

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

PENNSYLVANIA REPORT CARD 2012

The human trafficking law does not include sex trafficking, relying instead on commercial sexual exploitation of children (CSEC) laws to prosecute offenders, resulting in potential disparity in identification and treatment of the victims. Victims who are not identified or are deemed complicit in prostitution may face barriers to accessing protection or justice.

FINAL SCORE

58

FINAL GRADE

F



$\frac{5}{10}$

$\frac{16}{25}$

$\frac{10.5}{15}$

$\frac{4}{10}$

$\frac{10.5}{27.5}$

$\frac{12}{15}$



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Pennsylvania's human trafficking law does not include the crime of trafficking adults or minors for commercial sex acts. The CSEC laws include promoting prostitution of a minor, hiring a minor to engage in a sexual performance, and unlawful contact with a minor for prostitution offenses. The CSEC laws and the general prostitution law do not refer to the human trafficking law to identify commercially sexually exploited minors as human trafficking victims. The state racketeering law includes human trafficking and CSEC violations as predicate acts.

\$ CRIMINAL PROVISIONS ADDRESSING DEMAND

The absence of sex trafficking as a form of human trafficking in the law makes application of the law to buyers of commercial sex with minors unlikely. However, the human trafficking law includes the word "obtain," and if the law included sex trafficking, it could be applied to buyers following federal precedent. The CSEC crime of unlawful contact with a minor includes buying sex with a minor and contacting a minor through a computer to engage in prostitution. Buyers may also face prosecution under the age-neutral patronizing a prostitute law. The unlawful contact with a minor statute does not prohibit a defense of age mistake, allowing buyers to claim they did not know the child was under 18, while non-CSEC sexual offenses, such as corruption of minors and sexual abuse of children (photographing or videotaping a minor) do prohibit an age mistake defense. A convicted buyer must pay restitution to the victim who suffers personal injury as a result of the crime against her or him. A buyer is required to register as a sex offender for a conviction of unlawful contact with a minor for prostitution and possessing child pornography.



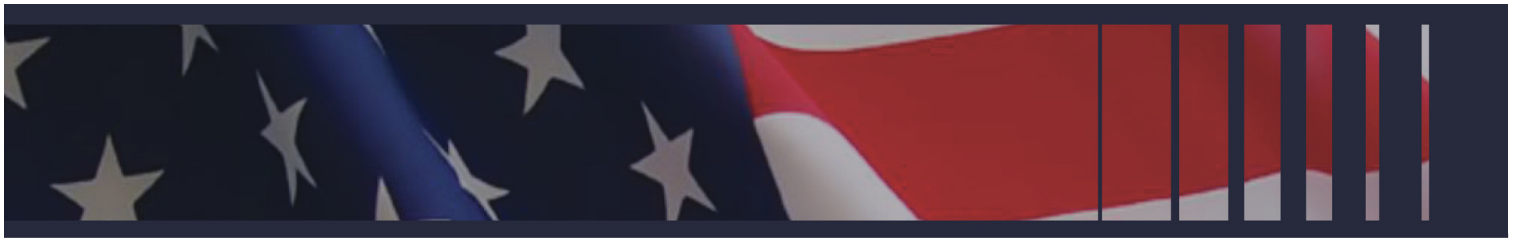
CRIMINAL PROVISIONS FOR TRAFFICKERS

Since the state human trafficking law does not define exploitation through commercial sex acts as a type of trafficking, the state must rely on CSEC and sexual offenses to prosecute sex traffickers, and the financial penalty of asset forfeiture available in cases of trafficking of persons cannot be used against sex traffickers. Promoting prostitution of a minor and unlawful contact with a minor for prostitution including by computer are felonies punishable by fines up to \$15,000 and possible imprisonment up to 7 years. Sexual exploitation of a child and creating child pornography are felonies punishable by a fine up to \$25,000 and possible imprisonment up to 10 years. When personal injury results from the crime, a court must order a trafficker to pay restitution to the victim. Traffickers are required to register as sex offenders if convicted of CSEC offenses or child pornography offenses. Grounds for termination of parental rights do not include CSEC convictions.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence (possible)	Fine (possible)	Asset Forfeiture (available)
Unlawful contact with a minor (for prostitution) (18 Pa. Cons. Stat. § 6318)	3rd degree Felony	Max. 7 years	Max. \$15,000	○
Possessing child pornography (18 Pa. Cons. Stat. § 6312(d) (1))	3rd degree Felony	Max. 7 years	Max. \$15,000	○

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 the state legal framework. State CSEC laws do not prohibit a defense to prosecution based on the consent of the minor to the sex acts. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. No laws expressly identify a CSEC victim as a victim, and no protective provisions are statutorily mandated specifically for child victims of CSEC or sex trafficking. CSEC victims could be ordered dependent children or they could enter the justice system as delinquents. A victim found to be abused—defined to include sexual exploitation and prostitution—could receive protection through child protective services if the definition of “person responsible for the welfare of the child” is determined to extend to those with “temporary care” of the child—a definition which would include a trafficker in control of a child. CSEC victims are likely eligible for state crime victims’ compensation, but eligibility criteria may threaten a victim’s ability to recover, including a bar to recovery for failure to cooperate with law enforcement and a reduction of an award for conduct contributing to the injury. Additionally, victims have a requirement to report the crime to law enforcement within 72 hours, unless the victim was under 18 and the alleged offender is a person responsible for the victim’s welfare or person with whom the victim resides. Victim-friendly trial procedures are not widely available for child sex trafficking or CSEC victims. The “rape shield” law which limits the trauma of cross-examination for victims does not apply to protect CSEC victims; however, certain child victims under 16 in sexual offense trials may be permitted to testify through a closed-circuit television type method from a room other than the courtroom to limit interaction with their exploiter. Juvenile criminal records may be expunged 5 years after final discharge of the minor or when the minor reaches 18 under certain circumstances. A convicted offender must pay restitution for personal injury to a victim, but no civil remedy is expressly provided for CSEC or sex trafficking victims. The statute of limitations to prosecute CSEC crimes (such as promoting prostitution of a minor) is 5 years from the date of the crime and the statute of limitations begins to run for a child pornography prosecution when the victim turns 18 or as late as age 50 if not discovered until later. Civil actions based on childhood sexual abuse must be brought before a victim reaches 30.

CRIMINAL PROVISIONS FOR FACILITATORS

The human trafficking law does not include the crime of benefiting financially from human trafficking, and commercial sex acts are not included as a type of exploitation prohibited by the human trafficking law. The CSEC crime of promoting prostitution applies to some facilitators, such as those that lease or permit their premises to be utilized for prostitution and those that benefit from promoting prostitution. If the child involved is under 16, then these offenses are felonies in the third degree punishable by a fine up to \$15,000 and possible imprisonment up to 7 years. If the minor is 16 or 17, the offense is a misdemeanor in the second degree punishable by a possible fine up to \$5,000 and a possible prison sentence up to 2 years. Facilitating child pornography by selling, distributing, or displaying child pornography is a felony punishable by a fine up to \$15,000 and possible imprisonment up to 7 years, but providing information that directs buyers to a source for obtaining child pornography is punishable as a misdemeanor. Facilitators are not subject to asset forfeiture; however, a facilitator could be found in violation of state racketeering law, imposing additional financial penalties. No laws in Pennsylvania make sex tourism a crime.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Pennsylvania law does not mandate law enforcement training on domestic minor sex trafficking or human trafficking. The law requires both parties in an audiotaping to consent to the recording, although single party consent may be allowed with approval by the State or when an undercover officer records the conversation while meeting in person with the suspected offender. Wiretapping is allowed for specified CSEC offenses including prostitution and related offenses and unlawful contact with a minor. Law enforcement may use decoys and the Internet to investigate CSEC offenses relying on the unlawful contact with a minor statute, which includes contacting—in person or via a computer—a law enforcement officer posing as a minor to solicit prostitution or engage in other forms of sexual exploitation of children. Law enforcement officers must report missing and recovered children through the Commonwealth Law Enforcement Assistance Network, providing important information to law enforcement about repeat runaways who are at high-risk for sex trafficking.

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.

