Criminalization of Domestic Minor Sex Trafficking

New Hampshire’s trafficking in persons law includes sex trafficking, but requires the victim, even if a child, to have been forced to engage in commercial sex acts. The state has several commercial sexual exploitation of children (CSEC) crimes, including prostitution and related offenses involving a minor and computer pornography. Only prostitution-related offenses reference the trafficking in persons statute for purposes of providing trafficking victims an affirmative defense but prostitution and CSEC laws do not refer to the trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. New Hampshire has not enacted a racketeering or gang crimes law, leaving the state without a law that could be used to prosecute sex trafficking enterprises although crimes committed as gang activities can result in penalty enhancements.

Criminal provisions addressing demand

The trafficking in persons law includes the act of “obtaining” and could, following federal precedent, be applied to buyers, but only if the buyer has knowledge that compulsion was used against the minor to cause the prostitution. CSEC laws do not include the crime of purchasing commercial sex with a minor, and solicitation laws do not distinguish between purchasing commercial sex acts with an adult versus a minor. While the prostitution and related offenses law provides heightened penalties when minors are victimized through certain actions in the statute, this heightened penalty is not applicable to buyers. The computer pornography law establishes a separate crime for buying or receiving information about a minor to solicit sexual conduct with a child. Though not mandatory, buyers convicted of other crimes may be required to pay restitution to the victim. If convicted of trafficking in persons, buyers are required to make restitution to the victim. Trafficking in persons and CSEC laws are silent on mistake of age, leaving open the possibility of buyers using this defense. Buyers of sex with minors must register as sex offenders if convicted of prostitution and related offenses, computer pornography, or possessing child pornography, but not if convicted of trafficking in persons.

Demand | Selected Commercial Sex Crimes

<table>
<thead>
<tr>
<th>Crime (name of law abridged)</th>
<th>Classification</th>
<th>Sentence</th>
<th>Fine</th>
<th>Asset Forfeiture (available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prostitution and related offenses ($645:2(I)(a))</td>
<td>Class B misdemeanor</td>
<td>N/A</td>
<td>Max. $1,200</td>
<td>○</td>
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<tr>
<td>Possession of Child Sexual Abuse Images ($649-A:3)</td>
<td>Class A felony</td>
<td>Max. 15 yrs.</td>
<td>Max. $4,000</td>
<td>○</td>
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</tbody>
</table>

Final Score 52
Final Grade F

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.
Trafficking in persons and CSEC laws do not prohibit a defense based on consent of the minor, leaving this an issue in a victim's pursuit of justice. When charged with prostitution, a CSEC victim may assert an affirmative defense that she or he was a victim of trafficking, but prostitution offenses are not limited in application to adults and a victim might be arrested and charged with prostitution despite being a victim. For purposes of child welfare intervention, an “abused child” includes one sexually exploited through prostitution or child pornography; however, the state’s protective custody laws are limited to taking children from those with legal custody for the child, leaving non-familial trafficking cases outside of the reach of child protective services. Crime victims' compensation is available for victims of CSEC offenses. However, several ineligibility requirements limit CSEC victim's ability to recover, including a bar to recovery when contributory fault leads to the injuries and a requirement to file a claim within two years, unless good cause is shown. Some victim-friendly criminal justice procedures are available to trafficking victims, including a prohibition on admitting evidence of a trafficking victim's prior personal or commercial sexual activity. Crime victims or witnesses under 16 may give videotaped testimony subject to certain requirements. Juvenile records are kept confidential and upon the person's 21st birthday will be closed and placed in an inactive file, but not expunged. Offenders convicted of trafficking in persons are required to pay victim's restitution and offenders convicted of other offenses may be ordered to pay restitution. No civil remedies are specifically provided for trafficking in persons or CSEC victims. Prosecution for trafficking in persons and felony CSEC laws must be brought within six years of the crime. The statute of limitations for civil cases is only extended for minor victims of certain crimes, not including trafficking in persons or CSEC.

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.