

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## MICHIGAN REPORT CARD 2015

*Michigan criminalizes sex trafficking of minors under age 18 without requiring force, fraud or coercion and buyers face penalties under both trafficking and commercial sexual exploitation of a child (CSEC) laws. A protective response allows juvenile sex trafficking victims to access specialized services through child welfare but 16 and 17 year old victims remain subject to arrest and potential adjudication for prostitution offenses.*

FINAL SCORE

81

FINAL GRADE

B



10

10

23

25

12.5

15

7

10

16

27.5

12.5

15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Michigan's human trafficking law criminalizes sex trafficking of minors without requiring that the minor be subject to force, fraud, or coercion in the commission of the offense. The state CSEC laws include enticing away a female under sixteen, child sexually abusive activity or material, and engaging services for purpose of prostitution with a minor. The prostitution law refers to the human trafficking law to establish a presumption that commercially sexually exploited 16 and 17 year olds are victims of trafficking. The state racketeering law includes human trafficking and CSEC offenses as predicate acts.



### CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking law can apply to buyers following federal precedent through use of the word "obtain." Buyers may also be prosecuted under the CSEC offense of engaging services for purpose of prostitution with a minor, which distinguishes between buying sex with an adult versus a minor and provides a heightened penalty when the person solicited or patronized is a minor. The human trafficking law prohibits a mistake of age defense but the CSEC offense of engaging services for purpose of prostitution with a minor does not specifically prohibit this defense. The statute on use of the Internet or a computer system makes it a crime to use the Internet to commit certain sex offenses against minors, including accosting, enticing or soliciting a minor under 16 for immoral purpose. Possession of child pornography is punishable by up to four years imprisonment and a possible fine up to \$10,000. Victim restitution is mandatory and buyers face asset forfeiture for violations of the human trafficking law and under nuisance laws for trafficking and prostitution offenses. A buyer convicted of trafficking or CSEC offenses, as well as a range of sex offenses, will be required to register as a sex offender.



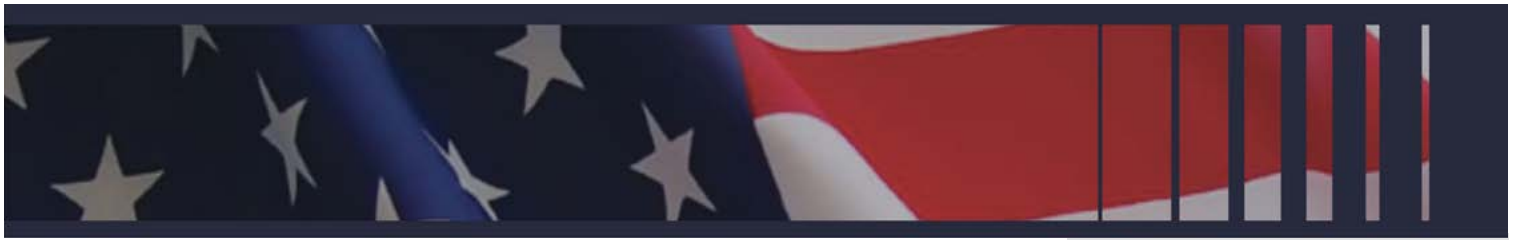
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers convicted of sex trafficking face 20 years imprisonment, increased to life imprisonment when kidnapping is involved in the offense, and a fine not to exceed \$20,000. The CSEC crime of producing child sexually abusive activity or material, which includes creating child pornography, is punishable by up to 20 years imprisonment and/or a fine up to \$100,000, and the crime of enticing away a female under 16 is punishable by up to 10 years imprisonment. Traffickers may also face racketeering and money laundering charges which can lead to asset forfeiture actions. A trafficker convicted of sex trafficking must pay victim restitution, and faces asset forfeiture for human trafficking offenses and under nuisance laws for trafficking and prostitution offenses. The statute on use of the Internet or a computer system to commit illegal sex acts involving minors provides a means of prosecuting the growing number of traffickers who use the Internet to recruit and exploit child sex trafficking victims. Traffickers are required to register as sex offenders if convicted of sex trafficking, soliciting a child for immoral purpose, producing child sexually abusive activity or material, use of the Internet or a computer system to commit illegal sex acts involving minors, or pandering. Convictions for sex trafficking or CSEC offenses do not establish grounds for termination of parental rights, leaving children of traffickers at potential continuing risk.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Soliciting and patronizing prostitution (\$ 750.449a)	Misdemeanor	Max. 93 days (1st offense); 1 year (2nd offense); or 2 years (3rd offense)	Max. \$500 (1st offense); \$1,000 (2nd offense); \$2,000 (3rd offense)	○
Possessing child pornography (\$ 750.145c(4))	Felony	Max. 4 years	Max. \$10,000	○

*All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.*



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking may face barriers to accessing services and protective provisions in the law. The sex trafficking and CSEC laws do not prohibit a defense based on consent of the minor to the commercial sex act. While Michigan's prostitution offense prohibits the prosecution of minors under 16, 16 and 17 year old juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization and may be treated as delinquent youth. However, there is a rebuttable presumption that 16 or 17 year olds charged with prostitution are victims of human trafficking and these minors may be directed into a diversion process that allows them to avoid a delinquency adjudication, but only if they comply with court-ordered services. Law enforcement officers who encounter a juvenile sex trafficking victim must report the victim to child welfare, which must conduct an investigation within 24 hours. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation, which includes allowing a minor to engage in prostitution or sexual performance, and a court may assert jurisdiction over a minor as "dependent" based on CSEC activity. When referred to child welfare, the child's status as a possible trafficking victim must be considered in making placement decisions and the agency must ensure access to specialized services. While victims of sex offenses are provided exceptions to the time limits for reporting crimes and filing claims for victim compensation, juvenile sex trafficking victims may be denied victim compensation if they are found to be an accomplice or criminally responsible. As a way to increase the comfort of a testifying child victim, a separate waiting area in the courtroom is provided. The "rape shield" law, which may reduce the trauma of cross examination for testifying victims, only applies in sex offense cases, leaving testifying victims of sex trafficking cases without this protection. Minors convicted as adults for prostitution may have convictions set aside as the result of being a victim of human trafficking and a minor with one adjudication of juvenile delinquency may petition to have the adjudication set aside; however, a CSEC victim with an ongoing juvenile record of delinquency adjudications for prostitution would be prevented from accessing these remedies. Victim restitution is mandatory, and civil remedies are available for victims under the human trafficking law. Prosecutions for some CSEC and sex offenses must be brought within 10 years, or by the victim's 21st birthday, whichever is later. Other CSEC offense must be brought within 25 years, and human trafficking offenses may be brought anytime if punishable by a life sentence. Civil actions must be filed within 3 years after the last violation.



## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

The Michigan Human Trafficking Commission is tasked with providing training to law enforcement, prosecutors, court, social services, and other appropriate personnel. Two-party consent to audiotaping communications is generally required, but an exception exists for law enforcement that permits audiotaping and wiretapping in the performance of their duties. The CSEC and trafficking laws do not expressly authorize the use of a decoy or the Internet in the investigation of sex trafficking cases, but law enforcement may utilize these investigative tools under the statute prohibiting use of the Internet or a computer system to commit illegal sex acts involving minors. Michigan has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.



## CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators may be convicted of assisting, enabling or benefitting from sex trafficking of minors under the sex trafficking law punishable by up to 10 years imprisonment and enhanced to 20 years imprisonment when serious bodily injury results. Facilitators may also face penalties under the racketeering and money laundering statutes. Promoting and distributing child pornography is punishable by imprisonment up to 7 years and/or a fine up to \$50,000. Victim restitution is mandatory for a facilitator convicted of sex trafficking. Facilitators also face asset forfeiture for violations of human trafficking and racketeering laws and under nuisance laws for human trafficking and prostitution offenses. No laws in Michigan address sex tourism, making the state attractive to unscrupulous businesses capitalizing on commercial sexual activity.

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).