

PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

ARKANSAS REPORT CARD

Demand is not sufficiently deterred through Arkansas' criminal laws. The trafficking of persons law requires proof of force used to secure sexual conduct even in cases where the victim is a minor. Minors are vulnerable to buyers and traffickers and they do not have full protections under the law as victims of a crime.

FINAL SCORE

54.5

FINAL GRADE

F



3.5

7.5

15

25

10.5

15

6

10

9.5

27.5

10

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Arkansas's trafficking of persons law includes the crime of forced sexual conduct but fails to distinguish the exploitation of a minor under 18 for commercial sex acts without regard to use of force, fraud or coercion as trafficking. Arkansas's commercial sexual exploitation of children (CSEC) laws include: promoting prostitution in the first degree, engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, employing or consenting to the use of a child in a sexual performance, and producing, directing, or promoting a sexual performance by a child. CSEC statutes do not refer to the trafficking of persons law for prosecution or victim protections.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. The state trafficking of persons law tracks the federal definition and could, following limited federal precedent, be applied to buyers through the word "obtain," but to be applicable the state law requires the use of force to secure the sexual conduct of the minor. The sexual solicitation statute does not distinguish between buying sex acts with an adult or a minor; however, based on the premise of prostitution, CSEC crimes could include contributing to the delinquency of a minor or contributing to the delinquency of a juvenile. Under certain conditions, transportation of minors for prohibited sexual conduct would capture the crime of buying sex acts with a minor. A separate statute makes it a crime when a person over 21 uses the Internet to buy information about a child 15 or younger to arrange a meeting to engage in sexual intercourse. Additionally, computer child pornography and buying and possessing child pornography are separate crimes. The trafficking of persons and transportation of minors laws do not expressly prohibit a defense based on age mistake leaving open the possibility of such a defense. Buyers convicted of child pornography offenses and Internet stalking of a child offenses must register as sex offenders and although not enumerated as registrable offenses, the court has discretion to require registration of a person convicted of any sex offense, which could include sex trafficking or CSEC. Also at the court's discretion is the ordering of restitution for economic losses, medical and psychological care to a victim of any crime.

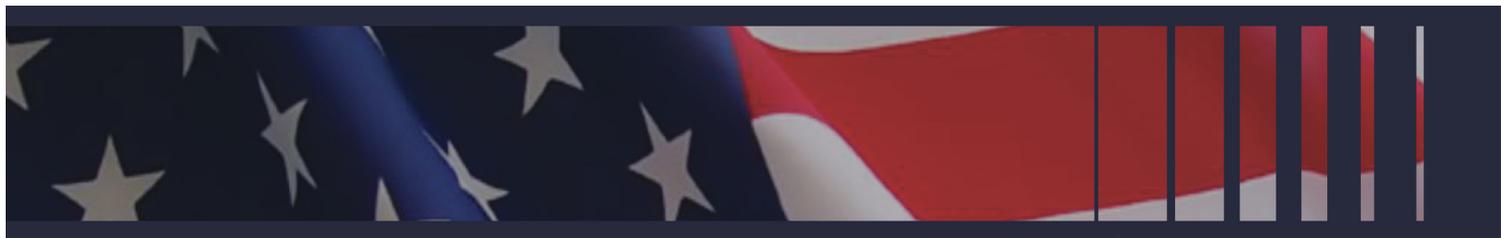
CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the trafficking of persons law and some CSEC laws, a trafficker could receive penalties as high as federal trafficking offenses, and a trafficker could be subject to criminal gang and money laundering laws. Violations of trafficking of persons or transporting minors for prohibited sexual conduct are felonies punishable by 6–30 years imprisonment and a possible fine not to exceed \$15,000. Promoting prostitution of a minor is a felony punishable by up to six years imprisonment and a possible fine not to exceed \$10,000. First offenses relating to sexually exploiting a child to create pornography and producing, directing or promoting a sexual performance of a child are punishable by 5–20 years imprisonment and a possible fine up to \$15,000. To reach Internet facilitated trafficking, it is a separate offense when traffickers 21 or older sell information about a child 15 or younger to arrange a meeting to engage in sexual intercourse. Convictions for most CSEC offenses require registration as a sex offender, but trafficking of persons convictions are not a registrable offense. The state law concerning the termination of parental rights does not enumerate convictions of specific crimes as grounds for termination, but if a court finds that a trafficker's child is a dependent-neglected child as a result of sexual exploitation, a court may terminate the trafficker's parental rights. Traffickers are only subject to asset forfeiture for violations of child pornography laws. Though not mandatory, a court could order a trafficker to pay restitution to the victims of their crime.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Sexual solicitation (§ 5-70-103) (age-neutral)	Class B misdemeanor	Max. 90 days	Max. \$1,000	○
Buying and possessing child pornography (§§ 5-27-304(a)(2), 5027-602(a)(2))	Class C felony	3–10 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

Not all commercially sexually exploited children are expressly defined as victims for the purpose of “Rights of Victims of Crime,” leaving some victims without these protections. The trafficking of persons and CSEC statutes do not expressly prohibit a defense based on consent of the minor to engage in the commercial sex acts. Minors are not immune from charges and prosecution under the prostitution offenses and minors engaged in prostitution are not identified as victims of sex trafficking. No protective provisions specifically for child sex trafficking victims are statutorily mandated. As a result, a victim could enter either the juvenile justice system as a “delinquent juvenile” or the child protective system as a “dependent-neglected” juvenile. The definition of “dependent-neglected juvenile” includes a juvenile at risk of sexual exploitation through prostitution or pornography, but does not expressly include a victim of trafficking of persons. The definition of caretaker is limited to parents, guardians, custodians, and those that they entrust with the care of the child, and is therefore not likely to include most traffickers to allow for intervention. CSEC victims could be eligible for Crime Victims Reparations, but face some ineligibility barriers such as requirements to report the crime within 72 hours of its occurrence and filing claims within one year, unless the victim can show good cause for the delay. The award may also be reduced for failure to cooperate with law enforcement officers. Victim-friendly court procedures are limited to children under 12 (closed circuit television testimony eligibility) and 10 (certain hearsay exceptions), and the “rape shield” law, which limits traumatizing cross-examination of testifying victims, only applies to sexual offense victims, not victims of CSEC or sex trafficking. Juveniles who incur a criminal record as a result of their trafficking may have their delinquency adjudications expunged 10 years after completion of the adjudication and any other juvenile record may be expunged anytime by the court. A court may order restitution to victims for actual economic loss and the cost of necessary medical or professional services. Additionally, any victim of a felony offense may bring a civil action within three years of reaching 21. The criminal statute of limitations is not eliminated for trafficking of persons; however, it is extended until the victim reaches 28 for many CSEC offenses, including transportation of minors for prohibited sexual conduct, employing or consenting to the use of a child in a sexual performance, computer child pornography and producing, directing, or promoting a sexual performance by a child.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Arkansas law does not mandate law enforcement training on domestic minor sex trafficking, but does require training on related topics such as child abuse victim interview techniques. The state law allows for single party consent to audiotaping, and if done “under the color of law,” intercepting telephone, wire, landline or wireless communications for criminal investigations is lawful. Trafficking of persons and CSEC statutes do not expressly permit the use of a decoy to investigate these crimes or prohibit a defense based on the use of a decoy, making investigations of non-computer based child sex trafficking difficult. However, law enforcement may utilize the Internet to investigate Internet stalking of a child and computer child pornography when the child is under 17. The law requires law enforcement to immediately report missing and recovered children to the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center which provides law enforcement officers with a tool to track high-risk runaways for prevention and intervention of sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

The trafficking of persons statute includes those who benefit financially from trafficking, and a facilitator could be subject to criminal gang and money laundering laws. Asset forfeiture may be used only in child pornography offenses. Though not mandatory, a court could order a facilitator to pay victim restitution. No laws address sex tourism. Facilitating trafficking of persons or transporting minors for prohibited sexual conduct are felonies punishable by 6–30 years imprisonment and a possible fine not to exceed \$15,000. Promoting prostitution of a minor is a felony punishable by up to 6 years imprisonment and a possible fine not to exceed \$10,000. Crimes of advertising, selling, transporting, exhibiting, and manufacturing child pornography are classified as Class C felonies for a first offense punishable by 3–10 years imprisonment and a fine up to \$10,000. A facilitator may also be charged with producing, directing, or promoting a sexual performance by a child, a Class B felony with 5–20 years imprisonment and a fine up to \$15,000.

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/reportcards.aspx.

