

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

NEW YORK REPORT CARD 2014

Commercial sexual exploitation of children (CSEC) laws that apply to buyers of commercial sex with minors provide low penalties and only protect minors under 14. The state sex trafficking law requires proof that force, fraud, or coercion was used even when the victim is a minor. Minors arrested for prostitution are presumed to be trafficking victims and may be placed in a safe house.

FINAL SCORE

66.5

FINAL GRADE

D



8.5

10

11.5

25

11

15

9

10

16.5

27.5

10

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

New York's sex trafficking law requires proof of the use of force, fraud, or coercion, even when the victim is a minor. New York's CSEC laws include: promoting prostitution in the first, second and third degrees (covering minors under 19), patronizing a prostitute in the first and second degree, compelling prostitution of one less than 16, use of a child under 17 in a sexual performance, and promoting an obscene sexual performance of a child under 17. New York's prostitution, and loitering statutes do not refer to the human trafficking statute for victim identification. New York's racketeering statute includes sex trafficking and CSEC offenses as predicate acts.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law does not prohibit purchasing commercial sex with minors, leaving buyers subject only to the patronizing prostitution law. Patronizing prostitution distinguishes between buying sex with adults versus minors under 14, with penalties varying based on the age of the minor; however, defendants may assert an age mistake defense to these crimes. Buyers who use the Internet to purchase commercial sex acts with a minor could be prosecuted under the statute on disseminating indecent material to minors in the first degree, or the statute penalizing use of a computer for the purpose of luring or inducing a person under 17 to engage in sexual conduct, although these are not expressly commercial. Buyers face civil forfeiture of assets constituting the proceeds or instrumentality of any crime. Buyers of sex with minors are required to register as sex offenders if convicted of possessing child pornography or any degree of patronizing a prostitute when a minor under 17 is involved.

CRIMINAL PROVISIONS FOR TRAFFICKERS

Under the sex trafficking and CSEC laws a trafficker could receive a sentence as high as federal trafficking offenses (10 years–life). Convictions for sex trafficking, compelling prostitution of one less than 16 by force, fraud or coercion, or promoting prostitution of a minor under 11 are felonies punishable by 1–25 years imprisonment. Promoting prostitution of a minor under 16 or use of a child under 16 to engage in a sexual performance are felonies punishable by 1–15 years imprisonment, whereas promoting prostitution of a minor 16–19 or producing a performance with sexual conduct of a minor under 17 are felonies punishable by up to 7 years imprisonment. All felony sentences may include fines up to \$5,000 or “double the amount of the defendant's gain from the commission of the crime,” whichever is higher, and victim restitution may be ordered. Traffickers may face forfeiture of all proceeds and instrumentalities of a felony and forfeiture of all equipment used to create child pornography is mandatory. New York's laws making it a crime in the first degree to disseminate indecent material to minors or the statute penalizing use of a computer for purpose of luring or inducing person under 17 to engage in sexual conduct (although not specifically commercial) could be used to prosecute the growing number of traffickers using the Internet to commit their crimes. Traffickers are required to register as sex offenders for convictions of sex trafficking, creating child pornography, and some CSEC offenses. Convictions of sex trafficking offenses or CSEC are not enumerated grounds for termination of parental rights, but if a trafficker is incarcerated for a significant period of time, parental rights could be terminated.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Patronizing a prostitute (minors 14–18) (NY Penal §230.04)	Class A misdemeanor	Max. 1 year	Max. \$1,000	○
Patronizing a prostitute (minor under 14; buyer over 18) (NY Penal § 230.05)	Class E felony	Max. 4 years	Max. \$5,000	○
Patronizing a prostitute (minor under 11) (NY Penal § 230.06)	Class D felony sex offense	2–7 years	Max. \$5,000	○
Possessing child pornography (minors under 16) (NY Penal §§ 263.11, 263.16)	Class E felony	Max. 4 years	Max. \$5,000	●

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



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

New York’s “Safe Harbour” legislation increases protections for CSEC victims; nonetheless, sex trafficking and CSEC victims continue to be vulnerable due to gaps in the laws. Sex trafficking and CSEC offenses do not prohibit a defense based on consent of the minor to the commercial sex acts, and even though a minor under 17 may not be considered an accomplice to sex trafficking or certain CSEC crimes, an offender may still be prosecuted and employ a consent defense. A sexually exploited child is defined by law to include a minor victimized through sex trafficking or prostitution-related offenses. Minors are not immune from prosecution for prostitution; however, a minor under 16 is presumed to be a victim of a severe form of trafficking, and if the minor consents, law enforcement may deliver the victim to a safe house. Upon a motion, the court may substitute a person in need of supervision petition for the delinquency petition. A minor victim aged 16 or 17 who is arrested on criminal charges for prostitution or loitering may have the criminal charges converted to a person in need of supervision proceeding as long as a guilty plea has not been entered. Minor victims may be referred by the court to specialized services including placement in safe houses staffed by specially trained advocates. However, if the CSEC victim is unwilling to cooperate with specialized services, the delinquency proceedings will continue. For purposes of child welfare intervention, the definition of an abused child includes victims of CSEC offenses or child pornography and the definition of “person legally responsible” includes any “person responsible for the child’s care at the relevant time,” which could apply to non-familial traffickers and allow child protective services to intervene. Victims of sex trafficking are expressly identified as victims and child victims under 18 who suffer physical, mental, or emotional injury from a crime are provided exceptions to crime victims’ compensation prompt reporting requirements. Victim-friendly criminal justice procedures are limited. Only children under 14 may testify via closed-circuit television, and the “rape shield” law, which reduces the trauma of cross-examination for testifying victims, does not extend to CSEC victims and specifically allows evidence of a victim’s sexual conduct that “tends to prove” willing involvement based on the victim having been convicted of the crime of prostitution within three years prior to the alleged sex offense. A motion to seal juvenile criminal records may be filed at any time after the minor’s 16th birthday and prostitution charges may be automatically expunged on the 18th birthday of the minor under some circumstances. Victim restitution for personal injury may be ordered and sex trafficking victims and crime victims may bring civil actions for damages. Statutes of limitations for criminal and civil actions are not extended for sex trafficking victims—prosecutions for felonies must begin within five years after the crime and civil actions must be initiated within seven or ten years, depending on the crime, and may be extended until the victim reaches 21.



CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training or development of training materials for law enforcement on sex trafficking is not statutorily mandated or authorized, but the social services commissioner is authorized by law to contract with NGOs experienced in working with CSEC victims to train law enforcement. Single party consent to audiotaping is allowed, and wiretapping is authorized for sex trafficking and promoting prostitution in the first and second degree investigations. No law expressly authorizes the use of a decoy or the use of the Internet by law enforcement to investigate cases of sex trafficking. New York maintains a Statewide Central Register for Missing Children and a Missing and Exploited Children Clearinghouse, and requires reporting of missing and recovered children.



CRIMINAL PROVISIONS FOR FACILITATORS

The sex trafficking statute is unlikely to include actions of facilitators as crimes due to the requirement to prove use of force, fraud or coercion. Facilitators could be charged with certain CSEC offenses. Aiding or facilitating in an act or enterprise of prostitution of a minor under 19 is a felony with a varying degree of crime and penalty based on the age of the victim: if the victim is under 11, a conviction is punishable by 1–20 years imprisonment; 11–15 is punishable by 1–15 years imprisonment; 16–18 is up to 7 years. Additionally, promoting prostitution in the third degree addresses sex tourism and includes the crime of controlling or owning a business selling travel for the purpose of prostitution. Convictions of promoting prostitution in the third degree and promoting sexual performance of a minor under 17 are felonies punishable by up to 7 years imprisonment. All felonies are punishable with possible fines up to \$5,000 or “double the amount of the defendant’s gain from the commission of the crime,” whichever is higher. For a felony conviction, facilitators may be required to pay restitution and forfeit through civil levy procedures all proceeds gained from commission of the felony. Facilitators also face mandatory criminal forfeiture of all equipment used to manufacture or distribute child pornography.

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.

