

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

NEBRASKA REPORT CARD 2012

Sex trafficking of a minor is a crime in Nebraska and does not require proof of force, fraud, or coercion. However, registration is not required for offenders convicted of sex trafficking, creating vulnerability for children, and insufficient protective laws may fail child victims of sex trafficking.

FINAL SCORE

61

FINAL GRADE

D



7.5
10

19
25

10
15

3.5
10

10.5
27.5

10.5
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Nebraska's human trafficking law separately criminalizes the sex trafficking of a minor under 18 without regard to the use of force, fraud, or coercion. Three commercial sexual exploitation of children (CSEC) laws are available to prosecute offenders: child abuse by allowing or forcing a child to solicit or engage in prostitution, pandering of a minor and employing a child in pornography. The CSEC and prostitution laws do not refer to the human trafficking law to identify commercially sexually exploited minors as victims of trafficking. Nebraska's racketeering law includes human trafficking and CSEC laws in the definition of racketeering activity, allowing use of this offense to prosecute sex trafficking enterprises.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law applies to buyers who "cause or attempt to cause a minor to engage in commercial sexual activity." The pandering of a minor law appears to apply to a buyer of commercial sex with minors, however, the solicitation law does not differentiate between buying sex with adults versus minors. Restitution is not mandatory for buyers convicted of human trafficking or CSEC offenses, although it may be ordered under general criminal restitution laws. Human trafficking and CSEC laws are silent on mistake of age, leaving open the possibility of using this defense. Nebraska's laws relating to use of the Internet to entice or sexually assault a child under 16 do not expressly criminalize use of the Internet for purposes of sex trafficking or CSEC, failing to provide a criminal deterrence to buyers who increasingly use the Internet to solicit and engage minors in commercial sex acts. Those convicted of possessing child pornography are required to register as sex offenders, but not if convicted for sex trafficking or solicitation of prostitution, even when involving a minor.

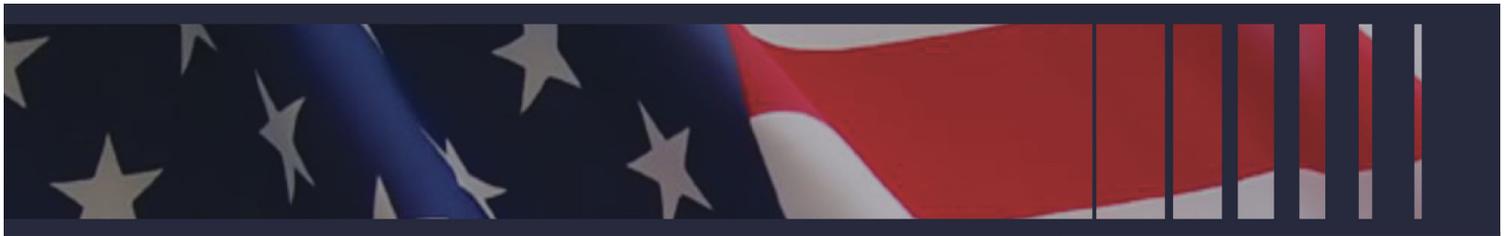
CRIMINAL PROVISIONS FOR TRAFFICKERS

Human trafficking is a felony punishable by 1–50 years imprisonment (use of force or victim under 15) or 1–20 years and/or a fine up to \$25,000 (victim 15+, no force). Pandering of a minor is a Class III felony punishable by 1–20 years imprisonment or a fine not to exceed \$25,000, or both. Child abuse is a Class I misdemeanor punishable by up to 1 year imprisonment and/or a fine up to \$1,000; however, the punishment varies depending on whether the offense was committed negligently or knowingly and whether serious bodily injury resulted. At most, child abuse is a felony punishable by 1–50 years imprisonment. Employing a child in pornography is a felony punishable by 3–50 years imprisonment. Asset forfeiture is not a financial penalty for trafficking crimes. Laws related to using the Internet to entice or sexually assault a child under 16 do not expressly include violations for the purposes of sex trafficking or CSEC, even though traffickers increasingly use the Internet to recruit and sell minors for commercial sex acts. Convicted traffickers face mandatory victim restitution for any crime and victims of child pornography may have civil claims. Traffickers convicted of human trafficking or child abuse are not required to register as sex offenders and convictions for these crimes do not present grounds for termination of parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Human trafficking (\$ 28-831)	Class II	1–50 years (victim under 15 or force used)	Max. \$25,000 (victim 15 or older and no force)	○
	Class III	1–20 years (victim 15 or older and no force used)		
Solicitation of prostitution (28-801.01)	Class I misdemeanor (first conviction)	Max. 1 year	\$250 - \$1,000	○
Pandering (\$ 28-802)	Class III Felony	1-20 years	Max. \$25,000	○
Buying child pornography (\$ 28-1463.03(2)) and possessing child pornography (\$ 28-813.01(1))	Class III felony	1–20 years	Max. \$25,000	○

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 sex trafficking and CSEC are not fully protected under Nebraska’s laws. Human trafficking and CSEC laws do not prohibit a defense based on consent of the minor. Prostitution is not limited in application to adults, does not identify a juvenile involved in prostitution as a victim of trafficking in persons, and provides no affirmative defenses to a minor charged with the offense. While a child who is sexually exploited through prostitution or pornography is considered an abused child under law and may receive a protective response through child welfare if properly identified, Nebraska’s failure to define the term “caregiver” to include those without legal custody of a minor may prevent a child protective response. Additionally, CSEC victims still may be detained as status offenders or for committing an offense under Nebraska’s criminal laws related to their exploitation. Crime victims’ compensation is available for victims of CSEC offenses; however, participating in the criminal conduct giving rise to the injury, failing to file a claim within two years of the crime, and failing to report the crime within three days of the crime or the time when a report could reasonably have been made could prevent CSEC victims from receiving compensation. Victim-friendly criminal justice procedures are also limited. While child victims under 11 of any crime may have videotaped deposition admitted in lieu of in-person testimony, Nebraska’s “rape shield” law is limited to victims of non-commercial sexual offenses, leaving testifying CSEC victims unprotected from the trauma of cross-examination at trials of their traffickers. Juvenile records may be sealed once the child satisfactorily completes his or her sentence or turns 17, provided that the child has satisfactorily completed his or her sentence and is found to be satisfactorily rehabilitated. Restitution is not mandatory and express civil remedies are not provided for victims of sex trafficking, but may be available to a victim of child pornography who was under 16. Prosecutions for human trafficking must be brought within three years of the crime, while prosecutions for CSEC offenses must be brought within seven years of the crime.

CRIMINAL PROVISIONS FOR FACILITATORS

The human trafficking law does not include the crime of assisting, enabling, or financially benefitting from the sex trafficking of a child, but pandering of a minor could reach the actions of some facilitators of CSEC. Facilitators may be convicted under age-neutral prostitution-related and racketeering laws leading to further liability. Facilitators may be guilty of distributing child pornography, a felony punishable by imprisonment for 3–50 years. Facilitators do not face mandatory restitution and no asset forfeiture provisions apply to facilitators; however, facilitators who aid in creating or distributing child pornography may face civil liability. No laws in Nebraska address sex tourism.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Nebraska law does not require training on human trafficking or domestic minor sex trafficking for law enforcement, but recent legislation requires the development of human trafficking training curriculum. The state allows single party consent to audiotaping, but wiretapping is not allowed for human trafficking or CSEC investigations, handicapping law enforcement investigations and collection of evidence. No laws expressly authorize the use of a decoy or the Internet in sex trafficking investigations. Nebraska has established a statewide reporting and response system for missing children and requires the reporting of missing and located children, an important tool to identify repeat runaways who are at high risk of sex trafficking exploitation.

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.

