

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

DISTRICT OF COLUMBIA REPORT CARD 2012

Sex trafficking of a minor under 18 without regard to force, fraud, or coercion is a crime. Nonetheless, juveniles are subject to arrest for prostitution in the District of Columbia in conflict with their status as sex trafficking victims. Critical investigative tools to combat the growing use of the Internet to commit sex trafficking are not provided by law.

FINAL SCORE

57.5

FINAL GRADE

F



5

10

16

25

8.5

15

6.5

10

16.5

27.5

5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

D.C. has a separate law for the sex trafficking of children clearly defining a minor under the age of 18 used in a commercial sex act as a sex trafficking victim without regard to use of force, fraud, or coercion. Commercial sexual exploitation of children (CSEC) laws include: abducting or enticing child from his or her home and harboring for purposes of prostitution, pandering, inducing or compelling an individual to engage in prostitution, procuring, receiving money or other valuable thing for arranging assignation, and using a minor in a sexual performance. The CSEC laws do not refer to the sex trafficking of children statute for victim identification.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The child sex trafficking law tracks the federal definition and could, following federal precedent, be applied to attempted buyers through the word “obtain.” Further support for this interpretation is found in legislation mandating the collection of human trafficking-related data, which includes data on those who purchase commercial sex acts. No CSEC law specifically makes it a crime to buy sex with minors, but a buyer arguably could be prosecuted for pandering or contributing to the delinquency of a minor. A buyer is likely to be charged with soliciting prostitution, even though solicitation laws do not differentiate buying sex with an adult from buying sex with a minor. Though the Internet is increasingly used by buyers, no statute expressly makes using the Internet to purchase sex acts with minors a crime; however, two statutes—enticing a child or minor and arranging for sexual contact with a real or fictitious child—although not specific to the Internet, might apply. Offenses applicable to buyers are silent on age mistake, leaving this defense potentially available to defendants. D.C. does not require sex offender registration by those convicted of sex trafficking of minors, but does require registration for soliciting prostitution with a minor. Though not mandatory, a court could order a buyer of commercial sex with minors to pay restitution.

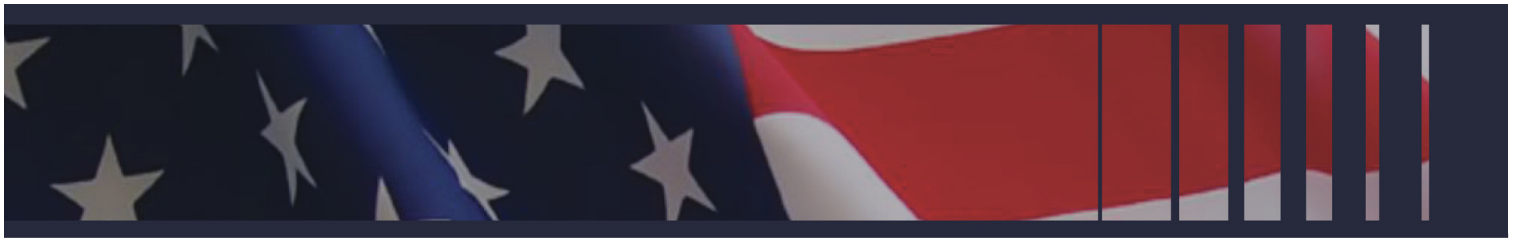
CRIMINAL PROVISIONS FOR TRAFFICKERS

Penalties for child sex trafficking are comparable to federal trafficking penalties, punishable by a maximum of 20 years imprisonment and/or a fine up to \$200,000. CSEC crimes of pandering and procuring and abducting/enticing a child for prostitution are punishable by a maximum of 20 years imprisonment and/or a fine up to \$20,000. Though the Internet is increasingly used by traffickers, no statute expressly makes using the Internet to sell commercial sex acts with a minor a crime; however, two statutes—enticing a child or minor and arranging for sexual contact with a real or fictitious child—although not specific to the Internet, might apply. Traffickers face mandatory criminal asset forfeiture for human trafficking or discretionary civil asset forfeiture for prostitution and pandering offenses, and restitution may be ordered at the discretion of the court. Sex offender registration is required for many crimes of which a trafficker could be convicted, but not sex trafficking of children. Sex trafficking of children and CSEC crimes are not enumerated as violent crimes for which a trafficker’s parental rights can be terminated, though parental rights may be terminated if it is in the best interest of the child or if the trafficker is convicted of other enumerated violent crimes. A first offense for knowingly creating and promoting child pornography is punishable by up to 10 years imprisonment and/or a fine not to exceed \$5,000.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Sentence | Fine (and/or) | Asset Forfeiture (Available penalty) |
|---|---|---|---|
| Soliciting for prostitution (§ 22-2701) | 1st conviction = Max. 90 days; 2nd = Max. 180 days; 3rd or more Max. = 2 years | 1st conviction = Max. \$500, 2nd Max = \$1,000, 3rd Max. = \$4,000 | ● |
| Pandering (§ 22-2705) | Max. 20 years | Max. \$20,000 | ● |
| Possessing child pornography (§ 22-3102(b)) | Max. 10 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

Domestic minor sex trafficking victims are vulnerable due to gaps in the laws. Trafficking and CSEC victims are expressly classified as victims for the limited purpose of data collection on human trafficking related crimes. Sex trafficking of a minor and CSEC crimes do not prohibit a defense based on consent of the minor to the commercial sex act, leaving open the potential of shifting the burden to prove lack of consent on the minor. Prostitution offenses are not limited in application to adults, do not identify a minor engaged in prostitution as a victim of sex trafficking, and provide no affirmative defenses to a minor charged with the offense. No specific protective provisions are statutorily mandated for CSEC victims. Victims could be classified as a “delinquent child,” a “child in need of supervision,” or a “neglected child” leading to different response protocols and placements, including detention. For purposes of child welfare intervention, the definition of abuse includes sexual abuse or exploitation of a child, which includes allowing the child to engage in prostitution or a sexual performance; however, the definition of custodian does not clearly apply to a trafficker, potentially preventing a child welfare response in non-familial trafficking cases. Victims of most CSEC offenses are eligible for crime victims’ compensation, but some eligibility criteria could hamper their ability to recover, including the requirement to report the crime to law enforcement within seven days and file a claim within one year, unless good cause is shown. Victim-friendly criminal justice procedures are available in CSEC cases, including the “rape shield” law which limits traumatizing cross-examination of testifying victims in sex trafficking cases. D.C. law allows juvenile records to be sealed two years after final discharge from custody if the minor has not been subsequently convicted or found in need of supervision. Civil remedies against trafficking offenders and facilitators are expressly allowed for victims. A court may order a convicted offender to pay criminal restitution to a CSEC victim. Criminal actions for sex trafficking of children can be brought until 10 years after a minor reaches 21, and the statute of limitations on civil actions for damages from trafficking does not begin to run until the victim is free from the sex trafficking situation. Civil actions for other offenses do not begin to run until the plaintiff knows or should know of an act constituting a violation or until a minor reaches 18, whichever is later.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking or domestic minor sex trafficking is not mandated by law, but training on related issues such as domestic violence is mandated and could include components of trafficking. D.C. law allows single party consent for audiotaping, but wiretapping is not available as an investigative tool in sex trafficking cases. Use of a decoy to investigate the crime of arranging to engage in sexual conduct with a real or fictitious child is permitted, but no statute specifically authorizes law enforcement to utilize the Internet for CSEC or trafficking investigations. D.C. has not statutorily mandated the reporting of missing children or rescued children.

CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators are subject to prosecution under a separate statute for benefitting financially from human trafficking, punishable by a maximum of 20 years imprisonment and/or a fine up to \$200,000. Though not mandatory, a court may order a facilitator to pay restitution, and facilitators are subject to mandatory criminal asset forfeiture for human trafficking offenses. Knowingly promoting child pornography, defined as manufacturing, issuing, selling, distributing, circulating, or disseminating pornographic material, is punishable by up to 10 years imprisonment and/or a fine up to \$5,000, increased to up to 20 years imprisonment and/or a fine up to \$15,000 for subsequent offenses. No laws in D.C. 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.

