

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

MINNESOTA REPORT CARD 2013

Minnesota law makes sex trafficking of minors a crime without requiring proof of force, fraud or coercion, but it does not apply to buyers. Statutory protective provisions help victims of trafficking and commercial sexual exploitation of children (CSEC) offenses avoid a punitive response in the criminal justice system.

FINAL SCORE

86

FINAL GRADE

B



10

10

18

25

14

15

7

10

22

27.5

15

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Minnesota's sex trafficking of minors law clearly defines a minor under the age of 18 used in a commercial sex act as a sex trafficking victim without regard to use of force, fraud, or coercion. The state CSEC laws include soliciting a minor to engage in prostitution, housing a prostituted minor, and use of minors in sexual performance. The state prostitution offenses refers to the sex trafficking law to provide sex trafficking victims an affirmative defense, helping to identify commercially sexually exploited minors as victims of trafficking. The state racketeering law enumerates sex trafficking as a predicate offense.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law specifically does not apply to buyers of commercial sex from trafficking victims leaving the state. CSEC laws to criminalize the purchase of commercial sex acts with a minor. Soliciting a minor to engage in prostitution distinguishes the crime of purchasing commercial sex acts with a minor versus an adult and buyers may not assert a mistake of age defense to prosecution, and although penalties are staggered by age, the lowest penalties are still meaningful. Solicitation of children to engage in sexual conduct provides a means of obtaining heightened penalties for buyers using the Internet to commit illegal sex acts, which could include commercial sex acts with a minor. Possession of child pornography is a felony. Buyers could face asset forfeiture if convicted of CSEC or possession of child pornography offenses. Buyers convicted of soliciting a minor to engage in prostitution are also subject to civil asset forfeiture. A victim of any crime has a right to restitution for losses from convicted offenders. Buyers will be required to register as sex offenders if convicted of CSEC or pornography offenses.

CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker convicted of sex trafficking faces up to 20 years imprisonment and/or a fine up to \$50,000, enhanced to 25 years and/or up to \$60,000 if an aggravating factor is proven, such as more than one victim. When convicted of sex trafficking, a trafficker faces possible asset forfeiture and victim restitution. Use of minors in a sexual performance to create and disseminate child pornography is punishable by up to 10 years imprisonment and/or a fine up to \$20,000. The solicitation of children to engage in sexual conduct statute provides a sentence enhancement that could reach traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. If also convicted of racketeering for trafficking activities rising to a pattern of criminal activity, a trafficker faces 20 years and/or a fine up to \$1 million. Traffickers are subject to civil asset forfeiture and traffickers convicted of solicitation of children to engage in sexual conduct and use of minors in sexual performance are subject to criminal asset forfeiture. Traffickers must register as sex offenders if convicted of sex trafficking a minor, solicitation of children to engage in sexual conduct, or use of a minor in a sexual performance; however, convictions for these offenses do not establish grounds for termination of parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Classification | Sentence | Fine | Asset Forfeiture (available) |
|---|----------------|--|--|------------------------------|
| Soliciting a child for prostitution (§ 609.324) | Felony | Max. 5, 10 or 20 years | Max. \$10,000, \$20,000 or \$40,000 | ● |
| Solicitation of children to engage in sexual conduct (§ 609.352(2)) | Felony | Max. 3 years | Max. \$5,000 | ● |
| Possessing child pornography (§ 617.247(4)(a)) | Felony | Max. 5 years (1st offense) or 10 years (2nd offense) | Max. \$5,000 (1st offense) or \$10,000 (2nd offense) | ● |

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Minnesota law provides important protective provisions for CSEC victims. Sex trafficking and soliciting a minor for prostitution expressly prohibit a defense based on consent of the minor. Prostitution offenses do not limit application to adults; however, the statutory definition of a delinquent child removes prostituted minors from delinquency adjudication. Instead, victims “alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct” are included in the definitions of sexually exploited youth and of a child in need of protection or services who receive a child protective response. For purposes of child welfare intervention, the definition of abuse expressly includes sex trafficking and CSEC offenses; however, the definition of custodian is limited to those with legal custody of the child, making it unlikely that child protective services could intervene in a case of a non-family member trafficking the minor. If identified as a victim and suffering economic loss, sex trafficking and CSEC victims are eligible for crime victims’ compensation, although several criteria may limit their eligibility, including a bar to recovery if the victim participated or assisted in a criminal act, was committing a crime at the time the injury occurred, or does not fully cooperate with law enforcement. Also, the crime must be reported within 30 days of when the report could reasonably have been made. Minnesota’s “rape shield” law only applies to testifying victims in sex offense cases and not specifically in sex trafficking cases, however a child victim witness may provide testimony via closed-circuit television, outside the presence of the defendant. The juvenile court may expunge juvenile records at any time, at its discretion. The court may award criminal restitution and civil remedies are also provided for sex trafficking victims. The statute of limitations for criminal prosecutions of sex trafficking and CSEC offenses is three years. For civil claims based on damages from being trafficked, a six year statute of limitations begins to run after the victim knows or should know of the injury but is tolled until age 18 and may be tolled while the coercion continues.

CRIMINAL PROVISIONS FOR FACILITATORS

Facilitators are subject to prosecution for benefitting financially from sex trafficking, punishable by imprisonment up to 20 years and/or a fine up to \$50,000. A court may order victim restitution in a sex trafficking conviction. If convicted of CSEC or pornography offenses, such as use of minors in a sexual performance, facilitators face asset forfeiture. Disseminating and owning a business to disseminate child pornography is punishable by up to 10 years imprisonment and/or a fine up to \$20,000 and \$40,000 for any subsequent offense. No laws in Minnesota make sex tourism a crime.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training for law enforcement on child sex trafficking is authorized by law. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations for sex trafficking and soliciting a minor for prostitution. No laws expressly authorize the use of a decoy or the Internet in sex trafficking investigations, but these tools could be used in investigating child solicitation offenses, applicable to in-person and online solicitations when a person over 18 solicits a child 15 years old or younger to engage in sexual activity, which could include sex trafficking. Minnesota has established a statewide reporting and response system for missing children and requires the reporting of located children.

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.

