

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## NEW JERSEY REPORT CARD 2012

*New Jersey's human trafficking law requires proof of force, fraud, or coercion, even when a minor is the victim, and offenders convicted of sex trafficking are not required to register as sex offenders. Victims receive disparate protections and responses depending on how they are identified.*

FINAL SCORE

67

FINAL GRADE

D



8.5  
10

17.5  
25

11  
15

4  
10

19  
27.5

7  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

New Jersey's human trafficking law includes sex trafficking, but it does not remove the requirement to prove use of force, fraud, or coercion when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include endangering the welfare of children through creating pornography of a child under 16, and prostitution—which covers promoting prostitution of a minor, and soliciting or engaging in prostitution with a minor. The general prostitution law contains an affirmative defense that refers to the human trafficking statute but fails to specifically identify commercially sexually exploited minors as sex trafficking victims. The state racketeering law includes human trafficking and CSEC offenses as predicate offenses, allowing this law to be used to prosecute sex trafficking enterprises.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law could be applied to buyers who “obtain” a child for commercial sex acts, following federal precedent, however, the buyer must obtain the minor through force, fraud, or coercion limiting its application. The solicitation of prostitution law distinguishes between buying sex with an adult versus a minor by providing higher penalties for buyers who patronize minors, making this a CSEC law. Additionally, age mistake defenses are prohibited in prosecutions for these crimes. Though the Internet is increasingly used by buyers, no statute expressly makes using the Internet to purchase sex acts with minors a crime; however, the general luring statute, which includes luring via electronic means to commit a criminal offense against a child, might apply. Though not mandatory, a court could order a buyer of commercial sex with minors to pay restitution. Buyers will be required to forfeit assets, including vehicles, used in, intended to be used in, or derived from illegal activity. Buyers convicted of CSEC crimes are not required to register as sex offenders.

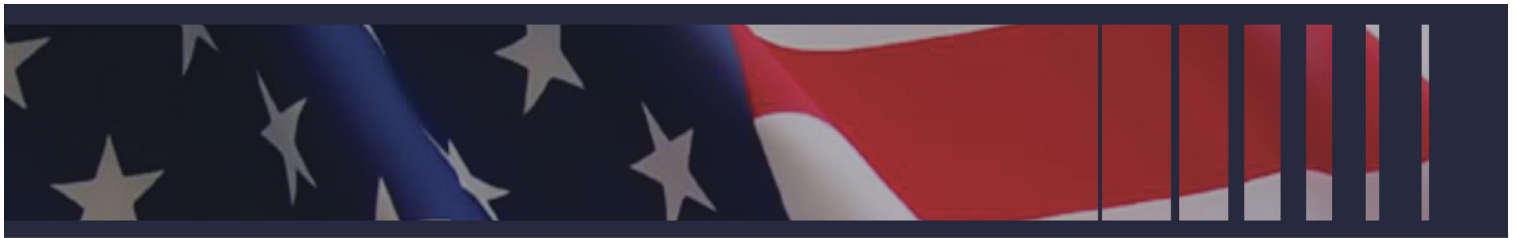
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Penalties for trafficking are comparable to federal trafficking penalties (10 years–life), and for any offense traffickers are subject to asset forfeiture of any property or vehicle intended to be used, used in, or derived from the commission of an offense. Sex trafficking is punishable by 10–20 years imprisonment and a possible fine up to \$200,000. Penalties are increased to 20 years–life imprisonment if the trafficker benefits financially as an organizer, supervisor, financier or manager of a trafficking scheme. CSEC crimes of promoting prostitution and endangering the welfare of children, and creating pornography of a child under 16, are punishable by 5–10 years imprisonment and a possible fine up to \$150,000. No statute expressly makes using the Internet to recruit a minor for commercial sex acts a crime; however, the general luring statute, which includes luring via electronic means to commit a criminal offense against a child, might apply. If convicted of sex trafficking, traffickers are required to pay victim restitution, and a court may order restitution for convictions of other felonies. Sex offender registration is required for CSEC crimes and endangering the welfare of children through creating child pornography, but not for sex trafficking of children. Grounds for termination of parental rights do not include convictions of human trafficking or CSEC crimes.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Soliciting or engaging in prostitution with a minor (\$ 2C:34-1(b)(7))	3rd degree crime	3–5 years	(and) Max. \$15,000	●
Possessing child pornography (minor under 16) (\$2C:24-4(5)(b))	4th degree crime	Max. 18 months	(and/ or) Max. \$10,000	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Sex trafficking of a minor and CSEC crimes do not prohibit a defense based on the consent of the minor, leaving victims vulnerable to this claim by a defendant. Prostitution offenses are not limited in application to adults but a person charged with prostitution has an affirmative defense that the defendant was a minor under 18 or was a victim of human trafficking. This affirmative defense is not available to minors in delinquency proceedings who face adjudication for prostitution offenses committed as a result of their victimization, although all facts related to prostitution or trafficking charges are factors the court must take into consideration at various stages of a delinquency proceeding. A victim of sex trafficking or CSEC faces different responses, ranging from services to diversion to possible detention, depending on whether the child is classified as dependent, delinquent, or “involved in a juvenile-family crisis,” which is defined to include a prostituted or sex trafficked minor. The definitions of an abused child and caretaker are sufficiently broad to potentially allow child protective services to intervene. Victims of sex trafficking are expressly eligible for crime victims’ compensation, but other CSEC victims are not similarly eligible. Even if eligible, several criteria may limit these victims’ ability to recover, including requirements to cooperate with law enforcement, to report the crime to law enforcement within three months of reasonable discovery, and to file a claim within two years unless good cause is shown. Victim-friendly criminal justice procedures are limited. The ability of child victims under 16 to testify via closed circuit television does not include CSEC victims. The “rape shield” law, which reduces the trauma of cross-examination for testifying victims, is only available to CSEC victims involved in endangering the welfare of children through pornography. Upon motion, a minor’s records may be sealed two years after discharge. Restitution is mandatory for trafficking convictions, and may be ordered in any CSEC felony. A CSEC victim may bring a civil action for sexual abuse. Criminal actions for sex trafficking and most CSEC crimes must be brought within five years; however, the statute of limitations for endangering the welfare of children, which includes pornography offenses, is extended until the victim is 23. A civil action related to sexual abuse must be brought within two years after reasonable discovery.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on domestic minor sex trafficking is not mandatory, but training on related issues such as missing persons and technology used in the commission of sex offenses is provided. New Jersey law allows single party consent for audiotaping, but wiretapping is not available as an investigative tool in sex trafficking cases and most CSEC cases, although it is permitted in investigations of endangering welfare of children (which includes pornography) and racketeering. No statute specifically authorizes law enforcement to utilize decoys or the Internet for investigations of minor sex trafficking. Law enforcement must report missing and recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

New Jersey’s human trafficking law applies only to those facilitators that receive value from a human trafficking scheme as a “financier,” and does not apply to facilitators who benefit financially from human trafficking, allowing many to escape punishment for their involvement in the crime. Under the endangering welfare of children statute, selling or promoting pornography of minors under 16 is punishable by 5–10 years imprisonment and a possible fine up to \$150,000. The CSEC crime of promoting prostitution is applicable to some actions by facilitators and is punishable by 5–10 years imprisonment and a possible fine up to \$150,000. A facilitator convicted of human trafficking must pay restitution to the victim, and although not mandatory, a court may order a facilitator to pay restitution for convictions of other felonies. Facilitators will be required to forfeit any assets used in, intended to be used in, or derived from illegal activity. No laws in New Jersey make sex tourism a crime.

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).

