

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## California Report Card 2016

California law provides minimal penalties for prosecuting demand. The human trafficking law protects victims of child sex trafficking without requiring proof of force, fraud or coercion. However, paying for sex acts with a minor and benefitting financially from assisting or enabling sex trafficking are not punishable under the human trafficking law.

Final Score

64.5

Final Grade

D



7.5

10



15.5

25



11

15



3.5

10



17.5

27.5



9.5

15



### Criminalization of Domestic Minor Sex Trafficking

California's human trafficking law criminalizes sex trafficking, imposing enhanced penalties where the victim is a minor, and does not require force, fraud, or coercion when a minor is used in a commercial sex act. California CSEC laws include: procurement of a minor, disorderly conduct (which includes soliciting prostitution, with heightened penalties when a minor is involved), pimping and pandering (when a minor is involved), abduction of minor for prostitution, and employment of minor in pornography. Neither of California's prostitution-related statutes refer to the human trafficking statute to provide victim protections nor an affirmative defense to victims of domestic minor sex trafficking. Predicate acts under the criminal profiteering statute include human trafficking and CSEC offenses.



### Criminal Provisions for Demand

The human trafficking law cannot be used to prosecute demand. A buyer can be prosecuted under the general solicitation law (disorderly conduct) which distinguishes between buying sex with a minor and buying sex with an adult by providing an increased penalty when the defendant knew or should have known the person solicited was a minor. However, the penalty fails to reflect the seriousness of the offense and a mistake of age defense is specifically allowed. The statute on contact or communication with a minor with intent to commit an illegal sex act statute could apply to buyers who use the Internet or other electronic communications for this purpose. Buyers convicted of any crime may be required to pay restitution to a victim. Child pornography may be seized and destroyed, and buyers whose property is deemed a nuisance in connection with prostitution-related offenses could face asset forfeiture. Buyers who purchase or possess pornography involving children must register as sex offenders; registration is also required for buyers of sex with minors if convicted or even if the buyer contacts or communicates with the minor with the sexually motivated intent to commit the crime. However, buyers convicted of disorderly conduct even when it involves a minor, will not be required to register.



### Criminal Provisions for Traffickers

Human trafficking of a minor is punishable by five, eight, or twelve years imprisonment, a fine which will generally not exceed \$500,000, and a potential fine enhancement up to \$1,000,000. Procurement of a minor, employment of a minor in child pornography, and abduction of a minor for prostitution are punishable by up to one year imprisonment and/or a fine up to \$2,000; however, abduction of a minor for prostitution is also punishable by a possible additional fine up to \$20,000. Preparing images of child pornography and distribution of child pornography are punishable by up to one year imprisonment and/or a fine up to \$1,000, or for distribution, imprisonment and/or a fine up to \$10,000. Contact or communication with a minor with intent to commit a crime might apply to traffickers who use the Internet or other electronic communications to commit certain sex offenses against a minor. Traffickers convicted of human trafficking face mandatory restitution, while those convicted of other crimes may be ordered to make restitution. Traffickers whose property is deemed a nuisance in connection with prostitution-related offenses and traffickers who engage in criminal profiteering with predicate offenses of employment of a minor in pornography, pimping or pandering of a minor, and human trafficking could face asset forfeiture. Traffickers convicted under the human trafficking law or most CSEC offenses must register as sex offenders, but not if convicted of pimping of a minor. Convictions for human trafficking or CSEC offenses do not establish grounds for termination of parental rights, leaving children of traffickers at a potential and continuous risk of harm.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Disorderly Conduct (\$ 647(m))	Misdemeanor or Felony	Min. 2 days Max. up to 1 year	Max. \$10,000	●
Disorderly Conduct (\$ 647(b))	Misdemeanor	Max. 6 months	Max. \$1,000	●

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 trafficking law is inapplicable to buyers. State laws offer limited protection to victims of sex trafficking or CSEC crimes. While the human trafficking law prohibits a defense based on consent of the minor, most CSEC laws do not, leaving this a potential defense for offenders. 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. As a result, CSEC victims could be classified as wards, leading to different response protocols and placements, including detention. However, juvenile sex trafficking victims may receive multidisciplinary services through family justice centers, even if the juvenile chooses not to cooperate with law enforcement. A victim found to be abused may receive protection through child protective services and child welfare; child abuse is defined to include CSEC, child sex trafficking, and the exchange of sex for food or shelter if the child's parent or guardian failed to, or was unable to, protect the child. Services available to child victims of trafficking or CSEC offense include short-term residential treatment placement and specialized services through a law enforcement diversion program. Crime victims' compensation is available for victims of CSEC offenses, and California law prohibits human trafficking victims' claims from being denied solely because the victim did not report the crime. Victim-friendly trial procedures are available to human trafficking victims, including confidentiality for communications between a victim and caseworker and for the location of trafficking shelters. However, only victims of sexual offenses under age 13 may testify via closed-circuit television. Human trafficking victims receive protection under California's "rape shield" law, but CSEC victim-witnesses remain unprotected from the trauma of cross-examination at trials of their traffickers. Victims of human trafficking and most CSEC offenses may have up to two support persons present during their testimony and are provided with special precautions for their comfort and support during trial. Juvenile records may be sealed five years after the jurisdiction of the court terminates or any time after the person turns 18, provided the juvenile "has not been convicted of a felony or misdemeanor involving moral turpitude" and has been satisfactorily rehabilitated. Restitution and a civil remedy are available to victims of human trafficking. The statute of limitations for both civil and criminal cases of DMST is extended; it is eliminated altogether for criminal cases when the means of force, fraud, fear, or coercion are employed.



## Criminal Justice Tools for Investigation and Prosecution

California requires law enforcement officers with field or investigative duties to complete training on human trafficking. California does not allow single party consent to audiotaping. Judges may authorize wiretapping in investigations of human trafficking but not CSEC investigations. No law expressly prohibits a defense as to the use of a decoy to investigate prostitution of children or the Internet in the investigation of child sex trafficking cases. Law enforcement are not expressly authorized to use the Internet to investigate human trafficking or CSEC crimes and an offender must make direct communication with a minor to violate the minor internet solicitation offense. California has established a statewide reporting and response system and law enforcement must report missing and located children.



## Criminal Provisions for Facilitators

Facilitators do not face prosecution under the human trafficking law for benefitting financially from sex trafficking; however, predicate offenses under the human trafficking statute are applicable to facilitators. Procurement of a minor applies to facilitators and is punishable by a maximum one year imprisonment term and/or a fine up to \$2,000. Facilitators also may be convicted under pimping of a minor, punishable by a possible fine up to \$10,000 and three, six, or eight years imprisonment (minor under 16) or three, four, or six years imprisonment (minor 16–18). A conviction for any crime may result in a victim restitution order. Facilitators whose property is deemed a nuisance in connection with prostitution-related offenses or who engage in criminal profiteering activity with predicate offenses of employment of a minor in pornography and pimping where a minor is involved may face asset forfeiture. Advertising child pornography is punishable by two, three, or four years imprisonment, or by one year imprisonment and/ or a fine up to \$50,000 and selling child pornography is punishable by up to one year imprisonment and/or a fine not to exceed \$1,000, or imprisonment and/or a fine up to \$10,000. No laws in California address sex tourism. Facilitators convicted of a predicate offense falling within the human trafficking statute are required to pay restitution.

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).