

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## SOUTH CAROLINA REPORT CARD 2012

South Carolina's new human trafficking law expressly identifies sex trafficking of minors; however, proof that force was used to cause the trafficking is required, even for minors. The human trafficking law provides an affirmative defense for victims, but minor victims of sex trafficking and commercial sexual exploitation of children (CSEC) are not directed to specialized services or housing.

FINAL SCORE

65.5

FINAL GRADE

D



$\frac{7}{10}$

$\frac{17}{25}$

$\frac{11}{15}$

$\frac{6}{10}$

$\frac{17}{27.5}$

$\frac{7.5}{15}$

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

South Carolina's human trafficking statute includes sex trafficking of minors but requires that the minor was forced to engage in sexual conduct. The state has several CSEC laws: promoting prostitution of a minor, participating in prostitution of a minor, first and second degree sexual exploitation of a minor, employment of person under 18 to appear in public state of sexually explicit nudity, and engaging a child for sexual performance and producing, directing or promoting sexual performance by a child. CSEC and prostitution laws do not refer to the human trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. The Criminal Gang Prevention Act includes human trafficking and CSEC offenses as predicate acts, making this law available to prosecute sex trafficking enterprises.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

While the human trafficking law may apply to buyers who "obtain" a minor for commercial sex, but the buyer must either know that the minor was forced to engage in sexual conduct or must use force to cause the minor to engage in sexual conduct. The CSEC law against participating in prostitution of a minor prohibits buying sex with a minor. South Carolina's solicitation laws distinguish between buying commercial sex acts with an adult and a minor through the statute on criminal solicitation of a minor for sexual activity. This law may also provide a means of prosecuting buyers who use the Internet to engage in illegal sex acts that may include commercial sex acts with a minor. Human trafficking and the CSEC statutes of participating in prostitution of a minor and second degree sexual exploitation of a minor prohibit an age mistake defense. A buyer must register as a sex offender if convicted of participating in the prostitution of a minor or criminal solicitation of a minor for sexual activity but convictions under the new human trafficking law. Restitution is mandatory and civil asset forfeiture is available for human trafficking convictions.

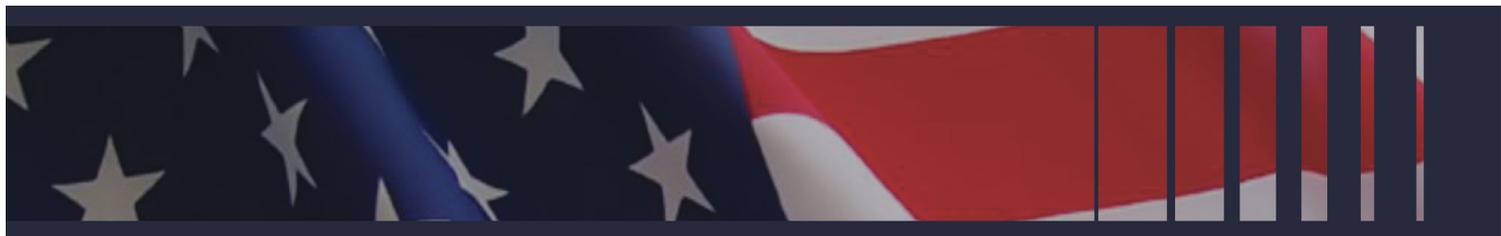
### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker convicted of human trafficking could be sentenced to up to 15 years imprisonment, to which the court may add an additional 15 years to be served consecutively when the victim is a minor under 18. Promoting the prostitution of a minor and using or employing a minor to engage in a sexual performance are punishable by 3–20 years imprisonment, and recording, photographing or filming a minor engaged in a sexual activity is punishable by 2–10 years imprisonment. No fines apply to convictions under the CSEC laws. Though not specific to the Internet, the statute on criminal solicitation of a minor may provide a means of prosecuting traffickers who recruit minors for illegal sex acts that may include sex trafficking. Traffickers must register as sex offenders for various offenses, including offenses related to prostitution of a minor and child pornography, but not for offenses under the new human trafficking law. Grounds for terminating parental rights exist when a victim is hospitalized or dies as a result of trafficking in persons or offenses related to child pornography. Restitution is mandatory for human trafficking offenses. Traffickers face civil asset forfeiture for human trafficking offenses and criminal forfeiture of equipment used to commit child pornography offenses.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Participation in prostitution of a minor (§ 16-15-425)	Class F felony	2–5 years	n/a	○
Criminal solicitation of a minor (§ 16-15-342)	Class E felony	Max. 10 years	Max. \$5,000	○
Possessing child pornography (§ 16-15-410)	Felony	Max. 10 years	n/a	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

CSEC victims continue to be vulnerable due to gaps in the laws. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. However, the human trafficking law provides an affirmative defense for all offenses committed as a result of being a victim of trafficking and specifically provides that human trafficking victims are entitled to victim compensation. No specific protective provisions are statutorily mandated for CSEC victims, and a CSEC victim could enter the juvenile justice system under prostitution-related charges and receive detention if the affirmative defense is not asserted or unsuccessful. However, a victim found to be an abused or neglected child by a person responsible for the child’s welfare may receive a protective response through social services. Child abuse and neglect are not expressly defined to include infliction of sex trafficking, CSEC, or child pornography offenses, but a child is considered abused when an adult allows a criminal offense to be committed against the child, potentially including CSEC. Person responsible for the child’s welfare is defined to include an adult who has assumed the role and responsibility of a parent or guardian, but does not necessarily have legal responsibility, possibly allowing for intervention by child protective services where a non-familial trafficker has custody and control of a minor. The human trafficking law expressly prohibits a defendant from asserting a defense based on consent of the minor, but the CSEC laws do not prohibit this defense. While the “rape shield” law is not specifically available to limit traumatizing cross-examination of CSEC and trafficking victims, the human trafficking law bars a defense based on the victim’s past sexual conduct. Minors under 16 may have status and nonviolent offenses expunged, and minors who are 17 or committed D, E, or F felonies may have their records expunged one time. Restitution is mandated for human trafficking convictions and funds forfeited in connection with human trafficking must be used for payment to the victim. Civil actions may be filed by victims of human trafficking or sexual abuse defined to include prostitution-related offenses and child pornography offenses. A criminal case can be brought at any time, but a civil action provided under the human trafficking law must be brought within 3 years of reaching majority and is a statute of limitations defense is estopped while the victim is under the duress of the defendant.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

South Carolina law does not mandate training on CSEC, though such training could be included in the training provided by the Missing Person Information Center on exploited children. Single party consent to audiotaping is permitted, but wiretapping is not authorized for investigations related to CSEC. Use of a decoy and use of the Internet to investigate human trafficking is allowed in reliance on the crime of solicitation of a minor. Law enforcement is required to report missing children and once a child is rescued, law enforcement must confirm and delete the records unless grounds for criminal prosecution exist.

## CRIMINAL PROVISIONS FOR FACILITATORS

South Carolina’s human trafficking law penalizes one who “who benefits, financially or by receiving anything of value” from sex trafficking with up to 15 years imprisonment, to which the court may add an additional 15 years to be served consecutively when the victim is a minor under 18. Business owners who use their business to aid or assist sex trafficking face possible fines, up to 10 years imprisonment, and forfeiture of their business charter. Facilitators convicted of promoting prostitution of a minor and transporting or financing the transportation of a minor for pornography face 3–20 years imprisonment. Facilitators convicted of producing, directing, or promoting sexual performance by a child face up to 10 years imprisonment, while conviction for distributing, transporting, and selling child pornography is punishable by 2–10 years imprisonment. Facilitators convicted of use of taxi for prostitution, a misdemeanor, face up to 30 days imprisonment or a fine up to \$100. A facilitator could also be subject to criminal gang laws. Restitution is mandatory and civil asset forfeiture is available for human trafficking offenses. Convictions for child pornography crimes subject a facilitator to criminal forfeiture of equipment used in commission of the offense. No laws in South Carolina 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).

