

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

ALABAMA REPORT CARD 2012

Alabama's human trafficking law requires the use of coercion or deception to cause a minor to engage in commercial sex acts. Demand is largely unaddressed in the law, leaving buyers to exploit minors through prostitution without serious risk. Sex trafficking victims who wish to pursue justice are not protected by a "rape shield" law or courtroom protections and are not assured non-punitive response and treatment.

FINAL SCORE

69.5

FINAL GRADE

D



4.5
10

12
25

14.5
15

7
10

16.5
27.5

15
15



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Alabama's human trafficking statute makes trafficking for sexual servitude a crime, but requires proof of coercion or deception used to effect the trafficking. The trafficking statute provides an enhanced penalty when sexual servitude involves a minor under 18. The state commercial sexual exploitation of children (CSEC) laws include: promoting prostitution in the first degree and second degree, facilitating solicitation of unlawful sexual conduct with a child, facilitating the travel of a child for an unlawful sex act, and permitting or allowing a child to engage in production of obscene matter. Neither the CSEC laws nor the prostitution law refer to the sex trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. Alabama has not enacted a racketeering or gang crimes law that includes human trafficking and CSEC crimes as predicate acts for prosecution of sex trafficking enterprises.



CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking statute tracks the federal definition and could, following federal precedent, be applied to buyers through the word "obtain," but only if the buyer uses coercion or deception to engage the minor in a commercial sex act. CSEC laws do not include the crime of buying sex with a minor and the patronizing a prostitute statute does not distinguish between purchasing sex acts with minors versus adults. Computer-based communications and facilitating solicitation of unlawful sexual conduct could lead to heightened penalties for some buyers using the Internet to commit illegal sex acts, which could include those committed through prostitution. The sex trafficking law specifically prohibits a defense based on mistake of age. If convicted under the sex trafficking law, a buyer faces mandatory restitution to the victim and criminal asset forfeiture, or mandatory restitution if convicted of any other criminal offense resulting in pecuniary loss to the victim. Buyers also face criminal asset forfeiture for possession of obscene material. Buyers of sex acts with minors are required to register as sex offenders if convicted of sex trafficking or possession of child pornography, but not for patronizing a prostitute even when a minor is involved.



CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking of a minor and promoting prostitution of a minor are felonies punishable by imprisonment up to 20 years—life, comparable to federal penalties. Traffickers who use the Internet to recruit minors could be prosecuted under facilitating solicitation of unlawful sexual conduct with a child under 16 that might occur as a result of sex trafficking. Permitting or allowing a child to engage in obscene matter and production of such matter are felonies punishable by up to life imprisonment and a possible fine up to \$60,000 or double the loss or gain resulting from the offense. A convicted sex trafficker faces mandatory restitution and criminal asset forfeiture. Traffickers must register as sex offenders if convicted of sex trafficking a minor, promoting prostitution of a minor, facilitating travel of a minor for an unlawful sex act, or allowing a child to engage in production of obscene matter. Convictions for sex trafficking or CSEC offenses are not express grounds for termination of parental rights, leaving children of traffickers at continuing risk.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Classification | Sentence | Fine (possible) | Asset Forfeiture (available) |
|---|---------------------|---------------------------|---|------------------------------|
| Facilitating solicitation of unlawful sexual conduct with a child under 16 (§13A-6-121) | Class C felony | 1 year and 1 day–10 years | Max. \$15,000 (or double gain or loss from crime) | ○ |
| Soliciting prostitution (§13A-12-121(b)) | Class A misdemeanor | Max. 1 year | Max. \$6,000 | ○ |
| Possession of child pornography (§ 13A-12-192(b)) | Class C felony | 1 year and 1 day–10 years | Max. \$15,000 (or double gain or loss from crime) | ● |

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Child victims of sex trafficking and CSEC are vulnerable due to gaps in the law. The sex trafficking law expressly prohibits a defense based on consent, but Alabama’s CSEC and sex offense laws do not, leaving minors’ claims against buyers particularly burdensome to prove. Prostitution offenses are not limited in application to adults, but the sex trafficking statute provides an affirmative defense to a child victim of trafficking charged with an offense committed during the course of victimization. No protective provisions are mandated specifically for sex trafficking or CSEC victims and a victim may be determined delinquent or in need of services—in either case alternatives to secure custody will be considered but not required. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation of a child, which is defined to include allowing the child to engage in prostitution; however, the definition of “caregiver” is not broad enough to include a trafficker and therefore prevents child welfare intervention. CSEC victims who suffer serious personal injury are eligible for state crime victims’ compensation but face barriers to recovery if the victim is considered an accomplice to a criminal act, fails to report the crime to law enforcement within 72 hours, or fails to file a claim within one year unless good cause is shown. Victim-friendly trial procedures are limited to children under 16 in criminal prosecutions for sexual offenses or sexual exploitation and include closed-circuit television testimony. Testifying victims in CSEC or sex trafficking cases do not get the protection of the “rape shield” law which would reduce the trauma of cross-examination. If a minor has not been subsequently convicted or adjudicated delinquent following final discharge from custody, Alabama law allows juvenile records to be sealed after two years and destroyed after five. Criminal restitution is mandatory in sex trafficking convictions and civil actions against trafficking offenders and facilitators are expressly allowed for victims. No statute of limitations applies to prosecutions of any sex offense involving a victim under 16 years of age, and the statute of limitations on civil actions for damages from trafficking is five years after the victim is free from the sex trafficking situation but does not begin to run until the minor reaches 18.



CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Alabama law does not mandate law enforcement training on domestic minor sex trafficking or human trafficking. Single party consent to audiotaping and body wires are permitted, but the law does not authorize wiretapping for CSEC or human trafficking investigations, leaving law enforcement without this valuable tool and resulting evidence for better prosecutions. Use of a decoy to investigate offenses involving solicitation of children by electronic means appears to be permitted, and use of the Internet to investigate electronic solicitation of a child is permissible. Alabama has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.



CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators who benefit financially from sex trafficking face 2–20 years imprisonment and a possible fine up to \$30,000 or double the loss or gain resulting from the offense. Convicted facilitators are subject to criminal asset forfeiture and mandatory restitution to the victim. Profiting from the prostitution of a person under 18 or 16 years of age is punishable by up to 10 or 20 years imprisonment respectively and a possible fine up to \$15,000 or \$30,000, or double the loss or gain resulting from the offense. Production of obscene material, which includes filming, printing, or photographing a person under 17, and the crime of disseminating, displaying or possessing with intent to disseminate child pornography are punishable by 2–20 years or up to life imprisonment and a possible fine up to \$30,000 or \$60,000, or double the loss or gain resulting from the offense. Facilitating the travel of a child for an unlawful sex act is a crime but no laws in Alabama specifically make sex tourism a crime.

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.

