

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

KANSAS REPORT CARD 2013

The human trafficking law does not require proof of force, fraud or coercion, and a comprehensive CSEC law reaches traffickers, buyers and facilitators. Child victims of commercial sexual exploitation are provided a protective response through child welfare, but are not immune from prostitution charges.

FINAL SCORE

73.5

FINAL GRADE

C



10

10

19

25

13

15

6

10

15.5

27.5

10

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

The human trafficking law in Kansas includes sex trafficking and defines a minor under the age of 18 as a trafficking victim without regard to use of force, fraud or coercion. The state also has two commercial sexual exploitation of children (CSEC) laws to reach traffickers: commercial sexual exploitation of a child and sexual exploitation of a child for pornography. The prostitution statute refers to human trafficking as an affirmative defense to a charge of selling sexual relations. The Kansas racketeering law includes human trafficking, sexual exploitation of a child, and promoting prostitution as predicate offenses, making it available as a tool to prosecute trafficking crimes.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law applies to buyers who “obtain” a victim for commercial sex acts, following federal precedent. Buyers may also be convicted under the commercial sexual exploitation of a child law. Electronic solicitation, which includes using the Internet to solicit a minor under 16 to engage in an unlawful sexual act (although not defined to include commercial sex acts), might be used to prosecute buyers. No laws prohibit a buyer from asserting a defense to prosecution based on age mistake, making prosecutions more difficult. Courts must hold a hearing to establish restitution when requested by victims of any crime. Buyers face mandatory civil asset forfeiture for human trafficking, commercial sexual exploitation of a child, or indecent solicitation of a child. A person convicted of possessing child pornography is required to register as a sex offender, and a person convicted of sex trafficking a minor or commercial sexual exploitation of a child must register as a violent sexual offender.

CRIMINAL PROVISIONS FOR TRAFFICKERS

Convicted sex traffickers of a minor 14–18 years of age are subject to presumptive imprisonment of 147–165 months and a possible fine up to \$300,000. A conviction for commercial sexual exploitation of a child is punishable by 31–34 months and a possible fine not to exceed \$300,000. When the victim is under 14 and the offender is 18 or older, the crime is punishable by 25 years to life and a possible fine not to exceed \$500,000. Creating child pornography is a felony punishable by 31–34 months imprisonment and a possible fine not to exceed \$300,000. For all of these crimes, when the victim is under 14 and the offender over 18, traffickers face a mandatory sentence of 25 years–life and a possible fine up to \$500,000. Traffickers are subject to mandatory civil asset forfeiture for convictions of sex trafficking and commercial sexual exploitation of a child, and restitution is required. Traffickers are required to register as sex offenders for convictions of creating child pornography, and must register as sexually violent offenders for convictions of sex trafficking, sexual exploitation, commercial sexual exploitation of a child and electronic solicitation of minors. Grounds for termination of parental rights exist if a parent is “convicted of a felony in which intercourse occurred,” and any conviction of a felony and imprisonment may be considered in determining parental fitness.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Human trafficking (§ 21-6421(a))	Severity level 1, person felony (if 14-17)	Presumptive 147-165 months	Max. \$300,000	●
	Off-grid person felony (under 14)	25 years to life	Max. \$500,000	
Commercial sexual exploitation of a child (Enacted House Bill 2034)	Severity level 5, person felony (if 14-17)	Presumptive 31-34 months	Max. \$300,000	●
	Off-grid person felony (under 14)	25 years to life	Max. \$500,000	
Possessing child pornography (§ 21-5510)	Severity level 5, person felony	Presumptive 31–34 months	Max. \$300,000	○

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

A defendant may not assert consent of the minor as a defense in sex trafficking or CSEC prosecutions, but if misidentified as prostitution, a minor may be prosecuted for prostitution rather than identified as a sex trafficking victim. A protective response is provided through child welfare statutes that includes staff secure facilities where victims have access to specialized services. However, minors are not expressly immune under the prostitution law and may still be detained and adjudicated delinquent for offenses committed as a result of their victimization. A victim found to be abused—defined to include pornography and prostitution—might receive protection through child protective services if the definition of a permanent custodian is also determined to include traffickers. Sex trafficking and CSEC victims are likely eligible for state crime victims' compensation. However, eligibility criteria may threaten a victim's ability to recover, including a requirement to report the crime to law enforcement within 72 hours (unless good cause is shown) and a bar to recovery for contributory misconduct or victim involvement in the unlawful activity. For certain listed crimes that include sexual exploitation of a child through pornography, a claim must be filed within two years of reporting the incident to law enforcement if the victim was under 16. If the victim is over 16 or is a victim of a non-listed offense, such as sex trafficking, a claim must be filed within 2 years of occurrence of the crime. The "rape shield" law, which reduces the trauma of cross-examination for testifying victims of sex offenses, is specifically available in cases of sex trafficking and sexual exploitation through child pornography, and some victims under 13 may testify via closed-circuit television. Juvenile records may be expunged when the juvenile is 23 or one year has passed since the juvenile was discharged. A victim of any crime may request a hearing to set restitution, and victims of sexual exploitation through pornography have a civil action for damages against an offender. Generally felony prosecutions must be commenced within five years unless certain factors are present, such as the victim being under 15 or the victim was prevented by a parent or legal authority from reporting the crime. Victims of human trafficking may bring a civil action by age 21 or within three years of discovering an injury was caused by human trafficking.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Kansas law authorizes law enforcement training on human trafficking. The law allows single party consent to audiotaping, but does not allow wiretapping for CSEC offenses. No law expressly authorizes the use of a decoy in the investigation of child sex trafficking cases, but law enforcement may utilize the Internet to investigate domestic minor sex trafficking, relying on the crime of electronic solicitation if the underlying offense is considered an unlawful sex act. Law enforcement must report both missing and recovered children to the state database and National Crime Information Center, improving the ability to identify repeat runaways who are at high-risk for sex trafficking.

CRIMINAL PROVISIONS FOR FACILITATORS

The crime of benefitting financially from human trafficking is a felony punishable by presumptive imprisonment of 109–123 months and a possible fine up to \$300,000. A facilitator may also commit commercial sexual exploitation of a child by allowing owned property to be used for prostitution or transporting a minor to assist in promotion and is generally punishable by 31–34 months imprisonment. Promoting child pornography is a felony punishable by 31–34 months imprisonment and a possible fine up to \$300,000. For all of these crimes, when the victim is under 14 and the offender is over 18, a mandatory 25 years–life imprisonment and fine up to \$500,000 are possible. Also, civil asset forfeiture laws apply to sex trafficking and commercial sexual exploitation of a child offenses and restitution may be ordered. 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.

