

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

MAINE REPORT CARD 2012

Maine does not have a sex trafficking law, which leads to problems in victim identification. Additionally, the state has few victim protections and provides low penalties for buyers and facilitators.

FINAL SCORE

45.5

FINAL GRADE

F



2.5
10

14
25

9.5
15

2
10

12.5
27.5

5
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Maine does not have a sex trafficking law, relying instead on the kidnapping and criminal restraint laws to prosecute sex trafficking. The state commercial sexual exploitation of children (CSEC) laws include: aggravated promotion of prostitution, patronizing prostitution of minor, sexual exploitation of a minor through pornography, endangering the welfare of a child by allowing the child to enter or remain in a house of prostitution, and solicitation of a child to commit a prohibited act, including sexual exploitation. Maine's CSEC laws and prostitution law do not refer to the kidnapping or criminal restraint laws or the sex trafficking civil remedies law to ensure CSEC victims are identified as victims under the statute used to prosecute sex trafficking. Maine has not enacted a racketeering statute that could be used to prosecute sex trafficking enterprises.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand under Maine law. The plain language of the kidnapping and criminal restraint laws does not criminalize the purchase of commercial sex with minors. A separate CSEC law, patronizing prostitution of minor, includes the crime of buying sex with a minor and makes the solicitation of prostitution with a minor distinct from and with higher penalties than solicitation of an adult, although still far below comparable federal penalties for child sex trafficking (10 years to life). Buyers may be prosecuted for patronizing prostitution of minor without regard to their knowledge of the age of the minor, but enhanced liability applies if the offender knew the victim was under 18. The state has no statute or heightened penalties for using the Internet to purchase commercial sex acts from a minor. Buyers could be subject to restitution for economic losses of the victim and forfeiture of all computer equipment for child pornography offenses. Buyers of sex with minors may be required to register as sex offenders if convicted of patronizing prostitution of a minor or any offense requiring registration under the federal Adam Walsh Act.

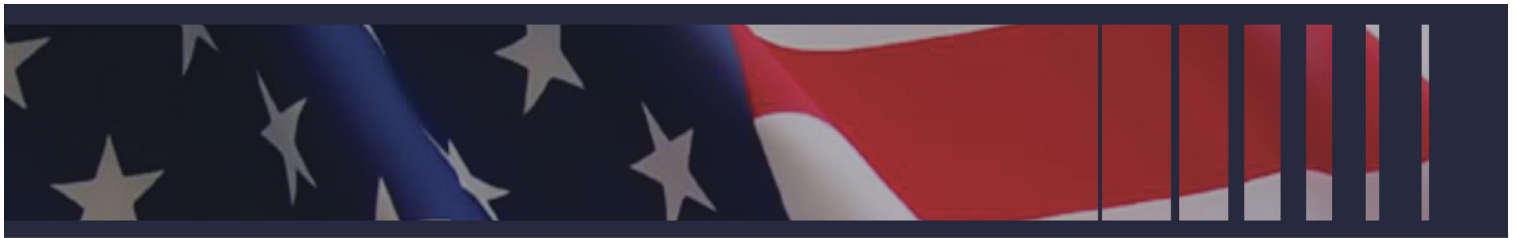
CRIMINAL PROVISIONS FOR TRAFFICKERS

Kidnapping, the most severe of the laws used to prosecute sex trafficking, is punishable by up to 30 years imprisonment and a possible fine up to \$50,000; however, when the victim is voluntarily released the sentence is reduced to a maximum of 10 years imprisonment and a possible fine up to \$20,000, the same penalty as promoting prostitution of a minor. Sexual exploitation of a minor in child pornography is a felony punishable by 5-10 years imprisonment and a possible fine up to \$20,000. Criminal restraint and permitting a child under 16 to enter and remain in a house of prostitution are felonies punishable by up to 1 year imprisonment and a possible fine not to exceed \$2,000. Solicitation of a child to commit a prohibited act is a Class D crime punishable by up to 1 year and a possible fine not to exceed \$2,000. A court may order convicted traffickers to pay restitution and violations of child pornography crimes, but not other CSEC crimes, subject a trafficker to asset forfeiture. Traffickers may have to register as sex offenders if convicted of kidnapping a minor or promoting the prostitution of a minor and their parental rights may be terminated if the trafficker was the parent of the child victim or frequented the child's household.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Patronizing prostitution of minor (tit. 17-A, § 855)	Class D	Max. 1 year	Max. \$2,000	○
	Class C if knows not 18	Max. 5 years	Max. \$5,000	
Possession or transportation of child pornography (tit. 17-A, § 284(1)(A))*	Class D	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 domestic minor sex trafficking and CSEC in Maine are vulnerable due to gaps in the laws. Criminal restraint, used as a sex trafficking law, precludes the defense of consent; however, CSEC offenses are silent as to a defense based on consent, and Maine law has a general consent defense to crimes. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. No laws expressly identify a CSEC victim as a victim leaving open the possibility that victims can enter the justice system as delinquents and no specific protective provisions are statutorily mandated for CSEC victims. However, a victim found to be abused or neglected—defined to include sexual exploitation, but not expressly child pornography or CSEC crimes—might receive protection through child protective services. The definition of custodian only includes those with legal custody of the child, but the definition of “person responsible for the child” is not limited to those with legal custody of the child and includes “with responsibility for the health and welfare of the child,” making the term broad enough to potentially include a trafficker and therefore, allow for child welfare intervention. While CSEC victims would likely be eligible for state crime victims’ compensation, several eligibility criteria may limit their ability to recover, including a bar to recovery for contributory conduct or not cooperating with law enforcement. Requirements also exist to report the crime within five days and file a claim within three years reduction unless good cause is shown, which could include that the child was the victim and an adult reported the crime. Victim-friendly court procedures may be available to CSEC victims, and the “rape shield law” includes all cases of sexual misconduct to limit traumatizing cross-examination of testifying victims. Juvenile records are not expunged in Maine, but the records may be sealed from public inspection if three years have passed since the crime, the juvenile has not been adjudicated of another crime, and no adjudicatory proceedings are pending for the juvenile. Restitution for economic loss is available to all CSEC victims. Civil remedies are available to sex trafficking victims. A civil cause of action for sex trafficking must be brought within 10 years of the time that the victim was freed from the trafficking situation. Criminal actions must be brought within three or six years depending on the classification of the offense, and CSEC crimes do not have extended statutes of limitations.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

There is no mandated law enforcement training on human trafficking or commercial sexual exploitation of children in Maine. Single party consent to audiotaping is permitted; however, Maine does not authorize wiretapping for any offenses. No law expressly authorizes the use of a decoy in the investigation of prostitution or sex trafficking cases, and no law authorizes use of the Internet to investigate buyers and traffickers. Maine requires a statewide reporting and response system for missing children.

CRIMINAL PROVISIONS FOR FACILITATORS

Kidnapping and criminal restraint laws do not include the crime of assisting, enabling, or financially benefitting from sex trafficking. The CSEC crime of promoting prostitution of a minor applies to facilitators. A violation of promoting prostitution is a felony punishable by a maximum of 10 years imprisonment and a possible fine up to \$20,000. Disseminating child pornography is a felony punishable by a maximum of 5 years imprisonment and a possible fine up to \$5,000. Though not mandatory, the facilitator may be ordered to pay restitution to the victim. For violations of child pornography, a facilitator is subject to asset forfeiture however asset forfeiture does not apply to other facilitator crimes. No laws in Maine 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.

