

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Hawaii Report Card 2016

Hawaii criminalizes child sex trafficking without requiring proof of force, fraud or coercion, but demand is expressly excluded under the sex trafficking law. Instead, buyers of sex with minors face penalties that do not reflect the seriousness of the offense and commercially sexually exploited children may be misidentified and denied protections as child sex trafficking victims.

Final Score

73

Final Grade

C



10

10



17.5

25



15

15



9.5

10



9.5

27.5



11.5

15



### Criminalization of Domestic Minor Sex Trafficking

Hawaii has not enacted a human trafficking law that includes the crime of sex trafficking. The state has several commercial sexual exploitation of children (CSEC) laws, including promoting prostitution of a person under 18, kidnapping for purposes of prostitution or obscenity, promoting child abuse through pornography, and solicitation of a minor for prostitution. The absence of a sex trafficking law prevents proper identification of commercially sexually exploited minors as victims of sex trafficking. The state racketeering statute includes CSEC offenses in the definition of racketeering activity.



### Criminal Provisions Addressing Demand

The state sex trafficking law expressly excludes buyers from being charged with sex trafficking under the definition of “advances prostitution.” Solicitation of a minor for prostitution criminalizes soliciting and buying sex with a minor and distinguishes between purchasing sex acts with an adult versus a minor. Buyers may also face a heightened penalty under the prostitution statute for purchasing or soliciting sex in reckless disregard of the fact that the person was a victim of sex trafficking. If there are verified losses, restitution for conviction of any crime a buyer might be convicted of, is mandatory upon a victim’s request and includes medical expenses. Civil asset forfeiture is available for those convicted of solicitation of a minor for prostitution, promoting child abuse in the third degree by possessing child pornography and electronic enticement of a minor. A person convicted of solicitation of a minor for prostitution or possession of child pornography is required to register as a sex offender. Buyers who use the Internet to purchase sex with children can be prosecuted for electronic enticement of a child under 18 and face a up to 10 years imprisonment and possible fine up to \$25,000.



### Criminal Provisions for Traffickers

Traffickers can be convicted under Hawaii’s sex trafficking and the CSEC statutes of kidnapping and creating child pornography. These offenses carry sentences of imprisonment up to 20 years “without the possibility of suspension of sentence or probation”, a possible fine up to \$50,000, and an additional fine of \$5,000 to be deposited in the human trafficking victims services fund. A trafficker using the Internet to lure or recruit a minor under 18 for commercial sex acts could be prosecuted for electronic enticement of a child. Employing a minor in adult entertainment is a misdemeanor punishable by up to 1 year imprisonment and a possible fine up to \$2,000. Traffickers might be guilty under state racketeering and money laundering laws for their criminal actions. Traffickers convicted of sex trafficking, kidnapping for purposes of prostitution or obscenity, electronic enticement or promoting child abuse by creating child pornography are required to register as sex offenders. Traffickers found to have violated the sex trafficking law or certain CSEC and child pornography offenses are subject to asset forfeiture. Restitution to the victim for losses, including medical costs, is mandatory upon request by the victim. While the law does not enumerate convictions for CSEC or sexual offenses as grounds for terminating parental rights, being required to register as a sex offender under the federal Adam Walsh Act is considered an aggravated circumstance for which parental rights may be terminated.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation of a minor for prostitution (§ 712-1209.1)	Class C felony	Max. 5 years	Mandatory \$2,000-\$10,000	●
Promoting child abuse in the third degree by possessing child pornography (§ 707-752)	Class C felony	Max. 5 years	Max. \$10,000	●
Prostitution involving a sex trafficking victim (§ 712-1200(3)(b))	Class C felony	Max. 5 years	Mandatory \$5,000-\$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

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. There is no prohibition on a defendant raising consent of the minor to the commercial sex act as a defense to prosecution. The prostitution law reduces, but does not eliminate, liability for minors by lowering the class of offense from a misdemeanor to a violation when the person charged with prostitution is a minor. However, minors are still directed into the juvenile justice system as law violators for commercial sex acts committed as a result of their victimization. Child abuse and neglect definitions include victimization of a child through sex trafficking or child pornography, however the definition of child abuse and neglect requires that a parent or family member be at fault, creating a barrier to child welfare intervention in non-familial child trafficking cases. Victims of enumerated violent crimes are eligible for crime victim compensation including child sex trafficking victims but ineligibility criteria may result in child victims' compensation awards being reduced or denied. Victim-friendly trial procedures may be limited for victims of CSEC crimes. A victim under 18 of a sexual offense may be permitted to testify via closed circuit television and the "rape shield" law reduces the trauma of cross-examination for testifying victims of sexual offenses, which are not defined expressly to include CSEC offenses. Child victims of sex trafficking may be eligible to participate in a statewide witness protection program. Minors may petition to have certain arrest records expunged, but not records of adjudication, even for prostitution offenses committed as a result of their victimization. Civil remedies are available to sex trafficking and CSEC victims for injuries arising from sex offenses and under the Prostitution and Sex Trafficking Coercion Liability Act if the minor was coerced into prostitution. Restitution for losses including medical expenses is statutorily authorized. Neither criminal nor civil statutes of limitations are eliminated, presenting potential barriers to a sex trafficking victim with typically slow recovery from the unique trauma of CSEC. Civil statutes of limitations do not begin to run until the victim reaches 18, and the statute of limitations for civil actions arising from sexual offenses does not run until 8 years after the minor turns 18 or 3 years after discovery of the injury caused by sexual abuse.



## Criminal Justice Tools for Investigation and Prosecution

Training or development of training materials for law enforcement on human trafficking is not mandated or authorized. Single party consent to audiotaping is permissible in Hawaii, and sex trafficking is included as a crime for which a wiretapping order may be issued. A defendant is expressly prohibited from raising a defense to the use of a decoy in an investigation into the CSEC offense of solicitation; however, the defense is not prohibited in a prosecution for sex trafficking. Law enforcement may utilize the Internet to investigate buyers and sex traffickers in violation of the electronic enticement of a child statute. The state law mandates reporting of missing and recovered children.



## Criminal Provisions for Facilitators

Hawaii's sex trafficking statute criminalizes aiding or facilitating sex trafficking of a child. A facilitator convicted under the sex trafficking law faces imprisonment for 20 years, a possible fine up to \$50,000, and an additional fine of \$5,000 to be deposited in the human trafficking victim services fund. Disseminating or reproducing child pornography is a felony punishable by imprisonment up to 10 years and a possible fine up to \$25,000. Facilitators may also be subject to Hawaii's racketeering and money laundering laws for their criminal actions. Laws which prohibit selling, advertising, and promoting travel for the purpose of prostitution make sex tourism a felony punishable by up to 5 years imprisonment, a possible fine up to \$10,000, and an additional fine of \$1,000. Facilitators may be subject to asset forfeiture for sex trafficking, promoting prostitution and promoting child abuse by disseminating child pornography. Restitution is mandatory if a victim requests it and can prove losses and medical costs caused by an offense.

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).