

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Pennsylvania Report Card 2016

The trafficking in individuals law criminalizes sex trafficking without proof of force, fraud or coercion when the victim is a minor. Buyers of sex with minors face penalties under the human trafficking chapter but minors engaged in prostitution are not identified as victims of sex trafficking under the prostitution law and may face barriers to accessing protection or justice.

Final Score

78

Final Grade

C



10

10

19.5

25

12.5

15

7

10

14

27.5

15

15



Criminalization of Domestic Minor Sex Trafficking

Pennsylvania's trafficking in individuals law makes it a crime to traffic a child for commercial sex acts without requiring proof of force, fraud, or coercion when the victim is a minor. The CSEC laws include promoting prostitution of a minor, hiring a minor to engage in a sexual performance, and unlawful contact with a minor for prostitution offenses. The general prostitution law does not refer to the trafficking in individuals law, but certain protections under the human trafficking chapter acknowledge the intersection of prostitution with trafficking victimization. The state racketeering law includes trafficking in individuals and CSEC violations as predicate acts.



Criminal Provisions Addressing Demand

Following federal precedent, the trafficking in individuals law applies to buyers who "obtain" a minor for commercial sex; additionally, buyers can be charged under the patronizing a victim of sexual servitude law, but requires that the buyer knew the minor was a victim of sexual servitude. The CSEC crime of unlawful contact with a minor includes buying sex with a minor and contacting a minor through a computer to engage in prostitution. The trafficking in individuals and patronizing a victim of sexual servitude laws prohibit an age mistake defense, but the unlawful contact with a minor statute does not. A buyer convicted of trafficking in individuals, but not patronizing a victim of sexual servitude, faces mandatory asset forfeiture, but buyers convicted of either offense must pay restitution to a victim who suffers personal injury as a result of the crime. A buyer is required to register as a sex offender for a conviction of unlawful contact with a minor for prostitution, trafficking in individuals, and possessing child pornography.



Criminal Provisions for Traffickers

When the offense involves a minor victim of sexual servitude, trafficking in individuals is a first degree felony punishable by up to 20 years imprisonment, or life imprisonment if the offense involved rape or kidnapping, and a possible fine up to \$25,000. Promoting prostitution of a minor and unlawful contact with a minor for prostitution, including by computer, are felonies punishable by up to 7 years imprisonment and fines up to \$15,000. Sexual exploitation of a child and creating child pornography are felonies punishable by up to 10 years imprisonment and a possible fine up to \$25,000. Traffickers face mandatory asset forfeiture and mandatory restitution if convicted of trafficking in individuals. When personal injury results from the crime, a court must order a trafficker to pay victim restitution. Traffickers are required to register as sex offenders if convicted of trafficking in individuals, certain CSEC offenses, or child pornography offenses. Grounds for termination of parental rights do not include convictions for trafficking in individuals or CSEC offenses.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence (possible)	Fine (possible)	Asset Forfeiture (available)
Trafficking in individuals involving a minor victim of sexual servitude (18 Pa. Const. Stat. § 3011(b))	1st degree	20 years	\$25,000	●
Patronizing a victim of sexual servitude (18 Pa. Const. Stat. § 3013)	2nd degree	10 years	\$25,000	○
Unlawful contact with a minor (for prostitution) (18 Pa. Cons. Stat. § 6318)	3rd degree Felony	Max. 7 years	Max. \$15,000	○
Possessing child pornography (18 Pa. Cons. Stat. § 6312(d)(1))	3rd degree Felony	Max. 7 years	Max. \$15,000	○

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 children are identified as juvenile sex trafficking victims. However, Pennsylvania's trafficking in individuals law does not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. The human trafficking chapter provides an affirmative defense to prostitution charges, but it requires proof of compulsion or coercion. No protective provisions direct child victims of CSEC or trafficking in individuals away from the delinquency process and into services, allowing child sex trafficking victims to be adjudicated delinquent for prostitution offenses committed as a result of their victimization. Child welfare intervention may be possible since the definition of "abuse" includes sexual exploitation and prostitution, although not child sex trafficking. However, the definitions of "custodian" and "person responsible for the welfare of the child" appear to be barriers to child welfare serving sex trafficked children in non-familial trafficking cases. CSEC victims are likely eligible for state crime victims' compensation, but eligibility criteria could threaten a victim's ability to recover, including a bar to recovery for failure to cooperate with law enforcement and a reduction of an award for conduct contributing to the injury. Additionally, victims have a requirement to report the crime to law enforcement within 72 hours, unless the victim was under 18 and the alleged offender is a person responsible for the victim's welfare or person with whom the victim resides. Various victim-friendly trial procedures are specifically available to victims of trafficking in individuals, including availability of a support person during testimony, assessment of safety considerations, and confidentiality of the victim's identity in public records. The "rape shield" law, which limits the trauma of cross-examination for victims, is available for trafficking, but not CSEC victims. Certain child victims under 16 in sexual offense trials may testify through closed-circuit television to limit interaction with their exploiter. Juvenile criminal records may be expunged 5 years after final discharge of the minor or when the minor reaches 18 under certain circumstances. Juvenile sex trafficking victims are entitled to mandatory restitution and are provided with civil remedies. While the statute of limitations has been extended for some CSEC crimes, it has not been extended or eliminated for prosecutions under the trafficking in individuals law. Civil actions based on childhood sexual abuse have been extended and must be brought before a victim reaches 30.



Criminal Justice Tools for Investigation and Prosecution

Pennsylvania law mandates training for law enforcement on human trafficking. The law requires both parties in an audiotaping to consent to the recording, although single party consent may be allowed with approval by the State or when an undercover officer records the conversation while meeting in person with the suspected offender. Wiretapping is allowed for specified offenses including trafficking in individuals, prostitution and related offenses, and unlawful contact with a minor. The unlawful contact of a minor statute, a CSEC offense, prohibits a defense based on the use of a law enforcement decoy posing as a minor and permits use of the Internet in investigations; specifically, the statute includes contacting, in person or via a computer, a law enforcement officer posing as a minor to solicit prostitution or engage in other forms of sexual exploitation of children. Law enforcement officers are mandated to report missing and recovered children through the Commonwealth Law Enforcement Assistance Network, providing important information to law enforcement about repeat runaways who are at high-risk for sex trafficking.



Criminal Provisions for Facilitators

The trafficking in individuals law includes the crime of benefiting financially or receiving anything of value from human trafficking and is punishable as a first degree felony by up to 20 years imprisonment and a possible fine up to \$25,000, or up to \$1,000,000 for business entities, when the sex trafficking victim is a minor. The CSEC crime of promoting prostitution of a minor applies to facilitators who lease or permit their premises to be utilized for prostitution of a minor or who benefit from promoting prostitution of a minor. Promoting prostitution of a minor is a third degree felony punishable by up to 7 years imprisonment and a possible fine up to \$15,000.. Facilitating child pornography by selling, distributing, or displaying child pornography is a felony punishable by up to 7 years imprisonment and a possible fine up to \$15,000, but providing information that directs buyers to a source for obtaining child pornography is punishable as a misdemeanor. Facilitators face mandatory asset forfeiture and mandatory restitution if convicted of trafficking in individuals. No laws in Pennsylvania make sex tourism a crime.

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.