

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## New Jersey Report Card 2016

New Jersey's human trafficking law does not require proof of force, fraud, or coercion when the victim is a minor. Offenders convicted of sex trafficking face serious penalties but are not required to register as sex offenders. Testifying victims are provided with the trauma reducing protection of the "rape shield" statute.

Final Score

84

Final Grade

B



10

10

22

25

14.5

15

7.5

10

15.5

27.5

14

15



### Criminalization of Domestic Minor Sex Trafficking

New Jersey's human trafficking law includes sex trafficking and does not require proof of force, fraud, or coercion when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include endangering the welfare of children through creating pornography of a child under 18, and prostitution—which covers promoting prostitution of a minor and soliciting or engaging in prostitution with a minor. The general prostitution law contains an affirmative defense that refers to the human trafficking statute, helping to acknowledge the intersection of prostitution with trafficking victimization. The state racketeering law includes human trafficking and CSEC offenses as predicate offenses, allowing this law to be used to prosecute sex trafficking enterprises.



### Criminal Provisions Addressing Demand

Following federal precedent, New Jersey's human trafficking law applies to buyers who "obtain" a child for commercial sex acts. The solicitation of prostitution law distinguishes between buying sex with an adult versus a minor by providing higher penalties for buyers who patronize minors. Age mistake defenses are prohibited in prosecutions for prostitution with a minor and human trafficking, but a rebuttable presumption is permitted in prosecutions for human trafficking in the second degree. The general luring statute, which includes luring via electronic means to commit a criminal offense against a child, might apply to buyers who use the Internet to solicit or purchase commercial sex acts with minors. A buyer is mandated to pay victim restitution consequent to a sex trafficking conviction and may be required to pay victim restitution for any CSEC felony. Buyers will be required to forfeit assets, including vehicles, used in, intended to be used in, or derived from illegal activity. Buyers convicted of sex trafficking or CSEC crimes are not required to register as sex offenders.



### Criminal Provisions for Traffickers

Penalties for trafficking are comparable to federal trafficking penalties (10 years–life), and traffickers are subject to asset forfeiture of any property or vehicle used in, intended to be used, or derived from the commission of an offense. Sex trafficking of a minor is punishable by 20 years–life imprisonment and a fine of \$25,000–\$200,000. Promoting prostitution, a CSEC offense, is punishable by 10–20 years imprisonment and a possible fine of \$200,000. Endangering the welfare of children by creating pornography of a child under 18 is punishable by 5–10 years imprisonment and a possible fine up to \$150,000. No statute expressly makes using the Internet to recruit a minor for commercial sex acts a crime; however, the general luring statute, which includes luring via electronic means to commit a criminal offense against a child, might apply. If convicted of sex trafficking, traffickers are required to pay victim restitution, and a court may order restitution for convictions of other felonies. Sex offender registration is required for endangering the welfare of children through creating child pornography, but not for sex trafficking or prostitution of children. Grounds for termination of parental rights do not expressly include convictions of human trafficking or CSEC crimes, but abuse, which is defined to include some forms of CSEC, is included.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human trafficking (§ 2C:13-8(3))	1st degree crime	20 years– life	\$25,000– \$200,000	●
Soliciting or engaging in prostitution with a minor (§ 2C:34-1(b)(7))	3rd degree crime	3–5 years	Max. \$15,000	●
Possessing child pornography (minor under 16) (§2C:24-4(5)(b))	3rd degree crime	3-5 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 defined as juvenile sex trafficking victims. New Jersey's sex trafficking of a minor and CSEC offenses do not prohibit a defense to prosecution 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; in a delinquency proceeding, however, the court must take into consideration that the minor is a victim of human trafficking. Juvenile sex trafficking victims face several possible responses, ranging from services to diversion or possible detention depending on whether the child is classified as dependent, delinquent, or "involved in a juvenile-family crisis," which is defined to include a prostituted or sex trafficked minor. Child sex trafficking is not included within the definition of abuse, and the definition of caretaker is likely too narrow to allow child protective services to intervene in non-familial trafficking cases. Victims of sex trafficking are expressly eligible for crime victims' compensation; however, several ineligibility criteria may limit victims' access to compensation, limitations which include requirements to cooperate with law enforcement, to report the crime to law enforcement within three months of reasonable discovery, and to file a claim within two years unless good cause is shown. The "rape shield" statute, which reduces the trauma of cross-examination for testifying victims, is available to sex trafficking and CSEC victims of endangering the welfare of children through pornography. Upon motion, a minor's records may be sealed two years after discharge. Restitution is mandatory for trafficking convictions, and may be ordered in any CSEC felony. A CSEC victim may bring a civil action for sexual abuse, and sex trafficking victims have specific civil remedies against their exploiter. Criminal actions for sex trafficking and most CSEC crimes must be brought within 5 years; however, the statute of limitations for endangering the welfare of children, which includes pornography offenses, is extended until the victim is 23. A civil action related to sexual abuse must be brought within 2 years after reasonable discovery.



## Criminal Justice Tools for Investigation and Prosecution

Development of training materials for law enforcement on the handling, response procedures, investigation, and prosecution of human trafficking cases is required. New Jersey law allows single party consent for audiotaping, and wiretapping is available as an investigative tool in sex trafficking cases, most CSEC cases, and racketeering cases. No CSEC or trafficking statute specifically prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate commercial sexual exploitation; however, the general luring statute, a non-CSEC offense, authorizes the use of decoys and the Internet for investigations. Law enforcement must report missing and recovered children.



## Criminal Provisions for Facilitators

New Jersey's human trafficking law applies to facilitators who benefit financially from human trafficking. Under the endangering welfare of children statute, selling or promoting pornography of minors under 18 is punishable by 5–10 years imprisonment and a possible fine up to \$150,000. The CSEC crime of promoting prostitution is applicable to some actions by facilitators and is punishable by 10–20 years imprisonment and a possible fine up to \$200,000. A facilitator convicted of human trafficking must pay victim restitution, and although not mandatory, a court may order a facilitator to pay restitution for convictions of other felonies. Facilitators will be required to forfeit any assets used in, intended to be used in, or derived from illegal activity. No New Jersey law criminalizes 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).