

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 Virginia’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.

Va. Code Ann. § 18.2-357.1(A) (Commercial sex trafficking; penalties) excludes buyers of commercial sex with minors because it requires the offender to act “with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing.” It states,

Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of § 18.2-346 [Prostitution; commercial sexual conduct; penalties], solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate § 18.2-346 is guilty of a Class 5 felony.

1.1.1 Recommendation: Amend Va. Code Ann. § 18.2-357.1(A) (Commercial sex trafficking; penalties) to make the statute applicable to the actions of buyers of commercial sex with minors.

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

Virginia law criminalizes soliciting commercial sex with minors under Va. Code Ann. § 18.2-346.01 (Prostitution; solicitation; commercial exploitation of a minor; penalties), which states, “Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in § 18.2-346 [Prostitution;

commercial sexual conduct; penalties]¹ and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution”

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

Virginia’s CSEC laws address an array of trafficker conduct. Pursuant to Va. Code Ann. § 18.2-356 (Receiving money for procuring person),

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act in violation of § 18.2-361 [Crimes against nature; penalty], or touching of the unclothed genitals or anus of another person with the intent to sexually arouse or gratify, or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography is guilty

Further, Va. Code Ann. § 18.2-357 (Receiving money from earnings of male or female prostitute; penalties) states, “Any person who shall knowingly receive any money or other valuable thing from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law, shall be guilty of pandering”

Under Va. Code Ann. § 18.2-48 (Abduction with intent to extort money or for immoral purpose),

Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony

Va. Code Ann. § 18.2-355(4) (Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking) states,

Any person who:

. . . .

(4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

¹ Va. Code Ann. § 18.2-346 states,

Any person who, for money or its equivalent, (i) commits any act in violation of § 18.2-361 [Crimes against nature; penalty]; performs cunnilingus, fellatio, or anilingus upon or by another person; engages in sexual intercourse or anal intercourse; touches the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; or allows another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify or (ii) offers to commit any act in violation of § 18.2-361; perform cunnilingus, fellatio, or anilingus upon or by another person; engage in sexual intercourse or anal intercourse; touch the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; or allow another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

Lastly, Va. Code Ann. § 18.2-349 (Using vehicles to promote prostitution or unlawful sexual intercourse; penalty) provides,

It is unlawful for any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle

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

Virginia law does not expressly prohibit a mistake of age defense in prosecutions for child sex trafficking and CSEC.

- 1.4.1 Recommendation: Prohibit a mistake of age defense in all cases involving child sex trafficking and CSEC.

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

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, Virginia’s criminal attempt statutes could provide prosecutors with an alternative avenue to prosecute those cases by holding an offender accountable for attempting to commit a child sex trafficking or commercial sexual exploitation offense even if the offender was prevented from completing the offense since the intended victim was a law enforcement decoy rather than an actual minor.

Pursuant to Va. Code Ann. § 18.2-25 (Attempts to commit Class 1 felony offenses; how punished), “If any person attempts to commit an offense that is punishable as a Class 1 felony, he is guilty of a Class 2 felony.” Further, Va. Code Ann. § 18.2-26 (Attempts to commit felonies other than Class 1 felony offenses; how punished) provides,

Except as provided in § 18.2-25, every person who attempts to commit an offense that is a felony shall be punished as follows:

- (1) If the felony attempted is punishable by a maximum punishment of life imprisonment or a term of years in excess of twenty years, an attempt thereat shall be punishable as a Class 4 felony.
- (2) If the felony attempted is punishable by a maximum punishment of twenty years' imprisonment, an attempt thereat shall be punishable as a Class 5 felony.
- (3) If the felony attempted is punishable by a maximum punishment of less than twenty years' imprisonment, an attempt thereat shall be punishable as a Class 6 felony.

Under Va. Code Ann. § 18.2-27 (Attempts to commit misdemeanors; how punished), “Every person who attempts to commit an offense which is a misdemeanor shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.” Lastly, Va. Code Ann. § 18.2-28 (Maximum punishment for attempts) states, “Any provision in this article notwithstanding, in no event shall the punishment for an attempt to commit an offense exceed the maximum punishment had the offense been committed.”

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

Virginia’s trafficking law does 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.²

² Regarding asset forfeiture, Va. Code Ann. § 19.2-386.35 (Seizure of property used in connection with certain offenses) provides for forfeiture of the following property used in connection with a trafficking or CSEC offense:

All money, equipment, motor vehicles, and other personal and real property of any kind or character together with any interest or profits derived from the investment of such proceeds or other property that (i) was used in connection with the commission of, or in an attempt to commit, a violation of . . . § 18.2-48 [Abduction with intent to extort money or for immoral purpose], . . . 18.2-346.01 [Prostitution; solicitation; commercial exploitation of a minor; penalties], . . . 18.2-348 [Aiding prostitution or illicit sexual intercourse], . . . 18.2-349 [Using vehicles to promote prostitution or unlawful sexual intercourse; penalty], 18.2-355 [Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking], 18.2-356 [Receiving money for procuring person], 18.2-357 [Receiving money from earnings of male or female prostitution; penalties], 18.2-357.1 [Commercial sex trafficking; penalties] . . . ; (ii) is traceable to the proceeds of some form of activity that violates . . . § 18.2-48, . . . 18.2-346.01, . . . 18.2-348, . . . 18.2-349, 18.2-355, 18.2-356, 18.2-357 . . . ; or (iii) was used to or intended to be used to promote some form of activity that violates . . . § 18.2-48, . . . 18.2-346.01, . . . 18.2-348, . . . 18.2-349, 18.2-355, 18.2-356, 18.2-357 . . . is subject to lawful seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.).

Real property shall not be subject to seizure unless the minimum prescribed punishment for the violation is a term of imprisonment of not less than five years.

All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this section.

Further, Va. Code Ann. § 19.2-386.32 (Seizure and forfeiture of property used in connection with the abduction of children) provides,

All moneys and other property, real and personal, owned by a person and used to further the abduction of a child in violation of . . . 18.2-48 . . . are subject to lawful seizure by a law-enforcement officer and are subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.).

Lastly, Va. Code Ann. § 19.2-386.16(A) (Forfeiture of motor vehicles used in commission of certain crimes) provides for forfeiture of vehicles as follows:

A. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of § 18.2-346, 18.2-346.01 . . . 18.2-348, . . . 18.2-349, 18.2-355, 18.2-356 or 18.2-357 or of a similar ordinance of any county, city or town . . . shall be forfeited to the Commonwealth

B. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit . . . a felony violation of (i) Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2 or (ii) § 18.2-357 where the prostitute is a minor, shall be forfeited to the Commonwealth

C. Forfeiture of such vehicle shall be enforced as is provided in Chapter 22.1 (§ 19.2-386.1 et seq.).

Disposition of forfeited property is governed by Va. Code Ann. § 19.2-386.12 (Sale of forfeited property), which provides for its sale and deposit into a special fund of the Department of Criminal Justice Services. The Department of Criminal Justice

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

Services then distributes the money to “federal, state and local agencies to promote law enforcement . . .” Va. Code Ann. § 19.2-386.14(A1) (Sharing of forfeited assets). However, state asset forfeiture laws do not direct a percentage of a sex trafficking or CSEC offender’s forfeited assets into a victim services fund.

Similarly, Va. Code Ann. § 17.1-275.13 (Additional fee for offenses related to sex trafficking) and Va. Code Ann. § 16.1-69.48:6 (Fees for offenses related to sex trafficking) require offenders convicted of sex trafficking and CSEC offenses to pay an additional fee; however, fees are directed toward the Virginia Prevention of Sex Trafficking Fund, which dedicates funds for prevention, awareness, and training rather than victim services. VA. Code Ann. §§ 17.1-275.13; 16.1-69.48:6; 9.1-116.4.

Va. Code Ann. § 17.1-275.13 states,

In addition to the fees provided for by §§ 17.1-275.1 [Fixed felony fee], 17.1-275.2 [Fixed fee for felony reduced to misdemeanor], 17.1-275.7 [Fixed misdemeanor fee], 17.1-275.10 [Additional fee], and 17.1-275.12 [Additional fee for internet crimes against children fund], any person convicted of a misdemeanor violation of § 18.2-346.01 [Prostitution; solicitation; commercial exploitation of a minor; penalties] or of § 18.2-348 [Aiding prostitution or illicit sexual intercourse] or 18.2-349 [Using vehicles to promote prostitution or unlawful sexual intercourse; penalty] shall be ordered to pay a \$100 fee, and any person convicted of a violation of clause (ii), (iii), or (iv) of § 18.2-48 [Abduction with intent to extort money or for immoral purpose], . . . or any felony violation of the laws pertaining to commercial sex trafficking or prostitution offenses pursuant to Article 3 (§ 18.2-346 et seq.) of Chapter 8 [Commercial Sex Trafficking, Prostitution, Etc.], with the exception of § 18.2-361 [Crime against nature; penalty], shall be ordered to pay a \$500 fee. All fees collected pursuant to this section shall be deposited into the Virginia Prevention of Sex Trafficking Fund to be used in accordance with § 9.1-116.4 [Virginia prevention of sex trafficking fund; purpose; guidelines].

Under Va. Code Ann. § 16.1-69.48:6, “The court shall order any person convicted of a misdemeanor violation of § 18.2-346.01 or of § 18.2-348 or 18.2-349 to pay a \$100 fee, which shall be deposited into the Virginia Prevention of Sex Trafficking Fund to be used in accordance with § 9.1-116.4.”



ISSUE 2: Identification of & Response to Victims

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.

To be identified as a trafficking victim under the criminal code, a child must be exploited by a trafficker; however, Virginia law expands the definition of victim for purposes of accessing services. Rather than relying solely on the criminal code's definition of child sex trafficking, Virginia's service-oriented statutes also include victims under the federal trafficking law.³ Inclusion of victims under the federal trafficking law allows for a service response in cases where a child is exploited by a buyer without trafficker-involvement.

As noted, however, this conflicts with the criminal code's definition of trafficking victim, which requires third party control. Va. Code Ann. § 18.2-357.1(A) (Commercial sex trafficking; penalties) specifically excludes buyers from criminal liability.⁴ Accordingly, third party control is required to establish the crime of child sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the criminal code's definition of child sex trafficking victim.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim within the criminal code.⁵

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

Virginia 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.

While Virginia law requires local child welfare agencies to conduct a human trafficking assessment for all known or suspected cases of child sex trafficking, this process is more akin to a child welfare investigation rather than a

³ Va. Code Ann. § 63.2-1517(C) (Authority to take child into custody) and Va. Code Ann. § 63.2-1506.1(A) (Sex trafficking assessments by local departments). See *infra* Policy Goal 3.1 for a full discussion of Virginia's service response in child sex trafficking cases.

⁴ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Va. Code Ann. § 18.2-357.1.

⁵ See generally Shared Hope Int'l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

screening policy or process.⁶ As such, Virginia 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.

Virginia 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.

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

Virginia law fails to prohibit the criminalization of minors for prostitution offenses. The core prostitution offense, Va. Code Ann. § 18.2-346 (Prostitution; commercial sexual conduct; penalties), is age neutral, applying equally to minors and adults, stating,

Any person who, for money or its equivalent, (i) commits any act in violation of § 18.2-361 [Crimes against nature; penalty]; performs cunnilingus, fellatio, or anilingus upon or by another person; engages in sexual intercourse or anal intercourse; touches the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; or allows another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify or (ii) offers to commit any act in violation of § 18.2-361 . . . is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

For individuals who are prosecuted for prostitution, Va. Code Ann. § 18.2-361.1 (Victims of sex trafficking; affirmative defense) provides an affirmative defense to those identified as sex trafficking victims, stating,

A. For the purposes of this section:

“Qualifying offense” means a charge for a violation of § 18.2-346 [Prostitution; commercial sexual conduct; penalties] or 18.2-347 [Keeping, residing in, or frequenting a bawdy place; “bawdy place” defined; penalty].

“Victim of sex trafficking” means any person charged with a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in § 18.2-346, regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such person.

B. It is an affirmative defense to prosecution of a qualifying offense if at the time of the offense leading to such charge, such person was a victim of sex trafficking and (i) was coerced to engage in the offense through the use of force or intimidation or (ii) such offense was committed at the direction of another person other than the individual with whom the person engaged in the acts of prostitution or unlawful sexual intercourse for such money or its equivalent.

⁶ See *infra* Policy Goal 2.11 for a full discussion of the human trafficking assessment.

Resultantly, while some victims of sex trafficking may avoid being adjudicated delinquent or convicted for prostitution, Virginia law still permits arresting, detaining, charging, and prosecuting minors for prostitution and prostitution-related offenses.

- 2.5.1 Recommendation: Amend state law to prohibit the criminalization of minors for prostitution offenses.

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.

Virginia law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

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.

Although Virginia law does not prohibit 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, an affirmative defense may be available for CSE-related conduct. Pursuant to Va. Code Ann. § 18.2-361.1 (Victims of sex trafficking; affirmative defense),

A. For the purposes of this section:

“Qualifying offense” means a charge for a violation of § . . . 18.2-347 [Keeping, residing in, or frequenting a bawdy place; “bawdy place” defined; penalty].

“Victim of sex trafficking” means any person charged with a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in § 18.2-346, regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such person.

B. It is an affirmative defense to prosecution of a qualifying offense if at the time of the offense leading to such charge, such person was a victim of sex trafficking and (i) was coerced to engage in the offense through the use of force or intimidation or (ii) such offense was committed at the direction of another person other than the individual with whom the person engaged in the acts of prostitution or unlawful sexual intercourse for such money or its equivalent.

- 2.7.1 Recommendation: Enact a law that 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.

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.

Virginia law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides 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.

Virginia law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While Virginia law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute does not establish a minimum age for jurisdictional purposes and permits automatic transfers for older minors charged with certain felonies or those previously convicted in criminal court. Additionally, the juvenile court is not required to consider the impact of trauma or past trafficking victimization in making 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. “Child, “Juvenile, and “Minor” are defined as, “a person who is (i) younger than 18 years of age”	17	Yes. Minors: (1) 16+ years of age charged with certain violent juvenile felony offenses; or (2) convicted in criminal court.	Yes. Minors 14+ years of age charged with a felony offense.	No.
Relevant Statute(s)	Va. Code Ann. § 16.1-228 (Definitions)	Va. Code Ann. § 16.1-228 (Definitions)	Va. Code Ann. § 16.1-241(A) (Jurisdiction; consent for abortion); Va. Code Ann. § 16.1-269.1(B), (C) (Trial in circuit court; preliminary hearing; direct indictment; remand); Va. Code Ann. § 16.1-269.6(C) (Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and appeals)	Va. Code Ann. § 16.1-269.1(B) (Trial in circuit court; preliminary hearing; direct indictment; remand)	N/A

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Consequently, some minors may still be subjected 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 automatically transferred to criminal court; and (3) do not require the juvenile court to consider previous trafficking victimization or trauma in 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.

Virginia law clearly defines “abused or neglected child” to include child sex trafficking. Under both Va. Code Ann. § 63.2-100 (Definitions) and Va. Code Ann. § 16.1-228 (Definitions), “[a]bused or neglected child” means any child . . . who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the federal Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.”

EXTRA CREDIT



Child labor trafficking is included in the definition of “abused or neglected child” under Va. Code Ann. § 63.2-100 and Va. Code Ann. § 16.1-228, which expressly include victims of “severe forms of trafficking.” 22 U.S.C. §7102 defines “severe forms of trafficking” to include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

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.

Virginia law allows for a child welfare response to non-familial child sex trafficking cases that does not hinge on caregiver fault and provides a trafficking-specific process for child sex trafficking victims to access services through child welfare without having to enter the dependency process. Va. Code Ann. § 16.1-228 (Definitions) and Va. Code Ann. § 63.2-100 (Definitions) require fault by “parents or other person responsible for his care” in the definition of “abused or neglected child” except when a child “has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, 22. U.S.C. § 7102 et seq., and in the federal Justice for Victims of Trafficking Act of 2015, 42. U.S.C. § 5101 et seq.” As such, the definitions of “abused or neglected child” do not hinge on parent or caregiver fault in the context of child sex trafficking.

Further, Va. Code Ann. § 63.2-1508(B) (Valid report or complaint) states,

A valid report or complaint regarding a child who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102 et seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22) may be established if

the alleged abuser is the alleged victim child's parent, other caretaker, or any other person suspected to have caused such abuse or neglect.

Once a report of suspected trafficking is made to child welfare, several other statutes set out a trafficking-specific protocol for child welfare to respond to child sex trafficking cases. Regarding the initial response to a report of suspected trafficking victimization, Va. Code Ann. § 63.2-1506.1(A)–(C), (F) (Human trafficking assessments by local departments) provides,


- A. If a report or complaint is based upon information and allegations that a child is a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102 et seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22), the local department shall conduct a human trafficking assessment, unless at any time during the human trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 [Investigations by local departments] or 63.2-1506 [Family assessments by local departments].
- B. A human trafficking assessment requires the collection of information necessary to determine:
 - 1. The immediate safety needs of the child;
 - 2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and
 - 3. Risk of future harm to the child.
- C. When a local department responds to the report or complaint by conducting a human trafficking assessment, the local department may:
 - 1. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and the child's family;
 - 2. Petition the court for services deemed necessary; or
 - 3. Commence an immediate investigation or family assessment, if at any time during the human trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 or 63.2-1506.
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- F. The local department or departments shall notify the Child Protective Services Unit within the Department in writing whenever such a human trafficking assessment is conducted.

Regarding protective custody, Va. Code Ann. § 63.2-1517(C) (Authority to take child into custody) states,

A child-protective services worker of a local department responding to a complaint or report of abuse and neglect for purposes of sex trafficking or severe forms of trafficking may take a child into custody and the local department may maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child or children have been identified as a victim or victims of sex trafficking or a victim or victims of severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, (22 U.S.C. § 7101 et. seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22). After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person. The local department shall also notify the Child-Protective Services Unit within the Department whenever a child is taken into custody.⁷

⁷ Pursuant to Va. Code Ann. § 63.2-1517(D),

When a child is taken into custody by a child-protective services worker of a local department pursuant to subsection C, that child shall be returned as soon as practicable to the custody of his parent or guardian. However, the local



department shall not be required to return the child to his parent or guardian if the circumstances are such that continuing in his place of residence or in the care or custody of such parent or guardian, or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irreparable injury would be likely to result or if the evidence of abuse is perishable or subject to deterioration before a hearing can be held. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 [Emergency removal order].



ISSUE 3: Continuum of Care

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

Child sex trafficking victim may have access to services through a discretionary, non-punitive process. Pursuant to Va. Code Ann. § 63.2-1517(C) (Authority to take child into custody),

A child-protective services worker of a local department responding to a complaint or report of abuse and neglect for purposes of sex trafficking or severe forms of trafficking may take a child into custody and the local department may maintain custody of the child for up to 72 hours without prior approval of a parent or guardian, provided that the alleged victim child or children have been identified as a victim or victims of sex trafficking or a victim or victims of severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, (22 U.S.C. § 7101 et. seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22). After taking the child into custody, the local department shall notify the parent or guardian of such child as soon as practicable. Every effort shall be made to provide such notice in person. The local department shall also notify the Child-Protective Services Unit within the Department whenever a child is taken into custody.⁸

Under Va. Code Ann. § 63.2-1506.1 (Sex trafficking assessments by local departments), the Department of Social Services must complete an assessment regarding potential sex trafficking allegations; it states,

- A. If a report or complaint is based upon information and allegations that a child is a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102 et seq.) and in the federal Justice for Victims of Trafficking Act of 2015 (P.L. 114-22), the local department shall conduct a sex trafficking assessment, unless at any time during the sex trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 [Investigations by local departments] or 63.2-1506 [Family assessments by local departments].
- B. A sex trafficking assessment requires the collection of information necessary to determine:
 1. The immediate safety needs of the child;
 2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and
 3. Risk of future harm to the child.

⁸ Pursuant to Va. Code Ann. § 63.2-1517(D),

When a child is taken into custody by a child-protective services worker of a local department pursuant to subsection C, that child shall be returned as soon as practicable to the custody of his parent or guardian. However, the local department shall not be required to return the child to his parent or guardian if the circumstances are such that continuing in his place of residence or in the care or custody of such parent or guardian, or custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irreparable injury would be likely to result or if the evidence of abuse is perishable or subject to deterioration before a hearing can be held. If the local department cannot return the child to the custody of his parents or guardians within 72 hours, the local department shall obtain an emergency removal order pursuant to § 16.1-251 [Emergency removal order].

- C. When a local department responds to the report or complaint by conducting a sex trafficking assessment, the local department may:
1. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and the child's family;
 2. Petition the court for services deemed necessary; or
 3. Commence an immediate investigation or family assessment, if at any time during the sex trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 [Investigations by local departments] or 63.2-1506 [Family assessments by local departments].
-
- F. The local department or departments shall notify the Child Protective Services Unit within the Department in writing whenever such a sex trafficking assessment is conducted.

In addition to this discretionary service response, Virginia law requires the Sex Trafficking Response Coordinator to develop a plan for responding to child sex trafficking victims. Specifically, Va. Code Ann. § 9.1-116.5(A) (Sex Trafficking Response Coordinator; duties; report) requires the coordinator to:

1. Create a statewide plan for local and state agencies to identify and respond to victims of sex trafficking;
 2. Coordinate the development of standards and guidelines for treatment programs for victims of sex trafficking;
 3. Maintain a list of programs that provide treatment or specialized services to victims of sex trafficking and make such list available to law-enforcement agencies, attorneys for the Commonwealth, crime victim and witness assistance programs, the Department of Juvenile Justice, the Department of Social Services, the Department of Education, and school divisions;
 4. Oversee the development of a curriculum to be completed by persons convicted of solicitation of prostitution under subsection B of § 18.2-346.01 [Prostitution; solicitation; commercial exploitation of a minor; penalties]; and
 5. Promote strategies for the education, training, and awareness of sex trafficking and for the reduction of demand for commercial sex.
- 3.1.1 Recommendation: Strengthen existing law to require access to specialized services for all child sex trafficking victims 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.

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child sexual abuse MDT, Virginia law does not require an MDT response specific to child sex trafficking cases. Pursuant to Va. Code Ann. § 15.2-1627.5(A), (B) (Coordination of multidisciplinary response to child sexual abuse and the abuse, neglect, and exploitation of adults),

- A. The attorney for the Commonwealth in each jurisdiction in the Commonwealth shall establish a multidisciplinary child sexual abuse response team, which may be an existing multidisciplinary team. The multidisciplinary team shall conduct regular reviews of new and ongoing reports of felony sex offenses in the jurisdiction involving a child and the investigations thereof and, at the request of any member of the team, may conduct reviews of any other reports of child abuse and neglect or sex offenses in the jurisdiction involving a child and the investigations thereof. The multidisciplinary team shall meet frequently enough to ensure that no new or ongoing reports go more than 60 days without being reviewed by the team.
- B. The following individuals, or their designees, shall participate in review meetings of the multidisciplinary team established pursuant to subsection A: the attorney for the Commonwealth; law-enforcement officials responsible for the investigation of sex offenses involving a child in the jurisdiction; a representative of the

local child protective services unit; a representative of a child advocacy center serving the jurisdiction, if one exists; and a representative of an Internet Crimes Against Children task force affiliate agency serving the jurisdiction, if one exists. In addition, the attorney for the Commonwealth may invite other individuals, or their designees, including the school superintendent of the jurisdiction; a representative of any sexual assault crisis center serving the jurisdiction, if one exists; the director of the victim/witness program serving the jurisdiction, if one exists; and a health professional knowledgeable in the treatment and provision of services to children who have been sexually abused.

- 3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response specific 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.

Virginia law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.⁹

- 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.

Virginia law extends foster care services to youth under 21 years of age. However, these services are not extended to youth under 23 years of age as permitted under federal law.¹⁰ Pursuant to Va. Code Ann. § 63.2-917 (Fostering futures program; established),

The Fostering Futures program is established to provide services and support to individuals 18 years of age or older but less than 21 years of age who were in foster care upon turning 18 years of age. Such services and support shall be designed to assist the program participant in transitioning to adulthood, becoming

⁹ While Virginia law requires the Sex Trafficking Response Coordinator to develop a plan for responding to child sex trafficking cases, which includes providing program lists of specialized services to law enforcement and the Department of Juvenile Justice, it does not require the juvenile justice system to provide identified sex trafficking children and youth with services. Specifically, Va. Code Ann. § 9.1-116.5(A) (Sex Trafficking Response Coordinator; duties; report) requires the coordinator to:

1. Create a statewide plan for local and state agencies to identify and respond to victims of sex trafficking;
2. Coordinate the development of standards and guidelines for treatment programs for victims of sex trafficking;
3. Maintain a list of programs that provide treatment or specialized services to victims of sex trafficking and make such list available to law-enforcement agencies, attorneys for the Commonwealth, crime victim and witness assistance programs, the Department of Juvenile Justice, the Department of Social Services, the Department of Education, and school divisions;
4. Oversee the development of a curriculum to be completed by persons convicted of solicitation of prostitution under subsection B of § 18.2-346.01 [Prostitution; solicitation; commercial exploitation of a minor; penalties]; and
5. Promote strategies for the education, training, and awareness of sex trafficking and for the reduction of demand for commercial sex.

¹⁰ 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 (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

self-sufficient, and creating permanent, positive relationships. The program is voluntary and shall at all times recognize and respect the autonomy of the participant

Va. Code Ann. § 63.2-919 (Fostering futures program; eligibility) governs eligibility for program participation, stating,

The Fostering Futures program is available, on a voluntary basis, to an individual between 18 and 21 years of age who:

1. Was (i) in the custody of a local department immediately prior to reaching 18 years of age, remained in foster care upon turning 18 years of age, and entered foster care pursuant to a court order; or (ii) in the custody of a local department immediately prior to commitment to the Department of Juvenile Justice and is transitioning from such commitment to self-sufficiency; and
2. Is (i) completing secondary education or an equivalent credential; (ii) enrolled in an institution that provides postsecondary or vocational education; (iii) employed for at least 80 hours per month; (iv) participating in a program or activity designed to promote employment or remove barriers to employment; or (v) incapable of doing any of the activities described in clauses (i) through (iv) due to a medical condition, which incapability is supported by regularly updated information in the program participant's case plan.

Under Va. Code Ann. § 63.2-920 (Continuing services and support), available services and supporting may include the following:

1. Medical care under the state plan for medical assistance;
2. Housing, placement, and support in the form of continued foster care maintenance payments in an amount not less than the rate set immediately prior to the program participant's exit from foster care. Policies and decisions regarding housing options shall take into consideration the program participant's autonomy and developmental maturity, and safety assessments of such living arrangements shall be age-appropriate and consistent with federal guidance on supervised settings in which program participants live independently. For program participants residing in an independent living setting, the local department may send all or part of the foster care maintenance payments directly to the program participant, as agreed upon by the local department and the program participant. For program participants residing in a foster family home, foster care maintenance payments shall be paid to the foster parents; and
3. Case management services, including a case plan that describes (i) the program participant's housing or living arrangement; (ii) the resources available to the program participant in the transition from the Fostering Futures program to independent adulthood; and (iii) the services and support to be provided to meet the program participant's individual goals, provided such services and support are appropriate for and consented to by the program participant. All case plans shall be developed in consultation with the program participant

Further, for purposes of determining eligibility for state funding, Va. Code Ann. § 2.2-5212 (Eligibility for state pool of funds) defines "child" or "youth" as "(i) a person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services."

If the child or youth is eligible for funding for services under Va. Code Ann. § 2.2-5212 (Eligibility for state pool of funds),¹¹ Va. Code Ann. § 63.2-905.1 (Independent living services) provides access to transitional living facilities and services for youth from ages 18 to 21, stating,

Local departments and licensed child-placing agencies shall provide independent living services to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency. Any person who was committed or entrusted to a local board or licensed child-placing agency may choose to discontinue receiving independent living services any time before his twenty-first birthday in accordance with regulations adopted by the Board. The local board or licensed child-placing agency shall restore independent living services at the request of that person provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board or licensed child-placing agency regarding the terms and conditions of his receipt of independent living services.

Local departments and licensed child-placing agencies shall provide independent living services to any person between 18 and 21 years of age who (a) was in the custody of the local department of social services immediately prior to his commitment to the Department of Juvenile Justice, (b) is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency, and (c) provides written notice of his intent to receive independent living services and enters into a written agreement for the provision of independent living services, which sets forth the terms and conditions of the provision of independent living services, with the local board or licensed child-placing agency within 60 days of his release from commitment to the Department of Juvenile Justice.

Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his twenty-first birthday written notice of his right to request restoration of independent living services in accordance with this section by including such written notice in the person's transition plan. Such transition plan shall be created within 90 days prior to the person's discharge from foster care. Local departments and licensed child-placing agencies may provide independent living services as part of the foster care services provided to any child 14 years of age or older. All independent living services shall be provided in accordance with regulations adopted by the Board.

- 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 Virginia state legislature made appropriations during the 2020-2021 Regular Session to support the development and provision of community-based specialized services for child and youth survivors of sex trafficking.¹²

¹¹ Under Va. Code Ann. § 2.2-5212 (A),

In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

4. The child or youth requires foster care services as defined in § 63.2-905.

¹² Further, enacted House Bill 30 (2020) included a \$290,000 appropriation, payable over a 2-year period from the general fund, for sex trafficking coordination activities needed to carry out previous legislation.

2020-2021 Legislative Session				
Bill	Recipient	Amount	Intended Purpose	Term
HB 30	Youth for Tomorrow	\$100,000	To contract with Youth for Tomorrow to provide comprehensive residential, education and counseling services to at-risk youth of the Commonwealth of Virginia who have been sexually exploited, including victims of sex trafficking.	FY 2021-2022 (Non-recurring)
2020-2021 Regular Session				

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 Virginia 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.

While civil orders of protection exist under Virginia law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

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.

Although Virginia's crime victims' compensation laws define "victim" broadly enough to include victims of child sex trafficking and CSEC, ineligibility factors may prevent a commercially sexually exploited child from accessing an award.

For purposes of accessing crime victims' compensation, Va. Code Ann. § 19.2-368.2 (Definitions) defines "victim" as follows:

[A] person who suffers personal physical injury or death as a direct result of a crime¹³ . . . or who suffers personal emotional injury as a direct result of being the subject of a violent felony offense¹⁴ as defined in subsection C of § 17.1-805

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Va. Code Ann. § 19.2-368.10 (When awards to be made; reporting crime and cooperation with law enforcement),

No award shall be made unless the Commission finds that:

1. A crime was committed;
2. Such crime directly resulted in an individual becoming a victim as defined in § 19.2-368.2, on whose behalf a claim is filed; and
3. Police records show that such crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that such report was made more than 120 hours after the occurrence of such crime, unless the Commission, for good cause shown, finds the delay to have

¹³ Va. Code Ann. § 19.2-368.2 defines "crime" as "an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law."

¹⁴ Va. Code Ann. § 17.1-805(C) (Adoption of initial discretionary sentencing guideline midpoint) expressly defines "violent felony offenses" to include violations of Virginia's child sex trafficking and CSEC offenses.

been justified. The provisions of this subdivision shall not apply to claims of sexual abuse that occurred while the victim was a minor.¹⁵
The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, may deny, reduce or withdraw any award, as the case may be.

Further, Va. Code Ann. § 19.2-368.5 (Filing of claims; deferral of proceedings; restitution) provides,

B. A claim shall be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is incapacitated, the provisions of subsection A of § 8.01-229 shall apply to toll the one-year period; (ii) in cases involving claims made by a victim against profits of crime held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) of this title, the claim shall be filed within five years of the date of the special order of escrow; and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed within 10 years after the minor's eighteenth birthday. For good cause shown, the Commission may extend the time for filing for a crime committed on or after July 1, 2001¹⁶

In addition, Va. Code Ann. § 19.2-368.4(B) (Persons eligible for awards) states, “A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim.”

Notably, under Va. Code Ann. § 19.2-368.8 (Reinvestigation of decision; reconsideration of award; judicial review),

The Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award. Except for claims of sexual abuse that occurred while the victim was a minor, the Commission shall not reopen or reinvestigate a case after the expiration of two years from the date of submission of the original claim. Any claim involving the sexual abuse of a minor that has been denied before July 1, 2001, because it was not timely filed may, upon application filed with the Commission, be reconsidered provided the application for reconsideration is filed within ten years after the minor's eighteenth birthday.

¹⁵ Virginia law does not explain what constitutes “good cause” for purposes of accessing crime victims’ compensation. Further, Va. Code Ann. § 19.2-368.2 (Definitions) defines “sexual abuse” to have the same meaning as given to it in “subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2.” Under Va. Code Ann. § 18.2-67.10(6) (General definitions),

“Sexual abuse” means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

- a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;
- b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;
- c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or
- d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

Accordingly, the exception to the reporting requirement found under Va. Code Ann. § 19.2-368.10(3) does not expressly apply to violations of Virginia’s child sex trafficking and CSEC laws; nevertheless, it may provide some relief to victims of these crimes. To ensure commercially sexually exploited children are protected, however, the definition of “sexual abuse” under Va. Code Ann. § 19.2-368.2 should expressly apply to these crimes.

¹⁶ See *supra* note 15 for a full discussion of the application of these exceptions to cases involving child sex trafficking and CSEC.

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

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

Virginia law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions arising from their victimization; however, relief is limited to prostitution-related offenses. Pursuant to Va. Code Ann. § 19.2-327.17(A) (Contents and form of the petition for vacatur),

Any victim of sex trafficking¹⁷ may file a petition for vacatur setting forth the relevant facts and requesting that the judgment of a conviction or adjudication of delinquency be vacated. Such petition shall allege categorically and with specificity, under oath, all of the following:

1. The petitioner was convicted or adjudicated delinquent of a qualifying offense, including the date on which the qualifying offense occurred, the date of final disposition on which the conviction or adjudication of delinquency was entered, the petitioner's date of birth, and the full name used by the petitioner at the time of the offense;
2. The petitioner committed the qualifying offense as a direct result of being a victim of sex trafficking; and
3. Whether the petitioner has previously filed any other petition in accordance with this chapter in any circuit court and, if so, the disposition of such petition.

“[U]pon a petition of a person who was convicted or adjudicated delinquent of a qualifying offense, the circuit court of the county or city in which the conviction or adjudication of delinquency was entered shall have the authority to issue writs of vacatur under this chapter.” Va. Code Ann. § 19.2-327.16(A) (Issuance of writ of vacatur for victims of commercial sex trafficking).

Under Va. Code Ann. § 19.2-327.18(C), (D) (Hearing on petition for vacatur), relief may be granted as follows:

C. Upon finding that the petitioner has by a preponderance of the evidence proven the elements contained in subsection A of § 19.2-327.17, the circuit court shall grant the writ and vacate the qualifying offense. If the petitioner fails to prove any of these elements, the court shall dismiss the petition.

D. The court may grant the writ and vacate the qualifying offense regardless of whether any person other than the petitioner has been charged or convicted of an offense related to the petitioner being a victim of sex trafficking.

Upon granting vacatur, Va. Code Ann. § 19.2-327.19(B), (E) (Relief under writ of vacatur) states,

B. If a writ of vacatur is granted, . . . an order of expungement for the qualifying offense shall be entered by the circuit court. Upon entry of the order of expungement, the clerk of court shall cause a copy of the writ of vacatur, the order of expungement, and the complete set of petitioner's fingerprints to be forwarded to the Department of State Police, which shall expunge the qualifying offense.

¹⁷ Va. Code Ann. § 19.2-327.15 (Definitions) defines “victim of sex trafficking” as follows:

[A]ny person convicted or adjudicated delinquent of a qualifying offense in the Commonwealth who committed such offense as a direct result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived by another to engage in acts of prostitution or unlawful sexual intercourse for money or its equivalent, as described in subsection A of § 18.2-346 [Prostitution; commercial sexual conduct; penalties], regardless of whether any other person has been charged or convicted of an offense related to the sex trafficking of such person.

....

E. If the court enters a writ of vacatur, the petitioner shall be entitled to a refund of all fines, costs, forfeitures, and penalties paid in relation to the qualifying offense that was vacated. If the clerk of the court where the conviction was entered is in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, the petitioner shall be entitled to a refund of such amount. If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.

As noted above, however, vacatur is only available for qualifying offenses. Va. Code Ann. § 19.2-327.15 defines “qualifying offense” as “a conviction or adjudication of delinquency for any violation of § 18.2-346 [Prostitution; commercial sexual conduct; penalties] or 18.2-347 [Keeping, residing in, or frequenting a bawdy place; “bawdy place defined; penalty].” Accordingly, vacatur is limited to prostitution-related offenses, 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.

Virginia law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Va. Code Ann. § 19.2-305.1(B) (Restitution for property damage or loss; community service),

Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

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

Virginia law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Va. Code Ann. § 8.01-42.4(A) (Civil action for trafficking in persons) states,

Any person injured by reason of (i) a violation of clause (iii), (iv), or (v) of § 18.2-48 [Abduction with intent to extort money or for immoral purpose]; (ii) a violation of § 18.2-348 [Aiding prostitution or illicit sexual intercourse], 18.2-348.1 [Promoting travel for prostitution; penalty], 18.2-349 [Using vehicles to promote prostitution or unlawful sexual intercourse], 18.2-355 [Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking], 18.2-356 [Receiving money for procuring person; penalties], 18.2-357 [Receiving money from earnings of male or female prostitute; penalties], 18.2-357.1 [Commercial sex trafficking; penalties] . . . ; or (iii) a felony violation of § 18.2-346.01 [Prostitution; solicitation; commercial exploitation of a minor; penalties] may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

EXTRA CREDIT



Virginia law provides sex trafficked youth with a trafficking-specific civil remedy under Va. Code Ann. § 8.01-42.4(A), which expressly includes victims of sex trafficking under Va. Code Ann. § 18.2-357.1 (Commercial sex trafficking; penalties) regardless of their age.

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 CSEC offenses may commence at any time; however, the statute of limitation for trafficking-specific civil actions is only lengthened, not eliminated. Regarding criminal actions, felonies are not subject to a statute of limitation in Virginia while misdemeanors are subject to a general 1-year statute of limitation under Va. Code Ann. § 19.2-8 (Limitation of prosecutions).

For civil actions, Va. Code Ann. § 8.01-42.4(B) (Civil action for trafficking in persons) provides,

No action shall be commenced under this section more than seven years after the later of the date on which such person (i) was no longer subject to the conduct prohibited by clause (iii), (iv), or (v) of § 18.2-48 [Abduction with intent to extort money or for immoral purpose] or § 18.2-348 [Aiding prostitution or illicit sexual intercourse], 18.2-348.1 [Promoting travel for prostitution; penalty], 18.2-349 [Using vehicles to promote prostitution or unlawful sexual intercourse], 18.2-355 [Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking], 18.2-356 [Receiving money for procuring person; penalties], 18.2-357 [Receiving money from earnings of male or female prostitute; penalties], 18.2-357.1 [Commercial sex trafficking; penalties] . . . or under a felony violation of § 18.2-346.01 [Prostitution; solicitation; commercial sexual exploitation of a minor; penalties] or (ii) attained 18 years of age.

In contrast, Va. Code Ann. § 8.01-243(A) (Personal action for injury to person or property generally; extension in actions for malpractice against health care provider) establishes a 2-year statute of limitation for personal injury actions.

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.

Virginia law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving 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.

Virginia law allows child sex trafficking victims who are under 17 years of age to testify by an alternative method. Specifically, Va. Code Ann. § 18.2-67.9(A)–(D) (Testimony by child victims and witnesses using two-way closed-circuit television) states,

A. The provisions of this section shall apply to an alleged victim who was 14 years of age or younger at the time of the alleged offense and is 16 years of age or younger at the time of the trial and to a witness who is 14 years of age or younger at the time of the trial.

In any criminal proceeding, including preliminary hearings, involving an alleged offense against a child, relating to a violation of the laws pertaining to kidnapping pursuant to Article 3 (§ 18.2-47 et seq.) of Chapter 4, criminal sexual assault pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4, commercial sex trafficking or prostitution offenses pursuant to Article 3 (§ 18.2-346 et seq.) of Chapter 8, or family offenses pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8, or involving an alleged murder of a person of any age, the attorney for the Commonwealth or the defendant may apply for an order from the court that the testimony of the alleged victim or a child witness be taken in a room outside the courtroom and be televised by two-way closed-circuit television

B. The court may order that the testimony of the child be taken by closed-circuit television as provided in subsection A if it finds that the child is unavailable to testify in open court in the presence of the defendant, the jury, the judge, and the public, for any of the following reasons:

1. The child's persistent refusal to testify despite judicial requests to do so;
2. The child's substantial inability to communicate about the offense; or
3. The substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

. . . .

D. The child's testimony shall be transmitted by closed-circuit television into the courtroom for the defendant, jury, judge, and public to view. The defendant shall be provided with a means of private, contemporaneous communication with his attorney during the testimony.

Notably, child victims who are 17 years of age are not permitted to testify by an alternative method, 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.

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims' identifying information is protected from disclosure in court records
Summary	Not statutorily required.	Not statutorily required.	Not statutorily required.
Relevant Statute(s)	None.	None.	None.

- 5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate, courtroom supports are provided when they are testifying against their exploiter, and their identifying information is kept confidential in court records.

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

Virginia 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

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

Virginia law authorizes statewide training for workers and supervisors on identification and response to child sex trafficking. Pursuant to Va. Code Ann. § 63.2-1502(14) (Establishment of Child-Protective Services Unit; duties),

There is created a Child-Protective Services Unit in the Department that shall have the following powers and duties:

.....

To establish minimum training requirements for workers and supervisors on identifying, assessing, and providing comprehensive services for children who are victims of sex trafficking or severe forms trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq., including efforts to coordinate with law-enforcement, juvenile justice, and social service agencies such as runaway and homeless youth shelters to serve this population.

Resultingly, training regarding child sex trafficking may be, or become, available to child welfare. However, Virginia law does not statutorily require individuals employed by child welfare to receive such training.

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.

Virginia 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.

Virginia law mandates trafficking-specific training for law enforcement but does not require the training to be ongoing. Pursuant to Va. Code Ann. § 9.1-102(37), (48) (Powers and duties of the Board and the Department),

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

.....

37. Establish training standards and publish and periodically update model policies for law-enforcement personnel in the following subjects:

.....

i. Sensitivity to and awareness of human trafficking offenses and the identification of victims of human trafficking offenses for personnel involved in criminal investigations or assigned to vehicle or street patrol duties;

....
....

48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

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.

Virginia law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.¹⁸

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.

Virginia law does not mandate training on child sex trafficking for school personnel.¹⁹

¹⁸ Although training is not statutorily mandated, Va. Code Ann. § 9.1-102 (Powers and duties of the Board and the Department) does allow the Attorney General to advise prosecutors on trafficking-related prosecutions; it states,

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

....

48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

¹⁹ Although training on identification and response to child sex trafficking is not statutorily mandated for teachers, school staff should have access to awareness and training materials under Va. Code Ann. § 22.1-16.5 (Training materials on human trafficking), which provides,

The Board, in collaboration with the Department of Social Services, shall provide awareness and training materials for local school division staff on human trafficking, including strategies for the prevention of trafficking of children.

Further, Va. Code Ann. § 22.1-207.1(B), (C) (Family life education) provides for trafficking-specific training but only for purposes of carrying out family life education for students, stating,

B. The Board of Education shall develop Standards of Learning and curriculum guidelines for a comprehensive, sequential family life education curriculum in grades kindergarten through 12. Such curriculum guidelines shall include instruction as appropriate for the age of the student in . . . the prevention of human trafficking . . .

C. . . . The Board shall also establish requirements for appropriate training for teachers of family life education, which shall include training in instructional elements to support the various curriculum components.

- 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.

Child sex trafficking prevention education is mandated for high school students and authorized for students in any grade level. Pursuant to Va. Code Ann. § 22.1-207.1:1(B), (E) (Family life education; certain curricula and standards of learning),

B. Any high school family life education curriculum offered by a local school division shall incorporate age-appropriate elements of effective and evidence-based programs on (i) the prevention of dating violence, domestic abuse, sexual harassment, including sexual harassment using electronic means, sexual violence, and human trafficking and (ii) the law and meaning of consent. Such age-appropriate elements of effective and evidence-based programs on the prevention of sexual violence may include instruction that increases student awareness of the fact that consent is required before sexual activity.

....

E. Any family life education curriculum offered by a local school division may incorporate age-appropriate elements of effective and evidence-based programs on the prevention, recognition, and awareness of child abduction, child abuse, child sexual exploitation, and child sexual abuse.

State Laws Addressing Child Sex Trafficking

1. Va. Code Ann. § 18.2-357.1(A), (C) (Commercial sex trafficking; penalties) states,

A. Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of § 18.2-346 [Prostitution; commercial sexual conduct; penalties], solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate § 18.2-346 is guilty of a Class 5 felony.

....

C. Any adult who violates subsection A with a person under 18 years of age is guilty of a Class 3 felony.

A Class 5 felony is punishable by imprisonment for 1–10 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months,” a fine up to \$2,500, either, or both. Va. Code Ann. § 18.2-10(e) (Punishment for conviction of felony; penalty). A Class 3 felony is punishable by imprisonment for 5–20 years and a fine up to \$100,000. Va. Code Ann. § 18.2-10(c).

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Va. Code Ann. § 18.2-48 (Abduction with intent to extort money or for immoral purpose) states,

Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony. If the sentence imposed for a violation of (ii), (iii), (iv), or (v) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

A Class 2 felony is punishable by imprisonment for 20 years to life and a possible fine up to up to \$100,000. Va. Code Ann. § 18.2-10(b) (Punishment for conviction of felony; penalty).

2. Va. Code Ann. § 18.2-346.01 (Prostitution; solicitation; commercial exploitation of a minor; penalties) states,

Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in § 18.2-346 [Prostitution; commercial sexual conduct]²⁰ and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution [A]ny person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

A Class 5 felony is punishable by imprisonment for 1–10 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months,” a fine up to \$2,500, either, or both. Va. Code Ann. § 18.2-10(e) (Punishment for conviction of felony; penalty). A Class 6 felony is punishable by imprisonment for 1–5 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months,” a fine up to \$2,500, either, or both. Va. Code Ann. § 18.2-10(f).

3. Va. Code Ann. § 18.2-355(4) (Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking) states,

Any person who:

. . . .

(4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

²⁰ Va. Code Ann. § 18.2-346 states,

Any person who, for money or its equivalent, (i) commits any act in violation of § 18.2-361 [Crimes against nature; penalty]; performs cunnilingus, fellatio, or anilingus upon or by another person; engages in sexual intercourse or anal intercourse; touches the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; or allows another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify or (ii) offers to commit any act in violation of § 18.2-361; perform cunnilingus, fellatio, or anilingus upon or by another person; engage in sexual intercourse or anal intercourse; touch the unclothed genitals or anus of another person with the intent to sexually arouse or gratify; or allow another to touch his unclothed genitals or anus with the intent to sexually arouse or gratify and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

. . . A violation of subdivision (4) is punishable as a Class 3 felony.

A Class 3 felony is punishable by imprisonment for 5–20 years and a fine up to \$100,000. Va. Code Ann. § 18.2-10(c) (Punishment for conviction of felony; penalty).

4. Va. Code Ann. § 18.2-356 (Receiving money for procuring person) states,

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act in violation of § 18.2-361 [Crimes against nature; penalty], or touching of the unclothed genitals or anus of another person with the intent to sexually arouse or gratify, or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography is guilty Any person who violates clause (i) or (ii) with a person under the age of 18 is guilty of a Class 3 felony.

A Class 3 felony is punishable by imprisonment for 5–20 years and a fine up to \$100,000. Va. Code Ann. § 18.2-10(c) (Punishment for conviction of felony; penalty).

5. Va. Code Ann. § 18.2-357 (Receiving money from earnings of male or female prostitute; penalties) states,

Any person who shall knowingly receive any money or other valuable thing from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law, shall be guilty of pandering Any person who violates this section by receiving money or other valuable thing from a person under the age of 18 is guilty of a Class 3 felony.

A Class 3 felony is punishable by imprisonment for 5–20 years and a fine up to \$100,000. Va. Code Ann. § 18.2-10(c) (Punishment for conviction of felony; penalty).

6. Va. Code Ann. § 18.2-348 (Aiding prostitution or illicit sexual intercourse) states,

It is unlawful for any person or any officer, employee, or agent of any firm, association, or corporation with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or outside any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within the Commonwealth or to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act violative of § 18.2-361 [Crimes against nature; penalty], or touching of the unclothed genitals or anus of another person with the intent to sexually arouse or gratify, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution. A violation of this section is a Class 1 misdemeanor. However, any adult who violates this section with a person under the age of 18 is guilty of a Class 6 felony.

A Class 1 misdemeanor is punishable by “confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.” Va. Code Ann. § 18.2-11(a) (Punishment for conviction of misdemeanor). A Class 6 felony is punishable by imprisonment for 1–5 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months,” a fine up to \$2,500, either, or both. Va. Code Ann. § 18.2-10(f) (Punishment for conviction of felony; penalty).

7. Va. Code Ann. § 18.2-349 (Using vehicles to promote prostitution or unlawful sexual intercourse; penalty) states,

It is unlawful for any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse or to aid or promote such prostitution or unlawful sexual intercourse by the

use of any such vehicle. A violation of this section is a Class 1 misdemeanor. However, any adult who violates this section by using a vehicle or allowing a vehicle to be used for or to aid or promote prostitution or unlawful sexual intercourse with a person under the age of 18 is guilty of a Class 6 felony.

A Class 1 misdemeanor is punishable by “confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.” Va. Code Ann. § 18.2-11(a) (Punishment for conviction of misdemeanor). A Class 6 felony is punishable by imprisonment for 1–5 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months,” a fine up to \$2,500, either, or both. Va. Code Ann. § 18.2-10(f) (Punishment for conviction of felony; penalty).