

PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

NEW YORK REPORT CARD

Laws designed to prosecute buyers of commercial sex with minors provide low penalties and only protect minors under 14. Similarly, the state sex trafficking law requires force, fraud, or coercion for all victims and does not include as crimes the actions of buyers, limiting the deterrence and impact of the law.

FINAL SCORE

61.5

FINAL GRADE

D



3.5

7.5

11.5

25

11

15

8.5

10

18.5

27.5

8.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

New York has a separate sex trafficking law, but it does not define a sex trafficking victim to include a minor under 18 used in commercial sex acts regardless of the use of force, fraud, or coercion. The state has several commercial sexual exploitation of children (CSEC) laws, including: promoting prostitution in the first, second and third degrees (covering minors under 19), 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 CSEC statutes do not refer to the human trafficking statute for prosecution or victim protections.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law does not make the purchase of commercial sex with minors a trafficking crime, leaving buyers subject only to patronizing prostitution law. Patronizing prostitution distinguishes between buying sex with an adult versus a minor under 14, with penalties varying based on whether the minor solicited was under 11 or under 14; however, defendants in a prosecution may assert an age mistake defense to these crimes. Buyers who use the Internet to purchase commercial sex acts from 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, although these are not defined to include commercial sex acts. 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.

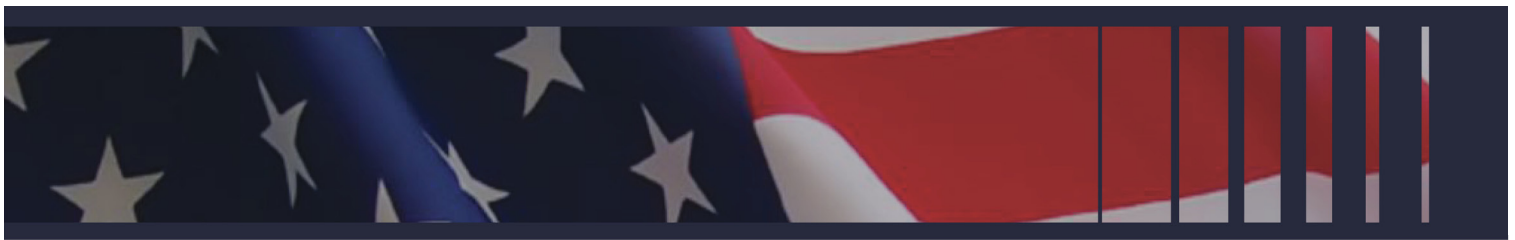
CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the sex trafficking and CSEC laws a trafficker could receive a sentence as high as federal trafficking offenses (10 years–life), and a trafficker could be in violation of New York's organized crime control act. Convictions for sex trafficking, compelling prostitution of one less than 16 by force, fraud or coercion, or promoting prostitution of a minor under 11 are felonies punishable by 1–25 years imprisonment. Promoting prostitution of a minor under 16 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 16–19 or producing a performance with sexual conduct of a minor under 17 are felonies punishable by up to seven 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 asset forfeiture for all proceeds from a felony for which they were convicted and forfeiture for all equipment used to create child pornography. 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 these are not defined to include commercial sex acts) 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 14; buyer over 18) (NY Penal § 230.05)	Class E felony	Max. 4 years	Max. \$5,000	○
Patronizing a prostitute (minor under 11) (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

New York’s “Safe Harbour” legislation increases protections for CSEC victims; nonetheless, 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 consent of the minor to the commercial sex acts, and even though a minor under 17 may not be considered an accomplice to sex trafficking or certain CSEC crimes, an offender may still be prosecuted and employ a consent defense. A sexually exploited child is defined by law to include a minor victimized through sex trafficking or prostitution-related offenses. Minors are not immune from prosecution for prostitution; however, upon an arrest for prostitution, there is a presumption that the minor is a victim of a severe form of trafficking, and if the minor consents, law enforcement may deliver the victim to a safe house. Then, upon a motion, a person in need of supervision petition stemming from the prostitution charges can be substituted for the delinquency petition. Specialized services include placement in safe houses with specially trained advocates. However, if the CSEC victim is unwilling to cooperate with specialized services, the delinquency proceedings will continue and the victim may be detained. A victim found to be abused—defined to include a victim of CSEC offenses or child pornography—might receive protection through child protective services, especially as the definition of “person legally responsible” includes any “person responsible for the child’s care at the relevant time,” which could make the term applicable to traffickers and allow child protective services intervention. Victims of sex trafficking are expressly identified as victims and child victims under 18 who suffer physical, mental, or emotional injury from a crime 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 and specifically allows evidence of a victim’s sexual conduct that “tends to prove” willing involvement based on the victim having been convicted of the crime of prostitution within three years prior to the alleged sex offense. A motion to seal juvenile criminal records may be filed at any time after the minor’s 16th birthday. Victim restitution for personal injury may be ordered and sex trafficking victims and crime victims may bring civil actions for damages. Statutes of limitations for criminal and civil actions are not extended for sex trafficking victims—prosecutions for felonies must begin within five years after the crime and civil actions must be initiated within seven or ten years, depending on the crime, and may be extended until the victim reaches 21.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on sex trafficking is not statutorily mandated, but the social services commissioner is authorized by law 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 a decoy or the use of the Internet by law enforcement to investigate cases of sex trafficking. New York maintains a Statewide Central Register for Missing Children and a Missing and Exploited Children Clearinghouse, and requires reporting of missing and recovered children.

CRIMINAL PROVISIONS FOR FACILITATORS

The sex trafficking statute includes actions of facilitators as crimes, and facilitators could be charged with other CSEC offenses and could be in violation of New York’s organized crime control act. Aiding or facilitating in an act or enterprise of prostitution of a minor under 19 is a felony with a varying degree of crime and punishment based on the age of the victim: if the victim is under 11, a conviction is punishable by 1–20 years imprisonment; 11–15 is punishable by 1–15 years imprisonment; 16–18 is up to seven years. 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 seven 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 conviction of a felony, facilitators may be required to forfeit all proceeds they gained in the commission of the felony and face forfeiture for 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/reportcards.aspx.

