

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## FLORIDA REPORT CARD 2013

*The human trafficking law includes sex trafficking of minors without regard to use of force, fraud or coercion to cause the minor to engage in commercial sex acts. Child victims have access to services and safe houses if identified as sexually exploited, but the prostitution law is age-neutral, allowing minors to be charged.*

FINAL SCORE

82

FINAL GRADE

B



7.5

18

15

6

20.5

15

10

25

15

10

27.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Florida's human trafficking law includes sex trafficking of minors without proof of use of force, fraud or coercion. Florida has several CSEC laws which include lewd or lascivious battery of a person under 16 for prostitution, kidnapping and false imprisonment of a child under age 13 for prostitution, use of a child in a sexual performance, selling or buying of minors into prostitution, selling or buying of minors for child pornography and procuring a minor for prostitution. Prostitution offenses do not refer to the trafficking law for victim identification. Florida's racketeering law includes human trafficking, CSEC and child pornography offenses as predicate acts making it a valuable tool to dismantle trafficking activities.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law could be applied to buyers who "obtain" a child for commercial sex acts, following federal precedent, if the relationship between buyer and trafficker satisfies the definition of "venture". The CSEC law on lewd or lascivious battery makes it a crime to engage a minor under 16 in prostitution. Since the patronizing a prostitute statute does not distinguish between purchasing commercial sex acts with adults versus minors, this statute would apply in cases of buying commercial sex acts with a minor 16 or 17 and when the purchase of sex acts with a minor is not identified as CSEC. Buyers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. The human trafficking law does not require the state to prove that the defendant knew a minor victim's age, but neither this law nor the CSEC laws expressly preclude a buyer from asserting mistake of age as a defense. Buyers must pay restitution to victims who suffer injury and face mandatory civil asset forfeiture for felony convictions. Buyers of sex with minors are required to register as sex offenders if convicted of lewd and lascivious battery, child pornography, or human trafficking offenses.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Human trafficking of a minor under 18 for commercial sex is a first degree felony punishable by up to life imprisonment and a fine up to \$10,000, or a life felony punishable by up to life imprisonment and a fine up to \$15,000 when the victim is under 15. Traffickers who obtain a minor for creating child pornography face up to 30 years imprisonment. CSEC crimes of lewd or lascivious battery, sexual performance by a child—which includes creating child pornography and is enhanced one higher degree if 10 or more images are found, at least one of which depicts certain types of abuse or very young minors—and procuring a minor for prostitution are punishable by up to 15 years imprisonment. Kidnapping a child under 13 for prostitution is punishable by life imprisonment and false imprisonment of a child under 13 for prostitution is punishable by up to 30 years imprisonment. All of these offenses carry a possible fine up to \$10,000. Traffickers face mandatory civil asset forfeiture and mandatory victim restitution. Traffickers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. Registration as a sexual predator is required for human trafficking and many CSEC crimes. Human trafficking is not enumerated as a violent crime for which a trafficker's parental rights can be terminated, however parental rights may be terminated if a trafficker is incarcerated for an extended period or is convicted of an offense as a habitual offender or for which registration as a sexual predator is required.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human trafficking (§ 787.06(3)(g))	1st degree felony	Max. life	Max. \$10,000	●
Lewd or lascivious battery (minor under 16) (§ 800.04(4))	2nd degree felony	Max. 15 years	Max. \$100,000	●
Patronizing a prostitute (§ 796.07(2)(i))	2nd degree misdemeanor (1st offense); 1st degree misdemeanor (2nd offense); 3rd degree felony (3rd offense)	Max. 60 days (1st offense); 1 year (2nd offense); 5 years (3rd offense)	Max. \$500 (1st offense); \$1,000 (2nd offense); \$5,000 (3rd offense)	●
Possessing child pornography (§ 827.071(5))	3rd degree felony	Max. 5 years	Max. \$5,000	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Sex trafficking and CSEC laws (other than lewd or lascivious battery) do not prohibit a defense based on consent of the minor. Prostitution offenses are not limited in application to adults, leaving prostituted minors vulnerable to arrest and detention for prostitution. Victims could be classified as a delinquent child, a child in need of services or an abused child leading to different response protocols and placements, including detention. Commercially sexually exploited minors come within the definition of a dependent child unless the child is charged with prostitution as a delinquent offense, and once identified as sexually exploited, may be placed in safe houses required to hire specially trained staff, where victims have access to counseling and crisis intervention services. For purposes of defining abuse in the child welfare statutes, “sexual abuse of a child” includes human trafficking and sexual exploitation by prostitution or sexual performance; however, the definition of custodian does not clearly apply to a trafficker, possibly preventing a child welfare response in cases of non-familial trafficking. Crime victims’ compensation is specifically mandated for victims of online sexual exploitation and child pornography identified through the National Center for Missing and Exploited Children’s Child Victim Identification Program and CSEC victims are specifically exempt from ineligibility factors. Victim-friendly trial procedures are available to sex trafficking victims, including an appointed guardian ad litem and the ability to testify via closed-circuit television at the discretion of the court for victims of trafficking under 16. The “rape shield” law is limited to victims of sexual battery, leaving CSEC victim-witnesses unprotected from the trauma of cross-examination. Florida law allows expungement specifically for victims of human trafficking. Additionally, a minor who successfully completed a diversion program or was not adjudicated delinquent may petition to expunge the juvenile record. Restitution to victims who suffer injury is mandatory and victims may bring various civil claims for injuries arising from trafficking. A prosecution for kidnapping a child under 13 or human trafficking of a minor under 15 may be brought at any time, while a four year statute of limitations applies to prosecutions of false imprisonment of a child under 13 and human trafficking where the child is under 18, and a three year statute of limitations for all other felonies. For civil claims based on damages from being trafficked, a three year statute of limitations begins to run after the later of the conclusion of the criminal case, notice to the victim of pornographic images, or three years after the victim turns 18.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on human trafficking is authorized in Florida. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations human trafficking and child pornography but not for prostitution offenses. Use of a decoy to investigate prostitution of children is not expressly authorized. A defendant prosecuted under the law against computer pornography and travelling to meet a minor for lewdness including prostitution and solicitation of a child to participate in pornography may not raise a defense that the “minor” was in fact an undercover law enforcement officer and it is enough that that defendant believed the person to be a minor, making the Internet a valuable tool for these investigations. A statewide reporting and response system for missing children is in place in Florida and requires the reporting of missing and located children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The human trafficking law applies to facilitators who benefit financially from human trafficking. No CSEC crimes are applicable to facilitators. Several laws make selling and promoting child pornography a crime, including acts in connection with obscene, lewd materials, punishable by up to 5 years imprisonment and a possible fine up to \$5,000 when the materials involve minors; the same penalty applies to computer pornography and transmission of pornography by electronic device or equipment but increases to 15 years imprisonment with a possible fine of \$10,000 if the defendant possesses 10 or more images, at least one of which depicts certain types of abuse or very young minors. Facilitators must pay restitution to victims who suffer injury and face mandatory civil asset forfeiture for felony convictions. Facilitators who allow use of their premises for sex trafficking face the loss of their property if declared a nuisance under criminal gang laws. No laws in Florida 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).

