

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

New Hampshire Report Card 2016

New Hampshire's trafficking in persons law criminalizes child sex trafficking of minors without regard to force, fraud, or coercion. Buyers of sex with minors face penalties under the human trafficking law. Commercially sexually exploited children are identified as sex trafficking victims and are not criminalized for prostitution offenses, but access to specialized services is not mandated.

Final Score

77

Final Grade

C



8.5

10



16.5

25



15

15



5

10



23

27.5



9

15



Criminalization of Domestic Minor Sex Trafficking

New Hampshire's trafficking in persons law includes sex trafficking and does not require proof that force, fraud or coercion was used to compel a minor victim to engage in commercial sex acts. The state criminalizes commercial sexual exploitation of children (CSEC) under the following law: prostitution and related offenses involving a minor. The prostitution and related offenses law references the trafficking in persons statute to provide trafficking victims an affirmative defense to prostitution charges. Crimes committed as gang activities can result in penalty enhancements, but New Hampshire has not enacted a racketeering law, leaving the state without a tool that could be used to prosecute sex trafficking enterprises.



Criminal Provisions Addressing Demand

The state trafficking in persons law makes it a crime to pay for, or agree or offer to pay for, sex with a minor and is punishable by a maximum prison term of 7 years, a fine of up to \$4,000, and asset forfeiture. The solicitation laws do not distinguish between purchasing commercial sex acts with an adult versus a minor and a mistake of age defense is seemingly permissible under the trafficking law. While the prostitution and related offenses law provides heightened penalties for some forms of commercial sexual exploitation of children under the statute, this heightened penalty does not apply to buying sex with a minor. The computer pornography law establishes a separate crime for buying or receiving information about a minor to solicit sexual conduct with a child. Though not mandatory, buyers convicted of other crimes may be required to pay restitution to the victim. Buyers of sex with minors must register as sex offenders if convicted of trafficking in persons, prostitution and related offenses, computer pornography, or possessing child pornography.



Criminal Provisions for Traffickers

Trafficking in persons where the victim is under 18 is a felony punishable by 7–30 years' imprisonment, and a possible fine up to \$4,000 (\$100,000 for corporations), or double the amount of the defendant's gain from the crime. The CSEC offenses of prostitution and related offenses and the offense of computer pornography are felonies punishable by up to 7 years imprisonment and possible fines up to \$4,000 for double the amount of gain received by the trafficker. Creating and distributing child pornography are felonies punishable by 15–30 and 10–20 years imprisonment, respectively, and possible fines up to \$4,000 or double the amount of any gain received. Traffickers convicted of trafficking in persons must pay the victim restitution and are subject to asset forfeiture. Though not mandatory, traffickers convicted of other crimes may be required to make restitution. The computer pornography law establishes a separate crime for selling information about a minor to solicit sexual conduct with a child. Traffickers must register as sex offenders if convicted of trafficking in persons, prostitution and related offenses, computer pornography, or creating or distributing child pornography. Convictions for trafficking in persons or CSEC offenses do not establish grounds for termination of parental rights.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking in persons (§ 633:7(III-a))	Class B felony	Max. 7 years	Max. \$4,000	●
Prostitution and related offenses (§ 645:2(I)(a))	Class B misdemeanor	N/A	Max. \$1,200	○
Possession of Child Sexual Abuse Images (§ 649-A:3)	Class A felony	Max. 15 years	Max. \$4,000	○

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



Protective Provisions for the Child Victims

All commercially sexually exploited minors are included as victims of sex trafficking under the trafficking in persons law. The trafficking in persons law prohibits a defense based on consent of the minor and a minor under 18 years of age cannot be charged with prostitution. However specialized services for minor victims are not provided by statute. For purposes of child welfare intervention, an “abused child” includes one sexually exploited through prostitution or child pornography, but not expressly sex trafficking. The definition of an abused child under the state’s child welfare statutes does not appear to require that the abuse be caused by a caregiver, allowing for child welfare intervention on behalf of child sex trafficking victims regardless of the perpetrator of abuse. Crime victims’ compensation is available for victims of CSEC offenses; however, several ineligibility requirements limit CSEC victim’s ability to recover, including a bar to recovery when contributory fault leads to the injuries and a requirement to file a claim within two years, unless good cause is shown. Some victim-friendly trial procedures are available to trafficking victims. These include a prohibition on admitting evidence of a trafficking victim’s prior personal or commercial sexual activity, and videotaped testimony for crime victims or witnesses under 16. Juvenile records are kept confidential and upon the person’s 21st birthday will be closed and placed in an inactive file, but not expunged. Offenders convicted of trafficking in persons are required to pay victim’s restitution and offenders convicted of other offenses may be ordered to pay restitution. Civil remedies are specifically provided for trafficking in persons offenses, but not CSEC offenses. Prosecution for trafficking in persons must be brought within 20 years of the minor turning eighteen, and felony CSEC laws must be brought within six years of the crime. The statute of limitations for civil cases is only extended for minor victims of certain crimes, not including trafficking in persons or CSEC.



Criminal Justice Tools for Investigation and Prosecution

New Hampshire law does not mandate or authorize training on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping is not allowed and the exception for law enforcement does not apply in investigations of sex trafficking or CSEC. Wiretapping is only allowed for the offense of computer pornography, denying law enforcement critical tools in investigation and evidence gathering. The buyer-applicable provision of the trafficking in persons law authorizes the use of a decoy in investigating prostitution of minors through reverse stings. Law enforcement may utilize the Internet to investigate CSEC offenses relying on the law of certain uses of computer services prohibited, which criminalizes using the Internet to commit a sex offense. New Hampshire has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.



Criminal Provisions for Facilitators

Trafficking in persons does not include the crime of assisting, enabling, or financially benefitting from sex trafficking. The CSEC crime of prostitution and related offenses applies to facilitators who transport a child with the purpose of facilitating prostitution or knowingly permit a place under the facilitator’s control to be used for prostitution. Trafficking, prostitution and related offenses is punishable as a felony by up to 7 years imprisonment, asset forfeiture, and a possible fine up to \$4,000, or double the amount of any gain received by the facilitator. Facilitators convicted of any crime may be required to make restitution, but will not be subject to asset forfeiture, unless convicted of trafficking in persons. Selling child pornography is punishable by 10–20 years imprisonment and a possible fine up to \$4,000, or double the amount of any gain received by the facilitator. No laws in New Hampshire address sex tourism.

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.