

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

NORTH DAKOTA REPORT CARD 2012

North Dakota has a strong sex trafficking law with strong possible penalties for traffickers and facilitators, but the state lacks adequate laws to combat demand of commercial sex with minors and protect victims. No commercial sexual exploitation of children (CSEC) laws include the crime of buying sex with a minor, and solicitation laws do not distinguish between buying sex with a minor versus an adult.

FINAL SCORE

57

FINAL GRADE

F



7.5
10

11.5
25

11
15

6.5
10

10.5
27.5

10
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

North Dakota'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 CSEC laws include: facilitating prostitution, use of a minor in a sexual performance, promoting or directing an obscene sexual performance by a minor, minor performing in obscene performance, and promoting a sexual performance by a minor. North Dakota's CSEC statutes and prostitution statute do not refer to the human trafficking statute to identify minor victims of sex trafficking. The state RICO law includes human trafficking, CSEC and child pornography as predicate crimes

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. The state human trafficking law tracks the federal law and could, following federal precedent, be applied to buyers through the use of the word "obtain." No CSEC laws include the crime of buying sex with a minor. However, the non-commercial corruption of a minor statute might be applicable to buyers of commercial sex with minors, which would potentially providing heightened penalties staggered based on the age of the minor. The solicitation of prostitution statute does not distinguish between purchasing commercial sex acts with an adult versus a minor. While the state has no statute or heightened penalties for using the Internet to purchase commercial sex acts with a minor, the statute on luring minors by computer or other electronic means might apply. Although not mandatory unless pecuniary damages are shown, a court could order a buyer to pay restitution. Buyers of sex with minors prosecuted under the state human trafficking law may not assert an age mistake defense, but most CSEC statutes are silent on this defense and the sexual performance by a minor statute expressly permits an age mistake defense. Subject to the court's discretion, buyers of sex with minors may be required to register as sex offenders if convicted of prostitution-related offenses or sex trafficking of a minor.

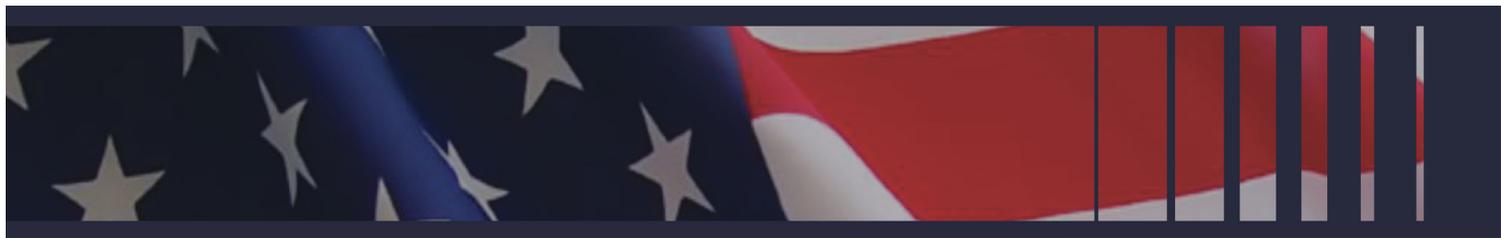
CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the state human trafficking and CSEC laws a trafficker could receive penalties as high as federal trafficking offenses. Human trafficking is a Class AA felony, punishable by a maximum of life imprisonment without parole and subject to asset forfeiture and restitution. Using a minor in a sexual performance, including creating child pornography, is a Class B felony punishable by imprisonment up to 10 years and/or a fine not to exceed \$10,000. Other CSEC crimes applicable to traffickers range from Class A misdemeanors (maximum 1 year imprisonment and/or fine up to \$2,000) to Class C felonies (maximum 5 years imprisonment and/or fine not to exceed \$5,000). Civil asset forfeiture is applicable to these crimes, and although not mandatory unless pecuniary damages are proven, restitution may be required. The statute on luring minors by computer or other electronic means provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts which may include trafficking. Subject to the court's discretion, traffickers convicted of sex trafficking a minor, exploiting a minor to make pornography, and prostitution-related offenses when a minor is involved may be required to register as sex offenders. Parental rights may be terminated for convictions of sexual performance of the child, corruption or solicitation of minors, or luring minors by computer or other electronic means, but not sex trafficking.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Hiring an individual to engage in sexual activity (§ 12.1-29-06)	Class B misdemeanor	Max. 30 days	Max. \$1,000	●
Possession of child pornography (§ 12.1-27.2-04.1)	Class C felony	Max. 5 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. Perpetrators of commercial sex offenses may assert a defense that the minor consented. Prostitution offenses are not limited in application to adults so a minor victim of sex trafficking could be charged with prostitution. Victim services statutes do not expressly identify a CSEC victim as a victim and no protective provisions are statutorily mandated for CSEC victims, leaving open the possibility that victims are detained as delinquents and denied services due to misidentification. However, a victim found to be abused or neglected—defined to include a victim of the crime of sexual performance by children but not human trafficking or other CSEC crimes—might receive protection through child protective services. Also, the definition of “person responsible for the child’s welfare” is not limited to those with legal custody of the child and includes “any member of the child’s household,” 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 reduction due to contributory misconduct and a requirement to file a claim within one year unless “the interests of justice so require.” Victim-friendly court procedures may be available to certain child victims of a classified “sex offense,” including the “rape shield” law to reduce the trauma of cross-examination for testifying victims. Victims of the crime of corruption or solicitation of minors are eligible for these protections, but other CSEC victims must have the crime filed as a sex offense to access these protections. Victims with juvenile delinquency adjudication records as a result of their trafficking must wait 10 years after expiration of the final order or 10 years after reaching 18 for expungement, while those with unruly child adjudications may expunge the record one year after turning 18. Restitution to victims is a mandatory part of sentencing for human trafficking convictions, and restitution for pecuniary damages is available in all CSEC convictions. Civil remedies are not expressly provided for CSEC victims, unless they are also victims of racketeering. North Dakota has a three year statute of limitations for criminal actions, which can be lengthened in certain cases including corruption or solicitation of minors, but not for human trafficking or other CSEC crimes. The statute of limitations for civil actions does not begin to run until the minor reaches 18.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

There is no mandated training on domestic minor sex trafficking for law enforcement in North Dakota. Single party consent to audiotaping is permitted, and wiretapping is allowed in some scenarios although no law specifically authorizes wiretapping for CSEC 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 luring minors by computer or other electronic means, which includes luring a person the offender believes is a minor. North Dakota requires a statewide reporting and response system for lost, missing, or runaway children.

CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law includes the crime of assisting, enabling, or financially benefitting from human trafficking. The CSEC crime of facilitating prostitution also applies to facilitators. When the minor is under 16, a violation is a Class C felony with a maximum 5 years imprisonment and/or a fine not to exceed \$5,000. When the minor is 16 or 17, a violation is a Class A misdemeanor punishable by a maximum of one year imprisonment and/or a fine not to exceed \$2,000. Various child pornography laws apply to facilitators with penalties for first violations ranging from Class B felonies (maximum 10 years imprisonment and/ or a fine not to exceed \$10,000) to Class C felonies (maximum 5 years imprisonment and/or a fine not to exceed \$5,000). Penalties for child pornography offenses can be enhanced for both of these crimes if the offender acts for a corporation, partnership, or other legal entity. Facilitators are subject to asset forfeiture and mandatory restitution for a violation of the human trafficking law or possible restitution for violations of other applicable laws. No laws in North Dakota 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.

