

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## HAWAII REPORT CARD 2013

*Hawaii has not enacted a sex trafficking law. Buyers of sex with minors face fines, asset forfeiture and sex offender registration for CSEC violations, but penalties are not as high as federal penalties. Few protective provisions exist for domestic minor sex trafficking victims.*

FINAL SCORE

54.5

FINAL GRADE

F



5

10

14.5

25

11.5

15

5

10

11.5

27.5

7

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Hawaii has not enacted a human trafficking law that includes the crime of sex trafficking. The state has several commercial sexual exploitation of children (CSEC) laws, including promoting prostitution of a person under 18, kidnapping for purposes of prostitution or obscenity, promoting child abuse through pornography, and solicitation of a minor for prostitution. The absence of a sex trafficking law prevents proper identification of commercially sexually exploited minors as victims of sex trafficking. The state racketeering statute includes CSEC offenses in the definition of racketeering activity.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The lack of a sex trafficking laws prevents buyers from being charged with sex trafficking. Solicitation of a minor for prostitution expressly addresses soliciting and buying sex with a minor and distinguishes between purchasing sex acts with an adult versus a minor. If there are verified losses, restitution for conviction of any crime a buyer might be convicted of, including general sex offenses and solicitation of a minor for prostitution, is mandatory upon a victim's request and includes medical expenses. Civil asset forfeiture is available for those convicted of solicitation of a minor for prostitution, promoting child abuse in the third degree by possessing child pornography and electronic enticement of a minor. A person convicted of solicitation of a minor for prostitution or possession of child pornography is required to register as a sex offender. Buyers can be prosecuted for electronic enticement of a child under 18 when they commit felony sexual abuse as a result and face a up to 10 years imprisonment and possible fine up to \$25,000, but buyers using the Internet for the purchase of sex with children are not expressly culpable under this law if they solicit a minor for prostitution.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

There is no sex trafficking law in Hawaii, leaving traffickers to be prosecuted under the CSEC statutes of promoting prostitution of a minor and creating child pornography which carry sentences (imprisonment up to 20 years "without the possibility of suspension of sentence or probation") as high as federal trafficking sentences (10 years–life) and a possible fine up to \$50,000. A trafficker using the Internet to lure or recruit a minor under 18 for commercial sex acts could be prosecuted for electronic enticement of a child if the resulting case is seen as felony sexual abuse, instead of merely prostitution. Employing a minor in adult entertainment is a misdemeanor punishable by up to 1 year imprisonment and a possible fine up to \$2,000. Traffickers might be guilty of state racketeering law and money laundering laws for their criminal actions. Traffickers convicted of promoting prostitution of a minor or promoting child abuse by creating child pornography are required to register as sex offenders. While the law does not enumerate convictions for CSEC or sexual offenses as grounds for terminating parental rights, being required to register as a sex offender under the federal Adam Walsh Act is considered an aggravated circumstance for which parental rights may be terminated. Traffickers found to have violated organized crime laws, the electronic enticement of a child law, or certain CSEC and child pornography offenses are subject to asset forfeiture. Restitution to the victim for losses, including medical costs, is mandatory upon request by the victim.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation of a minor for prostitution (§ 712-1209.1)	Class C felony	Max. 5 years	Mandatory \$2,000- \$10,000	●
Promoting child abuse in the third degree by possessing child pornography (§ 707-752)	Class C felony	Max. 5 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

Victims of sex trafficking are vulnerable due to gaps in Hawaii's laws. There is no prohibition on a defendant raising consent of the minor to the commercial sex act as a defense to prosecution. Prostitution offenses are not limited in application to adults leaving minors vulnerable to prosecution. No protective provisions are statutorily mandated specifically for domestic minor sex trafficking victims; therefore, a victim may receive a variety of responses including detention for delinquency or possible shelter care for dependency. Child abuse and neglect definitions include victimization of a child through prostitution or child pornography, but the definition of caregiver that dictates whether child protective services may become involved only includes parents, legal custodians, and those that a child resides with for more than 6 months with the consent of the legal custodian, reducing the likelihood of child welfare intervention in non-familial child trafficking cases. Only victims of enumerated violent crimes are eligible for crime victim compensation; these do not include CSEC but do include sexual assault and kidnapping which might be charged in a CSEC case. Victim-friendly trial procedures may be limited for victims of CSEC crimes. A victim under 18 of a sexual offense may be permitted to testify via closed circuit television and the "rape shield" law reduces the trauma of cross-examination for testifying victims of sexual offenses, which are not defined expressly to include CSEC offenses. Minors may petition to have certain arrest records expunged. Civil remedies are available to CSEC victims for injuries arising from sex offenses and under the Prostitution Coercion Liability Act if the minor was coerced into prostitution. Restitution for losses including medical expenses is statutorily authorized. Neither criminal nor civil statutes of limitations are eliminated, presenting potential barriers to a sex trafficking victim with typically slow recovery from the unique trauma of CSEC. Civil statutes of limitations do not begin to run until the victim reaches 18, and the statute of limitations for civil actions arising from sexual offenses does not run until 8 years after the minor turns 18 or 3 years after discovery of the injury caused by sexual abuse.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training or development of training materials for law enforcement on human trafficking is not mandated or authorized. Single party consent to audiotaping is permissible in Hawaii, but CSEC offenses are not included as crimes for which a wiretapping order may be issued, withholding a critical tool for law enforcement investigations and the gathering of evidence. Use of a decoy is not statutorily authorized, but law enforcement may utilize the Internet to investigate buyers and sex traffickers in violation of the electronic enticement of a child statute. The state law mandates reporting of missing and recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

A facilitator who knowingly advances or profits from prostitution of a minor under 18 faces imprisonment for 20 years and a possible fine up to \$50,000. Disseminating or reproducing child pornography is a felony punishable by imprisonment up to 10 years and a possible fine up to \$25,000. Facilitators may also be subject to Hawaii's racketeering and money laundering laws for their criminal actions. Laws which prohibit selling, advertising, and promoting travel for the purpose of prostitution make sex tourism a felony punishable by up to 5 years imprisonment and a possible fine up to \$10,000. Facilitators may be subject to asset forfeiture for promoting prostitution and promoting child abuse by disseminating child pornography. Restitution is mandatory if a victim requests it and can prove losses and medical costs caused by an offense.

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).

