

PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

NORTH CAROLINA REPORT CARD

While the state sex trafficking law includes sex trafficking of a minor without regard to the use of force, fraud, or coercion, the law fails to include facilitators. North Carolina also lacks several important victim protections and law enforcement tools, such as mandated training on domestic minor sex trafficking.

FINAL SCORE

61

FINAL GRADE

D



5

7.5

20.5

25

10

15

3

10

15

27.5

7.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

North Carolina's human trafficking law addresses sex trafficking and clearly defines a minor under the age of 18 used in a commercial sex act as a human trafficking victim without regard to use of force, fraud, or coercion. The state has several commercial sexual exploitation (CSEC) laws including promoting prostitution of a minor, participating in prostitution of a minor, first and second degree sexual exploitation of a minor, and employing a minor in an obscene act. North Carolina's CSEC statutes do not refer to the human trafficking statute for prosecution or victim protections.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. The state human trafficking law tracks the federal law and could be applied to buyers through the word "obtain," following federal precedent. However, North Carolina requires the buyer have the "intent that the other person be held in involuntary servitude or sexual servitude," making it unlikely to apply to buyers. The CSEC law of participating in prostitution of a minor separately criminalizes purchasing commercial sex acts with a minor, and solicitation laws distinguish between the crimes of buying sex with an adult versus buying sex with a minor. Mistake of age is not a defense to participating in the prostitution of a minor. While the state has no statute or heightened penalties for using the Internet to purchase commercial sex acts from a minor, the statute on solicitation of a child by computer or other electronic means to commit an unlawful sex act might apply. Though not mandatory, buyers could also be ordered to pay restitution to the domestic minor sex trafficking victim. Convicted buyers of commercial sex acts with minors are required to register as sex offenders for participation in the prostitution of a minor.

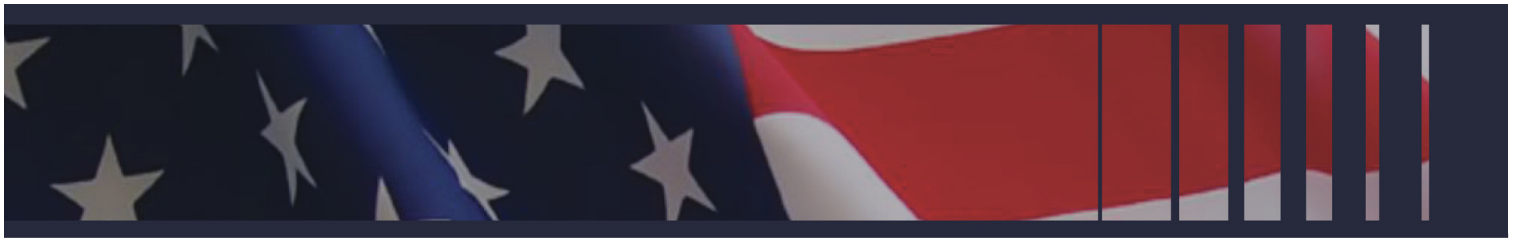
CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers do not receive penalties as high as federal trafficking offenses (10 years to life). Violations of human trafficking, sexual servitude, using a minor to create child pornography or in a live sexual performance for pecuniary gain, and promoting prostitution of a minor are felonies carrying presumptive sentences of 58-73 months' imprisonment. Additionally, a trafficker could be in violation of continuing criminal enterprise and racketeering laws. The statute on solicitation of a child by computer or other electronic means to commit an unlawful sex act provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Traffickers are subject to asset forfeiture laws, and, though not mandatory, could be ordered to pay restitution to a victim. Traffickers are required to register as sex offenders for convictions of sexual servitude and CSEC offenses. Violations of human trafficking and CSEC offenses are not expressly mentioned as grounds for terminating parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence
Participating in prostitution of a minor (§ 14.190.19)	Class F felony	13-16 months
Purchasing child pornography (§ 14-190.17)	Class E felony	20-25 months
Possessing child pornography (§ 14-190.17A)	Class H felony	5-6 months

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

CSEC victims continue to be vulnerable due to gaps in the laws. Human trafficking and CSEC laws do not prohibit a defense based on consent of the minor, though the law on solicitation of a child by computer does expressly prevent a defense based on the consent of the minor. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. The Crime Victims’ Rights Act expressly identifies a CSEC victim as a victim. A CSEC victim could be considered an “undisciplined juvenile” or enter the justice system as delinquent juveniles, and no specific protective provisions are statutorily mandated for CSEC victims. However, a victim found to be abused—defined to include being a victim of child pornography laws or CSEC laws, but not including sex trafficking—might receive protection through child protective services. Also, the definition of “custodian” is not limited to those with legal custody of the child and includes those who have assumed “the status and obligation of the parent,” 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 requirements to cooperate with law enforcement, to report the crime to law enforcement within 72 hours unless good cause is shown, and to file a claim for compensation within 2 years. Victim-friendly court procedures such as the “rape shield” law, which limits traumatizing cross-examination of testifying victims, are not available to CSEC victims, and the ability to testify via closed circuit television is limited to children under 16. Minors may petition for the expunction of misdemeanors from juvenile records 2 years after the date of a conviction or 2 years after the completion of probation. In addition, upon reaching 18, a person may petition for the expunction of records. A court must order an offender of human trafficking and CSEC offenses to pay CSEC victims restitution, and a victim may pursue civil remedies against an offender. North Carolina does not have a statute of limitations for felonies, and thus allows a CSEC felony to be brought at any time. Additionally, the statute of limitations for CSEC victims pursuing a civil cause of action does not begin to run until the victim reaches 18.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

There is no mandated training on domestic minor sex trafficking for law enforcement in North Carolina; however, the North Carolina Justice Academy is required to develop a protocol and training materials on human trafficking, which is made available to law enforcement. Single party consent to audio-taping is permitted. Wiretapping is allowed in CSEC investigations, but not allowed in sex trafficking investigations. No law expressly authorizes the use of a decoy in the investigation of prostitution or sex trafficking cases, but law enforcement may utilize the Internet to investigate buyers and traffickers relying on the crime of solicitation of a child by computer, which includes communicating with a person the offender believes is under 16 to meet with the offender or another person to commit an unlawful sex act. North Carolina requires a statewide reporting and response system for lost, missing or runaway children.

CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law does not include the crime of assisting, enabling, or financially benefitting from human trafficking. However, the CSEC offense of promoting prostitution of a minor is a felony that applies to facilitators and carries a presumptive sentence of 58-73 months’ imprisonment. A facilitator is subject to asset forfeiture and could also be subject to continuing criminal enterprise and racketeering laws, leading to additional financial penalties. Facilitating a minor to engage in sexual conduct for child pornography is a felony punishable with a presumptive sentence of 58-73 months’ imprisonment. Distributing, transporting, or exhibiting child pornography is a felony punishable by a presumptive sentence of 20-25 months. No laws in North Carolina 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/reportcards.aspx.

