

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## ARIZONA REPORT CARD 2012

Arizona law gives law enforcement critical investigative tools to pursue demand but buyers of commercial sex acts are provided opportunities to claim mistake of age, shifting the burden to prosecutors to obtain meaningful penalties. Minors are not statutorily immune from prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

FINAL SCORE

74

FINAL GRADE

C



7  
10

19  
25

13.5  
15

7  
10

15  
27.5

12.5  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Arizona's sex trafficking law clearly defines a minor under the age of 18 used in a commercial sex act as a human trafficking victim without regard to use of force, fraud, or coercion. The state has several commercial sexual exploitation of children (CSEC) statutes, including child prostitution, taking child for purpose of prostitution, and commercial sexual exploitation of a minor. The CSEC laws and prostitution offenses do not refer to sex trafficking for victim identification. The state racketeering law does not include sex trafficking or CSEC offenses as predicate crimes making it unavailable to reach trafficking networks.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

Arizona's sex trafficking law might, following federal precedent, be applied to buyers who "obtain" a minor for commercial sex acts. CSEC laws include the crime of buying sex with a minor under child prostitution. Enhanced sentencing when the victim is under 15 provides sufficient penalties for younger minors, but when the minor is 15 or older and the prosecution does not prove the buyer had knowledge of the age, the court may order probation and 180 days imprisonment in county jail for a first offense which may be further reduced to 90 days for certain offenders. No age mistake defense is available under child prostitution and there is strict liability when the minor is under 15, but the state must prove the defendant had knowledge of the age of a 15, 16 or 17 year old minor to obtain the sufficient penalty of a Class 2 felony as opposed to the Class 6 felony without proof of knowledge. Aggravated luring a child into sexual conduct and unlawful age misrepresentation, though not expressly commercial, may provide a means of prosecuting buyers who use the Internet to solicit sexual conduct with minors, which may include purchasing commercial sex acts with a minor. Buyers convicted of sex trafficking face mandatory restitution, while those convicted of other crimes may be required to make restitution if they cause economic loss to the victim. Additionally, any computer used by a buyer in the purchase of child pornography will be subject to mandatory criminal asset forfeiture. Buyers of sex with minors must register as sex offenders if convicted of sex trafficking or child prostitution.

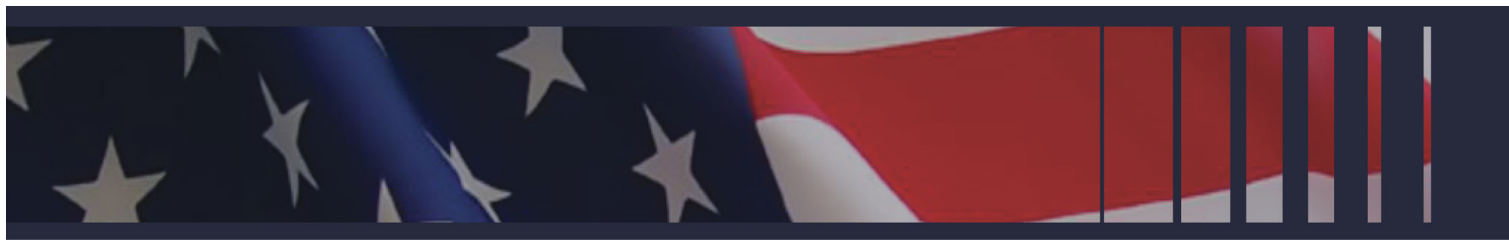
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking and CSEC offenses are Class 2 felonies punishable by 3–12½ years imprisonment, while taking a child for purpose of prostitution is a Class 4 felony punishable by 1–3¾ years imprisonment (child 15–17) or as a Class 2 felony by 13–27 years imprisonment (child under 15). Any equipment used by a trafficker in the commission of CSEC is subject to mandatory criminal asset forfeiture. The offense of child prostitution also applies to traffickers and is punishable by 13–27 years imprisonment (child under 15), 7–21 years (child known to be 15–17), or 4 months–2 years (child 15–17). Traffickers convicted of any felony face a possible fine up to \$150,000. Additionally, aggravated luring a child into sexual conduct and unlawful age misrepresentation, though not expressly commercial, may provide a means of prosecuting traffickers who use the Internet for sexual conduct with minors, which could include selling commercial sex acts with a minor. Traffickers convicted of sex trafficking face mandatory restitution. If convicted of sex trafficking or CSEC offenses, a trafficker must register as a sex offender. Grounds for termination of parental rights require that a trafficker's child suffer abuse, defined to include child prostitution and CSEC crimes, but a trafficker's conviction for sex trafficking or a CSEC offense does not constitute grounds for terminating parental rights, leaving children of traffickers at risk.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Child prostitution—minor under 15 (§ 13-3212(E))	Class 2 felony	13–27 years	\$150,000	○
Child prostitution—defendant knew minor 15–17 (§ 13-3212(F))	Class 2 felony	7–21 years	\$150,000	○
Child prostitution—minor 15–17 (§ 13-3212(G))	Class 6 felony	.33–2 years	\$150,000	○
Sexual exploitation of a minor—possessing child pornography of victim 15 or older (§ 13-3553)	Class 2 felony	3–12.5 years	\$150,000	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of sex trafficking and CSEC are not fully protected. Sex trafficking and CSEC laws do not prohibit a defense based on consent of the minor, leaving this an issue in a victim’s pursuit of justice. Prostitution offenses are not limited in application to adults, do not identify a juvenile involved in prostitution as a victim of trafficking in persons, and provide no affirmative defenses to a minor charged with the offense. As a result, a CSEC victim may enter the juvenile justice system as a delinquent child and could face detention. A child victim of prostitution or pornography is considered by law an abused child and, if identified properly, could receive child protective services protection through temporary custody, dependency and removal proceedings; however, the definition of custodian does not clearly apply to a trafficker, thereby possibly limiting the availability of a child welfare response to familial trafficking. Crime victims’ compensation is available for victims of CSEC offenses; however, participating in the conduct giving rise to the injury, failing to report the crime within 72 hours and to file a claim within two years (absent a finding of good cause), or failing to cooperate with law enforcement could prevent CSEC victims from receiving compensation. Child victim-witnesses have limited protections in the trial process. Minors under 15 may be permitted to testify via closed-circuit television and the “rape shield” law is limited to victims of sexual offenses, leaving testifying victims of sex trafficking or CSEC unprotected from the trauma of cross-examination at trials of their traffickers. Juvenile records may be destroyed upon application of the person after the person turns 18, provided that the child has not committed additional offenses and all conditions of the disposition have been satisfied. Restitution is mandatory for victims of sex trafficking and may be awarded to victims of other crimes for economic loss. Prosecution for commercial sexual exploitation of children can be initiated at any time, but CSEC and sex trafficking prosecutions must be brought within seven years. Civil suits may be brought by a victim against an offender within the earlier of three years of discovering the violation or 10 years of the offense (tolled until 18 years old).

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on human trafficking or domestic minor sex trafficking is not statutorily mandated. Single party consent for audiotaping is permitted and wiretapping is allowed pursuant to a court order upon a showing of probable cause of the commission of a crime and in certain emergency situations. The statute on child prostitution expressly permits a decoy to be used in investigations by prohibiting a defense to prosecution “that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor” when the defendant knowingly attempted to engage in prostitution with a minor under 15 years of age or with a minor known to be 15, 16, or 17 years of age. Luring a minor also expressly permits a decoy to be used in investigations by prohibiting this defense and aggravated luring a minor for sexual exploitation prohibits a defense based on the “minor” contacted through electronic communications, such as the Internet, actually being a law enforcement officer. Arizona 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 or receive anything of value from participating in the crime of sex trafficking are subject to prosecution under a separate trafficking in persons statute. Facilitating sex trafficking and commercial sexual exploitation of a minor through transportation are Class 2 felonies punishable by 3–12½ years imprisonment. Child prostitution offenses may apply to facilitator actions, punishable by 13–27 years imprisonment (child under 15), 7–21 years (child known to be 15–17), or 4 months–2 years (child 15–17). Promoting and selling child pornography also is punishable as a Class 2 felony. Facilitators convicted of any felony may face a possible fine up to \$150,000. Facilitators convicted of sex trafficking face mandatory restitution, while those convicted of other crimes may be required to make restitution if they cause economic loss to the victim, and any equipment used by a facilitator in the commission of commercial sexual exploitation of a minor will be subject to mandatory criminal asset forfeiture. No laws in Arizona 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](http://www.sharedhope.org).

