

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## NORTH CAROLINA REPORT CARD 2013

*North Carolina's human trafficking law includes sex trafficking of a minor without regard to use of force, fraud, or coercion, but fails to adequately include facilitators and penalties do not align with federal penalties. Minors are immune from prosecution under the prostitution law and North Carolina law authorizes training on domestic minor sex trafficking for law enforcement.*

FINAL SCORE

79

FINAL GRADE

C



10

10

22

25

12.5

15

4.5

10

20

27.5

10

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

North Carolina's human trafficking law addresses sex trafficking and clearly defines a minor under the age of 18 used in a commercial sex act as a human trafficking victim without regard to use of force, fraud, or coercion. The state has several commercial sexual exploitation (CSEC) laws including solicitation of prostitution, patronizing a prostitute, promoting prostitution, first and second degree sexual exploitation of a minor, and employing a minor in an obscene act. The prostitution statutes refer to the human trafficking and sexual servitude statutes to identify prostituted minors as victims of trafficking. North Carolina's continuing criminal enterprise statute, which includes any felony as a predicate act, could be used to prosecute sex trafficking crimes committed in concert by five or more persons.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

A buyer of sex with a minor could be prosecuted under the sexual servitude law. The state human trafficking law could apply to buyers through the word "obtain," following federal precedent, however, this law requires the buyer to have the "intent that the other person be held in involuntary servitude or sexual servitude," making it unlikely to apply to buyers. The CSEC laws of patronizing prostitution and solicitation of prostitution enhance the penalty for soliciting or purchasing sex with a minor, distinguishing between the crime of buying sex with an adult versus buying sex with a minor. Human trafficking and sexual servitude laws expressly prohibit mistake of age defenses in a prosecution under those statutes. No statute makes it a crime to use the Internet to purchase commercial sex acts from a minor, but the statute on solicitation of a child by computer or other electronic means to commit an unlawful sex act might apply to buyers using the Internet. Buyers convicted of human trafficking must pay restitution to the victim. Buyers face mandatory criminal forfeiture of assets acquired through commission of any felony and possible civil forfeiture of vehicles and other property used in connection with prostitution offenses. Convicted buyers of commercial sex acts with minors are required to register as sex offenders.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Violations of human trafficking, sexual servitude, using a minor to create child pornography or in a live sexual performance for pecuniary gain, and promoting prostitution of a minor are felonies carrying presumptive sentences of 58-73 months imprisonment, not as high as federal trafficking offenses (10 years to life). The statute on solicitation of a child by computer or other electronic means to commit an unlawful sex act provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Traffickers face mandatory restitution, mandatory criminal forfeiture of assets acquired through commission of any felony, and civil forfeiture of real and personal property used in connection with prostitution offenses. Traffickers are required to register as sex offenders. Violations of human trafficking and CSEC offenses are included as crimes which, if committed against a child, qualify the child as an abused juvenile for purposes of terminating parental rights.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture
Human trafficking (§ 14-43.11(a))	Class C felony	58-73 months	Discretionary	●
Sexual servitude (§ 14-43.13)	Class C felony	58-73 months	Discretionary	●
Patronizing a prostitute (§14-205.2)(with a minor)	Class F felony	13-16 months	Discretionary	●
Purchasing child pornography (§ 14-190.17)	Class E felony	20-25 months	Discretionary	●
Possessing child pornography (§ 14-190.17A)	Class H felony	5-6 months	Discretionary	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

The human trafficking laws and the law on solicitation of a child by computer expressly prohibit a defense based on consent of the minor. Minors are immune under the prostitution law and law enforcement must file a report of suspected child abuse, enabling many victims to avoid a punitive response and to access services, however services and housing specifically designed to meet these victims' needs are not mandated. A CSEC victim could be considered an "undisciplined juvenile," or found to be abused—which is defined to include victims of child pornography, CSEC or human trafficking laws—and might receive protection through child protective services. However, the definition of "custodian" is limited to those with legal custody of the child making it unlikely to include a non-familial trafficker. While CSEC victims would likely be eligible for state crime victims' compensation, several eligibility criteria may limit their ability to recover, including requirements to cooperate with law enforcement, to report the crime to law enforcement within 72 hours unless good cause is shown, and to file a claim for compensation within 2 years. Victim-friendly court procedures such as the "rape shield" law, which limits traumatizing cross-examination of testifying victims, are not available to CSEC victims, and the ability to testify via closed circuit television is limited to children under 16. Victims of human trafficking may petition for expunction of prostitution related offenses provided they have no prior convictions for prostitution and at least three years have passed. Minors may petition for the expunction of misdemeanors from juvenile records 2 years after the date of a conviction or 2 years after the completion of probation. In addition, upon reaching 18, a person may petition for the expunction of records. A court must order an offender of human trafficking and CSEC offenses to pay CSEC victims restitution, and a victim may pursue civil remedies against an offender. North Carolina does not have a statute of limitations for felonies, and thus allows a CSEC felony to be brought at any time. Additionally, the statute of limitations for CSEC victims pursuing a civil cause of action does not begin to run until the victim reaches 18.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

The North Carolina Justice Academy is required to develop a protocol and training materials on human trafficking which is made available to law enforcement. Single party consent to audiotaping is permitted. Wiretapping is allowed in CSEC investigations and sex trafficking investigations. No law expressly authorizes the use of a decoy in the investigation of prostitution or sex trafficking cases, but law enforcement may utilize the Internet to investigate buyers and traffickers relying on the crime of solicitation of a child by computer, which includes communicating with a person the offender believes is under 16 to meet with the offender or another person to commit an unlawful sex act. North Carolina requires a statewide reporting and response system for lost, missing or runaway children, and failure to report a missing child is a crime.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law does not include the crime of assisting, enabling, or financially benefitting from human trafficking. However, the CSEC offense of promoting prostitution of a minor is a felony that applies to facilitators and carries a presumptive sentence of 58–73 months imprisonment. A facilitator is subject to mandatory criminal forfeiture of assets acquired through commission of any felony, civil forfeiture of real and personal property used in connection with prostitution offenses, and some facilitators are subject to mandatory restitution. Facilitating a minor to engage in sexual conduct for child pornography is a felony punishable with a presumptive sentence of 58–73 months imprisonment. Distributing, transporting, or exhibiting child pornography is a felony punishable by a presumptive sentence of 20–25 months. No laws in North Carolina 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).

