

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

KENTUCKY REPORT CARD 2012

Kentucky's human trafficking law includes trafficking minors under 18 for commercial sexual activity without regard to use of force, fraud or coercion and provides serious penalties. While some statutorily authorized protective provisions exist for domestic minor sex trafficking victims, the protective framework has gaps.

FINAL SCORE

68

FINAL GRADE

D



9.5

10

12

25

14.5

15

5.5

10

16.5

27.5

10

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Kentucky's human trafficking law includes trafficking minors under 18 for commercial sexual activity without regard to use of force, fraud or coercion. Additionally, the state commercial sexual exploitation of children (CSEC) laws include: use of a minor in a sexual performance, promoting a sexual performance by a minor, and unlawful transaction with a minor in the third degree, including transactions for purposes of prostitution. The CSEC laws and the prostitution laws do not refer to the human trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. Kentucky's organized crime law includes human trafficking as a predicate offense, allowing this law to be used for prosecuting trafficking enterprises.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Kentucky law presents limited options to prosecute demand. The state human trafficking law includes intentionally subjecting a minor to commercial sexual activity, and potentially has limited application to buyers of sex with minors. The criminal solicitation statute does not distinguish between purchasing commercial sex acts with an adult versus a minor, but unlawful transaction with a minor in the third degree, which includes transactions for purposes of prostitution, may be used to prosecute buyers of sex with minors. Buyers also face criminal liability for using the Internet to procure a minor for certain acts, including sex trafficking and child pornography. There is no prohibition on asserting an age mistake defense in a prosecution, although there is the presumption as to minority in applicable CSEC and sex trafficking prosecutions that a victim who "appears to be under 18" is under 18. Buyers are required to register as offenders if convicted of unlawful transaction with a minor in the third degree for prostitution and for sex trafficking, if applicable. Buyers convicted of possessing child pornography and using the Internet to procure a minor for unlawful sex acts face mandatory criminal asset forfeiture, while buyers convicted of unlawful transaction with a minor in the third degree must pay restitution to their victims.

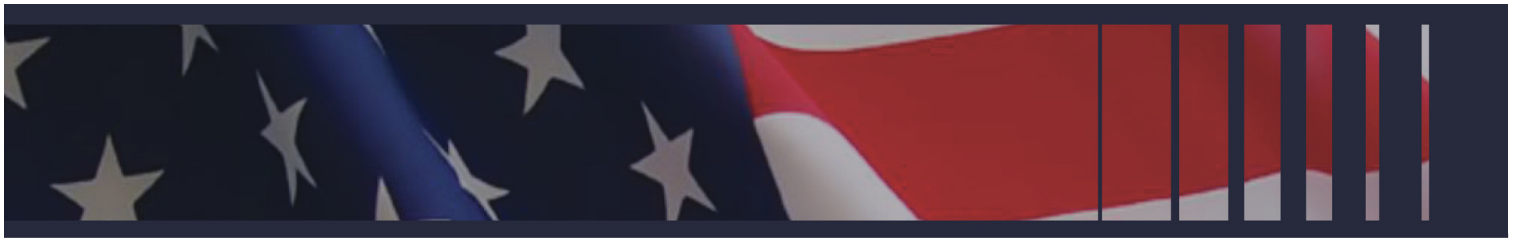
DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Classification | Sentence | Fine | Asset Forfeiture (available) |
|---|---------------------|-------------|--|------------------------------|
| Human trafficking (§ 529.100) | Class B felony | 10-20 years | \$1,000-\$10,000 | |
| Unlawful transaction with a minor in the 3rd degree (§ 530.070) | Class A misdemeanor | Max. 1 year | Max. \$500 | ○ |
| Possession of child pornography (§ 531.335(1)) | Class D felony | 1-5 years | \$1,000-\$10,000 or double the gain from the commission of the offense | ● |

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

CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the human trafficking law a person convicted of sex trafficking a minor is subject to 10–20 years imprisonment. Using a minor under 16 in a sexual performance and producing a sexual performance of a minor also are punishable by 10–20 years imprisonment, while using a minor age 16 or 17 in a sexual performance and promoting human trafficking are punishable by 5–10 years imprisonment. All of these crimes are subject to a fine of \$1,000–\$10,000 or "double [the] gain from commission of the offense." Using a communication system, including the Internet, to procure a minor or promote a minor for sex trafficking or child pornography is a separate offense. Kentucky's sex offender registration law requires convicted offenders of sex trafficking, promoting prostitution when involving a minor, and producing child pornography to register. A court can terminate a trafficker's parental rights for any criminal charge relating to the physical or sexual abuse of any child if the trafficker's child is also at risk. A trafficker is subject to mandatory criminal asset forfeiture for violations of CSEC, child pornography offenses and using the Internet to procure a minor, but not for sex trafficking or promoting prostitution of a minor. Convicted traffickers must pay victim restitution.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking victims are vulnerable due to gaps in the laws. Prostitution laws are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving these minors vulnerable to arrest, prosecution and detention rather than leading them to needed services. Few protective provisions are statutorily mandated specifically for domestic minor sex trafficking victims. Detention is avoided if the minor is identified as a human trafficking victim, but if the case is brought under a CSEC law or if the minor is prosecuted for prostitution, the minor may be determined delinquent. If the victim is found to be an abused or neglected child—de-fined to include pornography and prostitution, but not human trafficking—he or she is likely to receive protection through child protective services since the definition of abuse includes the acts of a person 21 or older who commits or allows to be committed sexual exploitation or prostitution of a minor, which is potentially broad enough to include a trafficker and therefore allow for child welfare involvement. Victims of sex trafficking are eligible for crime victims’ compensation but face potential barriers to recovery. Claims must be filed within five years and the crime must be reported to law enforcement within 48 hours; both may be waived for good cause. A victim who is found to have contributed to the injury may have compensation reduced or denied. Kentucky’s “rape shield” law, which applies in any proceeding involving alleged sexual misconduct to limit traumatizing cross-examination of testifying victims, may provide protection to sex trafficking and CSEC victims. Victims under 12 may be permitted to testify via closed circuit television. Expungement of juvenile criminal records stemming from misdemeanor prostitution related offenses often incurred as a result of being trafficked may be applied for two years after the release from juvenile detention or court jurisdiction, but felony charges cannot be expunged. Victims of any crime are entitled to restitution for pecuniary losses and civil remedies are available for human trafficking and some CSEC offenses, including use of a minor in a sexual performance and promoting a sexual performance by a minor. Prosecutions for sex trafficking of minors are not subject to a statute of limitations, but misdemeanor CSEC offenses, such as promoting the prostitution of one victim, must be brought within one year. A victim must bring a civil case by the time the victim reaches 23 or within five years of the time that the victim should have known of the offense, limiting a minor sex trafficking victim’s access to civil remedies.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Kentucky law does not mandate law enforcement training on human trafficking or domestic minor sex trafficking, but does require training on child sexual abuse which could include some forms of child sex trafficking. The law permits single party consent to audiotaping, but prohibits wiretaps without exception, leaving law enforcement without this important tool for sex trafficking investigations and prosecutions. No specific statutory authority permits law enforcement to use a decoy to investigate domestic minor sex trafficking, making it more difficult to investigate the prostitution of minors. Law enforcement officers investigating traffickers or buyers using computers to induce a minor to engage in sexual conduct are protected from a defense based on the “victim” actually being an adult officer. State law mandates reporting by law enforcement of both missing and recovered children to the state database and National Crime Information Center within 24 hours.

CRIMINAL PROVISIONS FOR FACILITATORS

Those who benefit financially from human trafficking are guilty of promoting human trafficking. Promoting human trafficking and promoting a sexual performance of a minor age 16 or 17 are felonies punishable by 5–10 years imprisonment. When the victim is under 16, promoting a sexual performance of a minor is a felony punishable by 10–20 years imprisonment. Sex tourism is not a crime, leaving Kentucky open to unscrupulous businesses capitalizing on commercial sexual activity. First offenses for distribution and advertising child pornography are felonies punishable by 1–5 years imprisonment and carry a possible fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense.” However, a first offense for selling child pornography is only a Class A misdemeanor punishable by up to 1 year imprisonment and a fine up to \$500. A facilitator is subject to mandatory criminal asset forfeiture for violations of child pornography offenses, but not promoting human trafficking. Victim restitution is mandatory.

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.

