

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

ARKANSAS REPORT CARD 2013

The trafficking of persons law does not require proof of force, fraud or coercion where the victim is a minor, and buyers of sex with minors face prosecution under human trafficking and commercial sexual exploitation of children laws. Minors have some protections under the law as victims of a crime, but may still be treated as delinquent.

FINAL SCORE

70.5

FINAL GRADE

C



10

10

20

25

12

15

3.5

10

12.5

27.5

12.5

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Arkansas's trafficking of persons law does not require the use of force, fraud or coercion when the victim is a minor and provides a heightened penalty for offenses involving a minor victim. Commercial sexual exploitation of children (CSEC) laws include: promoting prostitution in the first degree, engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, sexually grooming a child, and employing or consenting to the use of a child in a sexual performance. Prostitution statutes refer to the trafficking of persons law by providing an affirmative defense to minor victims of sex trafficking. Arkansas's RICO statute does not specifically include trafficking or CSEC as predicate offenses, although they may qualify as predicate criminal offenses if violence or pecuniary gain is involved.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state trafficking of persons law can, following federal precedent, be applied to buyers through the word "obtain," and the patronizing a victim of human trafficking statute can also apply to actions of buyers of sex acts with minors. The sexual solicitation statute does not distinguish between buying sex acts with an adult or a minor. The CSEC offenses of sexually grooming a child and transportation of minors for prohibited sexual conduct capture some crimes involving the purchase of sex acts with a minor. Internet stalking of a child makes it a crime when a person over 21 uses the Internet to entice, lure or buy information about a child 15 or younger to arrange a meeting to engage in sexual intercourse. Computer child pornography criminalizes use of the Internet to lure or entice a minor under 17 to engage in sexual conduct. Two offenses criminalize buying and possessing child pornography. Buyers face mandatory criminal asset forfeiture of any "instrument" used in commission of a felony. The trafficking in person law expressly prohibits a defense based on age mistake. Buyers convicted of child pornography offenses, sexually grooming a child, and Internet stalking of a child offenses must register as sex offenders but sex trafficking and CSEC offenses are not enumerated as registrable offenses. A court may order restitution for economic losses, medical and psychological care.

CRIMINAL PROVISIONS FOR TRAFFICKERS

Trafficking of persons is a felony punishable by 10 years to life when the victim is a minor. Promoting prostitution of a minor and sexually grooming a child are felonies punishable by up to 6 years imprisonment and a possible fine up to \$10,000. Child pornography offenses carry 5–20 years imprisonment and a possible fine up to \$15,000. Internet stalking of a child reaches traffickers 21 or older selling information about a child 15 or younger to arrange a meeting to engage in sexual intercourse. Convictions for most CSEC offenses require registration as a sex offender, but sex trafficking is not enumerated as a registrable offense. The law on termination of parental rights does not enumerate convictions of specific crimes as grounds for termination, but upon finding that a trafficker's child or sibling is dependent-neglected as a result of sexual exploitation parental rights may be terminated. Traffickers face civil judgments and mandatory criminal forfeiture. A court may order a trafficker to pay restitution to the victims of their crime.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking of persons (§ 5-18-103(4))	Class Y felony	10-40 years, or life	None	●
Patronizing a victim of human trafficking (§ 5-18-104)	Class A felony	6–30 years	Max. \$15,000	○
Sexual solicitation (§ 5-70-103) (age-neutral)	Class B misdemeanor	Max. 90 days	Max. \$1,000	○
Buying and possessing child pornography (§§ 5-27-304(a)(2), 5027-602(a)(2))	Class C felony	3–10 years	Max. \$10,000	●

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Commercially sexually exploited children are expressly defined as victims for the purpose of provision of services by the Department of Human Services. The trafficking of persons and CSEC statutes do not expressly prohibit a defense based on consent of the minor to engage in the commercial sex acts. Minors are not immune from charges and prosecution under the prostitution offenses and minors engaged in prostitution are not identified as victims of sex trafficking. No protective provisions specifically for child sex trafficking victims are statutorily mandated. As a result, a victim could enter either the juvenile justice system as a “delinquent juvenile” or the child protective system as a “dependent-neglected” juvenile. The definition of “dependent-neglected juvenile” includes a juvenile at risk of sexual exploitation through prostitution, pornography, or trafficking of persons. The definition of caretaker is limited to parents, guardians, custodians, a significant other of the child’s parent, and those that they entrust with the care of the child, and is therefore not likely to include most traffickers to allow for intervention. DMST and CSEC victims could be eligible for Crime Victims Reparations, but face some ineligibility barriers such as requirements to report the crime within 72 hours of its occurrence and filing claims within one year, unless the victim can show good cause for the delay. The award may also be reduced for failure to cooperate with law enforcement officers. Victim-friendly court procedures are limited to children under 12 (closed circuit television testimony eligibility) and 10 (certain hearsay exceptions), and the “rape shield” law, which limits traumatizing cross-examination of testifying victims, only applies to sexual offense victims, not victims of CSEC or sex trafficking. Juvenile victims of human trafficking may have prostitution convictions sealed by the court at any time. A court may order restitution to victims for actual economic loss and the cost of necessary medical or professional services. Additionally, any victim of a felony offense may bring a civil action within three years of reaching 21. The criminal statute of limitations is not eliminated for trafficking of persons; however, it is extended until the victim reaches 28 for many CSEC offenses.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Arkansas law mandates law enforcement training on human trafficking or domestic minor sex trafficking. The state law allows for single party consent to audiotaping, and if done “under the color of law,” intercepting telephone, wire, landline or wireless communications for criminal investigations is lawful. Trafficking of persons and CSEC statutes do not expressly permit the use of a decoy to investigate these crimes or prohibit a defense based on the use of a decoy, making investigations of non-computer based child sex trafficking difficult. However, law enforcement may utilize the Internet to investigate Internet stalking of a child believed to be under 15 and computer child pornography when the child is believed to be under 17. The law requires law enforcement to immediately report missing and recovered children to the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center which provides law enforcement officers with a tool to track high-risk runaways for prevention and intervention of sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

The trafficking of persons statute reaches those who benefit financially from trafficking, and a facilitator could be subject to criminal gang and money laundering laws. Additional penalties apply to organizations involved in human trafficking when force is used. Facilitating trafficking of persons or transporting minors for prohibited sexual conduct are felonies punishable by 6–30 years imprisonment and a possible fine not to exceed \$15,000. Promoting prostitution of a minor is a felony punishable by up to 6 years imprisonment and a possible fine not to exceed \$10,000. Crimes of advertising, selling, transporting, exhibiting, and manufacturing child pornography are classified as Class C felonies for a first offense punishable by 3–10 years imprisonment and a fine up to \$10,000. A facilitator may also be charged with producing, directing, or promoting a sexual performance by a child, a Class B felony with 5–20 years imprisonment and a fine up to \$15,000. Asset forfeiture applies to “conveyances” and “instruments” used in commission of the crime. A court may order a facilitator to pay victim restitution. No laws 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.

