

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Texas Report Card 2016

Texas has a full range of criminal laws against domestic minor sex trafficking; however, minors are subject to prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

Final Score

94

Final Grade

A



10

10

25

25

15

15

7.5

10

21.5

27.5

15

15



Criminalization of Domestic Minor Sex Trafficking

Texas's sex trafficking law criminalizes the use of a minor under the age of 18 in a commercial sex act regardless of force, fraud, or coercion. Commercial sexual exploitation of children (CSEC) laws include compelling prostitution, promotion of prostitution, aggravated promotion of prostitution, prostitution of a minor, criminal solicitation of a minor, employment harmful to children, and continuous sexual abuse of young child or children through means such as sex trafficking, aggravated sexual assault, and sexual performance by a child. The prostitution law refers to the sex trafficking law to provide an affirmative defense for sex trafficking victims. Texas' organized criminal activity law specifically targets trafficking of persons and includes certain CSEC offenses as predicate crimes, allowing use of this law to prosecute sex trafficking networks.



Criminal Provisions Addressing Demand

Texas's sex trafficking law applies to buyers who engage in sexual conduct with a trafficked child or, following federal precedent, who obtain and cause a child to engage in various CSEC offenses. A buyer who commits two or more acts of sex trafficking of children under 14 during a period of 30 or more days in duration may be found guilty of committing continuous trafficking of persons. CSEC laws include the crime of buying sex with a minor, and solicitation laws distinguish between buying sex with an adult versus a minor. The sex trafficking law provides a wide sentencing range for engaging in sexual conduct with a trafficked minor, and the solicitation of prostitution law provides enhanced penalties when the victim is, or is believed to be, a minor. Buyers convicted of sex trafficking of a child must pay victim restitution, but restitution is discretionary in CSEC convictions. The online solicitation of a minor law includes using the Internet or electronic communications to solicit a minor to engage in sexual contact and may apply to buyers. The sex trafficking and prostitution laws specifically prohibit the age mistake defense, but other CSEC offenses do not. Buyers of sex with minors are required to register as sex offenders if convicted of sex trafficking, possessing child pornography, some CSEC offenses, or prostitution when a minor, or an individual believed to be a minor, is solicited.



Criminal Provisions for Traffickers

Sex trafficking of a minor and compelling prostitution of a minor are felonies punishable by 5–99 years imprisonment and a possible fine up to \$10,000. Two or more violations of sex trafficking within 30 days is a violation of continuous trafficking in persons, punishable by 25–99 years imprisonment. A trafficker who employs a child to work in sexually oriented commercial activity or employs a child to appear in a sexual performance is guilty of a felony punishable by 2–20 years imprisonment when the victim is 14–18, and 5–99 years and a possible fine up to \$10,000 when the victim is younger than 14. A conviction for the CSEC offense of promoting prostitution is punishable by 2–20 years imprisonment and a fine up to \$10,000, and an aggravated promotion of prostitution offense involving a minor is punishable by 5–99 years imprisonment. Traffickers could also be subject to organized crime and criminal street gang laws, leading to additional penalties. Online solicitation of a minor, which includes using the Internet or electronic communications to solicit a minor to engage in sexual contact with another person, might apply to traffickers. Criminal asset forfeiture for sex trafficking, CSEC, and child pornography crimes is available. Additionally, traffickers are required to pay restitution to minor victims of sex trafficking, compelling prostitution, and possession or promotion of child pornography. Traffickers must register as sex offenders for convictions of sex trafficking, CSEC offenses, and child pornography offenses. Grounds for termination of parental rights include sex trafficking, CSEC, and child pornography convictions.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (pos- sible)	Asset Forfeiture (available)
Sex trafficking (§ 20A.02(a)(8))	Felony of the 1st degree	5–99 years	Max. \$10,000	●
Continuous sexual abuse of young child or children (§ 21.02(b))	Felony of the 1st degree	25–99 years	Max. \$10,000	●
Prostitution (solicitation) (§ 43.02)	Felony of the 3rd degree (victim 14–18)	2–10 years	Max. \$10,000	○
	2nd degree (victim under 14)	2–20 years		
Possession of child pornography (§ 43.26)	Felony of the 3rd degree	2–10 years	Max. \$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

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Texas's sex trafficking and CSEC laws do not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Texas's prostitution laws do not prohibit the criminalization of minors under 18, but case law has held that a child under 14 may not be charged with prostitution. Juvenile sex trafficking victims also face criminalization for commercial sex acts committed as a result of their victimization, but may assert an affirmative defense that she or he was sex trafficked. As a result, a CSEC victim may enter the juvenile justice system as a delinquent child or be considered a child in need of rehabilitation. However, the court may direct minor trafficking victims into a trafficked persons program that includes services and placement and avoids a delinquency adjudication. The case must then be dismissed if the child completes the program. The definition of abuse for purposes of child welfare involvement includes child sex trafficking, CSEC, prostitution, and child pornography; additionally, the definition of abuse does not include a "caregiver" barrier because abuse may be committed by "a person," which is broad enough to allow child welfare involvement in non-familial trafficking cases. Crime victims' compensation is available for victims of CSEC and trafficking offenses, and child sex trafficking victims are exempt from some ineligibility requirements. Victim-friendly trial procedures are available to sex trafficking and CSEC victims, which may encourage them to pursue justice, including the ability to testify through closed circuit television and inadmissibility of evidence of crimes or acts committed by sex trafficking and CSEC victims under 18; however, victims may be required under statute to testify about sex trafficking offenses. Upon application, juvenile criminal records may be sealed two years after the minors' discharge if no additional delinquent conduct has occurred. Offenders of sex trafficking of a minor, compelling prostitution of a minor, and possession or promotion of child pornography are required to pay victim restitution, and a court may order offenders convicted of other crimes to pay victim restitution. A victim of sex trafficking also has a civil cause of action against an offender. A criminal action for sex trafficking and compelling prostitution may be brought at any time, while a prosecution for the crime of sexual performance by a child under 17 must be brought within 20 years of the victim turning 18. For civil actions, the statute of limitations for sex trafficking or compelling prostitution is 15 years.



Criminal Justice Tools for Investigation and Prosecution

Texas law mandates that law enforcement and judges receive training on human trafficking. Single party consent to audiotaping is permitted, and wiretapping is permitted for investigations of sex trafficking, prostitution offenses, and possession or promotion of child pornography crimes, giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Texas's criminal solicitation of a minor statute prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor; the offender need only believe that the decoy is a minor of a certain age. Law enforcement may utilize the Internet to investigate cases of sex trafficking, relying on the online solicitation of a minor law, which includes soliciting a person who represents himself or herself to be under 17 to meet for the purpose of engaging in sexual contact. Texas law requires law enforcement to report missing and recovered children, and the Department of Public Safety is required to interview recovered children to determine whether the child is a victim of trafficking.



Criminal Provisions for Facilitators

The state sex trafficking law, which includes the crime of benefitting from sex trafficking of a child, is a felony punishable by 5–99 years imprisonment and a possible fine up to \$10,000. A facilitator who engages in two or more violations of this law within 30 days may be convicted of continuous trafficking of persons with a heightened sentence of 25–99 years imprisonment. Aggravated promotion of prostitution, which applies to some facilitators, is a first degree felony punishable by 5–99 years imprisonment and a \$10,000 fine. Promotes a sexual performance of a child is a felony punishable by 2–20 years imprisonment when the victim is 14–18, 5–99 years when the victim is younger than 14, and a possible fine up to \$10,000. Distributing or promoting child pornography is a felony punishable by 2–20 years imprisonment and a possible fine up to \$10,000. Some facilitator offenses are also included in organized criminal activity laws, possibly subjecting them to enhanced penalties. Facilitators convicted of sex trafficking are required to make restitution to their victims, and facilitators convicted of other crimes may also be ordered to pay restitution. Facilitators are subject to criminal asset forfeiture for sex trafficking. Any person may also bring a suit against a facilitator who maintains a place where people frequently engage in sex trafficking or prostitution-related crimes, and any business entity and its owners are liable if the entity is used for the purpose of trafficking. No laws in Texas specifically 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.