

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## TEXAS REPORT CARD 2013

Texas has a full range of criminal laws against domestic minor sex trafficking; however, minors are not statutorily immune from prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

FINAL SCORE

87.5

FINAL GRADE

B



10

10

23.5

25

14.5

15

7.5

10

17

27.5

15

15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Texas's sex trafficking law makes the use of a minor under the age of 18 in a commercial sex act a crime without regard to use of force, fraud, or coercion. The state commercial sexual exploitation of children (CSEC) laws include compelling prostitution, promotion of prostitution, aggravated promotion of prostitution, prostitution of a minor, criminal solicitation of a minor, employment harmful to children, and continuous sexual abuse of young child or children through means such as sex trafficking, aggravated sexual assault, and sexual performance by a child. The prostitution law refers to the sex trafficking law to provide an affirmative defense for sex trafficking victims, helping to ensure victim identification. Texas' organized criminal activity law specifically targets trafficking of persons and includes certain CSEC offenses as predicate crimes, allowing use of this law to prosecute sex trafficking networks.



### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law can be applied to prosecute a buyer who engages in sexual conduct with a trafficked child. A buyer who commits two or more acts of sex trafficking of children under 14 during a period of 30 or more days in duration may be found guilty of committing continuous sexual abuse of young child or children. CSEC laws include the crime of buying sex with a minor, and solicitation laws distinguish between buying sex with an adult versus buying sex with a minor. The sex trafficking law provides a wide sentencing range for engaging in sexual conduct with a trafficked minor under 18, while the solicitation of prostitution law provides enhanced penalties when the victim is under 18. Buyers convicted of sex trafficking of a child must pay restitution to the victim whereas restitution is discretionary in CSEC convictions. The online solicitation of a minor law includes using the Internet to solicit a minor to engage in sexual contact and might apply to buyers who use the Internet for this purpose. The sex trafficking and prostitution laws specifically prohibits the age mistake defense; however, other CSEC offenses do not prohibit this defense. Buyers of sex with minors are required to register as sex offenders if convicted of sex trafficking, possessing child pornography, and some CSEC offenses; however, buyers convicted under the prostitution statute, even when it involves a minor, are not required to register.



### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking of a minor and compelling prostitution of a minor are felonies punishable by 5–99 years imprisonment and a possible fine up to \$10,000. Two or more violations of sex trafficking within 30 days is a violation of continuous trafficking in persons punishable by 25–99 years imprisonment. A trafficker who employs a child to work in sexually oriented commercial activity or employs a child to appear in a sexual performance is guilty of a felony punishable by 2–20 years imprisonment when the victim is 14–18, and 5–99 years and a possible fine up to \$10,000 when the victim is younger than 14. A conviction for the CSEC offense of promoting prostitution is punishable by 2–20 years imprisonment and a fine up to \$10,000, and an aggravated promotion of prostitution offense involving a minor is punishable by 5–99 years imprisonment. Traffickers could also be subject to organized crime and criminal street gang laws, leading to additional penalties. Online solicitation of a minor, which includes using the Internet to solicit a minor to engage in sexual contact with another person, might apply to traffickers who use the Internet for this purpose. Criminal asset forfeiture for sex trafficking, CSEC, and child pornography crimes is available. Additionally, traffickers are required to pay restitution to minor victims of sex trafficking and compelling prostitution. Traffickers must register as sex offenders for convictions of sex trafficking, CSEC offenses, and child pornography offenses. Grounds for termination of parental rights include convictions of sex trafficking, CSEC offenses, and child pornography offenses.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Sex trafficking (§ 20A.02(a)(8))	Felony of the 1st degree	5–99 years	Max. \$10,000	●
Continuous sexual abuse of young child or children (§ 21.02(b))	Felony of the 1st degree	25–99 years	Max. \$10,000	●
Prostitution (solicitation) (§ 43.02)	Felony of the 3rd degree (victim 14–18)	2–10 years	Max. \$10,000	○
	2nd degree (victim under 14)	2–20 years		
Possession of child pornography (§ 43.26)	Felony of the 3rd degree	2–10 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

The sex trafficking and CSEC laws in Texas do not prohibit a defense based on the consent of the minor, leaving this an issue in a victim's pursuit of justice. When charged with prostitution, a CSEC victim may assert an affirmative defense that she or he was sex trafficked, but still prostitution offenses are not limited in application to adults and a victim might be arrested and charged with prostitution despite being a victim (although case law has held that a child under 14 may not be charged with prostitution). As a result, a CSEC victim may enter the juvenile justice system as a delinquent child or be considered a child in need of rehabilitation. However, the court may direct minor trafficking victims into a trafficked persons program that includes services and placement and avoids a delinquency adjudication, but the minor victim must request to participate. The definition of abuse for purposes of child welfare involvement includes sex trafficking, CSEC, prostitution, and child pornography, but the definition of a person "responsible for a child's care, custody and control" is limited to a member of the child's household (whether or not related), limiting the ability of child protective services to respond to a trafficked child in non-familial trafficking cases. Crime victims' compensation is available for victims of CSEC offenses; however, knowingly participating in the conduct giving rise to the injury and a requirement to cooperate with law enforcement could prevent child sex trafficking victims from receiving compensation. Victim-friendly trial procedures are available to sex trafficking and CSEC victims that may encourage them to pursue justice, including the ability to testify through closed circuit television and inadmissibility of evidence of crimes or acts committed by sex trafficking and CSEC victims under 18. Upon application, juvenile criminal records may be sealed two years after the minors' discharge if no additional delinquent conduct has occurred. Offenders of sex trafficking of a minor or compelling prostitution of a minor are required to pay victim restitution, and a court may order offenders convicted of other crimes to pay restitution to the victim. A victim of sex trafficking also has a civil cause of action against an offender. A criminal action for sex trafficking may be brought at any time, while a prosecution for compelling prostitution of a minor must be brought before a victim reaches 28 and one based on the crime of sexual performance by a child under 17 must be brought within 20 years of the victim turning 18. For civil actions, the five year statute of limitations for sex trafficking or compelling prostitution does not begin to run until the victim reaches 18.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Texas law mandates that law enforcement receive training on human trafficking. Single party consent to audiotaping is permitted, and wiretapping is permitted for investigations of sex trafficking and possession or promotion of child pornography crimes, giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Use of a decoy is permitted in an investigation of criminal solicitation of a minor with the intent to commit sex trafficking or CSEC as the offender's belief that a person is under 17 is sufficient evidence. Law enforcement may utilize the Internet to investigate cases of sex trafficking relying on the online solicitation of a minor law which includes soliciting a person who represents himself or herself to be under 17 to meet to engage in sexual contact. Texas law requires law enforcement to report missing and recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state sex trafficking law includes the crime of benefitting from sex trafficking of a child and is a felony punishable by 5–99 years imprisonment and a possible fine up to \$10,000. A facilitator who engages in two or more violations of this law within 30 days may be convicted of continuous trafficking of persons with a heightened sentence of 25–99 years imprisonment. Aggravated promotion of prostitution applies to some facilitators and is a first degree felony punishable by 5–99 years imprisonment and a \$10,000 fine. A facilitator who promotes a sexual performance of a child is guilty of a felony punishable by 2–20 years imprisonment when the victim is 14–18, and 5–99 years when the victim is younger than 14 and a possible fine up to \$10,000. Distributing or promoting child pornography is a felony punishable by 2–20 years imprisonment and a possible fine up to \$10,000. Crimes facilitators commit are also included in organized criminal activity laws, possibly subjecting them to enhanced penalties. Facilitators convicted of sex trafficking are required to make restitution to their victims, and facilitators convicted of other crimes may also be ordered to pay restitution. Facilitators are subject to criminal asset forfeiture for sex trafficking. Any person may also bring a suit against a facilitator who maintains a place where people frequently engage in sex trafficking or prostitution-related crimes. No laws in Texas address sex tourism specifically.

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).

