

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

North Dakota Report Card 2016

North Dakota's human trafficking law criminalizes child sex trafficking without requiring proof of force, fraud, or coercion and provides substantial penalties. Minor victims may not be prosecuted for prostitution-related offenses, but specialized services are not mandated. Additionally, victims may face barriers to accessing crime victim compensation to fund their recovery.

Final Score

78

Final Grade

C



10

10

16

25

15

15

5

10

22

27.5

10

15



Criminalization of Domestic Minor Sex Trafficking

North Dakota's human trafficking laws criminalize child sex trafficking without requiring proof of force, fraud, or coercion by making it a crime to maintain or make available a minor for commercial sexual activity. North Dakota's CSEC laws include facilitating prostitution and use of a minor in a sexual performance. The prostitution statute does not refer to the human trafficking statute to identify minor victims of sex trafficking, but a related provision refers to the trafficking law to provide an affirmative defense to trafficking victims and eliminate criminal liability for minors for prostitution offenses. The state RICO law includes human trafficking, CSEC, and child pornography as predicate crimes.



Criminal Provisions Addressing Demand

The trafficking an individual and sexual servitude laws do not apply to buyers; however, buyers can be charged with patronizing offenses included in the human trafficking chapter—patronizing a minor for commercial sexual activity and patronizing a victim of sexual servitude. No CSEC laws include the crime of buying sex with a minor, and the solicitation of prostitution statute does not distinguish between purchasing commercial sex acts with an adult versus a minor. Buyers who use the Internet or electronic communications to lure or entice minors for sex acts may be charged under the statute on luring minors by computer or other electronic means. A court could order a buyer to pay victim restitution if convicted of certain sex offenses and if pecuniary damages are shown. While the sexual servitude law expressly prohibits a defense based on age mistake and mandates victim restitution, the buyer-applicable patronizing offenses do not prohibit an age mistake defense and do not require convicted buyers to pay victim restitution. Convictions for patronizing a minor for commercial sexual activity, patronizing a victim of sexual servitude, luring a minor by computer, and certain other sex offenses require registration as a sex offender.



Criminal Provisions for Traffickers

Trafficking an individual and sexual servitude are Class AA felonies punishable by a maximum of life imprisonment without parole when the victim is a minor. Facilitating prostitution and using a minor in a sexual performance, including creating child pornography, are Class A felonies punishable by up to 20 years imprisonment and/or a fine not to exceed \$20,000. Luring minors by computer or other electronic means provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Discretionary civil asset forfeiture is available for these offenses. Restitution is mandated under the human trafficking statute and is required under other laws if pecuniary damages are proven; otherwise, restitution is discretionary. Traffickers convicted of trafficking an individual for sexual servitude, sexual servitude, luring minors by computer or other electronic means, using a minor in a sexual performance, facilitating prostitution, and other prostitution-related offenses when a minor is involved are required to register as sex offenders. However, the court has discretion, under certain circumstances, to waive registration when the defendant is not the victim's parent and is convicted of facilitating prostitution of a minor. Parental rights may be terminated for convictions of sexual performance of the child or luring minors by computer or other electronic means or if the child is a deprived child, which is defined to include a juvenile sex trafficking victim.

Demand | Selected Commercial Sex Crimes

| Crime (name of law abridged) | Classification | Sentence | Fine | Asset Forfeiture (available) |
|---|---------------------|---------------|--------------|------------------------------------|
| Patronizing a minor for commercial sexual activity (§ 12.1-41-06) | Class A felony | Max. 20 years | \$20,000 | ● |
| Patronizing a victim of sexual servitude (§ 12.1-41-05) | Class A | Max. 20 years | \$20,000 | ● |
| Hiring an individual to engage in sexual activity (§ 12.1-29-06) | Class B misdemeanor | Max. 30 days | Max. \$1,500 | ● |

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. Perpetrators of sexual servitude of a minor cannot assert a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. North Dakota's prostitution offenses prohibit the criminalization of minors and, instead, create a presumption that the minor is "a child in need of services." However, specialized services are not mandated. A trafficked minor may also be designated as a neglected child, a sexually abused child, or a deprived child, which is defined to specifically include a juvenile sex trafficking victim. While the definition of "person responsible for the child's welfare" may not be broad enough to allow for child welfare intervention in all non-familial trafficking cases, the definitions of deprived child and sexually abused child, together with the presumption that juvenile sex trafficking victims are children in need of services, appear to allow child welfare involvement without regard to whether a parent or caregiver was the perpetrator of the abuse or neglect. While CSEC victims would likely be eligible for state crime victims' compensation, several eligibility criteria may limit their ability to recover, including reduction due to contributory misconduct and a requirement to file a claim within one year unless "the interests of justice so require." Victim-friendly court procedures may be available to child victims of certain sex offenses, including the "rape shield" law, but these protections do not specifically extend to victims of CSEC and trafficking offenses. Criminal justice records containing identifying information about victims of human trafficking or information regarding the use of a minor in a sexual performance are exempt from public record disclosure requirements, and minor victims of human trafficking may request a restraining order against their perpetrators. Victims with juvenile delinquency adjudication records as a result of their trafficking must wait 10 years after expiration of the final order or 10 years after reaching 18 for expungement, while those with unruly child adjudications may expunge the record one year after turning 18. However, there does not appear to be a waiting period to vacate and expunge criminal convictions that are a direct result of being a trafficking victim. Restitution to victims is a mandatory part of sentencing for human trafficking convictions, and restitution for pecuniary damages is available in all CSEC convictions. Victims may bring civil claims for human trafficking offenses. North Dakota has a 3 year statute of limitations for criminal actions, which can be lengthened in certain cases including corruption or solicitation of minors, but not for human trafficking or other CSEC crimes. The statute of limitations for civil actions by trafficking victims runs for 10 years after the date on which victim turns 18 or was no longer subject to trafficking, whichever is later.



Criminal Justice Tools for Investigation and Prosecution

Training on human trafficking is not mandatory, but the Attorney General is authorized to establish a human trafficking commission that is tasked with coordinating training for law enforcement, service providers, and other government employees on human trafficking. Single party consent to audiotaping is permitted, and wiretapping is allowed in some scenarios although no law specifically authorizes wiretapping for CSEC investigations. No trafficking or CSEC law expressly prohibits a defense based on the use of a law enforcement decoy posing as a minor in prostitution or sex trafficking investigations, but law enforcement may utilize the Internet to investigate buyers and traffickers, relying on the crime of luring minors by computer or other electronic means, a non-CSEC offense which includes luring a person the offender believes is a minor. North Dakota requires a statewide reporting and response system for lost, missing, or runaway children.



Criminal Provisions for Facilitators

The state human trafficking law does not specifically criminalize assisting, enabling, or financially benefitting from human trafficking, but business entities that commit trafficking crimes face financial penalties including a fine of up to \$1,000,000 and disgorgement of profits. The CSEC crime of facilitating prostitution also applies to facilitators and is a Class A felony when the victim is a ward of the defendant or the defendant is otherwise responsible for the care, protection, or support of the victim. Various child pornography laws apply to facilitators with penalties for first violations ranging from Class A felonies (maximum 20 years imprisonment and/ or a fine not to exceed \$20,000) to Class C felonies (maximum 5 years imprisonment and/ or a fine not to exceed \$10,000). Penalties for child pornography offenses can be enhanced for both of these crimes if the offender acts for a corporation, partnership, or other legal entity. Facilitators are subject to asset forfeiture and mandatory restitution for a violation of the human trafficking law or possible restitution for violations of other applicable laws. No laws in North Dakota 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.