

# PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

## FLORIDA REPORT CARD

Florida's sex trafficking law requires the use of force, fraud or coercion to cause a minor to engage in commercial sex acts, unless trafficked by a parent, and traffickers convicted of sex trafficking are not required to register as sex offenders. Child victims have some protections but consistent identification and wrap-around services and shelter are critical deficiencies.

FINAL SCORE

71.5

FINAL GRADE

C



4.5

7.5

17

25

14.5

15

5.5

10

18

27.5

12

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Florida law separately addresses sex trafficking (1) of any age person with a requirement of force, fraud, or coercion used in the commission, and (2) of a minor under 18 by a parent, guardian or custodian without regard to the use of force, fraud, or coercion. Florida has several commercial sexual exploitation of children (CSEC) laws, including lewd or lascivious battery of a person under 16 for prostitution, kidnapping and false imprisonment of a child under age 13 for prostitution, use of a child in a sexual performance, and procuring a minor for prostitution. The CSEC offenses do not refer to the sex trafficking statutes for prosecution or victim protection.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law could be applied to buyers who “obtain” a child for commercial sex acts, following federal precedent, but only if the buyer has knowledge that force was used against the minor to cause the prostitution. The CSEC law on lewd or lascivious battery makes it a crime to engage a minor under 16 in prostitution, but the patronizing a prostitute statute does not distinguish between purchasing commercial sex acts with an adult versus a minor and would be used in cases of buying commercial sex acts with a minor 16 or older and when the buyer is not identified as a buyer of prostitution with a child. Buyers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. The sex trafficking and CSEC laws are silent on mistake of age leaving open the possibility of this defense being asserted by a prosecuted buyer. Buyers must pay restitution to victims who suffer injury and face asset forfeiture for felony convictions. Buyers of sex with minors are required to register as sex offenders if convicted of lewd and lascivious battery or child pornography offenses, but not for sex trafficking offenses.

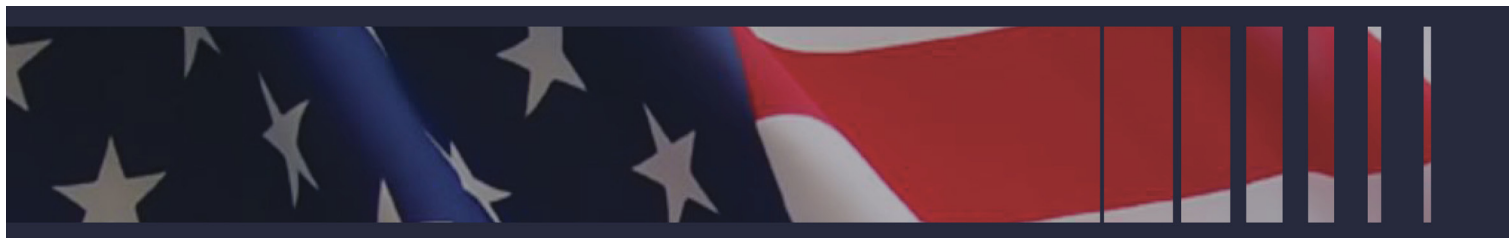
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking through force, fraud or coercion is punishable by up to 15 years imprisonment, or 30 years when the victim is under 14, the trafficking results in death, or a child is trafficked by a parent, guardian or custodian. Traffickers who obtain a minor for creating child pornography face up to 30 years imprisonment. CSEC crimes of lewd or lascivious battery, sexual performance by a child—which includes creating child pornography and is enhanced one higher degree if 10 or more images are found, at least one of which depicts certain types of abuse or very young minors—and procuring a minor for prostitution are punishable by up to 15 years imprisonment. Kidnapping a child under 13 for prostitution is punishable by life imprisonment and false imprisonment of a child under 13 for prostitution is punishable by up to 30 years imprisonment. All of these offenses carry a possible fine up to \$10,000. Traffickers may face racketeering and money laundering charges and asset forfeiture. Mandatory victim restitution will be ordered at sentencing. Traffickers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. Registration as a sexual predator is required for many CSEC crimes, but not sex trafficking. Sex trafficking is not enumerated as a violent crime for which a trafficker’s parental rights can be terminated, however parental rights may be terminated if a trafficker is incarcerated for an extended period or is convicted of an offense as a habitual offender or for which registration as a sexual predator is required.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Lewd or lascivious battery (minor under 16) (§ 800.04(4))	2nd degree felony	Max. 15 years	Max. \$10,000	●
Patronizing a prostitute (§ 796.07(2)(i))	2nd degree misdemeanor (1st offense); 1st degree misdemeanor (2nd offense); 3rd degree felony (3rd offense)	Max. 60 days (1st offense); 1 year (2nd offense); 5 years (3rd offense)	Max. \$500 (1st offense); \$1,000 (2nd offense); \$5,000 (3rd offense)	●
Possessing child pornography (§ 827.071(5))	3rd degree felony	Max. 5 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

Sex trafficking and CSEC victims are not fully protected under Florida’s laws. Sex trafficking and CSEC laws (other than lewd or lascivious battery) do not prohibit a defense based on consent of the minor. Prostitution offenses are not limited in application to adults, leaving prostituted minors vulnerable to arrest and detention for prostitution. No specific protective provisions are statutorily mandated for CSEC victims. Victims could be classified as a delinquent child, a child in need of services or an abused child leading to different response protocols and placements, including detention. The definition of harm, for purposes of defining abuse in the child welfare statutes, includes sexual exploitation by prostitution or sexual performance; however, the definition of custodian does not clearly apply to a trafficker, possibly preventing a child welfare response in cases of non-familial trafficking. Crime victims’ compensation is specifically mandated for victims of online sexual exploitation and child pornography identified through the National Center for Missing and Exploited Children’s Child Victim Identification Program. Other CSEC victims may be eligible for compensation bodily or psychological injury or death, although several criteria may limit their eligibility. These include a bar to recovery if the victim participated or assisted in a criminal act and a possible bar if the crime is not reported within 72 hours (unless good cause is shown) and a claim is not filed within one year of the victim turning 18. Victim-friendly trial procedures are available to sex trafficking victims, including an appointed guardian ad litem and the ability to testify via closed-circuit television at the discretion of the court for victims of trafficking under 16. The “rape shield” law is limited to victims of sexual battery, leaving CSEC victim-witnesses unprotected from the trauma of cross-examination. A minor who successfully completed a diversion program or was not adjudicated delinquent may petition to expunge the juvenile record. Restitution to victims who suffer injury is mandatory and victims may bring various civil claims for injuries arising from trafficking. A prosecution for kidnapping a child under 13 may be brought at any time, while a four year statute of limitations applies to prosecutions of false imprisonment of a child under 13 and sex trafficking where the child is under 14 or the child is trafficked by a parent, and a three year statute of limitations for all other felonies. For civil claims based on damages from being trafficked, a three year statute of limitations begins to run after the later of the conclusion of the criminal case, notice to the victim of pornographic images, or three years after the victim turns 18.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on human trafficking is mandated in Florida. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations for child pornography but not for sex trafficking or prostitution offenses. Use of a decoy to investigate prostitution of children is not expressly authorized. A defendant prosecuted under the law against computer pornography and travelling to meet a minor for lewdness including prostitution and solicitation of a child to participate in pornography may not raise a defense that the “minor” was in fact an undercover law enforcement officer and it is enough that that defendant believed the person to be a minor, making the Internet a valuable tool for these investigations. A statewide reporting and response system for missing children is in place in Florida and requires the reporting of missing and located children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state sex trafficking law only applies to facilitators who assist or enable trafficking in which force was used. No CSEC crimes are applicable to facilitators but penalties may be available under racketeering and money laundering laws. Several laws make selling and promoting child pornography a crime, including acts in connection with obscene, lewd materials, punishable by up to 5 years imprisonment and a possible fine up to \$5,000 when the materials involve minors; the same penalty applies to computer pornography and transmission of pornography by electronic device or equipment but increases to 15 years imprisonment with a possible fine of \$10,000 if the defendant possesses 10 or more images, at least one of which depicts certain types of abuse or very young minors. Facilitators must pay restitution to victims who suffer injury and face asset forfeiture for felony convictions. Facilitators who allow use of their premises for sex trafficking face the loss of their property if declared a nuisance under criminal gang laws. No laws in Florida 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/reportcards.aspx](http://www.sharedhope.org/reportcards.aspx).

