

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## TENNESSEE REPORT CARD 2013

*Tennessee imposes substantial penalties for sex trafficking and provides tools for law enforcement to investigate effectively, but victims may be deterred from pursuing justice due to lack of trial protections and potential bars to victims' compensation. Minors exploited in prostitution are immune from prosecution, but the lack of specific protective responses may leave them vulnerable.*

FINAL SCORE

93.5

FINAL GRADE

A



10  
10

24.5  
25

15  
15

10  
10

21.5  
27.5

12.5  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Tennessee's sex trafficking law, trafficking a person for a commercial sex act, does not require proof of use of force, fraud, or coercion to engage a person in commercial sex acts. It enhances penalties when the minor is under 15 or the offense occurs near a school, library or park. The state commercial sexual exploitation of children (CSEC) laws include patronizing prostitution, promoting prostitution, especially aggravated sexual exploitation of a minor, solicitation of a minor, and soliciting sexual exploitation of a minor. The prostitution statute refers to the sex trafficking statute to provide immunity for minor victims, while the promoting prostitution law refers to the sex trafficking law for penalties when the victim is a minor.. Racketeering activity is defined under the racketeering law to include the CSEC offense of especially aggravated sexual exploitation of a minor and criminal gang offenses which include sex trafficking as a predicate offense.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law expressly applies to buyers who "purchase" a commercial sex act. Buying sex with any minor under 18 is a crime under the patronizing prostitution statute, with penalties far short of those provided under the sex trafficking law or comparable federal offenses. A separate offense of solicitation of a minor prohibits the use of the Internet to commit trafficking and CSEC offenses, addressing the growing trend of buying and selling commercial sex through the Internet. Victim restitution and asset forfeiture is mandatory in sex trafficking cases. No age mistake defense is permitted in charges of patronizing prostitution or solicitation for sexual exploitation of a minor. A sex trafficking conviction requires registration as a sex offender; however, a conviction for patronizing prostitution when the victim is a minor does not require registration.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking a person for a commercial sex act (§ 39-13-309)	Class B felony	8-30 years	Max. \$25,000	●
	Class A felony (under 15 or within 1,000 ft. of a school, library, rec center or park)		Max. \$50,000	
Patronizing prostitution of a minor (§ 39-13-514)	Class E felony	1-6 years	Max. \$3,000	●
Purchase child pornography (§ 39-17-1004)	Class C felony	3-15 years	Max. \$10,000	●
Possession of child pornography (§ 39-17-1003)	Class D felony	2-12 years	Max. \$5,000	●

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

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Trafficking a person for a commercial sex act and promoting prostitution of a minor are felonies punishable by 8-30 years imprisonment, enhanced to 15-60 years imprisonment if the minor is under 15 or the offense occurs near a school, library or park. Both carry fines up to \$25,000 and can be enhanced to \$50,000. Using or employing a minor in a sexual performance and promoting, assisting, or transporting a minor to participate in a sexual performance are felonies punishable by 8-30 years imprisonment and fines up to \$25,000, while promoting or selling child pornography is punishable by 3-15 years imprisonment and a possible fine not to exceed \$10,000. Mandatory criminal asset forfeiture and restitution applies to sex trafficking and promoting prostitution offenses. A trafficker who solicits a minor through the Internet for commercial sexual activity or sex trafficking will be culpable under a separate law punishable as one offense level lower than the offense solicited. Convictions for sex trafficking, aggravated exploitation of a minor and especially aggravated exploitation of a minor require sex offender registration, but not for promoting prostitution of a minor. Child sex trafficking and child abuse, which includes some CSEC offenses, are enumerated crimes for which the Department of Human Services must file a petition to terminate parental rights.



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Minors under 18 are immune from prostitution charges under Tennessee law; however, victims are not provided with a specialized protective response, potentially leaving them to return home without mandated treatment or services. A victim may be determined to be an abused and neglected child as a result of the definition including commercial sexual exploitation, or a dependent and neglected child determined to include a child engaged in prostitution or child pornography (but not a human trafficking victim). Child protective services may become involved in investigations where the child is in the custody of a person who “physically possesses or controls the child,” permitting intervention where a child is with a non-familial trafficker.. Trafficking for commercial sex acts and CSEC prostitution offenses do not prohibit a defense to prosecution by an offender based on consent of the minor to the commercial sex act, although sexual exploitation laws do. Victims of sex trafficking are eligible for crime victims’ compensation, and pain and suffering expenses are additionally available to victims of pornography. However, a victim may be barred from recovering if determined to have been criminally responsible for the crime, did not cooperate with police, or did not file the claim within one year (extended for child pornography victims). Additionally, the crime must be reported within 48 hours unless good cause is shown (examples do not include commercial sexual exploitation victimization). The appointment of a guardian ad litem could encourage child sex trafficking victims to pursue legal actions; however, the “rape shield” law which can reduce the trauma of cross-examination for testifying victims does not apply in sex trafficking or CSEC prosecution and closed circuit television testimony, although specifically permitted in cases of sex trafficking and patronizing prostitution, is limited to victims under 13. Juveniles may petition the juvenile court for expungement of criminal records if the juvenile is 18, one year has passed since the delinquency adjudication, and the minor has not been convicted of a criminal offense as an adult or adjudicated guilty of a violent juvenile sex offense. Restitution is mandatory and civil remedies are specifically authorized for victims of sex trafficking. The criminal statute of limitations is extended 15 years past the victim’s 18th birthday for sex trafficking and sexual exploitation crimes and 10 years for CSEC prostitution offenses.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Tennessee law requires training for law enforcement on childhood sexual abuse, which covers sexual exploitation of a child, including exploitation through prostitution or pornography. Additionally, some funds realized through the human trafficking asset forfeiture provisions are allocated to training on human trafficking. Single party consent to audiotaping is permitted by law, but wiretapping in investigations of child sex trafficking or CSEC is not permitted, denying law enforcement an effective investigative tool and hindering collection of actionable evidence. Law enforcement decoys and Internet investigation tools may be used for crimes of sex trafficking and sexual exploitation of minors. Law enforcement agencies are mandated to report missing children, maintain data on missing children, and report recovered children, allowing them to track repeat runaways who are at high risk for sex trafficking.

## CRIMINAL PROVISIONS FOR FACILITATORS

The trafficking a person for a commercial sex act statute applies to facilitators who benefit from or attempt to benefit from sex trafficking. Facilitators convicted under the sex trafficking law face 8–30 years imprisonment and a possible fine of \$25,000, or 15-60 years imprisonment and a possible fine of \$50,000 if the minor is under 15 or the offense occurs near a school, library or park. CSEC and child pornography offenses also include actions of facilitators. Promoting prostitution of a minor is subject to the penalties provided under the sex trafficking law. A facilitator guilty of promoting or selling child pornography faces 3–15 years imprisonment and up to a \$10,000 fine with each image constituting a separate offense, and when more than 25 images are involved, an enhanced sentence of 8–30 years and up to a \$25,000 fine. Promoting, assisting, or transporting a minor to participate in a sexual performance is punishable by 8–30 years imprisonment and up to a \$25,000 fine. Mandatory criminal asset forfeiture and victim restitution applies to sex trafficking and promoting prostitution offenses. Tennessee law criminalizes the sale of travel services for prostitution..

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).

