performance or to lure or entice a child into an illegal sexual interaction. Amending this to raise the age to under 18 and raise the penalty to the levels of a trafficking crime would make this a beneficial law to counter the growing abuse of the Internet to commit sex trafficking.

- 3.4 Financial penalties for traffickers are sufficiently high to expose the crime and reach assets for forfeiture and vehicles for impound.

*Note: Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by the convicted trafficker. Asset forfeiture laws have been very effective in fighting drug trafficking and should be viewed as an effective tool in the fight against domestic minor sex trafficking. Asset forfeiture is commonly tied to Racketeer Influenced and Corrupt Organizations (RICO) actions in many states requiring prosecutors to charge these crimes in addition to human trafficking; however, states should follow the lead of the federal TVPA in permitting asset forfeiture in human trafficking actions. Significant financial penalties can deter trafficking as the cost of doing this criminal business increases.*

- 3.5 Sex offender registry laws include domestic minor sex trafficking as an offense for which the perpetrator must register.

- 3.6 Laws relating to termination of parental rights for certain violent offenses include the offense of domestic minor sex trafficking in order to remove the children of traffickers from their control.

*Note: Pimps often impregnate their victims, including minor victims, with the intent of maintaining control. The effect is to have second generation victims within a criminal “family.” Breaking the bonds between victim and pimp include freeing their child from a continuing relationship with the trafficker parent. Also, children of traffickers can become victims of trafficking at the hands of their trafficker-parent.*

#### 4. Criminal Provisions for Facilitators

- 4.1 The act of assisting, enabling, and/or financially benefitting from domestic minor sex trafficking is included in the state human trafficking law.

*Note: Facilitators are those people or entities that knowingly enable domestic minor sex trafficking and/or benefit from sex trafficking in any way. The act of facilitation must be included in the state human trafficking law.*

- 4.2 Asset forfeiture laws are in place for those who benefit financially from domestic minor sex trafficking.

*Note: Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by a person or an entity convicted of benefiting from domestic minor sex trafficking, such as hotels or online classified businesses.*

4.3 Promoting and/or selling child sex tourism is illegal.

Example: Washington State RCW 9.68A.102, Promoting travel for commercial sexual abuse of a minor, makes the following a felony: “(1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.”

4.4 Promoting and/or selling child pornography (images of child sexual abuse) is illegal.

5. Protective Provisions for the Child Victims

5.1 A commercially sexually exploited child is defined as a victim.

*Note: Clear and consistent language throughout the relevant code provisions defining a minor who has been used in a commercial sex act (prostitution, pornography, or sexual performance) as a victim under state human trafficking laws, state commercial sexual exploitation laws, and the federal trafficking act can lead to improved identification and responses at all levels.*

5.2 Consent of the minor to the commercial sex act is immaterial to the crime of commercial sexual exploitation or sex trafficking and cannot be a defense for the perpetrator.

*Note: Many states allow a minor to consent to sex at an age lower than the age of majority. This must not be confused with a commercial sex act in which the child is a victim of adult criminal behavior; such acts cannot be mitigated by the child’s consent. Also, consent must not be able to be used as a defense to the crime of domestic minor sex trafficking.*

Example: Louisiana R.S. 14:46.3, Trafficking of children for sexual purposes, stipulates that “C. (1) Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.”

5.3 Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.

*Note: This is consistent with the definition of a minor in prostitution as a victim of domestic minor sex trafficking. This also establishes that a prostituted minor will not be charged as an offender, but rather, will be given protection as a victim.*

Example: Illinois' Safe Children Act, Public Act 96-1464, allows a person suspected of a prostitution violation to be detained for a reasonable time (determined by case law and regulatory provisions; 48 hours in Chicago) for investigation. However, once determined to be a minor (under 18), a child is immune from prosecution for prostitution. Law enforcement must then report an allegation of trafficking to the Illinois Department of Children and Family Services, which must conduct an initial investigation into child abuse or neglect within 24 hours.

Example: As a result of Connecticut's SB 153, passed in 2010, anyone under the age of 16 cannot be prosecuted for crimes of prostitution. For 16 and 17-year-olds facing prostitution charges, "there shall be a presumption that the actor was coerced into committing such offense by another person."

- 5.4 Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities regardless of their cooperation with law enforcement.

*Note: Establishing a child protection response is critical to ending the arrest and detention of domestic minor sex trafficking victims and ensuring instead that they are provided crime victim protections, services, and benefits. Law enforcement would prefer protective shelter as the alternative to the current practice of charging the minor with an offense in order to detain her for her own safety and for the case they are building. Service providers struggle with case management when the victim must be placed in inappropriate places, such as ill-equipped foster care, group homes, and detention facilities or they are returned to poor home environments. Laws are needed to establish residential programs to treat the victim of domestic minor sex trafficking in three stages: intervention, restoration, and transitional living. Debate exists over the level and duration of confinement and the size and location of such shelters; however, agreement exists as to the need for a variety of approaches from long-term shelters to home-based care to specialty foster homes, etc.*

Example: SB 6476, passed in Washington in 2010, affected the referral and placement of victims of domestic minor sex trafficking into the child protective services instead of the criminal justice system. Beginning July 1, 2011, the "Child in Need of Services" (CHINS) petition may be used to temporarily detain a sexually exploited child in a secure or semi-secure crisis residential center (CRC) for up to 15 days, without criminal charges. Each CRC must have staff experienced in working with child sexual exploitation victims as a condition of licensing.

Example: Illinois' Safe Children Act, Public Act 96-1464, transfers jurisdiction over children arrested for prostitution from the criminal system to the child protection system. The law facilitates their placement in temporary protective custody if necessary, to include custody within a hospital or other medical facility or designated place (may be a licensed foster home, group home or other institution) by the Department of Children and Family Services, subject to review by the judge. Note: Temporary protective custody may *not* be in a jail or criminal or juvenile detention facility.

- 5.5 The definition of “caregiver” in the child welfare statutes is broad enough to cover situations in which a trafficker (pimp) is in custody or control of a child in order to bring a trafficked child into protection of Child Protective Services.

*Note: Child Protective Services is often precluded from intervening in a case of non-familial domestic minor sex trafficking because the agency’s mandate is limited to cases in which a parent, guardian, caretaker or other defined person is the cause of danger to the child. Defining such a person to include the person in custody or control of a minor, such as a trafficker (pimp), can bring greater protections to domestic minor sex trafficking victims through Child Protective Services’ intervention.*

- 5.6 Commercial sexual exploitation is identified as a type of abuse and neglect within child protection statutes.

*Note: Expanding or interpreting the definition of “abuse and neglect” in the child protection statutes to include commercial sexual exploitation would allow child protective services to include it as a specific maltreatment code and bring situations of domestic minor sex trafficking within the investigative and protective functions of Child Protective Services.*

- 5.7 Crime victims’ compensation is specifically available to a prostituted child without regard to ineligibility factors.

*Note: Ineligibility criteria contained in state crime victims’ compensation programs often result in the victims of child sex trafficking being denied funds due to their “involvement in the underlying crime” for which they are claiming the compensation, i.e. prostitution. This must be remedied with direct language specifically identifying these minors as victims.*

Example: In Washington, RCW 7.68.070, the state crime victims’ compensation statute, was amended to specifically consider the minor in a charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 a victim of a criminal act for the purpose of the right to benefits even if the person is also charged with prostitution.

- 5.8 Victim-friendly criminal justice procedures and protections are provided in the court system process.

*Note: Trauma reduction tools can increase the successful participation of the victim through safety and protection. Some examples include:*

- a. Court appointment of an attorney for the domestic minor sex trafficking victim, serving, as appropriate, as the child’s legal counsel or as a guardian ad litem could help protect the child from court system-related trauma and possibly pursue criminal or civil remedies on their behalf.*
- b. Victim witness coordinators are needed to shepherd the domestic minor sex trafficking victims and families through the criminal justice process.*

- c. *Domestic minor sex trafficking shield laws would provide the same protection to victims in trial as rape victims have through rape shield laws. These laws limit a defendant's ability to cross-examine victims about their past sexual behavior. They also prohibit the publication of the identity of an alleged rape victim.*
  - d. *Closed courtrooms for minor victim testimony can help with the problem of intimidation by defendant traffickers' friends and family packing the courtroom.*
  - e. *Closed circuit television testimony can reduce re-traumatization of a domestic minor sex trafficking victim and assist in securing her testimony against an offender.*
- 5.9 Expungement or sealing of criminal records resulting from arrests for offenses perpetrated as a result of, or in the course of, the commercial sexual exploitation of a minor is available and preferably automatic upon application by the minor at age 18.

*Note: Victims of domestic minor sex trafficking (and adult sex trafficking) report being hampered in attempts to restore their lives through employment or education because they have criminal records. Criminal records prevent survivors from obtaining academic scholarships, securing certain employment, and working in any capacity with children in some cases. Saddling the victim of domestic minor sex trafficking with a criminal record is contrary to their legal definition as a victim and prevents reintegration into the community.*

- 5.10 Restitution and civil remedies are statutorily authorized for minors victimized through prostitution, pornography or sexual performance.

*Note: Victims of domestic minor sex trafficking must be allowed to pursue civil remedies for the damages they have suffered as a result of the victimization. Often, criminal cases are not pursued or, if they are, restitution is not part of the sentence imposed. The continuing effects of sex trafficking on a young person can lead to future medical costs and other costs as they regain control over their lives. Civil restitution is a means to pay for these needs.*

- 5.11 Statute of limitations for civil and criminal actions for child sex trafficking offenses are eliminated.

*Note: Recognizing the traumatic effects of sex trafficking on a child, lifting the statute of limitations on criminal and civil actions for this crime and its injurious effects on the person is important to allow full access to justice for the victims.*

## 6. Criminal Justice Tools for Investigation and Prosecution

- 6.1 Training on human trafficking and domestic minor sex trafficking for law enforcement is required.

*Note: Training in victim identification, the definition of domestic minor sex trafficking, investigative techniques, and victim-witness management is critical to increased identification of and improved responses to the victims. Training has resulted in demonstrable increases in*

*investigations of domestic minor sex trafficking in places like San Antonio, Texas and Chicago, Illinois.*

Example: Washington's SB 6476 includes mandated training. Law enforcement is required to develop a model policy on procedures relating to a victim of domestic minor sex trafficking by December 1, 2010, and training on the model policy must be developed by January 1, 2011.

6.2 Single-party consent to audio-taping is permitted.

*Note: Two-party consent to audio-taped conversations makes undercover domestic minor sex trafficking investigations difficult. Allowing for single-party consent empowers law enforcement to more efficiently investigate and better prepare cases for prosecution.*

6.3 Domestic minor sex trafficking investigations may utilize wiretapping.

*Note: The evidence obtained can lead to better evidence for prosecution and alleviate the need for victim testimony in domestic minor sex trafficking cases.*

Example: The Safe Children Act, Public Act 96-1464, in Illinois adds human trafficking and pimping of a minor to the list of crimes that may be subject to court-ordered interceptions under judicial supervision. Evidence collected through wiretapping is admissible in civil, criminal, and administrative proceedings. Also, the law allows for officer-safety recordings to protect undercover officers during dangerous sex trafficking investigations.

6.4 Use of a decoy by law enforcement in the investigation of prostitution or sex trafficking is no defense to the purchase of sex with a minor.

6.5 Use of the Internet to investigate buyers and traffickers is a permissible investigative technique.

6.6 Reporting of missing children and rescued domestic minor sex trafficking victims is mandated.

*Note: Identifying the missing and exploited child leads to identifying the domestic minor sex trafficking victim, as well as provides an opportunity to intervene. The National Crime Information Center (NCIC), a computerized index of criminal justice information, relies on the entry of reports of missing and exploited children by local law enforcement. Also, immediate reporting to local police, the NCIC, and the National Center for Missing and Exploited Children (NCMEC) whenever a child in custody of a child welfare agency goes missing from a foster home or facility is critical to identification and intervention, especially given the high corollary between the missing child and the trafficked child. At the same time, it is critical that first responders check the NCIC database and report to NCMEC whenever any domestic minor sex trafficking victim is rescued to see if they have been entered into those systems as a reported missing child.*

## Grading

The Protected Innocence Legislative Framework will assign a point value of 0 (did not address) to 2.5 (addressed fully) to each of the components of law. The points will be totaled for each of the six areas of law, which will then be rated as limited, moderate, or advanced protection based on the total points to the whole available for that area of law. The six totals will be added to determine the final number for each state, which will translate to the corresponding letter grade as follows:

90 - 100 — A

80 - 89 — B

70 - 79 — C

60 - 69 — D

< 60 — F

These letter grades will reflect the level of protections, actions, and remedies available in a domestic minor sex trafficking case in the respective state. A short analysis of the legislation of each state will follow with recommendations.

**It is important to note that the methodology looks solely at the laws in place in a given state and their de jure compliance with the Protected Innocence Legislative Framework at the time of the review. This analysis does not review the enforcement or implementation of the laws, though clearly enforcement is of critical importance.** Where available, statistics that demonstrate enforcement are noted in the state analysis but are not considered in the grade a state receives due to the inconsistency in content, collection, and maintenance of statistical data from state to state. A de facto assessment may be undertaken through the Shared Hope International Rapid Assessment of Domestic Minor Sex Trafficking Methodology and Tool, developed and implemented in thirteen locations around the country with funding from the U.S. Department of Justice (see [www.sharedhope.org/dmst](http://www.sharedhope.org/dmst)).



# PROTECTED INNOCENCE INITIATIVE

Creating A Uniform Standard Across States to Combat Domestic Minor Sex Trafficking



## REPORT CARD

### PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK

[STATE]	GRADE: [A-F]
CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING	PROTECTION: Advanced, Moderate, or Limited
CRIMINAL PROVISIONS FOR DEMAND	PROTECTION: Advanced, Moderate, or Limited
CRIMINAL PROVISIONS FOR TRAFFICKERS	PROTECTION: Advanced, Moderate, or Limited
CRIMINAL PROVISIONS FOR FACILITATORS	PROTECTION: Advanced, Moderate, or Limited
PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS	PROTECTION: Advanced, Moderate, or Limited
CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS	PROTECTION: Advanced, Moderate, or Limited

#### ANALYSIS AND RECOMMENDATIONS

1. CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING
2. CRIMINAL PROVISIONS FOR DEMAND
3. CRIMINAL PROVISIONS FOR TRAFFICKERS
4. CRIMINAL PROVISIONS FOR FACILITATORS
5. PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS
6. CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

*NOTE: THIS IS A SNAPSHOT OF THE LEGISLATION IN EFFECT AS OF XX/XX/XX*







## PROTECTED INNOCENCE LEGISLATIVE FRAMEWORK ANALYSIS TOOL

Area of Law	Law Should Be	[State] Law Is
1. <i>Criminalization of Domestic Minor Sex Trafficking</i>	1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under 18 years used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal law.	
	1.2 CSEC is identified as a separate offense from non-commercial sex offenses.	
	1.3 CSEC statutes reference the human trafficking statute in order to clarify the status of the victim as a trafficking victim.	
2. <i>Criminal Provisions for Demand</i>	2.1 The state human trafficking law can be applied to the buyers of sex from a victim of domestic minor sex trafficking.	
	2.2 CSEC laws and/or sexual offense laws include the crime of buying sex with a minor and/or refer to the human trafficking statute.”	
	2.3 Solicitation laws differentiate between buying sex with an adult and buying sex with a minor	
	2.4 Penalties for buyers of commercial sex with minors are as high as those for federal trafficking offenders of domestic minor sex trafficking.	
	2.5 Use of the Internet to lure, entice, recruit or purchase commercial sex acts with a minor is a separate crime and/or results in an enhanced penalty for buyers.	

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	2.6	No age mistake defense is permitted for a buyer of commercial sex with any minor under 18.	
	2.7	Penalties for buying sex with a minor are sufficiently high for all minors under 18 and not reduced for older minors.	
	2.8	Significant financial penalties are in place for buyers of sex with minors.	
	2.9	Buying and possessing child pornography carries penalties as high as those for sex trafficking of a minor and commercial sexual exploitation of a child, as well as similar federal offenses.	
	2.10	Convicted buyers of sex with minors are required to register as sex offenders.	
3. <i>Criminal Provisions for Traffickers</i>	3.1	Penalties for trafficking a child for sexual exploitation are as high as for federal trafficking offenders.	
	3.2	Creating and distributing child pornography carries penalties as high as those for sex trafficking of a minor and commercial sexual exploitation of a child, as well as similar federal offenses.	
	3.3	Use of the Internet to lure, entice, recruit or purchase commercial sex acts with a minor is a separate crime and/or results in an enhanced penalty for traffickers.	
	3.4	Financial penalties for traffickers are sufficiently high to expose the crime and reach assets for forfeiture and vehicles for impound.	
	3.5	Convicted sex traffickers of minors are required to register as sex offenders.	
	3.6	Laws relating to termination of parental rights for certain violent offenses include the offense of domestic minor sex trafficking in order to remove the children of traffickers from their control.	

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4. <i>Criminal Provisions for Facilitators</i>	4.1	The act of assisting, enabling, and/or financially benefitting from domestic minor sex trafficking is included in the state human trafficking law.	
	4.2	Asset forfeiture laws are in place for those who financially benefit from domestic minor sex trafficking.	
	4.3	Promoting and/or selling sex tourism is illegal.	
	4.4	Promoting and/or selling child pornography (images of sexual abuse) is illegal.	
5. <i>Protective Provisions for the Child Victims</i>	5.1	A commercially sexually exploited child is defined as a victim.	
	5.2	Consent of the minor to a commercial sex act is immaterial to the crime of commercial sexual exploitation or sex trafficking and cannot be a defense for the perpetrator.	
	5.3	Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.	
	5.4	Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities regardless of their cooperation with law enforcement.	
	5.5	The definition of “caregiver” in the child welfare statutes is broad enough to cover situations in which a trafficker (pimp) is in custody or control of a child in order to bring a trafficked child into protection of Child Protective Services.	
	5.6	Commercial sexual exploitation is identified as a type of abuse and neglect within child protection statutes.	
	5.7	Crime victims’ compensation is specifically available to a prostituted child without regard to ineligibility factors.	

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	5.8	Victim-friendly criminal justice procedures and protections (for example, rape shield laws and two-way closed circuit television testimony) are provided in the court system process.	
	5.9	Criminal records incurred by victims of domestic minor sex trafficking can be expunged.	
	5.10	Restitution and civil remedies are statutorily authorized for minors victimized through prostitution, pornography or sexual performance.	
	5.11	Statute of limitations for civil and criminal actions for child sex trafficking offenses are eliminated.	
6. <i>Criminal Justice Tools for Investigations and Prosecution</i>	6.1	Training on human trafficking and domestic minor sex trafficking for law enforcement is required.	
	6.2	Single party consent to audio-taping is permitted.	
	6.3	Domestic minor sex trafficking investigations may utilize wiretapping.	
	6.4	Use of a decoy by law enforcement in the investigation of prostitution or sex trafficking is no defense to the purchase of sex with a minor.	
	6.5	Use of the Internet to investigate buyers and traffickers is a permissible investigative technique.	
	6.6	Reporting of missing children and of rescued domestic minor sex trafficking victims is mandated.	