

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

TENNESSEE REPORT CARD 2012

Tennessee imposes substantial penalties for violations of the trafficking law, but the penalty enhancement provided under this law does not apply to all minors under 18. While minors exploited in prostitution are immune from prosecution, they are not directed into services and may be deterred from pursuing justice and recovery due to lack of protections.

FINAL SCORE

79.5

FINAL GRADE

C



9
10

20
25

14.5
15

7
10

16.5
27.5

12.5
15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Tennessee's sex trafficking law, trafficking for commercial sex acts, does not require proof of use of force, fraud, or coercion to engage a person, including a minor under 18, in commercial sex acts. It enhances penalties when the minor is under 15 or the offense occurs near a school, library or park. The state commercial sexual exploitation of children (CSEC) laws include patronizing prostitution, promoting prostitution, especially aggravated sexual exploitation of a minor, solicitation of a minor, and soliciting sexual exploitation of a minor. While the prostitution statute refers to the sex trafficking statute to provide an affirmative defense for victims, the CSEC statutes do not refer to the sex trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. Tennessee's racketeering law includes the CSEC offense of especially aggravated sexual exploitation of a minor as racketeering activity, but does not include human trafficking or the state's other CSEC offenses.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law could apply to buyers who "benefit" from a minor's commercial sex act, or following federal precedent, be applied to buyers who "obtain" a minor for commercial sex acts. Buying sex with any minor under 18 is a crime under the patronizing prostitution statute, which is punishable as a Class E felony with penalties far short of those provided under the sex trafficking law or comparable federal offenses. The sex trafficking law enhances the penalty for trafficking a minor under 15 to a Class A felony, while the penalty for sex trafficking of adults and minors 15 and older is a Class B felony. Tennessee has a statute that includes soliciting a minor via electronic means using the term "hire" to include commercial sexual activity within its scope, addressing the growing trend of buying and selling commercial sex through the Internet. Buyers face possible fines and criminal asset forfeiture for their crimes under the patronizing prostitution law and a court may order a convicted buyer of commercial sex with minors to pay victim restitution. If applicable to the crime of buying sex with a minor, trafficking for commercial sex acts requires registration as a sex offender upon conviction; however, a conviction for patronizing prostitution when the victim is a minor does not require registration, so not all buyers of sex with minors are being identified as sex offenders.

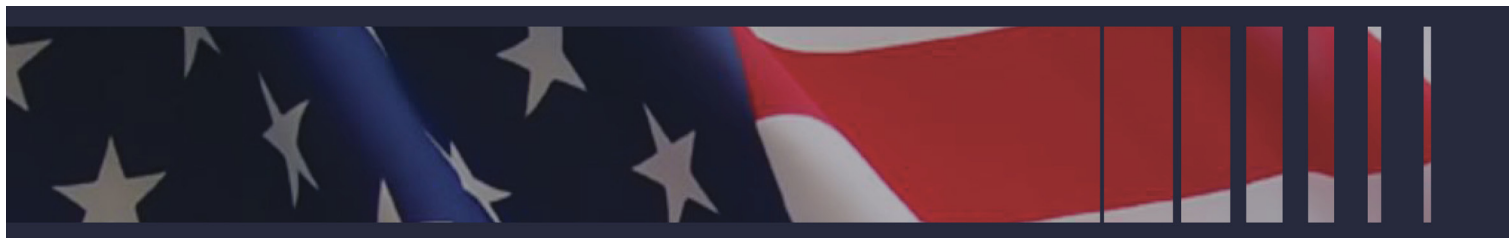
DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Patronizing prostitution of a minor (§ 39-13-514)	Class E felony	1-6 years	Max. \$3,000	●
Purchase child pornography (§ 39-17-1004)	Class C felony	3-15 years	Max. \$10,000	●
Possession of child pornography (§ 39-17-1003)	Class D felony	2-12 years	Max. \$5,000	●

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

CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers may be found guilty of a range of laws. Trafficking for commercial sex acts is a felony punishable by 8-30 years imprisonment, unless the minor is under 15 or the offense occurs near a school, library or park, in which case a trafficker faces 15-60 years imprisonment. The CSEC crime of promoting prostitution of a minor is a felony punishable by 1-6 years imprisonment. Both carry fines up to \$25,000, which can be enhanced to \$50,000 under the sex trafficking law. Using or employing a minor in a sexual performance and promoting, assisting, or transporting a minor to participate in a sexual performance are felonies punishable by 8-30 years imprisonment and fines up to \$25,000, while promoting or selling child pornography is punishable by 3-15 years imprisonment and a possible fine not to exceed \$10,000. Mandatory criminal asset forfeiture applies to sex trafficking and promoting prostitution offenses, while discretionary asset forfeiture and victim restitution can be pursued in most other cases. A trafficker who solicits a minor via electronic means for commercial sexual activity may be culpable under a separate law punishable by 8-30 years and up to a \$25,000 fine. Convictions for sex trafficking, aggravated exploitation of a minor and especially aggravated exploitation of a minor, but not promoting prostitution of a minor, require sex offender registration. Child sex trafficking and CSEC are not enumerated crimes for which the Department of Human Services must file a petition to terminate parental rights.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Minors under 18 are immune from prostitution charges under Tennessee law; however, victims are not provided with a statutory protective response, leaving them to return home without mandated treatment or services. A victim may be determined to be an abused and neglected child as a result of the definition including commercial sexual exploitation, or a dependent and neglected child determined to include a child engaged in prostitution or child pornography (but not a human trafficking victim). However, the definition of “custodian” does not expressly include persons without legal custody of a minor and therefore would not bring such a child whose abuse is perpetrated by a trafficker within the mandate of child protective services intervention. Trafficking for commercial sex acts and CSEC offenses do not prohibit a defense to prosecution by an offender based on consent of the minor to the commercial sex act, potentially deterring minors from pressing their claims of victimization. Victims of sex trafficking are eligible for crime victims’ compensation, and pain and suffering expenses are additionally available to victims of pornography. However, a victim may be barred from recovering if determined to have been criminally responsible for the crime, did not cooperate with police, or did not file the claim within one year (extended for child pornography victims). Additionally, the crime must be reported within 48 hours unless good cause is shown (examples do not include commercial sexual exploitation victimization). The appointment of a guardian ad litem could encourage child sex trafficking victims to pursue legal actions; however, the “rape shield” law which can reduce the trauma of cross-examination for testifying victims does not apply in sex trafficking or CSEC prosecution. Juveniles may petition the juvenile court for expungement of criminal records if the juvenile is 18, one year has passed since the delinquency adjudication, and the minor has not been convicted of a criminal offense as an adult or adjudicated guilty of a violent juvenile sex offense. Victims of any crime may request restitution in the sentencing of their perpetrator. Civil remedies are available when the victim suffers physical, mental or pecuniary injury and is not an accomplice to the crime, and the statute of limitations for bringing action does not begin to run until the minor reaches 18. The criminal statute of limitations is extended for certain sexual offenses involving children, not including sex trafficking or CSEC offenses.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Tennessee law requires training for law enforcement on childhood sexual abuse, which covers sexual exploitation of a child, including exploitation through prostitution or pornography. Additionally, some funds realized through the human trafficking asset forfeiture provisions are allocated to training on human trafficking. Single party consent to audiotaping is permitted by law but wiretapping in investigations of child sex trafficking or CSEC is not permitted, denying law enforcement an effective investigative tool and hindering collection of actionable evidence. Law enforcement decoys and Internet investigation tools may be used for some crimes related to domestic minor sex trafficking. Law enforcement agencies are mandated to report missing children, maintain data on missing children, and report recovered children, allowing them to track repeat runaways who are at high risk for sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

The trafficking for commercial sex acts statute applies to facilitators who benefit from or attempt to benefit from sex trafficking. Facilitators may also be criminally liable under the trafficking for forced labor or services law. Facilitators convicted under the sex trafficking law face 8–30 years imprisonment and a possible fine of \$25,000, or 15-60 years imprisonment and a possible fine of \$50,000 if the minor is under 15 or the offense occurs near a school, library or park. CSEC and child pornography offenses also include actions of facilitators. The felony crime of promoting prostitution when a minor is involved is punishable by 1–6 years imprisonment and up to a \$3,000 fine. A facilitator guilty of promoting or selling child pornography faces 3–15 years imprisonment and up to a \$10,000 fine with each image constituting a separate offense, and when more than 25 images are involved, an enhanced sentence of 8–30 years and up to a \$25,000 fine. Promoting, assisting, or transporting a minor to participate in a sexual performance is punishable by 8–30 years imprisonment and up to a \$25,000 fine. Mandatory criminal asset forfeiture applies to sex trafficking and promoting prostitution offenses, while discretionary asset forfeiture and victim restitution may also be pursued against facilitators in most other cases. No laws in Tennessee 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.

