

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

CALIFORNIA REPORT CARD 2012

California law provides very limited options for prosecuting demand and victims of child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are provided with little protection under the law as victims.

FINAL SCORE

43.5

FINAL GRADE

F



$\frac{7}{10}$

$\frac{3}{25}$

$\frac{8}{15}$

$\frac{2}{10}$

$\frac{16}{27.5}$

$\frac{7.5}{15}$

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

California's human trafficking law criminalizes sex trafficking, imposing enhanced penalties where the victim is a minor, but requires force, fraud, or coercion even when a minor is used in a commercial sex act. California CSEC laws include: procurement of a minor, pimping and pandering (when a minor is involved), abduction of minor for prostitution, and employment of minor in pornography. The CSEC and prostitution laws do not refer to human trafficking for prosecution or victim protections. Predicate acts under the criminal profiteering statute include human trafficking and CSEC offenses.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking law cannot be used to prosecute demand and no CSEC law includes the crime of buying sex with a minor. A buyer could be prosecuted under the general solicitation law (disorderly conduct) or acquiring a prostitute law, but the result is misidentification of the buyer as a "john" and the lack of enhanced penalties for the serious crime of child commercial sexual exploitation. While the state has no statute or heightened penalties for using the Internet to purchase commercial sex acts from a minor, the statute on contact or communication with a minor with intent to commit an illegal sex act statute might apply to buyers who use the Internet for this purpose. Buyers convicted of any crime may be required to pay restitution to a victim. Child pornography may be seized and destroyed, but buyers are not subject to other asset forfeiture. Buyers of sex with minors must register as sex offenders if convicted of contact or communication with minor with intent to commit a crime if sexually motivated; however, buyers convicted of disorderly conduct or acquiring a prostitute, even when it involves a minor, will not be required to register.

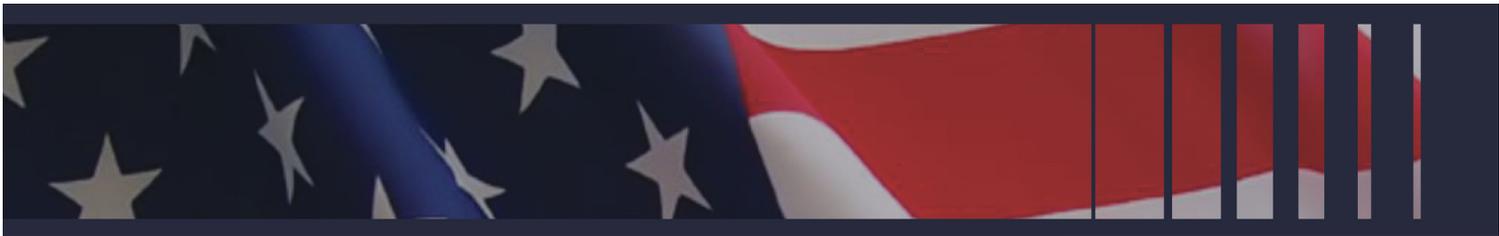
CRIMINAL PROVISIONS FOR TRAFFICKERS

Human trafficking of a minor is punishable by four, six, or eight years imprisonment and a fine up to \$100,000, while CSEC crimes of pimping of a minor and pandering of a minor each are punishable by possible fines up to \$10,000 and imprisonment for three, six, or eight years (minor is under 16) or three, four, or six years (minor 16–18), and an additional fine up to \$5,000. Procurement of a minor, employment of a minor in child pornography, and abduction of a minor for prostitution are punishable by up to one year imprisonment and/or a fine up to \$2,000; however, abduction of a minor for prostitution is also punishable by a possible additional fine up to \$20,000. Preparing images of child pornography and distribution of child pornography are punishable by up to one year imprisonment and/or a fine up to \$2,000 and \$1,000, respectively, or, for distribution, imprisonment and/or a fine up to \$10,000. Contact or communication with a minor with intent to commit a crime, while not expressly commercial, might apply to traffickers who use the Internet to sell commercial sex acts with a minor. Traffickers convicted of human trafficking face mandatory restitution, while those convicted of other crimes may be ordered to make restitution; however, only traffickers who engage in criminal profiteering with predicate offenses of employment of a minor in pornography, pimping or pandering of a minor, and human trafficking are subject to asset forfeiture. Traffickers convicted of most CSEC offenses must register as sex offenders, but not if convicted of human trafficking or pimping of a minor. Convictions for human trafficking or CSEC offenses do not establish grounds for termination of parental rights, leaving children of traffickers at potential continuing risk.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Disorderly Conduct (§ 647(b))	Misdemeanor	Max. 6 months	Max. \$1,000	○
Acquiring prostitute (§ 266e)	Felony	16 months, 2 years, or 3 years	Max. \$10,000	○
Possession of child pornography (§ 311.11(a))	Felony	Max. 1 year	Max. \$2,000	●

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 or CSEC are not protected under the state laws. Human trafficking and most CSEC laws do not prohibit a defense based on consent of the minor, leaving this a potential defense for offenders. Prostitution offenses are not limited in application to adults, do not identify a juvenile involved in prostitution as a victim of human trafficking, and provide no affirmative defenses to a minor charged with the offense. As a result, CSEC victims could be classified as wards, leading to different response protocols and placements, including detention. A victim found to be abused (defined to include commercial sexual exploitation through prostitution and child pornography) might receive protection through child protective services; however, an intervention by child protective services may be limited by California’s failure to define caregiver or other similar term to include those without legal custody of a minor. Victims of trafficking may also access services through family justice centers. Crime victims’ compensation is available for victims of CSEC offenses and California law prohibits human trafficking victims’ claims from being denied solely because the victim did not report the crime; however, participating in a crime or failing to cooperate with law enforcement could prevent CSEC victims from receiving compensation. Victim-friendly trial procedures are available to human trafficking victims, including confidentiality for communications between a victim and caseworker and for the location of trafficking shelters. However, only victims of sexual offenses under age 13 may testify via closed-circuit television or receive protection under California’s “rape shield” law, leaving CSEC victim-witnesses unprotected from the trauma of cross-examination at trials of their traffickers, but victims of human trafficking and most CSEC offenses may have up to two support persons present during their testimony. Juvenile records may be sealed five years after the jurisdiction of the court terminates or any time after the person turns 18, provided the juvenile “has not been convicted of a felony or misdemeanor involving moral turpitude” and has been satisfactorily rehabilitated. Restitution and a civil remedy are available to victims of human trafficking. Prosecutions for human trafficking and most CSEC crimes must be brought within three years of the crimes; however, prosecutions under employment of a minor in child pornography may be brought within 10 years. A civil action by a human trafficking victim must commence within five years of when the victim turns 18 or was freed from the trafficking situation.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

California provides law enforcement officers opportunities to receive training on human trafficking; however, it is not mandatory. California does not allow single party consent to audiotaping or wiretapping in investigations related to human trafficking or CSEC crimes, denying law enforcement these important tools for investigation and evidence gathering. No law expressly authorizes the use of a decoy to investigate prostitution of children or the Internet in the investigation of child sex trafficking cases, but law enforcement may use the Internet to investigate human trafficking or CSEC crimes relying on the sending harmful matter to children via the Internet and lewd or lascivious acts involving children statutes. California has established a statewide reporting and response system and law enforcement must report missing and located children.

CRIMINAL PROVISIONS FOR FACILITATORS

Procurement of a minor applies to facilitators and is punishable by up to one year imprisonment and/or a fine up to \$2,000. Facilitators also may be convicted under pimping of a minor, punishable by a possible fine up to \$10,000 and three, six, or eight years imprisonment (minor under 16) or three, four, or six years imprisonment (minor 16–18). A conviction for any crime may result in a victim restitution order. Facilitators who engage in criminal profiteering activity with predicate offenses of employment of a minor in pornography and pimping where a minor is involved will be subject to asset forfeiture. Advertising child pornography is punishable by two, three, or four years imprisonment, or by one year imprisonment and/or a fine up to \$50,000, while promoting employing a minor in child pornography is punishable by up to one year imprisonment and/or a fine up to \$2,000, and selling child pornography is punishable by up to one year imprisonment and/or a fine not to exceed \$1,000, or imprisonment and/or a fine up to \$10,000. No laws in California 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.

