

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Kansas Report Card 2016

The human trafficking law does not require proof of force, fraud or coercion, and a comprehensive CSEC law reaches traffickers, buyers and facilitators. Child victims of commercial sexual exploitation are provided a protective response through child welfare, but are not protected from prostitution charges.

Final Score

88

Final Grade

B



10

10

22

25

13.5

15

6

10

21.5

27.5

15

15



### Criminalization of Domestic Minor Sex Trafficking

The human trafficking law in Kansas includes sex trafficking and defines a minor under the age of 18 as a trafficking victim without regard to use of force, fraud or coercion. Kansas also has two commercial sexual exploitation of children (CSEC) laws to reach traffickers: commercial sexual exploitation of a child and sexual exploitation of a child for pornography. The prostitution statute refers to human trafficking as an affirmative defense to a charge of selling sexual relations. The Kansas racketeering law includes human trafficking, commercial sexual exploitation of a child and sexual exploitation of a child as predicate offenses, making it available as a tool to prosecute child sex trafficking crimes.



### Criminal Provisions Addressing Demand

The state human trafficking law applies to buyers who “obtain” a victim for commercial sex acts, following federal precedent. Buyers may also be convicted under the commercial sexual exploitation of a child law. Electronic solicitation, which includes using the Internet to solicit a minor under 16 to engage in an unlawful sexual act (although not defined to include commercial sex acts), might be used to prosecute buyers. A mistake of age defense is specifically prohibited for all sex offenses, including buying commercial sex with a minor. Courts must hold a hearing to establish restitution when requested by victims of any crime. Buyers face mandatory civil asset forfeiture for human trafficking, commercial sexual exploitation of a child, and indecent solicitation of a child, and restitution may be ordered. A person convicted of possessing child pornography is required to register as a sex offender, and a person convicted of sex trafficking a minor or commercial sexual exploitation of a child must register as a violent sexual offender.



### Criminal Provisions for Traffickers

An offenders convicted of sex trafficking a minor age 14–18 is subject to presumptive imprisonment of 147–165 months and a possible fine up to \$300,000. A conviction for commercial sexual exploitation of a child is punishable by 31–34 months and a possible fine not to exceed \$300,000. Creating child pornography is a felony punishable by 31–34 months imprisonment and a possible fine not to exceed \$300,000. A conviction for any of these crimes is punishable by a mandatory sentence of 25 years–life and a possible fine up to \$500,000 if the victim is under 14 and the offender over 18. Traffickers are subject to mandatory civil asset forfeiture for convictions of sex trafficking and commercial sexual exploitation of a child, and restitution may be ordered. Traffickers are required to register as sex offenders for convictions of creating child pornography and must register as sexually violent offenders for convictions of sex trafficking, sexual exploitation, commercial sexual exploitation of a child, and electronic solicitation of minors. Grounds for termination of parental rights exist if a parent is “convicted of a felony in which intercourse occurred,” or a human trafficking or CSEC offense.

### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Human trafficking (§ 21-6421(a))	Severity level 1, person felony (if 14-17)	Presumptive 147-165 months	Max. \$300,000	●
	Off-grid person felony (under 14)	25 years to life	Max. \$500,000	
Commercial sexual exploitation of a child (§§ 21-6422)	Severity level 5, person felony (if 14-17)	Presumptive 31-34 months	Max. \$300,000	●
	Off-grid person felony (under 14)	25 years to life	Max. \$500,00	
Possessing child pornography (§ 21-5510)	Severity level 5, person felony	Presumptive 31–34 months	Max. \$300,000	○

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. The human trafficking law does not prohibit a defendant from asserting 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; however, a protective response directs child victims to child welfare for assessment and possible services, including availability of a staff secure facility and access to specialized services. The definition of “child in need of care” specifically includes victims of sex trafficking and commercial sexual exploitation, thereby allowing for child welfare intervention in pornography, prostitution, human trafficking, and aggravated human trafficking cases. Sex trafficking and CSEC victims are eligible for state crime victims’ compensation. However, eligibility criteria may threaten a victim’s ability to recover, including a requirement to report the crime to law enforcement within 72 hours (unless good cause is shown) and a bar to recovery for contributory misconduct or victim involvement in the unlawful activity. For certain crimes, including sexual exploitation of a child, human trafficking, aggravated human trafficking, and commercial sexual exploitation of a child, a claim must be filed within two years of reporting the incident to law enforcement if the victim was under 16. Otherwise, if the victim is over 16, or is a victim of another offense, a claim must be filed within 2 years of occurrence of the crime. The “rape shield” law, which reduces the trauma of cross-examination for testifying victims of sex offenses, is specifically available in cases of sex trafficking and sexual exploitation through child pornography, and some victims under 13 may testify via closed-circuit television. Information identifying victims of human trafficking or aggravated human trafficking may not be disclosed or open to the public. Juvenile records may be expunged when the juvenile turns 23 or after one year has passed since the juvenile was discharged. The court must order defendants convicted of human trafficking offenses to pay victim restitution, and trafficking victims may bring a civil action for damages against an offender. Generally, felony prosecutions must be commenced within five years unless certain factors are present, factors such as the victim being under 15 or the victim being prevented by a parent or legal authority from reporting the crime. Civil claims for damages arising from human trafficking must be brought within ten years of turning 18 or being freed from human trafficking, whichever is later.



## Criminal Justice Tools for Investigation and Prosecution

Kansas law authorizes law enforcement training on human trafficking. The law allows single party consent to audiotaping, and wiretapping is available for investigation of CSEC and trafficking offenses. Sexual exploitation of a child, a CSEC offense, prohibits a defense based on the use of a law enforcement decoy posing as a minor to investigate the crime, requiring only that the defendant believed the individual to be a minor. Additionally, law enforcement may utilize the Internet to investigate domestic minor sex trafficking, relying on the crime of electronic solicitation if the underlying offense is considered an unlawful sex act. Law enforcement must report both missing and recovered children to the state database and National Crime Information Center, improving the ability to identify repeat runaways who are at high-risk for sex trafficking.



## Criminal Provisions for Facilitators

The crime of benefitting financially from human trafficking is a felony punishable by presumptive imprisonment of 109–123 months and a possible fine up to \$300,000. A facilitator may also commit commercial sexual exploitation of a child by allowing owned property to be used for prostitution or by transporting a minor to assist in promotion, crimes which are generally punishable by 31–34 months imprisonment. Promoting child pornography is a felony punishable by 31–34 months imprisonment and a possible fine up to \$300,000. A conviction for any of these crimes is punishable by a mandatory sentence of 25 years–life and fine up to \$500,000 if the victim is under 14 and the offender is over 18. Also, civil asset forfeiture laws apply to sex trafficking and commercial sexual exploitation of a child offenses and restitution may be ordered. No laws 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](http://www.sharedhope.org).