

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

KANSAS REPORT CARD 2012

Unless identified and prosecuted as child sex trafficking specifically, demand for commercial sex with minors is not a crime in Kansas. Gaps in the laws prevent child victims of prostitution from fully accessing justice and recovering damages to fund their recovery.

FINAL SCORE

51.5

FINAL GRADE

F



5

10

9

25

11

15

5.5

10

13.5

27.5

7.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

The human trafficking law in Kansas includes sex trafficking and defines a minor under the age of 18 as a trafficking victim without regard to use of force, fraud or coercion. The state also has two commercial sexual exploitation of children (CSEC) laws to reach traffickers, promoting prostitution and sexual exploitation of a child for pornography. Neither the CSEC laws nor the prostitution statute refer to the sex trafficking law to identify commercially sexually exploited minors as victims of trafficking. Kansas has not enacted a racketeering law and its gang crime law only includes controlled substance offenses as predicate criminal activity.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law tracks the federal definition of trafficking and could be applied to buyers who “obtain” a victim for commercial sex acts, following federal precedent. Penalties for sex trafficking a minor when the victim is 14 or older include imprisonment between 147–165 months and a possible fine up to \$300,000, enhanced to 25 years–life and a possible fine up to \$500,000 if the victim is under 14. With no CSEC law to prosecute the purchase of sex acts with a minor, the general patronizing a prostitute statute may be used to prosecute buyers, even though it does not distinguish between purchasing commercial sex acts with adults versus minors. Electronic solicitation, which includes using the Internet to solicit a minor under 16 to engage in an unlawful sexual act (although not defined to include commercial sex acts), might be used to prosecute buyers. No laws prohibit a buyer from asserting a defense to prosecution based on age mistake, making prosecution of buyers more difficult. Courts must hold a hearing to establish restitution when requested by victims of any crime. Buyers face mandatory civil asset forfeiture for human trafficking or patronizing a prostitute. A person convicted of patronizing a prostitute who is under 18 or possessing child pornography is required to register as a sex offender, and a person convicted of sex trafficking a minor or electronic solicitation of a minor must register as a violent sexual offender.

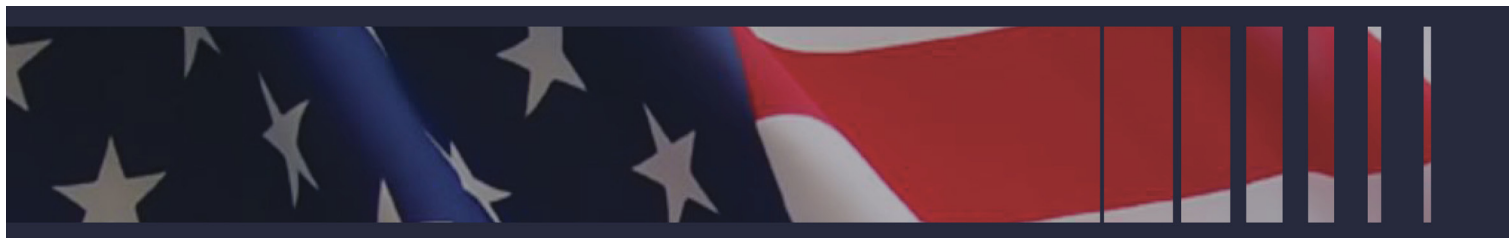
CRIMINAL PROVISIONS FOR TRAFFICKERS

Convicted sex traffickers of a minor 14–18 years of age are subject to presumptive imprisonment of 147–165 months and a possible fine up to \$300,000. A conviction for promoting prostitution of a 14 or 15 year old is a felony punishable by imprisonment of 17–19 months and a possible fine up to \$100,000. When the minor is 16 or 17, the penalty for promoting prostitution drops to a misdemeanor with up to one year imprisonment and up to a \$2,500 fine. Creating child pornography is a felony punishable by 31–34 months imprisonment and a possible fine not to exceed \$300,000. For all of these crimes, when the victim is under 14 and the offender over 18, traffickers face a mandatory sentence of 25 years–life and a possible fine up to \$500,000. Traffickers are subject to mandatory civil asset forfeiture for sex trafficking and promoting prostitution and restitution is required. Traffickers are required to register as sex offenders for convictions of promoting prostitution of a minor and creating child pornography, and must register as sexually violent offenders for convictions of sex trafficking, sexual exploitation and electronic solicitation of minors. Grounds for termination of parental rights exist if a parent is “convicted of a felony in which intercourse occurred,” and any conviction of a felony and imprisonment may be considered in determining parental fitness.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Patronizing a prostitute (any age) (§ 21-6421(a))	Class C misdemeanor	Max. 1 month	Max. \$500	●
Possessing child pornography (§ 21-5510)	Severity level 5, person felony	Presumptive 31–34 months	Max. \$300,000	○

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. A defendant may not assert consent of the minor as a defense in sex trafficking or CSEC prosecutions, but if misidentified as prostitution, a minor may be prosecuted for prostitution rather than identified as a sex trafficking victim. Protective provisions are not statutorily mandated for victims of child sex trafficking. These minors may be considered a child in need of care or they may enter the juvenile justice system as a juvenile offender of prostitution-related offenses. A victim found to be abused—defined to include pornography and prostitution—might receive protection through child protective services if the definition of a permanent custodian is also determined to include traffickers. Sex trafficking and CSEC victims are likely eligible for state crime victims’ compensation. However, eligibility criteria may threaten a victim’s ability to recover, including a requirement to report the crime to law enforcement within 72 hours (unless good cause is shown) and a bar to recovery for contributory misconduct or victim involvement in the unlawful activity. For certain listed crimes that include sexual exploitation of a child through pornography, a claim must be filed within two years of reporting the incident to law enforcement if the victim was under 16. If the victim is over 16 or is a victim of a non-listed offense, such as sex trafficking, a claim must be filed within 2 years of occurrence of the crime. The “rape shield” law, which reduces the trauma of cross-examination for testifying victims of sex offenses, is specifically available in cases of sex trafficking and sexual exploitation through child pornography, and some victims under 13 may testify via closed-circuit television. Juvenile records may be expunged when the juvenile is 23 or two years have passed since the juvenile was discharged and the juvenile has not been convicted of another crime. A victim of any crime may request a hearing to set restitution, and victims of sexual exploitation through pornography have a civil action for damages against an offender. Generally felony prosecutions must be commenced within five years unless certain factors are present, such as the victim being under 15 or the victim was prevented by a parent or legal authority from reporting the crime. Victims of human trafficking may bring a civil action by age 21 or within three years of discovering an injury was caused by human trafficking.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Kansas law does not mandate law enforcement training on domestic minor sex trafficking or human trafficking. The law allows single party consent to audiotaping, but does not allow wiretapping for CSEC offenses. No law expressly authorizes the use of a decoy in the investigation of child sex trafficking cases, but law enforcement may utilize the Internet to investigate domestic minor sex trafficking, relying on the crime of electronic solicitation if the underlying offense is considered an unlawful sex act. Law enforcement must report both missing and recovered children to the state database and National Crime Information Center, improving the ability to identify repeat runaways who are at high-risk for sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

The crime of benefitting financially from human trafficking is a felony punishable by presumptive imprisonment of 109–123 months and a possible fine up to \$300,000. A facilitator may also commit promoting prostitution of a minor by allowing owned property to be used for prostitution or transporting a minor to assist in promotion; if the victim is 14 or 15 this felony is punishable by imprisonment of 17–19 months and a possible fine up to \$100,000, but when 16 or 17 years old, a first conviction is a misdemeanor with up to one year imprisonment and a fine up to \$2,500. Promoting child pornography is a felony punishable by 31–34 months imprisonment and a possible fine up to \$300,000. For all of these crimes, when the victim is under 14 and the offender is over 18, a mandatory 25 years–life imprisonment and fine up to \$500,000 are possible. Also, civil asset forfeiture laws apply to sex trafficking and promoting prostitution offenses and restitution may be ordered. No laws 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.

