

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Montana’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



## ISSUE 1: Criminal Provisions

**Policy Goal 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Mont. Code Ann. § 45-5-705(1) (Patronizing victim of sexual servitude) expressly applies to buyers of commercial sex; it states,

A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity:<sup>1</sup>

- (a) that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sexual servitude; or
- (b) with a child.

Further, following federal precedent, both Mont. Code Ann. § 45-5-704 (Sexual servitude) and Mont. Code Ann. § 45-5-702 (Trafficking of persons) could apply to buyers based on the term “obtains.”<sup>2</sup> Pursuant to Mont. Code Ann. § 45-5-704(1),

<sup>1</sup> Mont. Code Ann. § 45-5-701(3) (Definitions) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received by a person.”

<sup>2</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the

A person commits the offense of sexual servitude if the person purposely or knowingly:

....

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.<sup>3</sup>

Under Mont. Code Ann. § 45-5-702(1),

A person commits the offense of trafficking of persons if the person purposely or knowingly:

(a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or

(b) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection (1)(a) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

**Policy Goal 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Montana law criminalizes both purchasing and soliciting commercial sex with a minor, but the prohibited conduct must be “direct and not through the clothing” of the minor. Mont. Code Ann. § 45-5-601(2)(b) (Prostitution – Patronizing a prostitute – Exception) states,

A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid . . . .

- 1.2.1 Recommendation: Amend Mont. Code Ann. § 45-5-601(2)(b) (Prostitution – Patronizing a prostitute – Exception) to criminalize purchasing and soliciting commercial sex with a minor without limitation.

**Policy Goal 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Montana’s CSEC laws address an array of trafficker conduct. Pursuant to Mont. Code Ann. § 45-5-602(1) (Promoting prostitution),

A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

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prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>3</sup> See *supra* note 1 for the definition of “commercial sexual activity.”

- (a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;
- (b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;
- (c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;
- (d) solicits clients for another person who is a prostitute;
- (e) procures a prostitute for a patron;
- (f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;
- (g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or
- (h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

Further, Mont. Code Ann. § 45-5-603(1) (Aggravated promotion of prostitution) states,

A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

- (a) compels another to engage in or promote prostitution;
- (b) promotes prostitution of a child, whether or not the person is aware of the child's age;
- (c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

**Policy Goal 1.4** Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Montana law prohibits a mistake of age defense in certain prosecutions for child sex trafficking and CSEC. Pursuant to Mont. Code Ann. § 45-5-704(2) (Sexual servitude), "It is not a defense in a prosecution under subsection (1)(b) [involving sexual servitude of a minor] . . . that the defendant believed the child was an adult." Further, Mont. Code Ann. § 45-5-705(2)(b) (Patronizing victim of sexual servitude) imposes a heightened penalty "if the individual patronized was a child . . . whether or not the person believed the child was an adult . . ." However, Mont. Code Ann. § 45-5-702 (Trafficking of persons) is silent regarding the permissibility of the defense.

Regarding Montana's CSEC offenses, Mont. Code Ann. § 45-5-601(3) (Prostitution – Patronizing a prostitute – Exception) holds buyers accountable regardless of "whether or not the [buyer] was aware of the child's age . . ." Similarly, Mont. Code Ann. § 45-5-602(3)(a) (Promoting prostitution) allows an offender to be prosecuted "[i]f the person engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense, whether or not the offender was aware of the child's age . . ." Lastly, Mont. Code Ann. § 45-5-603(1)(b) (Aggravated promotion of prostitution) criminalizes promoting prostitution of a child regardless of "whether or not the person is aware of the child's age."

**Policy Goal 1.5** Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although state trafficking laws do not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Montana's criminal attempt statute, Mont. Code Ann. § 45-4-103 (Attempt), could provide prosecutors with an alternative avenue to prosecute those cases. Mont. Code Ann. § 45-4-103(1), (2) states,

- (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act toward the commission of the offense.
- (2) It is not a defense to a charge of attempt that because of a misapprehension of the circumstances, it would have been impossible for the accused to commit the offense attempted.

Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense despite the use of a law enforcement decoy.

**Policy Goal 1.6**      The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Montana’s trafficking laws do not expressly allow for business entity liability.

- 1.6.1      Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

**Policy Goal 1.7**      State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>4</sup>

- 1.7.1      Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund.

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<sup>4</sup> Regarding asset forfeiture, Mont. Code Ann. § 45-5-707(1)(b), (c) (Property subject to forfeiture – Human trafficking) provides,

- (b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of 45-5-702 [Trafficking of persons], . . . 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing victim of sexual servitude].
- (c) The following property is subject to criminal forfeiture under this section:
  - (i) money, raw materials, products, equipment, and other property of any kind;
  - (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
  - (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
  - (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
  - (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;
  - (vi) negotiable instruments, securities, and weapons; and
  - (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

Disposition of forfeited property is governed by Mont. Code Ann. § 45-5-707(7), which states,

Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from the sale of property seized under this section must be distributed to the holders of security interests who have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any, must be deposited in the crime victims compensation account provided for in 53-9-113 [Crime victims compensation account].

However, state asset forfeiture laws do not direct a percentage of a sex trafficking offender’s forfeited assets into a victim services fund nor do those laws apply to CSEC offenders.



## ISSUE 2: Identification of & Response to Victims

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**Policy Goal 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Specifically, Mont. Code Ann. § 45-5-701(5) (Definitions) defines “human trafficking” to include Montana’s core sex trafficking offense, Mont. Code Ann. § 45-5-702 (Trafficking of persons), and their buyer-specific offense, Mont. Code Ann. § 45-5-705 (Patronizing victim of sexual servitude), both of which apply directly to buyers of commercial sex with minors regardless of whether a trafficker is involved or identified.<sup>5</sup>

Accordingly, third party control is not required to identify a commercially sexually exploited child as a trafficking victim or to establish the crime of child sex trafficking.

**Policy Goal 2.2** State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Montana law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

**Policy Goal 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Montana law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

**Policy Goal 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Montana law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

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<sup>5</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Mont. Code Ann. § 45-5-702 and Mont. Code Ann. § 45-5-705.



**Policy Goal 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.

Montana law clearly prohibits the prosecution of minors for prostitution and prostitution-related offenses; however, such protections do not expressly preclude the use of arrest or detention in response to minors engaged in commercial sex. Mont. Code Ann. § 45-5-709(1)–(3) (Immunity-Sex therapy participants) states,

- (1) A person is not criminally liable or subject to proceedings until Title 41, chapter 5 [Youth Court Act], for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense a direct result of being a victim of human trafficking.
- (2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings until Title 41, chapter 5, for prostitution if the person was a child at the time of the offense.
- (3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care until Title 41, chapter 3 [Child abuse and Neglect], and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.

Consequently, while Montana law fails to explicitly prohibit the use of arrest or detention in response to commercially sexually exploited minors, Mont. Code Ann. § 45-5-709(2) protects minors from prosecution for prostitution offenses.

- 2.5.1 Recommendation: Amend state law to clearly prohibit the use of arrest or detention in response to minors engaged in commercial sex.

**Policy Goal 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Montana law prohibits the criminalization of child sex trafficking victims for status offenses as well as misdemeanors and non-violent felonies committed as a result of their trafficking victimization. Specifically, Mont. Code Ann. § 45-5-709(1) (Immunity of child – Sex therapy participants) provides,

A person is not criminally liable or subject to proceedings under Title 41, chapter 5 [Youth court act], for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

**Policy Goal 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Montana law prohibits the criminalization of child sex trafficking victims for promoting prostitution; however, victims can still be charged as sex trafficking offenders or as accomplices alongside their exploiters.

Pursuant to Mont. Code Ann. § 45-5-709(1) (Immunity of child – Sex therapy participants),

A person is not criminally liable or subject to proceedings under Title 41, chapter 5 [Youth court act], for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

Because Montana’s trafficking laws are included within the definition of “crime of violence” under Mont. Code Ann. § 46-18-104(2)(a)(iii) (Definitions), the protection provided in Mont. Code Ann. § 45-5-709(1) would be unavailable to child sex trafficking victims who commit trafficking offenses as a result of their victimization.

- 2.7.1 Recommendation: Amend Mont. Code Ann. § 45-5-709 (Immunity of child – Sex therapy participants) to prohibit the criminalization of child sex trafficking victims for sex trafficking offenses, including accomplice and co-conspirator liability.

**Policy Goal 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Montana law limits non-criminalization and affirmative defense laws to cases involving non-violent offenses, leaving child sex trafficking victims charged with a violent felony committed as a result of their trafficking victimization without access to these crucial protections. Specifically, Mont. Code Ann. § 45-5-709(1) (Immunity of child – Sex therapy participants) states,

A person is not criminally liable or subject to proceedings under Title 41, chapter 5 [Youth court act], for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

Similarly, Mont. Code Ann. § 45-5-710 (Affirmative defense) provides, “A person charged with prostitution, promoting prostitution, or another nonviolent offense committed as a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking.”

- 2.8.1 Recommendation: Amend state law to provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.9** Juvenile court jurisdiction aligns with international human rights standards.

Montana law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Montana law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for juvenile court jurisdiction, permits direct file in cases involving minors 12 years of age or older, and fails to require courts to consider the impact of trauma or past victimization in make discretionary transfer determinations.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
Summary	None. “Youth” is defined as, “an individual who is less than 18 years of age . . . .”	17	Yes. Minors 12+ years of age charged with certain offenses (prosecutor’s discretion for minors 12-16, required for those 17 years old).	Yes, however, statute fails to specify any offense or age restriction. <sup>6</sup>	No.

<sup>6</sup> Mont. Code Ann. § 41-5-203(3) (Jurisdiction of court) states, “The court has jurisdiction to: (a) transfer a youth court case to the district court after notice and hearing . . . .”

<b>Relevant Statute(s)</b>	Mont. Code Ann. § 41-5-103(46) (Definitions); Mont. Code Ann. § 41-5-203 (Jurisdiction of court)	Mont. Code Ann. § 41-5-103(46) (Definitions); Mont. Code Ann. § 41-5-203 (Jurisdiction of court)	Mont. Code Ann. § 41-5-206(1)(a), (2) (Filing in district court prior to formal proceedings in youth court)	Mont. Code Ann. § 41-5-203(3) (Jurisdiction of court)	N/A
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Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allow some juvenile cases to be subject to direct file; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

**Policy Goal 2.10** State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

Montana law clearly defines “child abuse or neglect” to include child sex trafficking. Pursuant to Mont. Code Ann. § 41-3-102(7)(a)–(b)(i) (Definitions),

- (a) “Child abuse or neglect” means:
  - (i) actual physical or psychological harm to a child;
  - (ii) substantial risk of physical or psychological harm to a child; or
  - (iii) abandonment.
- (b)
  - (i) The term includes:
    - ....
    - (C) any form of child sex trafficking or human trafficking.

Additionally, Mont. Code Ann. § 41-3-102(22)(a)(ii) defines “physical or psychological harm to a child” as “the harm that occurs whenever the parent or other person responsible for the child’s welfare . . . commits or allows sexual abuse or exploitation of the child,” and Mont. Code Ann. § 41-3-102(31) defines “sexual exploitation” as follows:

- (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 (Prostitution) through 45-5-603 [Aggravated promotion of prostitution];
- ....
- (c) allowing, permitting, or encouraging sexual servitude as described in 45-5-704 [Sexual servitude] or 45-5-705 [Patronizing victim of sexual servitude].



## EXTRA CREDIT



Child labor trafficking is included in the definition of “child abuse or neglect” under Mont. Code Ann. § 41-3-102(7)(b)(i)(C), which includes victims of human trafficking. Importantly, Mont. Code Ann. § 45-5-701(5) defines “human trafficking” as “the commission of an offense under 45-5-702 [Trafficking of persons], 45-5-703 [Involuntary servitude], 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing victim of sexual servitude].”

**Policy Goal 2.11** State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Montana’s child welfare code does not expressly allow for a child welfare response in non-familial child sex trafficking cases without requiring caregiver involvement and does not provide for a specialized response to child sex trafficking reports. While the definition of “child abuse or neglect” under Mont. Code Ann. § 41-3-102(7) (Definitions) is not expressly limited to acts committed by a caregiver, no alternative response is statutorily provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

- 2.11.1 Recommendation: Amend the child welfare code to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.



## ISSUE 3: Continuum of Care

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**Policy Goal 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Montana law does not provide a process to connect child sex trafficking victims with access to specialized services through a non-punitive system. Pursuant to Mont. Code Ann. § 45-5-709(3) (Immunity of child – Sex therapy participants), “A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5 [Youth court act],<sup>7</sup> is presumed to be a youth in need of care under Title 41, chapter 3 [Child abuse and neglect], and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.”

- 3.1.1 Recommendation: Strengthen existing law to provide a clear process for child sex trafficking victims to access specialized services through a non-punitive system.

**Policy Goal 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Montana does not statutorily require a multi-disciplinary team response to child sex trafficking cases.

- 3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response to child sex trafficking victims.

**Policy Goal 3.3** State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Montana law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

- 3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

**Policy Goal 3.4** State law extends foster care services to older foster youth.

Montana law extends foster care services to youth under 21 years of age through optional approval by the department. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>8</sup> Specifically, 52-2-603(3) (Powers and duties of department.) provides,

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<sup>7</sup> See *supra* Policy Goal 2.5 for a full discussion of state non-criminalization laws.

<sup>8</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.4: Continuum of Care*, [https://sharedhope.org/wp-content/uploads/2020/12/SH\\_Issue-Brief-3.4\\_2020.pdf](https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf) (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

Additionally, Mont. Code Ann. § 52-2-602(9) (Definitions) defines “transitional living program” to provide program support to “youth who [are] 16 years of age or older and under 21 years of age.”

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

**Policy Goal 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Montana state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

- 3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

**Policy Goal 3.6** State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Montana state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

- 3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



## ISSUE 4: Access to Justice for Trafficking Survivors

### Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

Montana law allows trafficking victims to seek ex parte civil orders of protection against their exploiters. Pursuant to Mont. Code Ann. § 40-15-102(2)–(7) (Eligibility for order of protection),

- (2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual’s relationship to the offender:
  - (a) a victim of . . . human trafficking as defined in 45-5-701 [Definitions]; . . .  
 . . . .
- (3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner’s abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.  
 . . . .
- (6) A petitioner is eligible for an order of protection whether or not:
  - (a) the petitioner reports the abuse to law enforcement;
  - (b) charges are filed; or
  - (c) the petitioner participates in a criminal prosecution.
- (7) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner’s application for an order of protection is irrelevant.

Mont. Code Ann. § 40-15-201(1)–(4) (Temporary order of protection) allows those orders to be granted on an ex parte basis, stating,

- (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.
- (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief<sup>9</sup> . . . .

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<sup>9</sup> Pursuant to Mont. Code Ann. § 40-15-201(2),

The temporary order of protection may include any or all of the following orders:

- (a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;
- (b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;
- (c) prohibiting the respondent from removing a child from the jurisdiction of the court;
- (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner’s residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

....

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

## EXTRA CREDIT



Victims of child labor trafficking may seek ex parte civil orders of protection against their exploiters under Mont. Code Ann. § 40-15-102, which broadly protects victims of human trafficking. Importantly, Mont. Code Ann. § 45-5-701(5) defines “human trafficking” as “the commission of an offense under 45-5-702 [Trafficking of persons], 45-5-703 [Involuntary servitude], 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing victim of sexual servitude].”

### **Policy Goal 4.2**      Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Montana's crime victims' compensation laws exempt victims of child sex trafficking and CSEC from all ineligibility factors. Pursuant to Mont. Code Ann. § 44-4-1502(2) (Eligibility for benefit or service), “A child who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, including compensation under Title 53, chapter 9, part 1 [The Crime Victims Compensation Act of Montana], regardless of immigration status or factors described in 53-9-125 [Limitations on awards].” Accordingly, commercially sexually exploited children will not be denied an award based on the ineligibility factors provided for under Mont. Code Ann. § 53-9-125 (Limitations on awards), which states,

(1) Except as otherwise provided in this section, compensation may not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious

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- (e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;
  - (f) prohibiting the respondent from possessing or using the firearm used in the assault;
  - (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;
  - (h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;
  - (i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;
  - (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.



conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing a claim may be extended by the office for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. The report must be made within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the office finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant shall fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The office, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant must be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of the person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection must be in proportion to what the office finds to be the victim's contribution to the infliction of death or injury.

### **Policy Goal 4.3**      Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Although Montana law allows trafficking victims to vacate convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to Mont. Code Ann. § 46-18-608(1)–(4) (Motion to vacate conviction—human trafficking victims),

(1) On the motion of a person, a court may vacate a person's conviction of prostitution, promoting prostitution, or another nonviolent offense if the court finds that the person's participation in the offense was a direct result of having been a victim of human trafficking<sup>10</sup> or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

(2) The motion must:

(a) be made within a reasonable time after the person ceased to be involved in human trafficking or sought services for human trafficking victims, subject to reasonable concerns for the safety of the person, family members of the person, or other victims of human trafficking who could be jeopardized by filing a motion under this section; and

(b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.

(3) No official determination or documentation is required to grant a motion by a person under this section, but official documentation from a local government or a state or federal agency of the person's status as a victim of human trafficking creates a rebuttable presumption that the person's participation in the offense was a direct result of having been a victim of human trafficking.

(4) If a court vacates a conviction under this section, the court shall:

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<sup>10</sup> Mont. Code Ann. § 46-18-608(5) defines "human trafficking" to have the meaning as provided for under Mont. Code Ann. § 45-5-701(5) (Definitions), which states, "'Human trafficking' means the commission of an offense under 45-5-702 [Trafficking in persons], 45-5-703 [Involuntary servitude], 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing a victim of sexual servitude]."

- (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and
- (b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103 [Definitions], and public access to the information may be obtained only by district court order upon good cause shown.

However, Mont. Code Ann. § 46-18-608 applies specifically to “convictions.” Mont. Code Ann. § 41-5-103(10), (12) (Definitions) distinguishes between “criminally convicted youth” who have been convicted in a district court for select offenses and “delinquent youth” who have been adjudicated in the youth court. Because the terms “conviction” and “adjudication” have different meanings, delinquency adjudications are not eligible for vacatur. Further, only certain offenses are eligible for vacatur, which fails to recognize the array of crimes trafficking victims are charged with and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

**Policy Goal 4.4** State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Montana law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Mont. Code Ann. § 46-18-241(1) (Condition of restitution),

As provided in 46-18-201 [Sentences that may be imposed], a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. The duty to pay full restitution under the sentence remains with the offender or the offender’s estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.

**EXTRA CREDIT**



Montana law mandates restitution for victims of child labor trafficking under Mont. Code Ann. § 46-18-241(1), which applies broadly to any offense.

**Policy Goal 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Montana law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Mont. Code Ann. § 27-1-755(1), (2) (Civil action – human trafficking victim) states,

(1) A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under 45-5-702 [Trafficking of persons], 45-5-703 [Involuntary servitude], 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing a victim of sexual servitude] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

## EXTRA CREDIT



Montana law provides sex trafficked youth with a trafficking-specific civil remedy under Mont. Code Ann. § 27-1-755, which applies broadly to all cases involving sex trafficking regardless of the victim's age.



Montana law provides child labor trafficking victims with a trafficking-specific civil remedy under Mont. Code Ann. § 27-1-755, which applies broadly to cases involving trafficking, including both sex and labor trafficking.

**Policy Goal 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Prosecutions for child sex trafficking and certain CSEC offenses may commence at any time; however, the statute of limitation for trafficking-specific civil actions is only lengthened, not eliminated. Pursuant to Mont. Code Ann. § 45-1-205(1)(c) (General time limitations),

A prosecution for an offense under . . . 45-5-602 [Promoting prostitution], 45-5-603 [Aggravated promotion of prostitution], . . . 45-5-704 [Sexual servitude], or 45-5-705 [Patronizing a victim of sexual servitude] may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.

Otherwise, Mont. Code Ann. § 45-1-205(2) states,

Except . . . as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for a felony must be commenced within 5 years after it is committed.
- (b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

Regarding civil actions, Mont. Code Ann. § 27-1-755(3) (Civil action – human trafficking victim) provides,

An action under this section must be commenced not later than 10 years after the later of:

- (a) the date on which the victim no longer was subject to human trafficking; or
- (b) the date on which the victim reached 18 years of age.

4.6.1 Recommendation: Eliminate the civil statute of limitation for all cases involving child sex trafficking.



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

**Policy Goal 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Montana law allows out-of-court statements made by a commercially sexually exploited child under 15 years of age to be admitted into evidence. Specifically, Mont. Code § 46-16-220(1) (Child hearsay exception – Criminal proceedings) states,

Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

- (a) the declarant of the out-of-court statement is a child [under 15 years of age]<sup>11</sup> who is:
  - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
  - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
- (b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;<sup>12</sup>

<sup>11</sup> Mont. Code § 46-16-220(4) defines “child” as “a person under 15 years of age.”

<sup>12</sup> Pursuant to Mont. Code § 46-16-220(3),

When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a court shall consider the following:

- (a) the attributes of the child hearsay declarant, including:
  - (i) the child's age;
  - (ii) the child's ability to communicate verbally;
  - (iii) the child's ability to comprehend the statements or questions of others;
  - (iv) the child's ability to tell the difference between truth and falsehood;
  - (v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;
  - (vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and
  - (vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;
- (b) information regarding the witness who is relating the child's hearsay statement, including:
  - (i) the witness's relationship to the child;
  - (ii) whether the relationship between the witness and the child has an impact on the trustworthiness of the child's hearsay statement;
  - (iii) whether the witness has a motive to fabricate or distort the child's statement; and
  - (iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;
- (c) information regarding the child's statement, including:
  - (i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;
  - (ii) whether the statement was spontaneous;

- (c) the child is unavailable as a witness;
- (d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and
- (e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare . . . .

Mont. Code § 46-18-104(2)(a) (Definitions) defines “crime of violence” as follows:

- (i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;
- (ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender;
- or
- (iii) an offense under:
  - . . . .
  - (F) 45-5-603 [[Aggravated promotion of prostitution](#)];
  - (G) 45-5-702 [[Trafficking of persons](#)];
  - (H) 45-5-703 [[Involuntary servitude](#)];
  - (I) 45-5-704 [[Sexual servitude](#)]; or
  - (J) 45-5-705 [[Patronizing a victim of sexual servitude](#)].

Because the definition of “crime of violence” expressly includes state trafficking and CSEC offenses, out-of-court statements made by commercially sexually exploited children may be admitted into evidence under Mont. Code § 46-16-220(1). However, child victims who are 15 years of age or older are not protected by this hearsay exception, thereby increasing their risk of re-traumatization from testifying.

- 5.1.1 Recommendation: Amend Mont. Code § 46-16-220(1) (Child hearsay exception – Criminal proceedings) to extend the hearsay exception to any case involving the commercial sexual exploitation of children under 18 years of age.

**Policy Goal 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Montana law allows a victim who is under 14 years of age to testify by an alternative method during the prosecution of an offender charged with a specified offense; however, this protection does not apply to victims of sex trafficking or most CSEC crimes. Specifically, Mont. Code Ann. § 46-16-229 (Order for two-way electronic audio-video communication testimony – Finding by court – Procedure for conducting testimony) states,

- 
- (iii) the suggestiveness of statements by other persons to the child at the time that the child made the statement;
  - (iv) if statements were made by the child to more than one person, whether those statements were consistent; and
  - (v) the nearness in time of the statement to the incident at issue;
  - (d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:
    - (i) whether the alleged act can be corroborated; and
    - (ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and
    - (e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.



The court shall order that the testimony of a child witness be taken by two-way electronic audio-video communication if, after considering the factors set forth in 46-16-228(3),<sup>13</sup> the court finds by clear and convincing evidence that the child witness is unable to testify in open court in the presence of the defendant for any of the following reasons:

- (a) the child witness is unable to testify because of fear caused by the presence of the defendant;
- (b) the child witness would suffer substantial emotional trauma from testifying in the presence of the defendant; or
- (c) conduct by the defendant or the defendant’s attorney causes the child witness to be unable to continue testifying.

Mont. Code Ann. § 46-16-226(1)(a) (Definitions) defines “child witness” as “an individual who is . . . 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense . . . .” Although the definition of “sexual offense” includes a violation of Mont. Code Ann. § 45-5-603 (Aggravated promotion of prostitution), violations of Montana’s child sex trafficking offense and the state’s other CSEC offense are not included within the definition of “sexual offense” or “violent offense.” Mont. Code Ann. § 46-16-226(2), (3). Accordingly, victims of those crimes are not able to testify by two-way electronic audio-video communication under Mont. Code Ann. § 46-16-229. Further, child victims who are 14 years of age or older are also not protected, thereby increasing their risk of re-traumatization from testifying.

5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

**Policy Goal 5.3** Child sex trafficking victims have access to victim protections in the criminal justice system.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims’ identifying information is protected from disclosure in court records</b>
<b>Summary</b>	Victims of a criminal offense have the right to have a victim advocate present when interviewed about the offense and at other stages in the criminal justice process that	Not statutorily required.	Information directly or indirectly identifying a child sex trafficking victim is prohibited from being disclosed by criminal justice agencies.

<sup>13</sup> Pursuant to Mont. Code Ann. § 46-16-228 (Hearing – Procedure – Evidence that may be received – Protection for child witness),

In ruling on the motion, the court shall consider the following factors:

- (a) the age and maturity of the child witness;
- (b) the possible effect that testifying in person might have on the child witness;
- (c) the extent of the trauma that the child witness has already suffered;
- (d) the nature of the testimony to be given by the child witness;
- (e) the nature of the offense;
- (f) threats made to the child witness or the child witness’s family in order to prevent or dissuade the child witness from attending or giving testimony at any trial or court proceeding;
- (g) conduct on the part of the defendant or the defendant’s attorney that causes the child witness to be unable to continue the child witness’s testimony; and
- (h) any other matter that the court considers relevant.

	are of significance to a crime victim.		
<b>Relevant Statute(s)</b>	Mont. Code Ann. § 46-24-106(7) (Crime victims – Family members – Right to attend proceedings – exceptions – Right to receive documents – Right during interview); Mont. Code Ann. § 46-24-201(1)(c)–(d) (Services to victims of crime)	None.	Mont. Code Ann. § 44-5-311 (Nondisclosure of information about victim)

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims are provided courtroom supports when testifying against their exploiter.

**Policy Goal 5.4** State law provides for privileged communications between caseworkers and child sex trafficking victims.

Montana law does not provide for privileged communications between caseworkers and child sex trafficking victims.

- 5.4.1 Recommendation: Enact a child sex trafficking-specific caseworker privilege law that protects a child sex trafficking victim’s communications with a caseworker from being disclosed.



## ISSUE 6: Prevention & Training

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**Policy Goal 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Montana law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

**Policy Goal 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Montana law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

**Policy Goal 6.3** State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Montana law authorizes trafficking-specific training for law enforcement. Pursuant to Mont. Code Ann. § 44-4-1504 (Human trafficking education account),

There is a human trafficking education account in the state special revenue fund for the purposes of preventing and detecting human trafficking. Money in this account may be expended by the department of justice to raise awareness about human trafficking and educate the public and law enforcement on how to prevent and detect human trafficking in this state.

Resultingly, resources and training regarding child sex trafficking may be, or become, available for use by law enforcement. However, law enforcement officers are not statutorily mandated to receive such training nor is the training required to be ongoing.

6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

**Policy Goal 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Montana law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

**Policy Goal 6.5** State law mandates child sex trafficking training for school personnel.

Montana law does not mandate training on child sex trafficking for school personnel.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

**Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.

Montana law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

## State Laws Addressing Child Sex Trafficking

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1. Mont. Code Ann. § 45-5-702 (Trafficking of persons) states,

(1) A person commits the offense of trafficking of persons if the person purposely or knowingly:

(a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or

(b) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection (1)(a) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2)

.....

(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined an amount not to exceed \$100,000, or both, if the victim was a child.

(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed \$75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide.

2. Mont. Code Ann. § 45-5-704 (Sexual servitude) states,

(1) A person commits the offense of sexual servitude if the person purposely or knowingly:

.....

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.<sup>14</sup>

.....

(3)

(a) A person convicted of the offense of sexual servitude under subsection (1)(a) shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$50,000, or both.

(b) A person convicted of the offense of sexual servitude under subsection (1)(b) shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

3. Mont. Code Ann. § 45-5-705 (Patronizing victim of sexual servitude) states,

(1) A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity:<sup>15</sup>

(a) that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sexual servitude; or

(b) with a child.

(2)

.....

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<sup>14</sup> Mont. Code Ann. § 45-5-701(3) (Definitions) defines “commercial sexual activity” as “sexual activity for which anything of value is given to, promised to, or received by a person.”

<sup>15</sup> See *supra* note 14 for the definition of “commercial sexual activity.”



(b) If the individual patronized was a child, a person convicted of the offense of patronizing a victim of sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed \$75,000.

## State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

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1. Mont. Code Ann. § 45-5-603(1)–(2)(b) (Aggravated promotion of prostitution) states,
  - (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:
    - (a) compels another to engage in or promote prostitution;
    - (b) promotes prostitution of a child, whether or not the person is aware of the child’s age;
    - (c) promotes the prostitution of one’s spouse, child, ward, or any person for whose care, protection, or support the person is responsible.
  - (2)
    - (a) Except as provided in subsections (2)(b) and (2)(c), a person convicted of aggravated promotion of prostitution shall be punished by:
      - (i) life imprisonment; or
      - (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed \$50,000, or both.
    - (b)
      - (i) Except as provided in 46-18-219 [Life sentence without possibility of release] and 46-18-222 [Exceptions to mandatory minimum sentences, restrictions on deferred imposition and suspended execution of sentence, and restrictions on parole eligibility], if the person engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense, the offender:
        - (A) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(b)(i)(A) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.
        - (B) may be fined an amount not to exceed \$50,000; and
        - (C) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.
2. Mont. Code Ann. § 45-5-601(2)(b)–(3)(a) (Prostitution – Patronizing a prostitute – Exception) states,
  - (2)

....

    - (b) A patron may be convicted of patronizing a prostitute if the patron engages in or agrees or offers to engage in sexual intercourse or sexual contact that is direct and not through clothing with another person for compensation, whether the compensation is received or to be received or paid or to be paid

....
  - (3)
    - (a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child’s age, the patron offender:
      - (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.
      - (ii) may be fined an amount not to exceed \$50,000; and
      - (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.
3. Mont. Code Ann. § 45-5-602(1)–(3)(a) (Promoting prostitution) states,

(1) A person commits the offense of promoting prostitution if the person purposely or knowingly commits any of the following acts:

- (a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;
- (b) procures an individual for a house of prostitution or a place in a house of prostitution for an individual;
- (c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;
- (d) solicits clients for another person who is a prostitute;
- (e) procures a prostitute for a patron;
- (f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;
- (g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or
- (h) lives in whole or in part upon the earnings of an individual engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

....

(3)

- (a) If the person engaging in prostitution was a child and the offender was 18 years of age or older at the time of the offense, whether or not the offender was aware of the child's age, the offender:
  - (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.
  - (ii) may be fined an amount not to exceed \$50,000; and
  - (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.