



2023 REPORT

MONTANA

Report Cards on Child & Youth Sex Trafficking

State Action. National Change.

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IN 2011, SHARED HOPE RELEASED THE NATION’S FIRST LEGAL FRAMEWORK THAT CHALLENGED states to enact laws that comprehensively address the crime of child sex trafficking. When we launched the Protected Innocence Challenge project—and issued the inaugural State Report Cards—the majority of states received an “F” grade, reflecting the reality that many states’ laws failed to even recognize the crime of child sex trafficking. Since then, we have been working to lay the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders in identifying gaps in the fabric of laws needed to address this heinous crime. By 2019, no state received an “F” grade, and a majority of the country received an “A” or “B.”

PROTECTED INNOCENCE CHALLENGE

MONTANA

| 2019 | SCORE | GRADE | 8.5 | 25 | 15 | 7.5 | 26 | 15 |
|------|-------|-------|-----|------|------|-----|------|-----|
| | 97 | A | 10 | 25 | 15 | 10 | 27.5 | 15 |
| 2011 | SCORE | GRADE | 3.5 | 14.5 | 12.5 | 6 | 12 | 7.5 |
| | 56 | F | 10 | 25 | 15 | 10 | 27.5 | 15 |

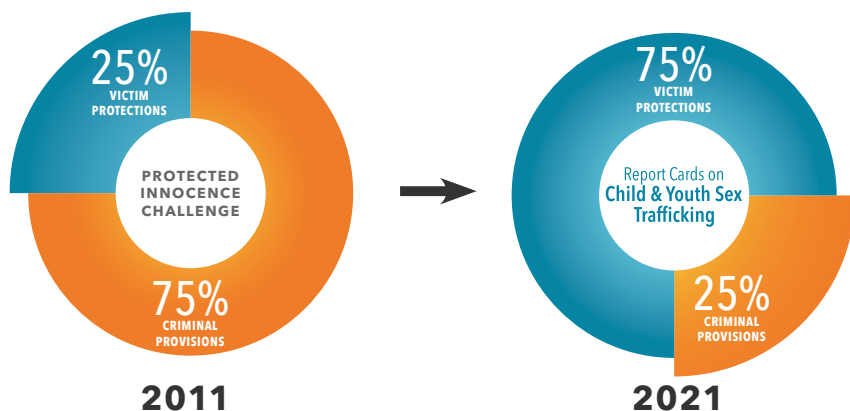
From 2011 to 2019, Montana raised their grade under the Protected Innocence Challenge from an “F” to an “A,” enacting legislation aimed at holding offenders accountable and protecting survivors.

To view Montana’s 2019 PIC report, visit sharedhope.org/PICframe9/reportcards/PIC_RC_2019_MT.pdf

A SHIFT IN FOCUS

THE PROTECTED INNOCENCE CHALLENGE PROJECT WAS SHARED HOPE’S VISION FOR MOBILIZING collective state action to ensure national change. Building on the progress already made under that project—while preserving its most fundamental components—we released a new, advanced legislative framework in 2020 that

focuses on new policy priorities reflective of feedback and research collected from the field. This framework is meant to challenge states to take the next step in the fight against sex trafficking by focusing on the area of law where the largest gaps remain—victim protections.



ADVANCED LEGISLATIVE FRAMEWORK

6 ISSUE AREAS IDENTIFIED:

CRIMINAL PROVISIONS

IDENTIFICATION OF & RESPONSE TO VICTIMS

CONTINUUM OF CARE

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

PREVENTION & TRAINING

40 POLICY GOALS ANALYZED:

110 TOTAL POINTS AWARDED:

States earn up to 2.5 points per policy goal

Extra credit: Protections for labor and youth 18+

100 possible points

plus up to 10 points

FINAL LETTER GRADES ASSIGNED:

A | 90-110 **B** | 80-89 **C** | 70-79 **D** | 60-69 **F** | <60

TIER RANKING

Another way the Report Cards on Child & Youth Sex Trafficking will measure progress is through a Tier system that will help states understand how they are doing compared to other states. Especially at this stage where grades are clustered at lower levels, the Tiers help to show states where they are on a spectrum. This provides another way for states to evaluate the progress they make beyond changes to their letter grade.

THE TIERS ARE STRUCTURED AS FOLLOWS:

- ▶ TIER 1 = TOP 10 SCORES
- ▶ TIER 2 = MIDDLE 31 SCORES
- ▶ TIER 3 = BOTTOM 10 SCORES

F



MONTANA

2023 Report Card

TIER II

GRADES ARE BASED SOLELY ON AN ANALYSIS OF STATE STATUTES. While we recognize the critical importance of non-legislative responses to propel progress, grading on statutory law provides a clear mechanism for evaluating policy goals across all states while ensuring that survivor-centered reforms are an enduring part of states' responses.

STATE HIGHLIGHTS:

- Between 2021-2023, raised score by 8.5 points.
- Currently ranked 22nd in the nation.
- Enacted House Bill 112, expanding the child sex trafficking law to include "isolating, maintaining, enticing, or using" a child for commercial sex as criminalized conduct.
- Child welfare is required to provide specialized services to system-involved children and youth with experiences of sex or labor trafficking victimization.

SAFE HARBOR STATUS:

One of 30 states that statutorily prohibit the criminalization of minors for prostitution.

| Issue | | Grade | Score | Summary |
|--------------|--|-------|---------------------|---|
| | 1. Criminal Provisions | C | $\frac{12.5}{17.5}$ | Policy goals accomplished related to buyer accountability, mistake of age defenses, decoy defenses, and business entity liability under the trafficking law. Gaps remain related to trafficker accountability under state CSEC laws and financial penalties. |
| | 2. Identification of and Response to Victims | F | $\frac{10.5}{27.5}$ | Policy goals accomplished related to non-criminalization for prostitution offenses, status offenses, misdemeanors, and non-violent felony offenses, and child abuse definitions. Gaps remain related to third party control, foreign national victims, screening through child welfare and the juvenile justice system, expanded non-criminalization, juvenile court jurisdiction, and non-caregiver trafficking cases. |
| | 3. Continuum of Care | F | $\frac{7}{15}$ | Policy goals accomplished related to services through child welfare and appropriations. Gaps remain related to community-based services, MDT responses, services through the juvenile justice system, and extended foster care services. |
| | 4. Access to Justice for Trafficking Survivors | B | $\frac{13}{15}$ | Policy goals accomplished related to civil orders of protection, crime victims' compensation, restitution, and civil remedies. Gaps remain related to vacatur and statutes of limitation. |
| | 5. Tools for a Victim-Centered Criminal Justice Response | B | $\frac{8}{10}$ | Gaps remain in all areas, including hearsay exceptions, alternatives to live, in-court testimony, victim-witness supports, and privileged communications. |
| | 6. Prevention and Training | F | $\frac{1}{15}$ | Gaps remain in all areas, including training for child welfare, juvenile justice agencies, law enforcement, prosecutors, and school personnel as well as prevention education in schools. |
| EXTRA CREDIT | Youth | | 2 | Protections related to appropriations and civil remedies are extended to sex trafficking youth. |
| | Child Labor Trafficking | | 5 | Protections related to child abuse definitions, appropriations, civil orders of protection, restitution, and civil remedies are extended to child labor trafficking victims. |

OVERALL GRADE
TIER II

F 59

WHAT IS SAFE HARBOR?

“Safe Harbor” refers to laws that insulate survivors from a punitive response and direct them toward funded, comprehensive, and protective services.










WHY SAFE HARBOR?

These laws ensure survivors of child and youth sex trafficking are not involved in the juvenile or criminal justice system and receive trauma-informed care. Appropriate identification and access to services are vital to creating a just response for survivors of child and youth sex trafficking.

SAFE HARBOR LAWS

Comprehensive Safe Harbor laws
**SHOULD PROHIBIT
ARRESTING, DETAINING,
CHARGING, & PROSECUTING**
all minors for prostitution offenses, regardless of
whether a finding of trafficking victimization is
made, and, instead, require law enforcement to
direct child and youth survivors to
SPECIALIZED SERVICES & CARE.

Safe Harbor laws
**SHOULD ALSO PROHIBIT
CRIMINALIZATION**
of child sex trafficking survivors for other crimes
committed as a result of their victimization.

| Status | Safe Harbor Policy Goal |
|---|--|
|  Not met | The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control (see Policy Goal 2.1 for further analysis and Issue Brief 2.1 for background). |
|  Not met | State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking (see Policy Goal 2.3 for further analysis and Issue Brief 2.3 for background). |
|  Not met | State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking (see Policy Goal 2.4 for further analysis and Issue Brief 2.4 for background). |
|  Fully met | State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest (see Policy Goal 2.5 for further analysis and Issue Brief 2.5 for background). |
|  Fully met | 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 (see Policy Goal 2.6 for further analysis and Issue Brief 2.6 for background). |
|  Partially met | 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 (see Policy Goal 2.7 for further analysis and Issue Brief 2.7 for background). |
|  Not met | State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization (see Policy Goal 2.8 for further analysis and Issue Brief 2.8 for background). |
|  Not met | State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems (see Policy Goal 3.1 for further analysis and Issue Brief 3.1 for background). |
|  Fully met | State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement (see Policy Goal 3.6 for further analysis and Issue Brief 3.6 for background). |

STATE SUMMARY:

Montana prohibits the criminalization of all minors for prostitution offenses and extends non-criminalization protections to status offenses, misdemeanors, non-violent felonies, and sex trafficking offenses committed as a result of the person's own trafficking victimization, a progressive step toward a survivor-centered, anti-child sex trafficking response. However, state law does not facilitate access to community-based services, potentially leaving some survivors underserved or disconnected from resources that are necessary to address trauma and promote healing. Further, Montana limits the definition of child sex trafficking victim by requiring third party control, preventing commercially sexually exploited children who are unable or unwilling to identify a trafficker, as well as those who are not under the control of a trafficker, from accessing protections and relief that are specifically designed for sex trafficked children.

SAFE HARBOR RESOURCES: For additional information, visit reportcards.sharedhope.org/safeharbor/.

SAFE HARBOR MAP: To see our map of state Safe Harbor law development, visit reportcards.sharedhope.org/wp-content/uploads/2022/11/SafeHarborMapDec2022.pdf.

This report provides a thorough analysis of Montana’s statutes related to offender accountability and victim protections while providing recommendations for addressing gaps in those statutes.¹ This report does not analyze case law, agency rules, or regulations, nor does it analyze practices or initiatives that exist outside of statutory law. However, stakeholders were invited to share non-statutory responses to paint a fuller picture of the state’s anti-child sex trafficking response; where such responses were submitted, they are included as “Insights from the Field” under the respective policy goal but are not factored into the state’s grade.

For more information on how to use this Analysis Report, click [here](#).



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.

● **FULLY MET**

Mont. Code Ann. § 45-5-705(1)² (Patronizing victim of sex trafficking) expressly applies to buyers of commercial sex; it states,

A person commits the offense of patronizing a victim of sex trafficking if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity³ that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sex trafficking.

¹ Evaluations of state laws are based on legislation enacted as of July 1, 2023.

² The text of Mont. Code Ann. § 45-5-705 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 and Senate Bill 265 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023 and May 19, 2023, respectively).

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

Further, following federal precedent, Mont. Code Ann. § 45-5-711⁴ (Child sex trafficking) could apply to buyers based on the term “obtains.”⁵ Pursuant to Mont. Code Ann. § 45-5-711(1),

A person commits the offense of child sex trafficking by purposely or knowingly:

- (a) committing the offense of sex trafficking with a child;⁶ or
- (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, enticing, or using a child for the purpose of commercial sexual activity.⁷

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws⁸ specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

● FULLY MET

Montana law criminalizes both purchasing and soliciting commercial sex with a minor, but the prohibited conduct must be “direct and not through the clothing” of the minor. Mont. Code Ann. § 45-5-601(2)(b)⁹ (Prostitution – Patronizing a prostitute – Exception)¹⁰ states,

⁴ The text of Mont. Code Ann. § 45-5-711 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 and Senate Bill 265 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023 and May 19, 2023, respectively).

⁵ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

⁶ Notably, Mont. Code Ann. § 45-5-702(1) (Sex trafficking) criminalizes a broad range of conduct, including “caus[ing] another person to become or remain a prostitute.” See *infra* note 48.

⁷ See *supra* note 3 for the definition of “commercial sexual activity.”

⁸ The phrase “commercial sexual exploitation of children” (or “CSEC”) encompasses a variety of criminal offenses committed against a child in which the child engages, or agrees to engage, in a sex act in exchange for something of value either directly or through a third party. Appropriately crafted CSEC laws can be important, additional tools available in a prosecution of child sex trafficking conduct by supplementing available penalties under the trafficking law and providing additional options for plea negotiations without requiring prosecutors to rely on unrelated or low-level offenses in that context. For this reason, we analyze trafficking laws separately from CSEC laws—even though both involve commercial sexual exploitation. For a complete list of Montana’s CSEC laws, see the appendix located at the end of this report.

⁹ The text of Mont. Code Ann. § 45-5-601 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

¹⁰ Mont. Code Ann. § 45-5-601(3)(a) provides for a heightened penalty when the victim of the conduct described under Mont. Code Ann. § 45-5-601(2)(b) is a minor. Mont. Code Ann. § 45-5-601(3)(a) states,

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

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws¹¹ apply to traffickers and protect all minors under 18.

○ NOT MET

Montana's CSEC law does not specifically apply to the actions of traffickers.

- 1.3.1 Recommendation: Enact a CSEC law that addresses an array of exploitive conduct engaged in by traffickers. (See [Issue Brief 1.3.](#))

Policy Goal 1.4 Mistake of age is not an available defense in child sex trafficking prosecutions.

● FULLY MET

Montana law expressly prohibits a mistake of age defense in prosecutions for child sex trafficking.¹² Pursuant to Mont. Code Ann. § 45-5-711(3)(b)¹³ (Child sex trafficking), "It is not a defense in a prosecution under this section . . . that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104 [Absolute liability], is imposed." Moreover, Mont. Code Ann. § 45-5-705(4)(b)¹⁴ (Patronizing victim of sex trafficking) provides, "It is not a defense in a prosecution under this section . . . that the defendant believed that the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

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

● FULLY MET

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

If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

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

¹¹ See *supra* note 8 for a full discussion on the purpose of analyzing trafficking laws separately from CSEC laws throughout this report.

¹² Further, the defense is prohibited in prosecutions of Mont. Code Ann. § 45-5-601 (Prostitution – Patronizing a prostitute – Exception). Mont. Code Ann. § 45-5-601(5) states, "It is not a defense in a prosecution under this section that a defendant believed the child was an adult. Absolute liability, as provided in 45-2-104 [Absolute liability], is imposed." See *supra* note 9.

¹³ See *supra* note 4.

¹⁴ See *supra* note 2.

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

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

Policy Goal 1.6 Business entities can be held criminally liable for conduct that violates the trafficking law.

● **FULLY MET**

Montana law allows business entities to be held criminally liable for conduct that violates the trafficking law. Pursuant to Mont. Code Ann. § 45-5-711(1)¹⁵ (Child sex trafficking),

- A person commits the offense of child sex trafficking by purposely or knowingly:
- (a) committing the offense of sex trafficking with a child; or
 - (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, enticing, or using a child for the purposes of commercial sexual activity.

Importantly, Mont. Code Ann. § 45-2-101(57) (General definitions) defines “person” to include “an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of a government or subdivision of government.” Accordingly, business entities can be held liable for a child sex trafficking violation.

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.

○ **NOT MET**

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.¹⁶

¹⁵ See *supra* note 4.

¹⁶ Regarding asset forfeiture, Mont. Code Ann. § 45-5-707(1)(b), (c) (Property subject to forfeiture – Human trafficking) provides,

- (b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of 45-5-702 [Sex trafficking], 45-5-703 [Labor trafficking], 45-5-705 [Patronizing victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], or 45-5-711 [Child sex trafficking].
- (c) The following property is subject to criminal forfeiture under this section:
 - (i) money, raw materials, products, equipment, and other property of any kind;
 - (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
 - (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
 - (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
 - (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;
 - (vi) negotiable instruments, securities, and weapons; and
 - (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund. (See [*Issue Brief 1.7.*](#))

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

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

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

The text of Mont. Code Ann. § 45-5-707 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).



ISSUE 2: Identification & 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.

○ NOT MET

The definition of child sex trafficking victim does not include all commercially sexually exploited children. Mont. Code Ann. § 45-5-701(5)¹⁷ (Definitions) defines “human trafficking” to include Montana’s buyer-specific offense, Mont. Code Ann. § 45-5-705¹⁸ (Patronizing victim of sex trafficking). Although Mont. Code Ann. § 45-5-705 applies directly to buyers of sex with minors, the buyer must have known (or should have known) the person patronized was a victim of sex trafficking.¹⁹ Accordingly, third party control is required to establish the crime of patronizing a victim of sex trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

- 2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.²⁰ (See [Issue Brief 2.1](#).)

Policy Goal 2.2

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

○ NOT MET

Montana law does not provide policy guidance that facilitates appropriate responses to foreign national child sex trafficking victims.

- 2.2.1 Recommendation: Statutorily provide policy guidance that facilitates access to services and assistance for trafficked foreign national children. (See [Issue Brief 2.2](#).)

Policy Goal 2.3

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

○ NOT MET

Montana law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.²¹

¹⁷ The text of Mont. Code Ann. § 45-5-701 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

¹⁸ See *supra* note 2.

¹⁹ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under Mont. Code Ann. § 45-5-705.

²⁰ 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).

²¹ Although not statutorily mandated, policy guidance requires child welfare to complete sex trafficking assessments utilizing the Commercial Sexual Exploitation-Identification Tool (CSE-IT). For more information, visit <https://dphhs.mt.gov/assets/cfsd/cfsdmanual/409-9.pdf>.

- 2.3.1 Recommendation: Statutorily require child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.3](#).)

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

○ NOT MET

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

- 2.4.1 Recommendation: Statutorily require juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.4](#).)

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest.

● FULLY MET

Montana law prohibits the criminalization of minors for prostitution offenses and requires law enforcement to refer impacted children to a child-serving agency. Mont. Code Ann. § 45-5-709(1)–(3)²² (Immunity – Sex therapy participants) states,

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

Further, state mandatory reporting laws facilitate access to services for commercially sexually exploited children. Specifically, Mont. Code Ann. § 41-3-201(1), (2)(g) (Reports) requires law enforcement to report child abuse, including conduct in violation of state trafficking and CSEC laws,²³ to child welfare; it states,

- (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child’s welfare, they shall report the matter promptly to the department of public health and human services.
- (2) Professionals and officials required to report are:

....

²² The text of Mont. Code Ann. § 45-5-709 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

²³ See *infra* Policy Goal 2.10 for a full discussion of the definition of “child abuse or neglect” under Mont. Code Ann. § 41-3-102 (Definitions).

(g) a peace officer or other law enforcement official;

Consequently, statutory protections safeguard minors from prosecution for prostitution offenses and establish a services-referral protocol.

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.

● FULLY MET

Montana law prohibits the criminalization of child sex trafficking victims for status offenses as well as misdemeanors and non-violent felonies committed as a result of their trafficking victimization. Specifically, Mont. Code Ann. § 45-5-709(1)²⁴ (Immunity of child – Sex therapy participants) provides,

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

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

● PARTIALLY MET

Although Montana law prohibits child sex trafficking victims from being prosecuted as sex trafficking offenders, victims can still be charged for related conduct under state commercial sexual exploitation laws. Pursuant to Mont. Code Ann. § 45-5-709(1)²⁵ (Immunity of child – Sex therapy participants),

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

2.7.1 Recommendation: Strengthen existing protections to prohibit the criminalization of child sex trafficking victims for commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization. (See [Issue Brief 2.7](#).)

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.

○ NOT MET

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

²⁴ See *supra* note 22.

²⁵ See *supra* note 22.

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

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

- 2.8.1 Recommendation: Amend state law to provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. (See [Issue Brief 2.8](#).)

Policy Goal 2.9 Juvenile court jurisdiction provides for a developmentally appropriate response.

❶ **PARTIALLY MET**

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

| | Minimum Age of Juvenile Court Jurisdiction | Maximum Age for Charging Youth in Juvenile Court | Automatic Transfers or Permits Direct File | Discretionary Transfers | Requirement for Court to Consider Trauma or Past Victimization |
|----------------------------|---|---|---|--|--|
| Summary | None. “Youth” is defined as, “an individual who is less than 18 years of age” | 17. | Yes. Minors 12+ years of age charged with certain offenses (prosecutor’s discretion for minors 12-16, required for those 17 years old). | Yes; however, statute fails to specify any offense or age restriction. ²⁶ | No. |
| Relevant Statute(s) | Mont. Code Ann. § 41-5-103(45) (Definitions); Mont. Code Ann. § 41-5-203 (Jurisdiction of court) | Mont. Code Ann. § 41-5-103(45) (Definitions); Mont. Code Ann. § 41-5-203 (Jurisdiction of court) | Mont. Code Ann. § 41-5-206(1)(a), (2) (Filing in district court prior to formal proceedings in youth court) | Mont. Code Ann. § 41-5-203(3) (Jurisdiction of court) | N/A |

Consequently, some minors may still be subject to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with domestic standards; (2) allow some

²⁶ Mont. Code Ann. § 41-5-203(3) (Jurisdiction of court) states, “The court has jurisdiction to: (a) transfer a youth court case to the district court after notice and hearing”

juvenile cases to be subject to direct file; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct. (See [Issue Brief 2.9](#).)

Policy Goal 2.10 State law defines child abuse to include child sex trafficking to ensure access to child welfare services.

● FULLY MET

Montana law clearly defines “child abuse or neglect” to include child sex trafficking. Pursuant to Mont. Code Ann. § 41-3-102(7)(a)–(b)(i)²⁷ (Definitions),

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

Additionally, Mont. Code Ann. § 41-3-102(23) defines “physical or psychological harm to a child” as “the harm that occurs whenever the parent or other person responsible for the child’s welfare inflicts or allows to be inflicted on the child physical abuse, physical neglect, or psychological abuse or neglect.” Included within the definition of “physical neglect” is “allowing sexual abuse or exploitation of the child.” Mont. Code Ann. § 41-3-102(22)(d). Mont. Code Ann. § 41-3-102(32) defines “sexual exploitation” as follows:

- (a) allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 (Prostitution) through 45-5-603 [(Aggravated promotion of prostitution) (repealed)];
 -
- (c) allowing, permitting, or encouraging sex trafficking as described in 45-5-702 [Sex trafficking], 45-5-705 [Patronizing victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], or 45-5-711 [Child sex trafficking].

²⁷ The text of Mont. Code Ann. § 41-3-102 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 112 and 399 and Senate Bill 115 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023, October 1, 2023, and October 1, 2023, respectively).

EXTRA CREDIT



Child labor trafficking is included in the definition of “child abuse or neglect” under Mont. Code Ann. § 41-3-102(7)(b)(i)(C), which includes victims of human trafficking. Importantly, Mont. Code Ann. § 45-5-701(5) (Definitions) defines “human trafficking” as “the commission of an offense under 45-5-702 [Sex trafficking], 45-5-703 [Labor trafficking], 45-5-705 [Patronizing victim of sex trafficking], 45-5-706 [Aggravated sex trafficking] or 45-5-711 [Child sex trafficking].”

Policy Goal 2.11 State law allows for child welfare involvement in sex trafficking cases that do not involve caregiver fault and provides for an alternative, specialized response in those cases.

○ NOT MET

Montana’s child welfare code does not expressly allow for a child welfare response in non-caregiver child sex trafficking cases. Specifically, the definition of “child abuse or neglect”²⁸ under Mont. Code Ann. § 41-3-102(7)(b)(i) (Definitions) is silent regarding the child’s relationship to the perpetrator when a child is deemed abused as the result of being a victim of child sex trafficking, creating ambiguity on child welfare’s ability to respond in child sex trafficking cases regardless of caregiver fault. Further, a specialized investigation is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-caregiver trafficker.

2.11.1 Recommendation: Statutorily allow for child welfare involvement in child sex trafficking cases regardless of parent or caregiver fault and provide for a specialized response in those cases. (*See Issue Brief 2.11.*)

²⁸ See *supra* Policy Goal 2.10 for the definition of “child abuse or neglect.”



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

○ NOT MET

Montana law does not mandate a process for coordinating access to specialized, community-based services for child sex trafficking victims that does not require involvement in a child-serving system.

3.1.1 Recommendation: Statutorily mandate a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems. (See [Issue Brief 3.1](#).)

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

○ NOT MET

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

3.2.1 Recommendation: Statutorily require a multi-disciplinary team response to child sex trafficking victims. (See [Issue Brief 3.2](#).)

Policy Goal 3.3 State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.²⁹

● FULLY MET

Montana law requires child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims. Pursuant to Mont. Code Ann. § 45-5-709(3) (Immunity of child – Sex therapy participants),

A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5 [Youth court act],³⁰ is presumed to be a youth in need of care³¹ under Title 41, chapter 3 [Child abuse and neglect], and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.

Resultantly, a child sex trafficking victim will be deemed a “youth in need of care,” giving rise to child welfare’s responsibility to ensure child victims have access to the specialized services provided for under Mont. Code Ann. § 45-5-709(3).

²⁹ The analysis in this section is predicated upon the recommendation in Policy Goal 2.11 being simultaneously or previously enacted.

³⁰ See *supra* Policy Goal 2.5 for a full discussion of state non-criminalization laws.

³¹ Mont. Code Ann. § 41-3-102(36) (Definitions) defines “youth in need of care” as “a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.”

- Policy Goal 3.4** State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.
- NOT MET

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

- 3.4.1 Recommendation: Statutorily require the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth. (See [Issue Brief 3.4.](#))

- Policy Goal 3.5** State law extends foster care services to older foster youth.
- PARTIALLY MET

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

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

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

- 3.5.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age. (See [Issue Brief 3.5.](#))

- Policy Goal 3.6** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.
- FULLY MET

The Montana Legislature statutorily appropriated funds to support grants for emergency lodging for child and youth survivors.

| 2023 Appropriations | | | | |
|---------------------|--|---------------------------------|--|------|
| Bill | Recipient | Amount | Intended Purpose | Term |
| SB 522 | Special revenue fund administered by the department of justice | <i>Exact amount unspecified</i> | For the provision of grants under the emergency lodging program for victims of | |

| | | | | |
|--------------------------------|--|---|--|---------------------------------------|
| 2023 Legislative Session | | (distribution of revenue from the lodging and facilities use tax ³²) | domestic violence or human trafficking. ³³ | Statutory appropriation ³⁴ |
|--------------------------------|--|---|--|---------------------------------------|

³² See Mont. Code Ann. § 15-65-121 (Distribution of proceeds) for tax allocation.

³³ Pursuant to Enacted Senate Bill 522, § 1 (Emergency lodging program for victims of domestic violence or human trafficking – Grants – Rulemaking – Definitions),

(1) There is an emergency lodging program for licensed establishments located in the state to assist designated organizations in providing short-term lodging in the state to individuals and families that are victims of domestic violence or human trafficking.

(2)

(a) Subject to the provisions of this section, participating establishments may submit a grant application to the department of justice for providing emergency lodging to an individual or family who is in immediate need of shelter based on being a victim of domestic violence or human trafficking.

(b) In order to be eligible for the grant, the individual or family must be referred to the establishment by a designated organization.

....

(8) As used in this section, the following definitions apply:

....

(b) “Designated organization” means a charitable organization or government entity approved by the department of justice to make referrals for emergency lodging.

(c) “Establishment” means a person or entity that makes sales of accommodations as defined in 15-68-101 [Definitions].

....

Enacted Senate Bill 522, § 1 cited here and elsewhere in this report was enacted during the 2023 Regular Session of the Montana state legislature (effective July 1, 2023).

³⁴ Enacted Senate Bill 522, § 2 (Emergency lodging for victims of domestic violence or human trafficking account) states,

(1) There is an emergency lodging for victims of domestic violence or human trafficking account in the state special revenue fund. The account is administered by the department of justice.

....

(3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice to provide grants to licensed establishments that provide short-term lodging in the state to individuals and families that are victims of domestic violence or human trafficking pursuant to [Enacted Senate Bill 522, § 1].

Mont. Code Ann. § 17-7-502(1) (Statutory appropriations – Definition – Requisites for validity) defines “statutory appropriation” as “an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.”

Enacted Senate Bill 522, § 2 cited here and elsewhere in this report was enacted during the 2023 Regular Session of the Montana state legislature (effective July 1, 2023).

EXTRA CREDIT



The Montana Legislature statutorily appropriated funds to support grants for emergency lodging for child and youth survivors.



The Montana Legislature statutorily appropriated funds to support grants for emergency lodging for survivors of human trafficking, including victims of child labor 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.

● FULLY MET

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

(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the individual's relationship to the offender:

(a) a victim of . . . human trafficking as defined in 45-5-701 [Definitions]; . . .

. . . .

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

. . . .

(6) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(7) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant.

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

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

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief³⁵

³⁵ Pursuant to Mont. Code Ann. § 40-15-201(2),

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

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

....

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

EXTRA CREDIT



Victims of child labor trafficking may seek ex parte civil orders of protection against their exploiters under Mont. Code Ann. § 40-15-102, which broadly protects victims of human trafficking. Importantly, Mont. Code Ann. § 45-5-701(5) defines “human trafficking” as “the commission of an offense under 45-5-702 [Sex trafficking], 45-5-703 [Labor trafficking], 45-5-705 [Patronizing victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], or 45-5-711 [Child sex trafficking].”

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.

● FULLY MET

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

-
- (d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;
 - (e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;
 - (f) prohibiting the respondent from possessing or using the firearm used in the assault;
 - (g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;
 - (h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;
 - (i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;
 - (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

- (1) Except as otherwise provided in this section, compensation may not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing a claim may be extended by the office for good cause shown.
- (2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.
- (3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. The report must be made within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the office finds there was good cause for the failure to report within that time.
- (4) In order to be entitled to benefits under this part, a claimant shall fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The office, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.
- (5) Compensation otherwise payable to a claimant must be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.
- (6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of the person are not entitled to the benefits of this part.
- (7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection must be in proportion to what the office finds to be the victim's contribution to the infliction of death or injury.

Policy Goal 4.3

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

 **PARTIALLY MET**

Although Montana law allows trafficking victims to vacate convictions, vacatur is unavailable for delinquency adjudications arising from trafficking victimization. Pursuant to Mont. Code Ann. § 46-18-608(1)–(4)³⁶ (Motion to vacate conviction—human trafficking victims),

- (1) On the motion of a person, a court may vacate a person's conviction of prostitution, sex trafficking or prior similar laws in effect at the time the act occurred, or another nonviolent offense if the court finds that the person's participation in the offense was a direct result of having been a victim of human trafficking³⁷ or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.
- (2) The motion must:
 - (a) be made within a reasonable time after the person ceased to be involved in human trafficking or sought services for human trafficking victims, subject to reasonable concerns for the safety of the person, family members of the person, or other victims of human trafficking who could be jeopardized by filing a motion under this section; and

³⁶ The text of Mont. Code Ann. § 46-18-608 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

³⁷ Mont. Code Ann. § 46-18-608(5) defines "human trafficking" to have the meaning as provided for under Mont. Code Ann. § 45-5-701(5) (Definitions), which states, "Human trafficking" means the commission of an offense under 45-5-702 [Sex trafficking], 45-5-703 [Labor trafficking], 45-5-705 [Patronizing a victim of sex trafficking], 45-5-706 [Aggravated sex trafficking] or 45-5-711 [Child sex trafficking]." See *supra* note 17.

- (b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.
- (3) No official determination or documentation is required to grant a motion by a person under this section, but official documentation from a local government or a state or federal agency of the person's status as a victim of human trafficking creates a rebuttable presumption that the person's participation in the offense was a direct result of having been a victim of human trafficking.
- (4) If a court vacates a conviction under this section, the court shall:
 - (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and
 - (b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103 [Definitions], and public access to the information may be obtained only by district court order upon good cause shown.

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

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization. (See [Issue Brief 4.3.](#))

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

● FULLY MET

Montana law requires an offender convicted of a child sex trafficking or CSEC offense to pay restitution. Pursuant to Mont. Code Ann. § 46-18-241(1)³⁸ (Condition of restitution – Interest),

As provided in 46-18-201 [Sentences that may be imposed], a sentencing court shall, as part of the sentence, require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss. Full restitution includes the interest required by subsection (4). The duty to pay full restitution under the sentence remains with the offender or the offender's estate until full restitution is paid, whether or not the offender is under state supervision. If the offender is under state supervision, payment of restitution is a condition of any probation or parole.

³⁸ The text of Mont. Code Ann. § 46-18-241 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 541 during the 2023 Regular Session of the Montana state legislature (effective July 1, 2027).

EXTRA CREDIT



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

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

● FULLY MET

Montana law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Mont. Code Ann. § 27-1-755(1)³⁹ (Civil action – human trafficking victim) states,

A victim of human trafficking may bring a civil action against a person who commits an offense against the victim under 45-5-702 [Sex trafficking], 45-5-703 [Labor trafficking], 45-5-705 [Patronizing a victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], or 45-5-711 [Child sex trafficking] for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

Further, Mont. Code Ann. § 27-2-216 (Tort actions – Childhood sexual abuse) references damages for injuries suffered as a result of childhood sexual abuse, which is defined more broadly to include several non-commercial sexual offenses as well as trafficking victimization.⁴⁰

EXTRA CREDIT



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



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

³⁹ The text of Mont. Code Ann. § 27-1-755 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

⁴⁰ See *supra* Policy Goal 4.6 for the substantive provisions of Mont. Code Ann. § 27-2-216.

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.

❶ PARTIALLY MET

Although Montana law allows prosecutions for sex trafficking to commence at any time, prosecutions for CSEC are still subject to a statute of limitation, and the statute of limitation for filing a trafficking-specific civil action is only lengthened, not eliminated. Pursuant to Mont. Code Ann. § 45-1-205(1)(c)⁴¹ (General time limitations),

A prosecution for an offense under . . . 45-5-702 [Sex trafficking], 45-5-705 [Patronizing a victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], or 45-5-711 [Child sex trafficking] may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred.

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

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

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

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

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

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

For civil actions related to childhood sexual abuse, Mont. Code Ann. § 27-2-216(1)–(3)⁴² (Tort actions – Childhood sexual abuse) states,

(1) . . . [A]n action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse against the individual who committed the acts must be commenced:

- (a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or
- (b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) As used in this section, “childhood sexual abuse” means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502 [Sexual assault], 45-5-503 [Sexual intercourse without consent], 45-5-504 [Indecent exposure], 45-5-507 [Incest], 45-5-508 [Aggravated sexual intercourse without consent], 45-5-625 [Sexual abuse of children], 45-5-627 [Ritual abuse of minor – Exceptions – Penalty], 45-5-702 [Sex trafficking], 45-5-705 [Patronizing a victim of sex trafficking], 45-5-706 [Aggravated sex trafficking], 45-5-711 [Child sex trafficking], or prior similar laws in effect at the time the act occurred.

⁴¹ The text of Mont. Code Ann. § 45-1-205 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

⁴² The text of Mont. Code Ann. § 27-2-216 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

(3) . . . [I]n an action for recovery of damages for liability against any entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff, the action must be commenced:

(a) before the victim of the act of childhood sexual abuse that is alleged to have caused the injury reaches 27 years of age; or

(b) not later than 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for CSEC to commence at any time and eliminate the statute of limitation for filing trafficking-specific civil actions. (See [*Issue Brief 4.6.*](#))



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

Policy Goal 5.1

Non-testimonial evidence may be admitted through a child sex trafficking-specific hearsay exception to reduce reliance of victim testimony.

PARTIALLY MET

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

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

- (a) the declarant of the out-of-court statement is a child [under 15 years of age]⁴³ who is:
 - (i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or
 - (ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;
- (b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;⁴⁴

⁴³ Mont. Code § 46-16-220(4) defines “child” as “a person under 15 years of age.”

⁴⁴ Pursuant to Mont. Code § 46-16-220(3),

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

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

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

Mont. Code § 46-18-104(2)(a)⁴⁵ (Definitions) defines “crime of violence” as follows:

- (i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;
- (ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender; or
- (iii) an offense under:
 -
 - (F) 45-5-702 [Sex trafficking];
 - (G) 45-5-703 [Labor trafficking];
 - (H) 45-5-705 [Patronizing a victim of sex trafficking];
 - (I) 45-5-706 [Aggravated sex trafficking]; or
 - (J) 45-5-711 [Child sex trafficking].

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

- 5.1.1 Recommendation: Amend Mont. Code § 46-16-220(1) (Child hearsay exception – Criminal proceedings) to extend the hearsay exception to trafficking cases involving any child victim under 18 years of age. (*See [Issue Brief 5.1.](#)*)

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

⁴⁵ The text of Mont. Code Ann. § 46-18-104 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

Policy Goal 5.2

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

PARTIALLY MET

Montana law allows child witnesses to testify by an alternative method during the prosecution of an offender charged with an enumerated sexual or violent offense; however, this protection is only available to younger minors. Specifically, Mont. Code Ann. § 46-16-229 (Order for two-way electronic audio-video communication testimony – Finding by court – Procedure for conducting testimony) states,

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

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

Mont. Code Ann. § 46-16-226(1)(a) (Definitions) defines “child witness” as “an individual who is . . . 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense” Importantly, the definition of “sexual offense” includes violations of Mont. Code Ann. § 45-5-711 (Child sex trafficking), Mont. Code Ann. § 45-5-706 (Aggravated sex trafficking), and Mont. Code Ann. § 45-5-705(1)(b) (Patronizing a victim of sex trafficking). Mont. Code Ann. § 46-16-226(2). Accordingly, victims of those crimes are able to testify by two-way electronic audio-video communication under Mont. Code Ann. § 46-16-229. However, child victims who are 14 years of age or older are not protected, thereby increasing their risk of re-traumatization from testifying.

- 5.2.1
- Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged. (See [Issue Brief 5.2](#).)

Policy Goal 5.3

Child sex trafficking victims have access to victim protections in the criminal justice system.

PARTIALLY MET

| | 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 | Victims of a criminal offense have the right to have a victim advocate present when interviewed about the offense and at other stages in the criminal justice process that are of significance to a crime victim. | Not statutorily required. | Information directly or indirectly identifying a child sex trafficking victim is prohibited from being disclosed by criminal justice agencies. |

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

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims are provided courtroom supports when testifying against their exploiter. (See [Issue Brief 5.3.](#))

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

 **PARTIALLY MET**

Montana law does not provide for privileged communications between caseworkers and child sex trafficking victims specifically. However, child sex trafficking victims may benefit from privileged communications protections provided to certain behavioral and mental health professionals and clients if the victim received care or services from such professionals.

| Statute | Profession | Relevant Limitations |
|--|--|----------------------|
| Mont. Code Ann. § 26-1-807 (Mental health professional-client privilege) | Psychologist, psychiatrist, licensed professional counselor, social worker | None. |

- 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. (See [Issue Brief 5.4.](#))

⁴⁶ The text of Mont. Code Ann. § 44-5-311 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).



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.
- NOT MET

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

- 6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking. (See [Issue Brief 6.1](#).)

- Policy Goal 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.
- NOT MET

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

- 6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking. (See [Issue Brief 6.2](#).)

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

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

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

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

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement. (See [Issue Brief 6.3](#).)

- Policy Goal 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.
- NOT MET

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

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors. (See [Issue Brief 6.4](#).)

- Policy Goal 6.5** State law mandates child sex trafficking training for school personnel.
- NOT MET

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

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel. (See [Issue Brief 6.5](#).)

- Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.
- NOT MET

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

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools. (See [Issue Brief 6.6](#).)

KEYSTONE STATUTES

State Laws Addressing Child Sex Trafficking

1. Mont. Code Ann. § 45-5-711(1)–(2)(i)⁴⁷ (Child sex trafficking) states,
 - (1) A person commits the offense of child sex trafficking by purposely or knowingly:
 - (a) committing the offense of sex trafficking⁴⁸ with a child; or
 - (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, enticing, or using a child for the purposes of commercial sexual activity.
 - (2)
 - (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state for a term of 100 years
 - (b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:
 - (i) must be fined an amount not to exceed \$400,000
2. Mont. Code Ann. § 45-5-705(1), (3)(a)⁴⁹ (Patronizing victim of sex trafficking) states,
 - (1) A person commits the offense of patronizing a victim of sex trafficking if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity⁵⁰ that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sex trafficking.

 - (3)

⁴⁷ See *supra* note 4.

⁴⁸ Mont. Code Ann. § 45-5-702(1) (Sex trafficking) states,

- A person commits the offense of sex trafficking if the person purposely or knowingly:
- (a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or prostitution business;
 - (b) procures an individual for a house of prostitution or prostitution business or procures a place in a house of prostitution or prostitution business for an individual;
 - (c) encourages, induces, or otherwise purposely causes another person to become or remain a prostitute;
 - (d) solicits clients for another person who is a prostitute;
 - (e) procures a prostitute for a patron;
 - (f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;
 - (g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means;
 - (h) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to prostitution; or
 - (i) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsections (1)(a) through (1)(h).

The text of Mont. Code Ann. § 45-5-702 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 112 during the 2023 Regular Session of the Montana state legislature (effective April 19, 2023).

⁴⁹ See *supra* note 2.

⁵⁰ See *supra* note 3 or the definition of “commercial sexual activity.”

- (a) If the individual patronized was a child and the patron was 18 years of age or older, a person convicted of the offense of patronizing a victim of sex trafficking, whether or not the person believed the child was an adult:
- (i) shall be imprisoned in the state prison for a term of 100 years
 - (ii) shall be fined an amount not to exceed \$400,000; and
 - (iii) must be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual assault offender treatment program provided or approved by the department of corrections.

3. Mont. Code Ann. § 45-5-706⁵¹ (Aggravated sex trafficking) states,

- (1) A person commits the offense of aggravated sex trafficking if, during the commission of the offense of sex trafficking, the person purposely or knowingly:
-
- (b) recruits, entices, or obtains the victim of the offense from a shelter that services runaway youth, foster children, homeless persons, human trafficking victim, or victims of domestic violence, or sexual violence.
- (2) A person convicted of the offense of aggravated sex trafficking shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years, fined in the amount of \$400,000, or both

⁵¹ The text of Mont. Code Ann. § 45-5-706 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 265 during the 2023 Regular Session of the Montana state legislature (effective May 19, 2023).

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. Mont. Code Ann. § 45-5-601(2)(b)–(3)(a)⁵² (Prostitution – Patronizing a prostitute – Exception) states,

(2)

....

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

....

(3)

(a) If the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child's age, the patron offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

⁵² See *supra* note 9.

RESOURCES

REPORT CARDS PROJECT: For more information on the Report Cards Project, visit reportcards.sharedhope.org.

TOOLKIT: To see how your state compares, visit reportcards.sharedhope.org/toolkit.

HIGHLIGHTED RESOURCES

Community-Based Services White Paper



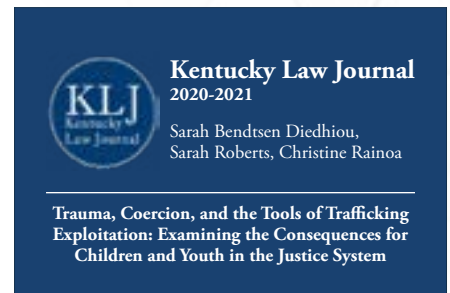
This white paper discusses the importance of providing comprehensive, trauma-informed services to all child sex trafficking victims, regardless of system involvement, and provides examples of state statutory responses.

Victim-Offender Intersectionality Report



This report examines the phenomenon of sex trafficking survivors entering the criminal justice system for allegedly engaging in sex trafficking conduct and provides tools for criminal justice stakeholders to assist in identifying and responding to these cases in a trauma-informed manner.

Trauma, Coercion, and the Tools of Trafficking Exploitation



This law journal article examines the harms of relying on a juvenile justice-based response for serving child sex trafficking victims, the importance of enacting strong non-criminalization laws, the intertwined nature of sex trafficking victimization and criminalized conduct, and the importance of using a trauma-informed lens in response.

TECHNICAL ASSISTANCE

For legislators and policy advocates assisting elected officials in creating legislation, request a consultation with our Policy Team online at sharedhope.org/legislative-technical-assistance. We will set up a meeting to discuss your legislative goals and create a customized plan for ongoing technical assistance, bill drafting services, and legislative support.

ADVOCACY ACTION CENTER

The Advocacy Action Center is an online resource that allows individuals to join the fight against child sex trafficking either through legislator engagement or by signing a petition. For more information, visit act.sharedhope.org/actioncenter.



Contact your legislators, letting them know you want greater protections for child sex trafficking victims and increased accountability for their exploiters.



Sign a petition to show your support for issues that advance justice for child sex trafficking survivors.



Help end the criminalization of child sex trafficking survivors! Several states can still criminalize child sex trafficking victims for prostitution. Sign the petition to show your support for changing these laws.