

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## WASHINGTON REPORT CARD 2013

*The human trafficking law does not require proof of use of force, fraud, or coercion when the victim is a minor, and reaches the actions of buyers. Domestic minor sex trafficking victims are provided protective responses but are not immune from prosecution for prostitution and could face detention as a juvenile offender rather than provision of shelter care.*

FINAL SCORE

92.5

FINAL GRADE

A



10

10

24

25

14.5

15

9.5

10

22

27.5

12.5

15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Washington's human trafficking law includes exploitation for commercial sex acts and does not require proof that force, fraud, or coercion was used when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include: commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, promoting travel for commercial sexual abuse of a minor, permitting commercial sexual abuse of a minor, communication with a minor for immoral purposes and sexual exploitation of a minor. The juvenile justice law and an affirmative defense in the prostitution chapter for human trafficking victims both establish a presumption that any juvenile arrested for prostitution-related offenses qualifies as a victim of a severe form of trafficking in persons and as a victim of commercial sexual abuse of a minor. Washington's criminal profiteering statute includes sex trafficking and some CSEC offenses as predicate acts.



### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state trafficking law expressly applies to a person who "buys" or "purchases" a person for commercial sex acts. The commercial sexual abuse of a minor statute specifically applies to buyers, and separately criminalizes paying a minor to engage in sexual conduct. The offense of communicating via electronic communications with a minor for "immoral purposes" applies to the purchase of commercial sex acts online. Buyers face a mandatory \$10,000 fee if convicted of trafficking or \$5,000 if convicted of commercial sexual abuse of a minor, as well as penalty fines and a \$5,000 fee if an internet advertisement was used in the offense. Buyers may be required to forfeit assets involved in violations of trafficking, CSEC and child pornography offenses. While an age mistake defense is generally prohibited for CSEC offenses, a buyer may assert an age mistake defense if the buyer made an attempt to ascertain the minor's age by actions beyond relying on the oral statements or apparent age of the minor, such as requiring a driver's license. A buyer is required to register as a sex offender for convictions of human trafficking, CSEC offenses and child pornography offenses.



### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under trafficking and CSEC laws and may be subject to criminal profiteering laws. Trafficking and promoting commercial sexual abuse of a minor are felonies punishable by imprisonment between 93–318 months and a possible fine up to \$50,000 (and mandatory fees include \$5,000 for promoting commercial sexual abuse of a minor convictions, \$10,000 for trafficking and \$5,000 if an internet advertisement was used in the offense). When trafficking includes a sexual motivation, kidnapping, or results in a death, the crime is punishable by 123–397 months imprisonment. Sexual exploitation of a minor, which includes using a minor in child pornography or performance, is a felony punishable by 31 months–10 years imprisonment and a possible fine up to \$20,000. Promoting travel for commercial sexual abuse is a felony punishable by a maximum of 12 months imprisonment and a possible fine up to \$10,000. The communication with a minor for immoral purposes statute enhances the penalty to a Class C felony from a misdemeanor when the Internet is used for purchase or sale of commercial sex acts. Traffickers are subject to asset and vehicle forfeiture for trafficking and CSEC crimes. A trafficker may also be ordered to pay victim restitution. Traffickers are required to register as sex offenders for convictions of sex trafficking, promoting sexual abuse of a minor, child pornography related offenses, and repeat offenses of promoting prostitution in the first and second degree. Convictions for trafficking or CSEC offenses are not expressly grounds for termination of parental rights.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking (§ 9A.40.100(1)(a)) (with sexual motivation)	Class A felony	123-397 months	Max. \$50,000	●
Commercial sexual abuse of a minor (§ 9.68A.100)	Class B felony	21 months –10 years	\$5,000– \$20,000	●
Possession or viewing child pornography (§ 9.68A.070)	Class B felony	12 months– 102 months	Max. \$20,000	●

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



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Washington law requires a protective response for CSEC victims. Washington’s trafficking and CSEC laws prohibit the defendant from raising consent of the minor to the sex acts as a defense. The general prostitution law fails to make minors immune from prosecution and a separate juvenile prostitution law continues to hold minors accountable for prostitution if they are not found to be trafficking or commercial sexual abuse victims. Nonetheless, diversion is mandated for a juvenile’s first offense and optional diversion exists for subsequent offenses. A CSEC victim is included in the definition of child in need of services, leading to a child protection response which includes crisis residential shelters and services; however, there is no guarantee they will not be detained as delinquents for prostitution or other offenses committed in the course of their exploitation. Sexual exploitation through prostitution or child pornography is a form of abuse or neglect allowing for child protective services involvement, though caregiver is defined as an adult in the home at least semi-permanently which would limit child welfare intervention to familial trafficking. Crime victims’ compensation is specifically made available to victims of commercial sexual abuse of a minor, regardless of whether the victim is charged with prostitution. Additionally, the rights of child victims of criminal acts do not accrue until “the time the victim discovers or reasonably should have discovered the elements of the crime.” If eligible for crime victims’ compensation, a court must order the offender to pay restitution to the victim. Some victim-friendly court procedures are in place, for example, victims of sexual assault including sexual exploitation or commercial sexual abuse of a minor have the right to be accompanied by a personal representative to court proceedings, and closed-circuit television testimony is available to victims under fourteen years old. The rape shield statute applies in trafficking and CSEC cases and criminal records of juveniles may be expunged upon application if two years have passed without incident and other conditions are satisfied. Civil remedies can be asserted by victims of human trafficking and certain CSEC offenses. Statutes of limitations have not been eliminated for trafficking or CSEC victims.

## CRIMINAL PROVISIONS FOR FACILITATORS



The state human trafficking law includes financially benefitting or receiving anything of value from the trafficking and CSEC laws are also applicable to facilitators. Trafficking and promoting commercial sexual abuse of a minor are felonies punishable by imprisonment between 93–318 months and a possible fine up to \$50,000 (and mandatory fees include \$5,000 for promoting commercial sexual abuse of a minor convictions, \$10,000 for trafficking and \$5,000 if an internet advertisement was used in the offense). When trafficking includes a sexual motivation, kidnapping, or results in a death, the crime is punishable by 123–397 months imprisonment. Selling, sending, and bringing images of sexual conduct into the state are felonies generally punishable by 15–116 months imprisonment and a possible fine up to \$20,000. Facilitators are subject to asset and vehicle forfeiture for trafficking and CSEC crimes. Promoting travel for commercial sexual abuse, which specifically addresses sex tourism by including selling travel for the purpose of engaging commercial sexual abuse with a minor, is a felony punishable by a maximum of 12 months imprisonment and a possible fine up to \$10,000. A facilitator may be ordered to pay restitution.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Washington law mandated the development of model policy and training on procedures relating to identifying and responding to victims of domestic minor sex trafficking by January 2011. Single party consent to audiotaping and judicially approved wiretapping is permitted for law enforcement pursuing trafficking and CSEC investigations. No laws expressly authorize the use of a decoy in sex trafficking or CSEC investigations; however, minors may aid investigations in which they are an alleged victim and their participation is limited to telephone or electronic communications with the defendant. Additionally, law enforcement may use the Internet to investigate cases of sex trafficking. Reporting of missing children is mandated within six hours and law enforcement must also report when missing or endangered children are recovered.

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).

