

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

SOUTH DAKOTA REPORT CARD 2012

The state human trafficking law includes sex trafficking but requires proof of force even when the victim is a minor, limiting prosecutions, particularly of demand. Victims of domestic minor sex trafficking are not provided with specific protection or services and law enforcement is not provided with training or access to wiretapping—critical tools to aggressively pursue investigations and prosecution.

FINAL SCORE

55.5

FINAL GRADE

F



8

10

10.5

25

13.5

15

6.5

10

7.5

27.5

9.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

South Dakota's human trafficking law includes the crime of trafficking for commercial sexual activity; however, it requires force, fraud, or coercion for all victims, including minors. A heightened penalty applies if the victim is under 16. The state criminalizes commercial sexual exploitation of children (CSEC) under its promotion of prostitution law and solicitation of a minor under 16, but neither law refers to the human trafficking law to identify CSEC victims as victims of trafficking. An affirmative defense to prostitution charges refers to the human trafficking law to identify prostituted minors as victims of trafficking. South Dakota's street gang activity law increases sentences for crimes committed as a pattern of gang activity.

CRIMINAL PROVISIONS ADDRESSING DEMAND

Limited options exist to prosecute demand. The state human trafficking law tracks the federal definition and could, following federal precedent, be applied to buyers through interpretation of the word "obtain" to include causing a person to engage in commercial sex acts, but the state law requires knowledge that force, fraud, or coercion was used against the person. No CSEC laws apply to buyers. The offense of soliciting a minor under 16 to engage in any prohibited sexual act does not expressly include commercial sex acts. This offense also criminalizes use of the Internet to buy information about a minor under 16 in order to solicit that minor to engage in a sex act; however, this statute leaves older minors unprotected. The offense of soliciting a minor under 16 prohibits an age mistake defense, but such defense is not prohibited in the sex trafficking law. Buyers could be required to pay restitution to the victim, and buyers who possess child pornography are subject to asset forfeiture. Buyers are required to register as sex offenders if convicted of possessing child pornography or buying information to solicit a minor online, but not for convictions of human trafficking for sexual purpose or solicitation for prostitution, even when the victim is under 18.

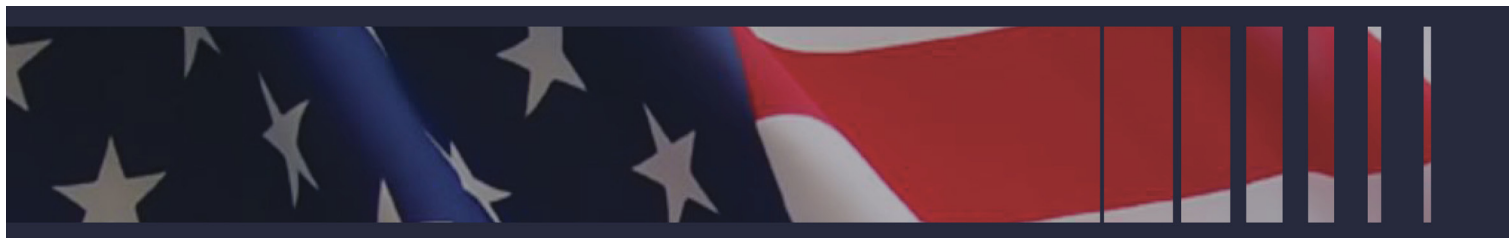
CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the state's human trafficking law a trafficker could receive a sentence as high as that for federal trafficking offenses, but CSEC laws do not carry equally high penalties. Sex trafficking is punishable by imprisonment up to 25 years and a possible fine of \$50,000. Promoting prostitution of a minor is punishable by imprisonment up to 5 years and a possible fine of \$10,000. Selling information online for the purpose of soliciting a minor under 16 to engage in a sex act (which could include sex trafficking) and creating child pornography are punishable by imprisonment up to 10 years and a possible fine of \$20,000. A trafficker is subject to mandatory criminal asset forfeiture if convicted of child pornography offenses or selling information about a minor under 16 for the purpose of soliciting sex acts. Traffickers may also be subject to restitution orders. A trafficker convicted of creating child pornography or promoting prostitution of a minor is required to register as a sex offender, but not if convicted of sex trafficking. Similarly, courts may find that good cause exists for termination of a trafficker's parental rights if the trafficker is convicted of sexual exploitation of a minor or any offense that requires sex offender registration, but not if convicted of human trafficking.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation of a minor (§ 22-24A-5)	Class 4 felony	Max. 10 years	Max. \$20,000	●
Hiring another to engage in sexual activity (§ 22-23-9)	Misdemeanor	Max. 1 year	Max. \$2,000	○
Possession of child pornography (§22-24A-3)	Class 4 felony	Max. 10 years	Max. \$20,000	●

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking are vulnerable due to gaps in the state legal framework. Child pornography offenders may not assert a defense that the minor consented to the acts, but such a defense is not prohibited in CSEC or sex trafficking prosecutions. Prostitution offenses are not limited in application to adults, so prostituted minors unsuccessful in asserting the available affirmative defense of sex trafficking victimization may be treated as offenders instead of victims. No laws expressly identify a sex trafficking victim as a victim for the purpose of protection and the definition of a child in need of services does not expressly include a child subjected to sex trafficking or CSEC, further narrowing the possibility of a child victim receiving protective services. In addition, many child victims of sex trafficking are not likely to qualify for protection through child protective services due to the undefined term “sexual exploitation” within the definition of abuse or neglect and the limitation of the definition of “custodian” to family members or legal guardians. Child victims are eligible for state crime victims’ compensation, although eligibility criteria may limit their ability to recover, including requirements to cooperate with law enforcement and to report the crime within five days of when “a report could reasonably be made.” Victims also must file a claim for compensation within one year unless good cause is shown, and victims become ineligible if determined to have contributed to their injury. South Dakota has no “rape shield” law to reduce the trauma of cross examination for testifying sex trafficking and CSEC victims and closed-circuit television testimony is limited to victims of sex offenses under age 12. A court may seal juvenile records one year after the child is released from the court’s jurisdiction or from detention. A victim of sex trafficking or CSEC may seek restitution for pecuniary damages only, while victims of certain non-CSEC sex offenses are specifically eligible for “any necessary medical, psychological, or psychiatric treatment, or foster care of the minor resulting from the act or acts.” Victims of child pornography and promoting prostitution of a minor have a statutorily authorized civil remedy against their exploiter. CSEC and sex trafficking prosecutions have a seven year statute of limitations, while civil action is six years beginning at age 18.

CRIMINAL PROVISIONS FOR FACILITATORS

South Dakota’s human trafficking law makes it a crime to benefit financially or receive anything of value from trafficking. Benefiting financially from sex trafficking is a felony punishable by imprisonment up to 25 years and a possible fine of \$50,000. Selling child pornography or transporting victims or owning a place regularly used for prostitution are felonies punishable by imprisonment up to 2 years and/or a fine of \$4,000. Manufacturing or distributing child pornography is a felony punishable by imprisonment up to 10 years and a possible fine of \$20,000. A facilitator is subject to mandatory criminal asset forfeiture if convicted of a child pornography offense and may be required to pay restitution to any victim who suffers pecuniary damages. No law makes sex tourism a crime in South Dakota.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

South Dakota law does not mandate law enforcement training on domestic minor sex trafficking or human trafficking. Single party consent to audiotaping is permitted, but the law does not authorize wiretapping for CSEC or human trafficking investigations, leaving law enforcement without this valuable tool and resulting evidence for better prosecution. Law enforcement are free to use decoys and the Internet to investigate sex trafficking crimes as a result of the express denial of a defense to prosecution based on the “minor” being an “undercover operative or law enforcement officer” in the solicitation of a minor statute, which makes it a crime to solicit a minor under 16 for any sex act, which may include commercial sex acts. Law enforcement are statutorily required to enter missing persons reports in the National Crime Information Center computer within 12 hours, but there is no express mandate to report found children which could help to identify repeat runaways at high-risk for commercial sexual exploitation.

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.

