

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

OKLAHOMA REPORT CARD 2012

Oklahoma law provides enhanced penalties where a human trafficking victim is a minor and does not require the use of “deception, force, fraud, threat or coercion” to cause a minor to engage in commercial sex acts. Human trafficking victims may not be penalized for having been trafficked, but minors are not specifically excluded from prosecution for prostitution.

FINAL SCORE

70

FINAL GRADE

D



7.5
10

15
25

13.5
15

7
10

17.5
27.5

9.5
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Oklahoma’s human trafficking law imposes heightened penalties when the victim is under 18 years of age regardless of deception, force, fraud, threat or coercion when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include: soliciting, aiding or participating in child prostitution, procuring a child for prostitution, inducing or detaining a child for prostitution, and procuring minors for participation in pornography. The CSEC and prostitution laws do not refer to the human trafficking statute to identify commercially sexually exploited minors as victims of trafficking. Oklahoma’s racketeering statute includes human trafficking offenses and some CSEC offenses as predicate acts, allowing it to be used to prosecute sex trafficking enterprises.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking law applies to purchasing of a minor by any means “for purposes of engaging the minor in a commercial sex act.” Soliciting child prostitution includes the crime of buying sex with a minor under 16, leaving older minors unprotected. Statutes on soliciting sexual conduct with a minor and indecent proposals to a child under 16 could provide a means of obtaining heightened penalties for buyers using the Internet to commit illegal sex acts, which could include commercial sex acts with a minor. The human trafficking law and CSEC laws do not prohibit a defendant from using a mistake of age defense, shifting the burden of proof and making prosecution more difficult. Buyers convicted under the human trafficking law face mandatory restitution to the victim; if convicted of any other offense, then victim restitution may be ordered by the court at sentencing. Buyers of sex with minors may be required to register as sex offenders if convicted of possession of child pornography, soliciting sexual conduct with a minor, or indecent proposals to child under 16, but not for human trafficking or soliciting child prostitution.

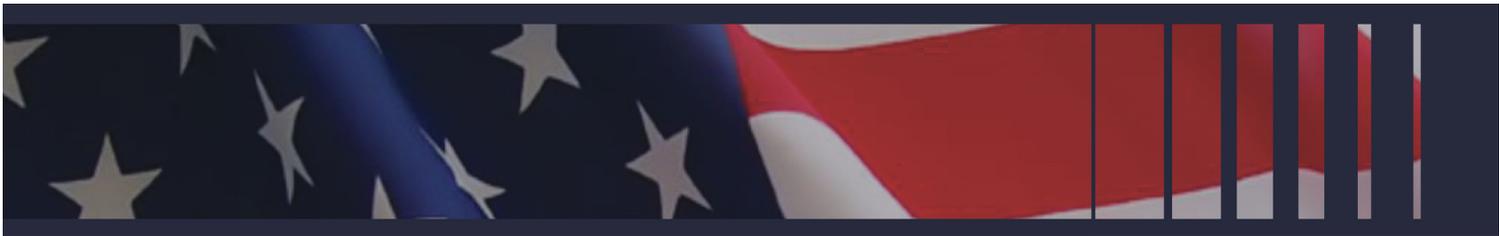
CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers face prosecution under human trafficking, CSEC, racketeering and money laundering laws, with sentences comparable to those under federal law (10 years–life). Human trafficking of a minor is punishable by a minimum imprisonment of 10 years and/or a fine up to \$20,000, while participating in child prostitution is punishable by up to 10 years and a fine up to \$10,000. Procuring a child for prostitution is punishable by 1–10 years imprisonment and detaining a child for prostitution is punishable by 1–25 years imprisonment and a fine of \$5,000–\$25,000. Offenses related to commercially distributing child pornography, preparing child pornography, and procuring minors for child pornography are punishable by up to 10, 20, and 25 years imprisonment respectively and/or fines up to \$10,000 or \$25,000. The statutes on facilitating sexual conduct with a minor and indecent proposals to child under 16 could reach traffickers who use the Internet to recruit minors for illegal sex acts, which may include human trafficking. When convicted of human trafficking, victim restitution is mandatory. Traffickers convicted of human trafficking, participating in child prostitution, or creating child pornography are subject to civil asset forfeiture. Traffickers must register as sex offenders if convicted of most CSEC and child pornography-related offenses, but not for human trafficking or participating in child prostitution. Convictions for human trafficking or CSEC offenses do not result in termination of parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human trafficking (tit. 21, § 748(B))	Felony	Min. 10 years	Max. \$20,000	○
Soliciting child prostitution (under 16) (tit. 21, § 1029)	Felony	Max. 10 years	Max. \$5,000	○
Possessing child pornography (tit. 21, § 1024.2)	Felony	Max. 5 years	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

Gaps in the law prevent full protection of CSEC victims in Oklahoma. Human trafficking and procuring a minor for participation in child pornography and parent consenting to a child participating in child pornography prohibit a defense based on consent of the minor or their parent. Other CSEC laws do not prohibit a defense based on consent of the minor. Prostitution offenses are not limited in application to adults, but human trafficking victims may not be penalized for offenses committed while being trafficked and the law provides that human trafficking victims should be housed in appropriate shelters. Also, a child victim of prostitution or pornography is considered for purposes of the child welfare laws an abused child and, if the definition of “custodian” is determined broad enough to include a trafficker in control of the child, then the child will receive a protective response through social services. However, a victim of CSEC could be treated as a delinquent for committing a delinquent act or running away from home, and instead receive possible detention. If identified as a victim and suffering economic loss, human trafficking and CSEC victims are eligible for state crime victims’ compensation, although eligibility criteria, including a requirement that the crime be reported within 72 hours and a claim filed within one year (unless good cause is shown to extend the filing time to up to two years) could operate to deny them an award. There is also a bar to recovery if the victim participated or assisted in a criminal act and possible bar for refusal to cooperate with law enforcement. Victim-friendly court procedures are available to human trafficking victims, which prevent the release of identifying information and protect trafficked persons from intimidation, but the “rape shield” law, which protects testifying victims from the trauma of cross-examination, is limited to victims of sexual offenses that do not include CSEC or human trafficking. Most juvenile records are confidential and those that are not may be expunged when the minor turns 21, subject to certain requirements. Criminal restitution is mandatory for victims of human trafficking and restitution may be awarded to other victims. Civil remedies are also provided for human trafficking victims. Prosecutions for human trafficking and CSEC offenses must begin within 3 years after the crime, while prosecutions for procuring a minor for participation in child pornography and parental consent to participation in child pornography must begin within 12 years after the crime. Statutes of limitations for civil claims based on damages from being trafficked do not begin to run until the later of the victim’s freedom from the defendant or the victim’s 21st birthday.

CRIMINAL PROVISIONS FOR FACILITATORS

The human trafficking law includes the crime of financially benefitting from human trafficking. The crimes of aiding in child prostitution and procuring a child for prostitution may apply to facilitators, and facilitators could be subject to money laundering laws. CSEC crimes applicable to facilitators are punishable as felonies: a first conviction under aiding in child prostitution is punishable by up to 10 years imprisonment and a fine up to \$10,000, and a first conviction for procuring a child for prostitution is punishable by 1–10 years imprisonment. When convicted of human trafficking, victim restitution is mandatory; if convicted of any other offense, then victim restitution may be ordered by the court at sentencing. Facilitators convicted of human trafficking, aiding in child prostitution, racketeering, and distributing child pornography are subject to civil asset forfeiture. No laws in Oklahoma address sex tourism.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on domestic minor sex trafficking is not statutorily mandated. Single party consent to audiotaping is permitted, but wiretapping is not allowed in investigations for human trafficking or CSEC offenses. No laws expressly authorize the use of a decoy or the Internet in human trafficking investigations, but both may be possible in investigations into facilitating sexual conduct with a minor, applicable to online solicitations of sexual conduct with a minor, and indecent proposals to child under 16 through in-person and online solicitations of a child under 16 to engage in sexual activity, both of which could include human trafficking. Oklahoma has established a statewide reporting and response system for missing children, but does not expressly require the reporting of located children—a gap that could prevent law enforcement from proactively identifying repeat runaways at high-risk of being sex trafficked.

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.

