

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## South Dakota Report Card 2016

The state human trafficking law includes sex trafficking but requires proof of force even when the victim is a minor, limiting prosecutions, particularly of demand. Victims of domestic minor sex trafficking are not provided with specific protection or services and law enforcement is not provided with training or access to wiretapping—critical tools to aggressively pursue investigations and prosecution.

Final Score

63.5

Final Grade

D



8

10

17

25

15

15

7.5

10

7

27.5

9

15



### Criminalization of Domestic Minor Sex Trafficking

South Dakota's human trafficking law includes the crime of trafficking for commercial sexual activity; however, it requires force, fraud, or coercion for all victims, including minors. A heightened penalty applies if the victim is under 18. The state criminalizes commercial sexual exploitation of children (CSEC) under its promotion of prostitution law and solicitation of a minor under 15. An affirmative defense to prostitution charges refers to the human trafficking law to identify prostituted minors as victims of trafficking. South Dakota's street gang activity law increases sentences for crimes committed as a pattern of gang activity but the state has no racketeering law that could provide an efficient deterrent to trafficking enterprises.



### Criminal Provisions Addressing Demand

The state human trafficking law includes the actions of buyers but requires knowledge that force, fraud, or coercion was used to obtain the commercial sex acts with the minor. No CSEC laws apply to buyers. The offense of soliciting a minor under 15 to engage in any prohibited sexual act does not expressly include commercial sex acts. This offense also criminalizes use of the Internet or electronic communications to buy information about a minor under 15 in order to solicit that minor to engage in a sex act; however, this statute leaves older minors unprotected. South Dakota does not prohibit a mistake of age defense to a prosecution for buying sex with a child. Buyers could be required to pay restitution to the victim, and buyers who are convicted of human trafficking, solicitation of a minor, or possessing child pornography are subject to asset forfeiture. Buyers are required to register as sex offenders if convicted of committing or attempting to commit an offense of human trafficking if the victim is a minor, possessing child pornography, or buying information to solicit a minor online, but not for convictions of solicitation for prostitution, even when the victim is under 18.



### Criminal Provisions for Traffickers

Under the state human trafficking law, a trafficker could receive a sentence as high as that for federal trafficking offenses, but CSEC laws do not carry equally high penalties. Sex trafficking is punishable by imprisonment up to 25 years and a possible fine of \$50,000. Promoting prostitution of a minor is punishable by imprisonment up to 5 years and a possible fine of \$10,000. Selling information online for the purpose of soliciting a minor under 16 to engage in a sex act (which could include sex trafficking) and creating child pornography are punishable by imprisonment up to 10 years and a possible fine of \$20,000. A trafficker is subject to mandatory criminal asset forfeiture if convicted of child pornography offenses, selling information about a minor under 15 for the purpose of soliciting sex acts, solicitation of a minor, promotion of prostitution, solicitation or procurement of prostitute for a patron, or human trafficking. Traffickers may also be subject to restitution orders. A trafficker convicted of human trafficking if the victim is a minor, promoting prostitution of a minor, or creating child pornography is required to register as a sex offender. Similarly, courts may find that good cause exists for termination of a trafficker's parental rights if the trafficker is convicted of sexual exploitation of a minor or any offense that requires sex offender registration, including human trafficking.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human Trafficking	Class 2 felony (victim under 16); Class 4 felony (16- 17 yr. old victim)	Max. 25 years; max. 10 years	\$50,000; \$20,000	●
Solicitation of a minor (§ 22-24A-5)	Class 4 felony	Max. 10 years	\$20,000	●
Hiring another to engage in sexual activity (§ 22-23-9)	Misdemeanor	Max. 1 year	\$2,000	○
Possession of child pornography (§22-24A-3)	Class 4 felony	Max. 10 years	Max. \$20,000	●



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as sex trafficking victims because the sex trafficking law requires use of force, fraud or coercion even when the victim is a minor. Victims of domestic minor sex trafficking are vulnerable due to gaps in the state legal framework. Offenders of CSEC, child pornography, and solicitation of a minor are expressly prohibited from asserting a defense that the minor consented to the acts, but such a defense is not prohibited in sex trafficking prosecutions. Prostitution laws apply to minors under 18. Trafficked minors may assert the affirmative defense of being a trafficking victim, but if the defense is unsuccessful, however, victims face criminalization for commercial sex acts. No laws expressly identify a sex trafficking victim as a victim for the purpose of protection, and the definition of a child in need of services does not expressly include a child subjected to sex trafficking or CSEC. However, any potential child in need of services or delinquent child with a nonviolent charge and with no prior adjudications shall be diverted to informal adjustment. For purposes of child welfare intervention, although “sexual exploitation” is included within the definition of abuse or neglect, the term is not defined, and the child must be subjected to sexual exploitation by a “parent, guardian, custodian, or any other person responsible for the care of the child.” Furthermore, the limitation of the definition of “custodian” to “person legally responsible for a child’s welfare in a residential setting” or day care may present a barrier to protective services intervention in non-familial trafficking cases. Child victims are eligible for state crime victims’ compensation, although eligibility criteria may limit their ability to recover, including requirements to cooperate with law enforcement and to report the crime within five days of when “a report could reasonably be made.” Victims also must file a claim for compensation within one year unless good cause is shown, and victims become ineligible if determined to have contributed to their injury. South Dakota has no “rape shield” law to reduce the trauma of cross examination for testifying sex trafficking and CSEC victims and closed-circuit television testimony is limited to victims of sex offenses under age 12. A court may seal juvenile records one year after the child is released from the court’s jurisdiction or from detention, and records may be expunged after one year of arrest if no charges are brought or one year after dismissal. A victim of sex trafficking or CSEC may seek restitution for pecuniary damages only, while victims of certain non-commercial sex offenses are specifically eligible for “any necessary medical, psychological, or psychiatric treatment, or foster care of the minor resulting from the act or acts.” Victims of child pornography, promoting prostitution of a minor and human trafficking have a statutorily authorized civil remedy against their exploiter. CSEC and sex trafficking prosecutions have a seven year statute of limitations, while civil action is six years beginning at age 18.



## Criminal Justice Tools for Investigation and Prosecution

South Dakota law does not mandate or authorize training or development of training materials for law enforcement on domestic minor sex trafficking or human trafficking. Single party consent to audiotaping is permitted, but the law does not authorize wiretapping for CSEC or human trafficking investigations, leaving law enforcement without this valuable tool and resulting evidence for better prosecution. CSEC and trafficking offenses do not prohibit a defense that the offense involved the use of a decoy or law enforcement officer, nor do CSEC or trafficking laws expressly permit the use of a law enforcement decoy. Law enforcement are statutorily required to enter missing persons reports in the National Crime Information Center computer within 12 hours, but there is no express mandate to report found children which could help to identify repeat runaways at high-risk for commercial sexual exploitation.



## Criminal Provisions for Facilitators

South Dakota’s human trafficking law makes it a crime to benefit financially or receive anything of value from trafficking. Benefitting financially from sex trafficking is a felony punishable by imprisonment up to 25 years and a possible fine of \$50,000. Selling child pornography or transporting victims or owning a place regularly used for prostitution are felonies punishable by imprisonment up to 2 years and/or a fine of \$4,000. Manufacturing or distributing child pornography is a felony punishable by imprisonment up to 10 years and a possible fine of \$20,000. A facilitator is subject to mandatory criminal asset forfeiture if convicted of solicitation or procurement of prostitute for a patron, a child pornography offense, or human trafficking, and may be required to pay restitution to any victim who suffers pecuniary damages. No law makes sex tourism a crime in South Dakota.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org](http://www.sharedhope.org).