

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Tennessee Report Card 2016

Tennessee imposes substantial penalties for sex trafficking and provides tools for law enforcement to investigate effectively, but victims may be deterred from pursuing justice due to lack of trial protections and potential bars to victims' compensation. Tennessee prohibits the criminalization of minors for prostitution, but the lack of specific protective responses may leave them vulnerable.

Final Score

98

Final Grade

A



10

10

25

25

15

15

10

10

23.5

27.5

14.5

15



Criminalization of Domestic Minor Sex Trafficking

Tennessee's sex trafficking law, trafficking a person for a commercial sex act, does not require proof of force, fraud, or coercion and enhances penalties when the minor is under 15 or the offense occurs near a school, library, or park. Commercial sexual exploitation of children (CSEC) laws include patronizing prostitution, promoting prostitution, especially aggravated sexual exploitation of a minor, solicitation of a minor, and soliciting sexual exploitation of a minor. The prostitution statute refers to the sex trafficking statute, and the patronizing prostitution and promoting prostitution laws refer to the sex trafficking law for penalties when the victim is a minor. Racketeering activity is defined under the racketeering law to include especially aggravated sexual exploitation of a minor, a CSEC offense, and criminal gang offenses, which include sex trafficking as a predicate offense.



Criminal Provisions Addressing Demand

The state sex trafficking law expressly applies to buyers who "purchase" a commercial sex act. Buying sex with any minor under 18 is a crime under the patronizing prostitution statute, which refers to the human trafficking statute for prosecution and significant penalties and fines. The separate offense of solicitation of a minor prohibits the use of the Internet to commit trafficking and CSEC offenses. Victim restitution and asset forfeiture are mandatory in sex trafficking cases. No age mistake defense is permitted in charges of patronizing prostitution or solicitation for sexual exploitation of a minor. Buyers convicted of sex trafficking or patronizing prostitution of a minor must register as sex offenders.



Criminal Provisions for Traffickers

Trafficking a person for a commercial sex act and promoting prostitution of a minor are felonies punishable by 8–30 years imprisonment, enhanced to 15–60 years imprisonment if the minor is under 15 or the offense occurs near a school, library, or park. Both carry fines up to \$25,000 and can be enhanced to \$50,000. Using or employing a minor in a sexual performance and promoting, assisting, or transporting a minor to participate in a sexual performance are felonies punishable by 8–30 years imprisonment and fines up to \$25,000, while promoting or selling child pornography is punishable by 3–15 years imprisonment and a possible fine up to \$10,000. Criminal asset forfeiture and victim restitution are mandatory in sex trafficking and promoting prostitution cases. A trafficker who solicits a minor through the Internet for commercial sexual activity or sex trafficking will be culpable under a separate law punishable as one offense level lower than the offense solicited. Convictions for sex trafficking, aggravated exploitation of a minor, and especially aggravated exploitation of a minor require sex offender registration, but promoting prostitution of a minor does not. Child sex trafficking and severe child abuse, which includes some CSEC offenses, are enumerated crimes as grounds upon which parental rights may be terminated.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking a person for a commercial sex act (§ 39-13-309)	Class B felony	8-30 years	Max. \$25,000	●
	Class A felony (under 15 or within 1,000 ft. of a school, library, rec center or park)	15-60 years	Max. \$50,000	
Patronizing prostitution of a minor (§ 39-13-514)	Class B felony	8-30 years	Max. \$25,000	●
	Class A felony (under 15 or within 1,000 ft. of a school, library, rec center or park)	15-60 years	Max \$50,000	
Purchase child pornography (§ 39-17-1004)	Class C felony	3-15 years	Max. \$10,000	●
Possession of child pornography (§ 39-17-1003)	Class D felony	2-12 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

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Tennessee's trafficking law prohibits a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. Further, Tennessee prohibits the criminalization of minors for prostitution; however, victims are not provided with a specialized protective response, potentially leaving them to return home without mandated treatment or services. The definition of severe child abuse includes a child engaged in prostitution or child pornography, but not a human trafficking victim; child sex trafficking is also not expressly included within the definition of abuse, which includes a caretaker requirement. The definition of caretaker does, however, expressly include any person who uses a child "for the purpose of commercial sexual exploitation." Victims of sex trafficking are eligible for crime victims' compensation; additionally, pain and suffering expenses are available to victims of pornography. However, a victim may be barred from recovering if determined to have been criminally responsible for the crime, did not cooperate with police, or did not file the claim within one year (extended for child pornography victims). Additionally, the crime must be reported within 48 hours unless good cause is shown (examples do not include commercial sexual exploitation victimization). The appointment of a guardian ad litem could encourage child sex trafficking victims to pursue legal actions; however, the "rape shield" law, which can reduce the trauma of cross-examination for testifying victims, does not apply in sex trafficking or CSEC prosecutions, and closed circuit television testimony, although specifically permitted in cases of sex trafficking and patronizing prostitution, is limited to victims under 13. Juveniles may petition the juvenile court for expungement of criminal records if the juvenile is 18, one year has passed since the delinquency or unruly adjudication, and the minor has not been convicted of a criminal offense as an adult or adjudicated guilty of a violent juvenile sex offense. Restitution is mandatory, and civil remedies are specifically authorized for victims of sex trafficking. The criminal statute of limitations is extended for some crimes. After the victim turns 18, prosecutions must be brought within 15 years for sex trafficking, 10 years for patronizing prostitution, and 25 years for promoting prostitution.



Criminal Justice Tools for Investigation and Prosecution

Tennessee law requires training for law enforcement on human trafficking as well as child sexual abuse, which covers sexual exploitation of a child, including exploitation through prostitution or pornography. Additionally, some funds realized through the human trafficking asset forfeiture provisions are allocated to training on human trafficking. Single party consent to audiotaping is permitted by law, and wiretapping is permitted in investigations of sex trafficking. Law enforcement decoys and Internet or electronic investigation tools may be used for crimes of sex trafficking and sexual exploitation of minors; thus, a defendant would be prohibited from asserting a defense based on the fact that an actual minor was not involved in the communication. Law enforcement are mandated to report missing children, maintain data on missing children, and report recovered children, allowing them to track repeat runaways who are at high risk for sex trafficking.



Criminal Provisions for Facilitators

The trafficking a person for a commercial sex act statute applies to facilitators who benefit from or attempt to benefit from sex trafficking. Facilitators convicted under the sex trafficking law face 8–30 years imprisonment and a possible fine of \$25,000, or 15–60 years imprisonment and a possible fine of \$50,000 if the minor is under 15 or the offense occurs near a school, library, or park. CSEC and child pornography offenses also include actions of facilitators. Promoting prostitution of a minor is subject to the penalties provided under the sex trafficking law. A facilitator guilty of promoting or selling child pornography faces 3–15 years imprisonment and a fine up to a \$10,000; each image constitutes a separate offense, and when more than 25 images are involved, an enhanced sentence of 8–30 years and a fine up to a \$25,000 applies. Promoting, assisting, or transporting a minor to participate in a sexual performance is punishable by 8–30 years imprisonment and a fine up to a \$25,000. Criminal asset forfeiture and victim restitution are mandatory in sex trafficking and promoting prostitution cases. Tennessee law criminalizes the sale of travel services for prostitution.

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.