

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## UTAH REPORT CARD 2013

*Utah's human trafficking law requires proof that force, fraud, or coercion was used in the trafficking of any age person including a minor. The state has laws to prosecute demand for commercial sex acts with a minor, but a protective response is not statutorily mandated, creating barriers to justice and leaving Utah's children vulnerable.*

FINAL SCORE

74.5

FINAL GRADE

C



9.5  
10

20.5  
25

15  
15

7.5  
10

12.5  
27.5

9.5  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Utah's human trafficking law increases the penalties when a minor is used in a commercial sex act; however, the law requires force, fraud, or coercion for any age person including a minor to be considered a sex trafficking victim. The state CSEC laws include aggravated exploitation of prostitution, aggravated sexual abuse of a child through prostitution, sexual exploitation of a minor and patronizing and solicitation of a minor. prostitution law does not refer to the sex trafficking offense making it more likely that commercially sexually exploited minors are identified as victims of trafficking. In addition, the state racketeering and criminal gang laws include human trafficking and most CSEC laws as predicate acts.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law can, following federal precedent, be applied to action of buyers but only if force, fraud, or coercion was used to obtain the commercial sex acts, defined broadly to include forced sexually explicit performance, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing or display. Buying sex with a minor is criminalized under patronizing and solicitation laws which distinguish between purchasing or soliciting commercial sex acts with an adult versus a minor and provide heightened penalties. A separate law makes it a crime to use the Internet to solicit a minor to engage in any illegal sexual activity, which could include prostitution and therefore could reach a buyer using the Internet to solicit minors for commercial sex acts. Mistake of age defenses are not permitted in CSEC or trafficking charges. Though not mandatory, a court may order a convicted buyer to pay restitution to a victim and Utah's general forfeiture statute permits assets related to any criminal offense to be forfeited. A buyer is required to register as a sex offender if convicted of sex trafficking, possessing child pornography or enticing a minor via the Internet to engage in a sex act.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Sex trafficking of a minor is a felony punishable by 5 years–life imprisonment and a possible fine not to exceed \$10,000. The CSEC laws of aggravated exploitation of prostitution of a minor and sexual exploitation of a minor through pornography are felonies punishable by 1–15 years imprisonment and possible fines up to \$10,000. Traffickers who “cause a minor to take indecent liberties” through prostitution can be prosecuted for aggravated sexual abuse of a child, a felony punishable by 15 years–life imprisonment and a possible fine up to \$10,000. A separate law makes it a crime to use the Internet to solicit a minor to engage in any illegal sexual activity, which could include recruiting for prostitution. Although only mandatory if pecuniary damages are proven, the court may order restitution to the victim. Utah's general forfeiture statute permits assets related to any criminal offense to be forfeited. Traffickers are required to register as sex offenders when convicted of sex trafficking, CSEC offenses and child pornography. Utah law does not expressly provide for the termination of parental rights for the conviction of sex trafficking or CSEC offenses.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Aggravated human trafficking (§ 76-5-310)	1st degree felony	5 years–life	Max. \$10,000	●
Sexual Solicitation (§ 76-10-1313)	3rd degree felony	Max. 5 years	Max. \$5,000	●
Patronizing a prostitute (§ 76-10-1303)	3rd degree felony	Max. 5 years	Max. \$5,000	●
Possessing child pornography (§ 76-5b-201(1))	2nd degree felony	1–15 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

Domestic minor sex trafficking victims are vulnerable due to gaps in Utah’s laws. Sex trafficking and CSEC laws do not prohibit a defense based on consent of the minor for all minors, but CSEC offenses of sexual exploitation of a minor through pornography and aggravated sexual abuse of a child through prostitution provide that a minor under 14 may not consent to the offense. Prostitution offenses are not limited to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking. No protective provisions are statutorily mandated specifically for victims of sex trafficking or CSEC offenses, and a victim could be charged with prostitution and receive detention. If a victim is found to be an abused child—defined to include children exploited through pornography, but not expressly sex trafficking—the victim may receive a child protective response, but the absence of a definition of “caregiver” in the child welfare statutes leave it unclear whether a child controlled by a trafficker could be protected through child welfare intervention. Crime victims’ compensation is expressly provided for child victims of pornography and is likely available to other CSEC victims. However, several eligibility factors may prevent CSEC victims from recovering. Victims must report the crime to law enforcement and cooperate with law enforcement, and any victim who may have been sentenced for crimes forced to commit as a part of the exploitation is ineligible for compensation. The victim-friendly trial procedure of testifying via closed circuit television is limited to victims under 14. However, the “rape-shield” law which reduces the trauma of cross-examination for victims is available to all victims of alleged sexual misconduct. Minors may petition for expungement of their juvenile criminal records after they reach 18 and one year has passed since they were released from the jurisdiction of the juvenile court, but a court can waive these requirements. Victim restitution is mandatory when pecuniary damages have been shown and some victims, such as those who are also victims of a pattern of unlawful activity, could bring civil actions against the offenders. Prosecutions of CSEC offenses of aggravated sexual abuse of a child through prostitution and aggravated exploitation of prostitution involving a child, and offenses of human trafficking may be commenced at any time, but the statutes of limitations for other criminal CSEC offenses are not extended and must be brought within four years. The statute of limitations for civil actions involving a minor does not begin to run until the minor reaches 18.

## CRIMINAL PROVISIONS FOR FACILITATORS

Utah’s human trafficking law applies to those who benefit financially from participating in the sex trafficking of a minor and is punishable by 1–15 years imprisonment and a possible fine not to exceed \$10,000. The CSEC crime of aggravated exploitation of prostitution of a minor and distributing child pornography are both felonies applicable to facilitators punishable by 1–15 years imprisonment and a possible fine not to exceed \$10,000. Utah’s general forfeiture statute permits assets related to any criminal offense to be forfeited. Although not mandatory, a court may order a facilitator to pay restitution to the victim. No specific laws in Utah criminalize sex tourism, making the state vulnerable to businesses that capitalize on commercial sex activity to sell travel.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training or development of training materials for law enforcement on human trafficking or domestic minor sex trafficking is not mandated or authorized by law. Single party consent to audiotaping is permitted, and wiretapping is allowed for investigations of aggravated exploitation of a minor. However, wiretapping is not authorized for sex trafficking investigations. No provision in Utah law expressly authorizes the use of a decoy by law enforcement in investigations of prostitution or sex trafficking. Relying on the enticement of a minor statute, law enforcement may utilize the Internet to investigate sex trafficking. Utah law requires law enforcement to report missing and recovered 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](http://www.sharedhope.org).

