

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

NEW MEXICO REPORT CARD 2012

New Mexico law criminalizes sex trafficking of a minor under 18 without regard to force, fraud, or coercion, and state laws exist to prosecute demand; however, proof of force, fraud or coercion is required to convict a facilitator. Nonetheless, minors are still vulnerable to arrest for prostitution in conflict with their status as sex trafficking victims under the sex trafficking law.

FINAL SCORE

56

FINAL GRADE

F



5

10

15

25

9.5

15

4.5

10

12.5

27.5

9.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

New Mexico's human trafficking law criminalizes sex trafficking of children and clearly defines a minor under the age of 18 used in a commercial sex act as a sex trafficking victim. Proof of force, fraud, or coercion is not required, except when applied to facilitators who benefit from sex trafficking. State commercial sexual exploitation of children (CSEC) laws include: sexual exploitation of children by prostitution, sexual exploitation of children, enticement of child, and child solicitation by electronic communication device. Neither the CSEC laws nor the prostitution law refer to the sex trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. New Mexico's racketeering law does not include sex trafficking or CSEC offenses as predicate activity.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state child sex trafficking law tracks the federal definition and could, following federal precedent, be applied to buyers who "obtain" a minor for commercial sex acts. CSEC laws—sexual exploitation of children by prostitution and enticement of a child—more specifically apply to buyers of sex acts with a minor and differentiate the crime of buying sex with a minor from general solicitation of prostitution with an adult. Child solicitation by electronic communication device could provide a means of obtaining heightened penalties for buyers using the Internet to commit illegal sex acts, including commercial sex acts with a minor. Sex trafficking and CSEC laws do not prohibit an age mistake defense to prosecution by buyers, allowing buyers to claim they did not know the victim was a minor. A buyer convicted of trafficking must pay restitution to victims. New Mexico does not require those convicted of sex trafficking of minors or child solicitation by electronic communication device to register as sex offenders, although registration is required for convictions of possessing child pornography, sexual exploitation of children by prostitution and enticement of a child.

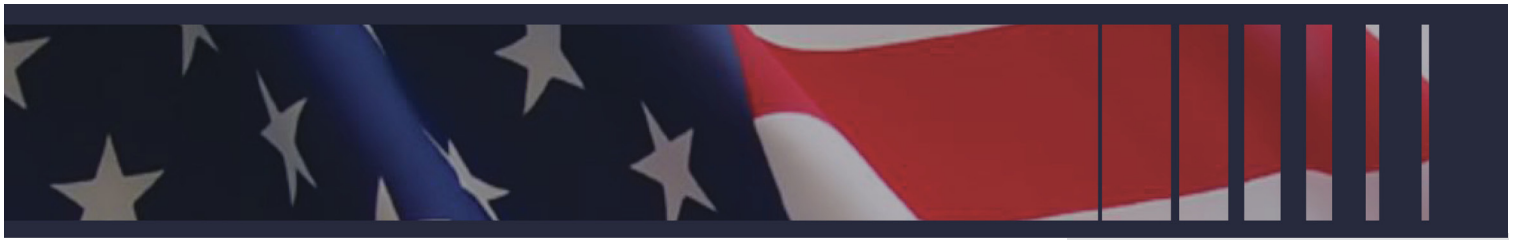
CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under sex trafficking and CSEC laws, and could face prosecution under state racketeering and money laundering laws. Sex trafficking is a felony offense punishable by imprisonment and possible fines based on victim age as follows: third degree (victim 16-17)—three years / up to \$5000, second degree (victim 13-15)—nine years/up to \$10,000, and first degree (victim under 13)—18 years/up to \$15,000. A convicted trafficker faces mandatory restitution to the victim. Traffickers may also be in violation of sexual exploitation of children by prostitution, a felony punishable as follows: second degree (victim 13-15)—nine years/up to \$10,000, and first degree (victim under 13)—18 years/up to \$15,000. Racketeering charges may apply, bringing a possibility of asset forfeiture as well. Child solicitation by electronic communication device provides a sentence enhancement to reach traffickers who use the Internet to recruit minors for illegal sex acts, possibly including sex trafficking. Creating child pornography is punishable by imprisonment for three years and a possible fine of \$5,000 (or nine years and \$10,000 if minor under 13). Sex offender registration is required for many crimes, but not sex trafficking of minors or child solicitation by electronic communication device. Sex trafficking of children and CSEC crimes are not enumerated as violent crimes for which a trafficker's parental rights can be terminated.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Sexual exploitation of a child by prostitution (over 13 and under 16 years of age) (§30-6A-4(B))	2nd degree felony	9 years	(and/or) Max. \$10,000	○
Enticement of child (under 16 years of age) (§ 30-9-1)	Misdemeanor	Less than 1 year in county jail	(and/or) Max. \$1,000	○
Possession of child pornography (§30-6A-3(A))	4th degree felony	18 months	(possible) 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 New Mexico's laws. Benefits and services to victims of sex trafficking are specifically provided in the law, but only if victims cooperate in the investigation and prosecution of the defendant. Sex trafficking of a minor and CSEC crimes are silent on the permissibility of a defense based on consent of the minor to the commercial sex act, making it possible that a victim may have to prove a lack of consent to pursue justice against the perpetrator. Prostitution offenses are not limited in application to adults, do not identify a minor engaged in prostitution as a victim of sex trafficking, and provide no affirmative defenses to a minor charged with the offense. A CSEC victim may be considered an abused or neglected child, a truant or runaway child, or a delinquent child and receive various responses ranging from delinquency charges to child protective services intervention. For purposes of child welfare involvement, the definition of abuse includes sexual abuse or exploitation of a child, which includes allowing the child to engage in prostitution or a sexual performance, and the definition of custodian is broad enough to apply to a trafficker. Victims of sex trafficking and CSEC offenses are not eligible for crime victims' compensation, but even if they were, eligibility criteria requiring a report to law enforcement within 30 days and a claim filed within two years (unless they are also victims of certain sex offenses) present barriers to their claims. In addition, failure to cooperate with law enforcement deems a victim ineligible. New Mexico's "rape shield" law reduces the trauma of cross-examination for testifying victims in sex trafficking cases; however, self-incriminating testimony by minor victims may be compelled in prostitution cases. Juvenile records may be expunged two years after final discharge from custody if the minor has not been subsequently convicted or found delinquent. Restitution and civil actions against trafficking offenders and facilitators are expressly allowed for victims. Depending on the age of the victim and the classification of the offense, the statute of limitations for criminal prosecutions may be one, two, three, five or six years, or eliminated entirely. The statute of limitations on civil actions for damages from trafficking does not commence until the victim knows or should have known of childhood sexual abuse that results in injury or until age 24, whichever is later.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

New Mexico has mandated training on human trafficking on a temporary basis through July 1, 2016. New Mexico law allows single party consent for audiotaping, but wiretapping is not available as an investigative tool in sex trafficking cases. Use of a decoy and use of the Internet to investigate the crime of arranging to engage in sexual conduct with a real or fictitious child is authorized under the child solicitation by electronic communication device law. New Mexico has established a statewide reporting and response system for missing children and requires the reporting of located children.



CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators may be prosecuted for benefitting financially from sex trafficking of minors only when the facilitator knows force, fraud or coercion was used. If convicted, facilitators face the same penalties as traffickers: three, nine or 18 years imprisonment and a possible fine of \$5,000, \$10,000 or \$15,000, depending on the age of the victim. Facilitators, like traffickers, may also be prosecuted under the sexual exploitation of a child law. Distribution of child pornography is punishable by three years imprisonment and a possible fine of \$5,000. Facilitators are subject to asset forfeiture if found to have violated racketeering laws through their criminal activities. No laws in New Mexico make sex tourism a crime. If convicted of sex trafficking, victim restitution is mandatory.

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.

