

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Delaware Report Card 2016

*Domestic minor sex trafficking is criminalized without requiring proof of force, fraud or coercion and minor victims may access services through a diversion process. The patronizing a victim of sexual servitude law applies to buyers of sex with minors only if they knew the minor was a victim of sex trafficking, limiting its use to combat demand.*

Final Score

83

Final Grade

B



10

10

20

25

15

15

5

10

18.5

27.5

14.5

15



### Criminalization of Domestic Minor Sex Trafficking

Delaware's human trafficking law includes sex trafficking of minors without requiring proof of force, fraud or coercion to cause the minor to engage in commercial sex acts, and enhances the penalty when force or threat was used or the child is recruited from a shelter. The commercial sexual exploitation of children (CSEC) laws include sexual exploitation of a child and promoting prostitution in the first and second degrees. The prostitution laws do not refer to the human trafficking law, however an affirmative defense to prostitution charges is provided under the human trafficking law to clarify the status of commercially sexually exploited minors as victims of sex trafficking. Human trafficking and CSEC offenses fall under the definition of racketeering activity in Delaware's organized crime and racketeering law, making it available to prosecute criminal enterprises that engage in child sex trafficking.



### Criminal Provisions Addressing Demand

The sex trafficking law does not apply to buyers, but patronizing a victim of sexual servitude is criminalized under the human trafficking chapter. No CSEC laws include the crime of buying sex with a minor. Sexual solicitation of a child, which does not specifically include solicitation of commercial sex acts, may be used in some cases to prosecute a buyer and is punishable by up to 15 years imprisonment. The offense of patronizing a prostitute does not distinguish between purchasing sex acts with an adult versus a minor and is punishable by up to 30 days imprisonment and a minimum fine of \$500. Sexual solicitation of a child may also apply to buyers who use the Internet to solicit illegal sex acts, which could include commercial sex acts with a minor, possibly providing additional penalties in such cases. Delaware law eliminates the mistake of age defense for patronizing a victim of sexual servitude. Child pornography laws are buyer-applicable, as they criminalize possessing and purchasing child pornography. Buyers of sex with minors will be required to register as sex offenders if convicted of patronizing a victim of sexual servitude, sexual solicitation of a child or child pornography offenses, but not for patronizing a prostitute when a minor is patronized.



### Criminal Provisions for Traffickers

A trafficker faces prosecution under both the sexual servitude and forced labor and services provisions of the trafficking statute, as well as CSEC laws and money laundering laws. Sexual servitude of a minor, trafficking for forced labor, and sexual exploitation of a child through pornography are felonies punishable by 2–25 years imprisonment. Creating and distributing child pornography is punishable by up to 25 years imprisonment. Sexual solicitation of a child may reach the conduct of traffickers who use the Internet to recruit or sell minors for illegal sex acts, possibly providing additional penalties in such cases. When convicted of sex trafficking, restitution to the victim is mandatory. Traffickers must register as sex offenders if convicted of sex trafficking, CSEC, or child pornography offenses. Grounds for termination of parental rights include sex trafficking but not promoting prostitution, sexual exploitation of a child and child pornography offenses.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Patronizing a victim of sexual servitude (tit. 11, § 787(b)(4).	Class C felony	Max. 15 years		○
Patronizing a prostitute (age-neutral) (tit. 11, § 1343(a))	Class A misdemeanor	Max. 30 days	\$500–\$575	○
Possession of child pornography (§ tit. 11, § 1111)	Class F felony	Max. 3 years		○

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



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims as the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. Victims of domestic minor sex trafficking in Delaware are vulnerable due to gaps in the laws. Prostitution laws apply to minors under 18 and juvenile sex trafficking victims could face arrest and prosecution for commercial sex acts committed as a result of their victimization. However, juvenile sex trafficking victims charged with a delinquent offense are presumed to be neglected or abused and may be directed into a specialized diversion process and may receive specialized services through child welfare or by order of the family court. Law enforcement is also required to immediately report commercially sexually exploited youth to child welfare. However, the investigative authority of child welfare is generally limited to “intra-familial and institutional” abuse and neglect even though a commercially sexually exploited minor is presumed to be a neglected or abused child. Delaware law prohibits a defense based on consent of the minor in sex trafficking and patronizing a victim of sexual servitude cases. Sex trafficking victims are expressly eligible to receive state crime victims’ compensation but may face barriers to receiving an award based on non-cooperation with law enforcement or if the injury arises from collusion with the perpetrator. Testifying sex trafficking victims may be provided separate waiting rooms during trial and non-disclosure of identifying information as trial protections. All child victims of sex trafficking and CSEC offenses may testify by means of secured video connection, pursuant to their identify as an abused or neglected child. The “rape shield” law protects victims of human trafficking offenses but not victims of CSEC offenses, leaving some victim-witnesses unprotected from the trauma of cross-examination at trials of their perpetrators. Expungement of juvenile records is mandated if the case did not lead to adjudication or was resolved through participation in a diversion program or resulted in no more than one adjudication of delinquency and three years have passed. Expungement is discretionary when the minor has no more than two adjudications of delinquency. Victim restitution is mandatory in sex trafficking convictions and specialized civil remedies are available. No statute of limitations applies to prosecutions of human trafficking, sexual exploitation of a child, and promoting prostitution in the first and second degrees and the statute of limitations for civil actions based on human trafficking offenses has been extended.



## Criminal Justice Tools for Investigation and Prosecution

Development of training materials and training for law enforcement on human trafficking or domestic minor sex trafficking is authorized by law but has yet to be effectuated. Single party consent to audiotaping is permitted and wiretapping is permitted in investigations of suspected human trafficking and racketeering offenses. Neither the trafficking nor CSEC statutes prohibit a defense as to the use of a law enforcement posing as minor in sex trafficking or CSEC investigations; however, the defense may be prohibited under the non-CSEC offense criminalizing Internet sexual solicitation of a child. The Internet may be used as an investigative tool for investigating sexual solicitation of a child and promoting sexual solicitation of a child. Delaware has established a statewide reporting and response system for missing children and requires the reporting of located children.



## Criminal Provisions for Facilitators

The human trafficking law does not include the crime of assisting, enabling, or financially benefitting from sex trafficking but the conduct of transporting or harboring a minor in furtherance of sexual servitude may apply to some facilitators. If convicted, a facilitator faces 2–25 years imprisonment and fines. A facilitator convicted of distributing or disseminating child pornography also faces 2–25 years imprisonment. Promoting prostitution in the second degree may apply to facilitators who provide the venue for sex trafficking of minors, punishable by up to 5 years imprisonment. Facilitators may face additional penalties under money laundering laws. Restitution is mandatory for convictions under the trafficking in persons law and facilitators face mandatory asset forfeiture if convicted under the human trafficking law. No laws in Delaware 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](http://www.sharedhope.org).