

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## DELAWARE REPORT CARD 2013

*The state sex trafficking law requires proof of force, fraud or coercion for facilitators, narrowing its use. Critical investigative tools for law enforcement efforts to combat the growing use of the Internet to commit sex trafficking are not provided by law.*

FINAL SCORE

65.5

FINAL GRADE

D



7.5

10

17

25

12.5

15

5

10

16

27.5

7.5

15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Delaware's human trafficking law includes sexual servitude of minors without requiring proof of force, fraud or coercion to cause the minor to engage in commercial sex acts, and enhances the penalty when force or threat was used. The commercial sexual exploitation of children (CSEC) laws include sexual exploitation of a child and promoting prostitution in the first and second degrees. The prostitution laws do not refer to the sex trafficking of children statute to identify commercially sexually exploited minors as victims of sex trafficking. Delaware's organized crime and racketeering law includes promoting prostitution as racketeering activity, making it available to prosecute criminal enterprises that engage in child sex trafficking.



### CRIMINAL PROVISIONS ADDRESSING DEMAND

The sex trafficking law applies to a buyer who "causes" a minor to engage in commercial sex acts, but no CSEC laws include the crime of buying sex with a minor. Sexual solicitation of a child, although not specifically including solicitation of commercial sex acts, may be used in some cases to prosecute a buyer and is punishable by up to 15 years imprisonment, but patronizing a prostitute, which does not distinguish between purchasing sex acts with an adult versus a minor, is punishable up to 30 days imprisonment and a minimum fine of \$500 and repeat offenders may have their vehicles seized. Sexual solicitation of a child may also apply to buyers who use the Internet to solicit illegal sex acts, which could include commercial sex acts with a minor, possibly providing additional penalties in such cases. Delaware law eliminates the mistake of age defense for all offenses in which age is an element of the offense but permits a defense in certain child pornography prosecutions that the defendant believed a child under 14 years of age was over 16. Buyers of sex with minors will be required to register as sex offenders if convicted of sex trafficking of a minor, sexual solicitation of a child or child pornography offenses, but not for patronizing a prostitute even when a minor is patronized.



### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under both the sexual servitude and the forced labor and services provisions of the trafficking statute, as well as CSEC laws and money laundering laws. Sexual servitude of a minor under age 14 and sexual exploitation of a child through pornography are felonies punishable by 2–25 years imprisonment. Creating and distributing child pornography is punishable by up to 25 years imprisonment. Sexual solicitation of a child may reach the conduct of traffickers who use the Internet to recruit or sell minors for illegal sex acts, possibly providing additional penalties in such cases. When convicted of sex trafficking, restitution to the victim is mandatory. Traffickers must register as sex offenders if convicted of sex trafficking, CSEC, or child pornography offenses. Sex trafficking is an enumerated felony offense which permits initiation of termination of parental rights procedures under Delaware law; however, promoting prostitution, sexual exploitation of a child and child pornography offenses are not included among the listed offenses.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking of persons (tit. 11, § 787(b)(2))	Class C felony (victim 14-18)	Max. 15 years		○
	Class B felony (victim under 14)	2–25 years		
Patronizing a prostitute (age-neutral) (tit. 11, § 1343(a))	Class A misdemeanor	Max. 30 days	\$500– \$575	○
Possession of child pornography ( § tit. 11, § 1111)	Class F felony	Max. 3 years		○

*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 in Delaware are vulnerable due to gaps in the laws. Prostitution offenses are not limited in application to adults, leaving prostituted minors vulnerable to arrest for prostitution. Delaware law prohibits a defense based on consent only in cases involving minors under the age of 16, leaving older minors unprotected and burdened with overcoming the defense. Even though the definition of an abused child is broad enough to include sexually exploited minors, some victims of domestic minor sex trafficking would not qualify for child welfare intervention because the investigative authority of Department of Services for Children and Their Families is limited to “intrafamilial and institutional” abuse and neglect. The human trafficking law mandates preliminary steps to be taken toward implementing a child protection response provided through the Department of Health and Social Services that is capable of meeting the specific needs of trafficked minors, but the juveniles not identified as trafficking victims or dependency cases may be considered delinquents and held culpable for the crimes committed against them. CSEC victims who may be eligible for state crime victims’ compensation face barriers to receiving an award, including a bar to recovery for non-cooperation with law enforcement or if the injury arises from collusion with the perpetrator. Testifying sex trafficking victims may be provided separate waiting rooms during trial and non-disclosure of identifying information as trial protections. Only child victims under 11 of enumerated sex offenses, including child pornography and sexual solicitation (but not including sex trafficking or promoting prostitution), may testify via closed-circuit television in certain cases. The “rape shield” law is limited to victims of unlawful sexual intercourse or contact that might not include all CSEC crimes, leaving some victim-witnesses unprotected from the trauma of cross-examination at trials of their perpetrators. Expungement of juvenile records is mandated if the case did not lead to adjudication or was resolved through participation in a diversion program or resulted in no more than one adjudication of delinquency and three years have passed. Expungement is discretionary when the minor has no more than two adjudications of delinquency. Victim restitution is mandatory in sex trafficking convictions. No statute of limitations applies to prosecutions of sexual exploitation of a child and promoting prostitution in the first and second degrees, but the general 5-year statute of limitations applies to prosecutions for sex trafficking.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Development of training materials and training for law enforcement on human trafficking or domestic minor sex trafficking is not mandated or authorized by law, but the Council on Police Training has statutory authority to mandate such training. Single party consent to audiotaping is permitted, but wiretapping is only permitted in investigations of suspected racketeering offenses or offenses likely to result in personal injury. No laws expressly authorize the use of a decoy or the Internet in sex trafficking investigations, or provide protection from a defense to prosecution for sexual solicitation of a child based on the “minor” being, in fact, an adult. Delaware has established a statewide reporting and response system for missing children and requires the reporting of located children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The sexual servitude of a minor provision of the trafficking law does not include the crime of assisting, enabling, or financially benefitting from sex trafficking, but the forced labor or services provision, which requires proof of force or coercion in commission of the offense, makes it a crime to assist in or benefit from human trafficking. If convicted, a facilitator faces 2–25 years imprisonment. A facilitator convicted of distributing or disseminating child pornography also faces 2–25 years imprisonment. Promoting prostitution in the second degree may apply to facilitators who provide the venue for sex trafficking of minors, punishable by up to 5 years imprisonment. Facilitators may face additional penalties under money laundering laws. Restitution is mandatory for convictions under the trafficking in persons law. No laws in Delaware 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).

