

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## NEW HAMPSHIRE REPORT CARD 2012

*New Hampshire's trafficking in persons law criminalizes the sex trafficking of minors but requires an element of force be used even for children exploited through commercial sex acts. Although the prostitution statute provides an affirmative defense for trafficking victims, juveniles may be subject to arrest and punishment for prostitution.*

FINAL SCORE

52

FINAL GRADE

F



$\frac{7}{10}$

$\frac{9}{25}$

$\frac{13}{15}$

$\frac{2.5}{10}$

$\frac{13.5}{27.5}$

$\frac{7}{15}$



### 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

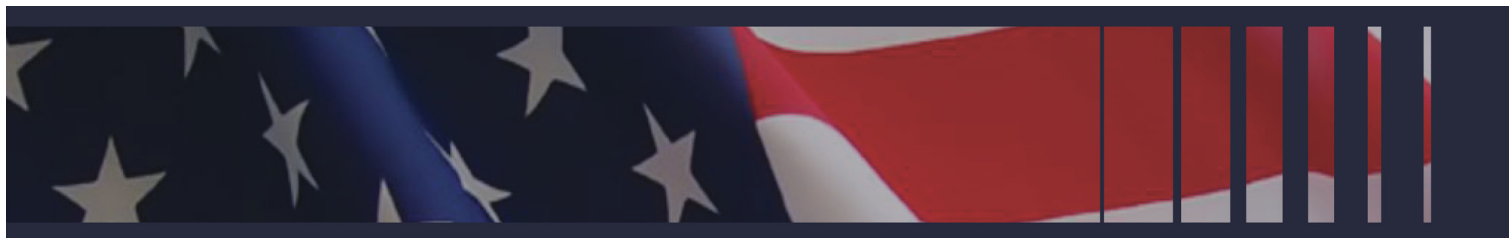
Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Prostitution and related offenses (§ 645:2(I)(a))	Class B misdemeanor	N/A	Max. \$1,200	○
Possession of Child Sexual Abuse Images (§ 649-A:3)	Class A felony	Max. 15 yrs.	Max. \$4,000	○

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



### CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the trafficking in persons, CSEC and child pornography laws, traffickers are subject to lower sentences than those of comparable federal crimes (10 years–life), but similarly high fines (up to \$250,000). Human trafficking and promoting prostitution of a minor are Class A felonies punishable by 5–8 years imprisonment and a possible fine up to \$250,000. A first offense of creating child pornography is a Class B felony punishable by imprisonment for 5–15 years and a possible fine up to \$100,000. Producing a pornographic photographic image of a minor under 16 is a Class C felony punishable by imprisonment for 0–2 years and a possible fine up to \$50,000. Civil asset forfeiture is available for human trafficking offenses, but not promoting prostitution and child pornography offenses. The statute on online enticement to engage in a live or recorded sexual performance is a means of prosecuting traffickers who use the Internet to recruit minors under 16 for sexual exploitation. In any conviction for sex trafficking, CSEC, or a sexual offense a court must order a trafficker to pay restitution to the victim. Traffickers are required to register as sex offenders if convicted of promoting prostitution and pornography offenses, but not for sex trafficking a minor. A convicted trafficker is not certain to face termination of parental rights as sex trafficking and CSEC crimes are not expressly enumerated grounds for termination of parental rights.



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

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.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

New Hampshire law does not mandate training on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping is not allowed, and wiretapping is only allowed for the CSEC offense of computer pornography, denying law enforcement critical tools in investigation and evidence gathering. No laws expressly authorize the use of a decoy in investigating prostitution of minors. Law enforcement may utilize the Internet to investigate CSEC offenses relying on the law of certain uses of computer services prohibited, which criminalizes using the Internet to commit a sex offense. New Hampshire has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.

## CRIMINAL PROVISIONS FOR FACILITATORS

Trafficking in persons does not include the crime of assisting, enabling, or financially benefitting from sex trafficking. The CSEC crime of prostitution and related offenses applies to facilitators who transport a child with the purpose of facilitating prostitution or knowingly permit a place under the facilitator's control to be used for prostitution. Prostitution and related offenses is punishable as a felony by up to 7 years imprisonment and a possible fine up to \$4,000, or double the amount of any gain received by the facilitator. Facilitators convicted of any crime may be required to make restitution, but will not be subject to asset forfeiture, unless convicted of trafficking in persons. Selling child pornography is punishable by 10–20 years imprisonment and a possible fine up to \$4,000, or double the amount of any gain received by the facilitator. No laws in New Hampshire 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](http://www.sharedhope.org).

