

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

MICHIGAN REPORT CARD 2013

Michigan criminalizes sex trafficking of minors under age 18 without regard to force, fraud or coercion, but it does not reach buyers, and the purchase of commercial sex acts with a minor is not penalized under any law. Convicted sex trafficking offenders are not required to register as sex offenders.

FINAL SCORE

53

FINAL GRADE

F



7.5
10

6.5
25

10.5
15

7
10

11.5
27.5

10
15



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Michigan's sex trafficking law prohibits use of a minor for child sexually abusive activity without regard to force, fraud, or coercion of the minor in commission of the offense. However, Michigan's forced labor or services law also applies to minor sex trafficking victims and requires proof of force, fraud or coercion. The state CSEC laws include enticing away a female under sixteen and producing child sexually abusive activity or material. The prostitution law does not refer to the human trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. The state racketeering law includes human trafficking and CSEC offenses as predicate acts.



CRIMINAL PROVISIONS ADDRESSING DEMAND

The sex trafficking law cannot be used to prosecute demand and no CSEC laws include the crime of buying sex with a minor. In the absence of any applicable CSEC law, a buyer could be prosecuted for accosting, enticing or soliciting a minor under 16 for immoral purpose, although the result is misidentification of the buyer and victim. This crime is the predicate offense for the statute on use of the Internet or a computer system to commit sex offenses, which may provide a means of prosecuting buyers who use the Internet to purchase sex acts with minors under 16. Michigan's general prostitution law, which includes soliciting and patronizing prostitution, does not distinguish between purchasing commercial sex acts with an adult versus a minor. Possession of child pornography is punishable by up to four years imprisonment and a possible fine up to \$10,000; however, a mistake of age defense may be available for this offense based on a buyer's reasonable efforts to determine the age of the child. Victim restitution is not mandatory but buyers face asset forfeiture under nuisance laws for prostitution offenses. All of the sex offenses that a buyer could be convicted of require registration as a sex offender, but buyers convicted of soliciting and patronizing prostitution, even with a minor, are not required to register.



CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers convicted of sex trafficking face 20 years imprisonment, increased to life imprisonment when kidnapping is involved in the offense; when coercion is used, a fine not to exceed \$20,000 is imposed. The CSEC crime of producing child sexually abusive activity or material, which includes creating child pornography, is punishable by up to 20 years imprisonment and/or a fine up to \$100,000, and the crime of enticing away a female under 16 is punishable by up to 10 years imprisonment. Traffickers may also face racketeering and money laundering charges which can lead to asset forfeiture actions. A trafficker convicted of sex trafficking must pay victim restitution, and property used to commit prostitution offenses is subject to forfeiture under nuisance laws. The statute on use of the Internet or a computer system to commit illegal sex acts involving minors, which may include sex trafficking conduct, provides a means of prosecuting the growing number of traffickers who use the Internet to solicit minors for sex trafficking. Traffickers are required to register as sex offenders if convicted of soliciting a child for immoral purpose, producing child sexually abusive activity or material, use of the Internet or a computer system to commit illegal sex acts involving minors or pandering, but not if convicted of sex trafficking. Convictions for sex trafficking or CSEC offenses do not establish grounds for termination of parental rights, leaving children of traffickers at potential continuing risk.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Soliciting and patronizing prostitution (§ 750.449a)	Misdemeanor	Max. 93 days (1st offense); 1 year (2nd offense); or 2 years (3rd offense)	Max. \$500 (1st offense); \$1,000 (2nd offense); \$2,000 (3rd offense)	○
Possessing child pornography (§ 750.145c(4))	Felony	Max. 4 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 domestic minor sex trafficking may not be able to access protective provisions in the law. The sex trafficking and CSEC laws do not prohibit a defense based on consent of the minor to the commercial sex act, making it possible that a victim may have to prove a lack of consent. Michigan’s prostitution offense (soliciting, accosting, or inviting to commit prostitution) restricts application to persons 16 or older, making minors under 16 immune from prosecution, but services will not be provided to these minors unless reported as abused. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation, which includes allowing a minor to engage in prostitution or sexual performance, and the definition of custodian may be broad enough to include those without legal custody of the child, making it possible for child protective services to intervene in a case of a non-family member trafficking the minor. A CSEC victim age 16 or 17 arrested for prostitution may receive various responses ranging from a juvenile justice response to a child protective response depending on whether the child is adjudicated as a delinquent child or reported as a victim of suspected sexual abuse or sexual exploitation. For the purpose of crime victims’ compensation, victims of trafficking offenses are entitled to compensation unless found to be an accomplice or criminally responsible. The law provides victims of sex offenses exceptions to the time limits required to report crimes and file claims for compensation. As a way to increase the comfort of a testifying child victim, a separate waiting area in the courtroom is provided. The “rape shield” law, which may reduce the trauma of cross examination for testifying victims, only applies in sex offense cases, leaving testifying victims of sex trafficking cases without this protection. A minor with one adjudication of juvenile delinquency may petition to have the adjudication set aside; however, a CSEC victim with an ongoing juvenile record of delinquency adjudications for prostitution would be prevented from accessing this remedy. Victim restitution is mandatory; however, specific civil remedies are not available for victims under the trafficking or CSEC laws. Prosecutions for some CSEC and sex offenses must be brought within 10 years, or by the victim’s 21st birthday, whichever is later, while prosecutions for trafficking must be brought within six years of commission of the offense.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking or domestic minor sex trafficking is not statutorily mandated or authorized; nevertheless, police officers receive special training in the area of child abuse and neglect investigations which might include some aspects of domestic minor sex trafficking. Two-party consent to audiotaping communications is generally required, but an exception exists for law enforcement that permits audiotaping and wiretapping in the performance of their duties. No law expressly authorizes the use of a decoy or the Internet in the investigation of sex trafficking cases, but law enforcement may utilize these investigative tools under the statute prohibiting use of the Internet or a computer system to commit illegal sex acts involving minors. Michigan has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.

CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators may be convicted of assisting, enabling or benefitting from sex trafficking of minors under the sex trafficking law punishable by up to 10 years imprisonment, and may face additional penalties under the racketeering and money laundering statutes. Promoting and distributing child pornography is punishable by imprisonment up to 7 years and/or a fine up to \$50,000. Victim restitution is mandatory for a facilitator convicted of sex trafficking. Facilitators also face asset forfeiture under the racketeering laws and the law on seizure and sale of personal property deemed a nuisance for its use in promoting prostitution. No laws in Michigan address sex tourism, making the state attractive to unscrupulous businesses capitalizing on commercial sexual activity.

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.

