

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

NEBRASKA REPORT CARD 2013

Sex trafficking of a minor is a crime in Nebraska and does not require proof of force, fraud, or coercion. Minors cannot be charged with prostitution, although specialized services and housing are not statutorily provided. Sex offender registration is required for offenders convicted of CSEC offenses but not sex trafficking.

FINAL SCORE

68.5

FINAL GRADE

D



10

10

20

25

10

15

3.5

10

13

27.5

12

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Nebraska's human trafficking law separately criminalizes the sex trafficking of a minor under 18 without regard to the use of force, fraud, or coercion. Five commercial sexual exploitation of children (CSEC) laws are available to prosecute offenders: child abuse by allowing or forcing a child to solicit or engage in prostitution, pandering of a minor, solicitation of a minor, keeping a place of prostitution and employing a child in pornography. The prostitution law refers to the human trafficking law to provide an affirmative defense to trafficking victims, helping to identify commercially sexually exploited minors as victims of trafficking. Nebraska's racketeering law includes human trafficking and CSEC laws in the definition of racketeering activity.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law applies to buyers who "cause or attempt to cause a minor to engage in commercial sexual activity" and following federal precedent through use of the term "obtain." Buyers face prosecution under the CSEC offenses of pandering of a minor and the solicitation law which differentiates between buying sex with adults versus minors. Restitution may be ordered under general criminal restitution laws but is not mandatory for human trafficking or CSEC offenses. Human trafficking and CSEC laws are silent on mistake of age, leaving open the possibility of using this defense. Nebraska's laws relating to use of the Internet to entice or sexually assault a child under 16 do not expressly criminalize use of the Internet for purposes of sex trafficking or CSEC. Buyers convicted of pandering of a minor, enticement by electronic communication device or possessing child pornography are required to register as sex offenders, but not if convicted for sex trafficking or solicitation of a minor for prostitution.

CRIMINAL PROVISIONS FOR TRAFFICKERS

Human trafficking is a felony punishable by 1–50 years imprisonment (use of force or victim under 15) or 1–20 years and/or a fine up to \$25,000 (victim 15+, no force). Pandering of a minor is a Class III felony punishable by 1–20 years imprisonment or a fine not to exceed \$ 25,000, or both. Child abuse is a Class I misdemeanor punishable by up to 1 year imprisonment and/or a fine up to \$1,000; however, the punishment varies depending on whether the offense was committed negligently or knowingly and whether serious bodily injury resulted. At most, child abuse is a felony punishable by 1–50 years imprisonment. Employing a child in pornography is a felony punishable by 3–50 years imprisonment. Asset forfeiture is not a financial penalty for trafficking or CSEC crimes and restitution is not mandatory, though convicted traffickers may have to pay victim restitution for physical injury or property loss, and victims of child pornography may have civil claims. Laws related to using the Internet to entice or sexually assault a child under 16 do not expressly include violations for the purposes of sex trafficking or CSEC, even though traffickers increasingly use the Internet to recruit and sell minors for commercial sex acts.. Traffickers convicted of pandering or child abuse are required to register as sex offenders, but not if convicted of human trafficking. Convictions for CSEC and human trafficking do not present grounds for termination of parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Human trafficking (\$ 28-831)	Class II	1–50 years (victim under 15 or force used)	Max. \$25,000 (victim 15 or older and no force)	○
	Class III	1–20 years (victim 15 or older and no force used)		
Solicitation of a minor for prostitution (28-801.01)	Class IV felony	Max. 5 years	Max. \$10,000	○
Pandering (\$ 28-802)	Class III Felony	1-20 years	Max. \$25,000	○
Buying child pornography (\$ 28-1463.03(2)) and possessing child pornography (\$ 28-813.01(1))	Class III felony	1–20 years	Max. \$25,000	○

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Human trafficking and CSEC laws do not 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 through child welfare, however services and housing specifically designed to meet these victims' needs are not statutorily mandated and victims identified as a status offender may be detained. A child who is sexually exploited through prostitution or pornography is considered an abused child by law and may receive a protective response through child welfare if properly identified, and a non-familial trafficker could be the subject of a report of child abuse. Crime victims' compensation is available for victims of CSEC offenses; however, participating in the criminal conduct giving rise to the injury, failing to file a claim within two years of the crime, and failing to report the crime within three days of the crime or the time when a report could reasonably have been made could prevent CSEC victims from receiving compensation. Victim-friendly criminal justice procedures are also limited. While child victims under 11 of any crime may have videotaped deposition admitted in lieu of in-person testimony, Nebraska's "rape shield" law is limited to victims of non-commercial sexual offenses, leaving testifying CSEC victims unprotected from the trauma of cross-examination at trials of their traffickers. Juvenile records may be sealed once the child satisfactorily completes his or her sentence or turns 17, provided that the child has satisfactorily completed his or her sentence and is found to be satisfactorily rehabilitated. Restitution is not mandatory and express civil remedies are not provided for victims of sex trafficking, but may be available to a victim of child pornography who was under 16. Prosecutions for human trafficking must be brought within three years of the crime, while prosecutions for CSEC offenses must be brought within seven years of the crime.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Nebraska law requires the development of human trafficking training curriculum for law enforcement. The state allows single party consent to audiotaping, but wiretapping is not allowed for human trafficking or most CSEC investigations, handicapping law enforcement investigations and collection of evidence. No laws expressly authorize the use of a decoy in human trafficking or CSEC investigations, but use of the Internet is permissible in investigation of online enticement of a child for illegal sexual conduct. Nebraska has established a statewide reporting and response system for missing children and requires the reporting of missing and located children, an important tool to identify repeat runaways who are at high risk of sex trafficking exploitation.

CRIMINAL PROVISIONS FOR FACILITATORS

The human trafficking law includes the crime of financially benefitting from the sex trafficking of a child. The CSEC offenses of pandering of a minor and keeping a place of prostitution could also reach the actions of some facilitators. Facilitators may be convicted under racketeering laws leading to further liability. Facilitators may be guilty of distributing child pornography, a felony punishable by imprisonment for 3–50 years. Facilitators do not face mandatory restitution and no asset forfeiture provisions apply to facilitators; however, facilitators who aid in creating or distributing child pornography may face civil liability. No laws in Nebraska 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.

