

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

New York Report Card 2016

The sex trafficking law does not apply to buyers and the commercial sexual exploitation of children (CSEC) laws that are buyer applicable provide low penalties. The state sex trafficking law requires proof that force, fraud, or coercion was used even when the victim is a minor. Minors may be arrested for prostitution and subjected to a delinquency process, however, minors involved in commercial sex are presumed to be trafficking victims and may be placed in a safe house.

Final Score

67.5

Final Grade

D



8.5

10



14

25



12.5

15



9

10



13.5

27.5



10

15



Criminalization of Domestic Minor Sex Trafficking

New York's sex trafficking law requires proof of the use of force, fraud, or coercion, even when the victim is a minor. Several of New York's CSEC laws include: promoting prostitution in the first, second and third degrees (covering minors under 19), advancing prostitution, profiting from prostitution, patronizing a prostitute in the first and second degree, compelling prostitution of one less than 16, use of a child under 17 in a sexual performance, and promoting an obscene sexual performance of a child under 17. New York's prostitution, and loitering statutes do not refer to the human trafficking statute for victim identification. New York's racketeering statute includes sex trafficking and CSEC offenses as predicate acts.



Criminal Provisions Addressing Demand

The state sex trafficking law does not prohibit purchasing commercial sex with minors, leaving buyers subject only to the several of the state CSEC laws. Patronizing prostitution distinguishes between buying sex with adults versus minors under 15, with penalties varying based on the age of the minor; however, defendants may assert an age mistake defense to these crimes. Buyers who use the Internet to purchase commercial sex acts with a minor could be prosecuted under the statute on disseminating indecent material to minors in the first degree, or the statute penalizing use of a computer for the purpose of luring or inducing a person under 17 to engage in sexual conduct. Buyers face civil forfeiture of assets constituting the proceeds or instrumentality of any crime. Buyers of sex with minors are required to register as sex offenders if convicted of possessing child pornography or any degree of patronizing a prostitute when a minor under 17 is involved.



Criminal Provisions for Traffickers

Under the sex trafficking and CSEC laws a trafficker could receive a sentence as high as federal trafficking offenses (10 years–life). Convictions for sex trafficking, compelling prostitution of one less than 18 by force, fraud or coercion, or promoting prostitution of a minor under 13 are felonies punishable by 1–25 years imprisonment. Promoting prostitution of a minor under 18 or use of a child under 16 to engage in a sexual performance are felonies punishable by 1–15 years imprisonment, whereas promoting prostitution of a minor 18–19 or producing a performance with sexual conduct of a minor under 17 are felonies punishable by up to 7 years imprisonment. All felony sentences may include fines up to \$5,000 or “double the amount of the defendant's gain from the commission of the crime,” whichever is higher, and victim restitution may be ordered. Traffickers may face forfeiture of all proceeds and instrumentalities of a felony and forfeiture of all equipment used to create child pornography is mandatory. New York's laws making it a crime in the first degree to disseminate indecent material to minors or the statute penalizing use of a computer for purpose of luring or inducing person under 17 to engage in sexual conduct (although not specifically commercial) could be used to prosecute the growing number of traffickers using the Internet to commit their crimes. Traffickers are required to register as sex offenders for convictions of sex trafficking, creating child pornography, and some CSEC offenses. Convictions of sex trafficking offenses or CSEC are not enumerated grounds for termination of parental rights, but if a trafficker is incarcerated for a significant period of time, parental rights could be terminated.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Patronizing a prostitute (minors 14–18) (NY Penal §230.04)	Class A misdemeanor	Max. 1 year	Max. \$1,000	○
Patronizing a prostitute (minor under 15; buyer over 18) (NY Penal § 230.05)	Class E felony	Max. 4 years	Max. \$5,000	○
Patronizing a prostitute (minor under 13) (NY Penal § 230.06)	Class D felony sex offense	2–7 years	Max. \$5,000	○
Possessing child pornography (minors under 16) (NY Penal §§ 263.11, 263.16)	Class E felony	Max. 4 years	Max. \$5,000	●

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 identifiable as child sex trafficking victims; the trafficking offense is not applicable to buyers and requires third party control. New York's "Safe Harbour" legislation increases protections for CSEC victims, but sex trafficking and CSEC victims continue to be vulnerable due to gaps in the laws. Sex trafficking and CSEC offenses do not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. A "sexually exploited child" includes victims of sex trafficking and prostitution-related offenses. Prostitution laws apply to minors under 18, and while an affirmative defense is available for sex trafficking victims, they still face criminalization for commercial sex acts committed as a result of their victimization. However, a minor under 16 is presumed to be a victim of a severe form of trafficking, and if the minor consents, law enforcement may deliver the victim to a safe house. Upon a motion, the court may substitute a "person in need of supervision" (PINS) petition for the delinquency petition. A minor victim aged 16 or 17 who is arrested for prostitution or loitering may have the criminal charges converted to a PINS proceeding as long as a guilty plea has not been entered. Minor victims may be referred to specialized services, including placement in safe houses staffed by specially trained advocates. However, if the CSEC victim is unwilling to cooperate with specialized services, the delinquency proceedings will continue. For purposes of child welfare intervention, the definition of an abused child includes victims of CSEC offenses or child pornography, but not sex trafficking. The definition of "person legally responsible" includes any "person responsible for the child's care at the relevant time" but requires presence in the household, which may create a barrier to child welfare intervention. Child sex trafficking who suffer physical, mental, or emotional injury are provided exceptions to crime victims' compensation prompt reporting requirements. Victim-friendly criminal justice procedures are limited. Only children under 14 may testify via closed-circuit television, and the "rape shield" law, which reduces the trauma of cross-examination for testifying victims, does not extend to CSEC victims, allowing evidence of a victim's sexual conduct or previous prostitution convictions. Child victims of CSEC offenses are eligible to receive psychosocial and advocacy support services. A motion to seal juvenile criminal records may be filed at any time after the minor's 16th birthday, and prostitution charges may be automatically expunged on minor's the 18th birthday under some circumstances; prostitution charges that were converted to PINS petitions will be sealed. Victim restitution for personal injury may be ordered, and sex trafficking victims may bring civil actions for damages. Victims of sex trafficking are afforded an extended statute of limitations for criminal actions, and the statute of limitations for all civil actions are eliminated.



Criminal Justice Tools for Investigation and Prosecution

Training or development of training materials for law enforcement on sex trafficking is not statutorily mandated or authorized, but the social services commissioner is authorized to contract with NGOs experienced in working with CSEC victims to train law enforcement. Single party consent to audiotaping is allowed, and wiretapping is authorized for sex trafficking and promoting prostitution in the first and second degree investigations. No law expressly authorizes the use of the Internet by law enforcement to investigate cases of sex trafficking, and neither New York's CSEC nor trafficking laws prohibit an offender from raising a defense to the use of a law enforcement decoy in an investigation for the buying and selling of sex acts with a child. New York maintains a Statewide Central Register for Missing Children and a Missing and Exploited Children Clearinghouse, and while law enforcement are not required to report missing and recovered children, state law requires reporting of closed missing children cases.



Criminal Provisions for Facilitators

The sex trafficking statute likely does not include facilitator conduct because of the force, fraud, or coercion requirement. Facilitators could be charged with certain CSEC offenses. Aiding or facilitating in an act or enterprise of prostitution of a minor under 19 is a felony with a varying penalties based on the age of the victim: a conviction is punishable by 1–25 years imprisonment if the victim is under 13, or 1–15 years if ages 13–18. Additionally, promoting prostitution in the third degree addresses sex tourism and includes the crime of controlling or owning a business selling travel for the purpose of prostitution. Convictions of promoting prostitution in the third degree and promoting sexual performance of a minor under 17 are felonies punishable by up to 7 years imprisonment. All felonies are punishable with possible fines up to \$5,000 or "double the amount of the defendant's gain from the commission of the crime," whichever is higher. For a felony conviction, facilitators may be required to pay restitution and forfeit all proceeds gained from commission of the felony. Facilitators also face mandatory criminal forfeiture of all equipment used to manufacture or distribute child pornography.

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.