

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## PENNSYLVANIA REPORT CARD 2015

*The trafficking in individuals law criminalizes sex trafficking without proof of force, fraud or coercion when the victim is a minor. Buyers of sex with minors face penalties under the human trafficking chapter but minors engaged in prostitution are not identified as victims of sex trafficking under the prostitution law and may face barriers to accessing protection or justice.*

FINAL SCORE

74

FINAL GRADE

C



7.5  
10

19  
25

12  
15

7  
10

14  
27.5

14.5  
15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Pennsylvania's trafficking in individuals law makes it a crime to traffick a child for commercial sex acts without requiring proof of force, fraud or coercion when the victim is a minor. The CSEC laws include promoting prostitution of a minor, hiring a minor to engage in a sexual performance, and unlawful contact with a minor for prostitution offenses. The general prostitution law does not refer to the trafficking in individuals law to identify commercially sexually exploited minors as human trafficking victims. The state racketeering law includes trafficking in individuals and CSEC violations as predicate acts.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The trafficking in individuals law may apply to buyers who "obtain" a minor for commercial sex following federal precedent or under the offense of patronizing a victim of sexual servitude, which requires the buyer to know the minor was a victim of sexual servitude. The CSEC crime of unlawful contact with a minor includes buying sex with a minor and contacting a minor through a computer to engage in prostitution. The trafficking in individuals and patronizing a victim of sexual servitude laws prohibit a mistake of age defense but the unlawful contact with a minor statute does not prohibit this defense. A buyer convicted of trafficking in individuals, but not patronizing a victim of sexual servitude, faces mandatory asset forfeiture but buyers convicted of either offense must pay restitution to the victim who suffers personal injury as a result of the crime against her or him. A buyer is required to register as a sex offender for a conviction of unlawful contact with a minor for prostitution, trafficking in individuals and possessing child pornography.

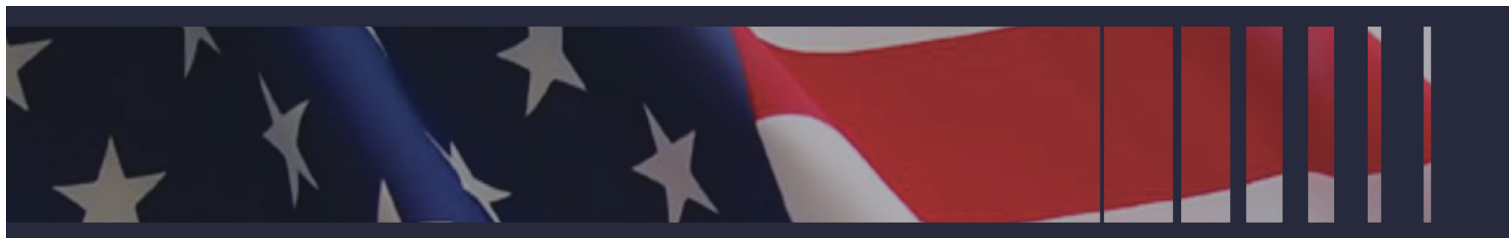
### CRIMINAL PROVISIONS FOR TRAFFICKERS

Trafficking in individuals when the offense involves a minor victim of sexual servitude is a first degree felony punishable by up to 20 years imprisonment, or life imprisonment if the offense involved rape or kidnapping, and a possible fine up to \$25,000. Promoting prostitution of a minor and unlawful contact with a minor for prostitution including by computer are felonies punishable by fines up to \$15,000 and possible imprisonment up to 7 years. Sexual exploitation of a child and creating child pornography are felonies punishable by imprisonment up to 10 years and a possible fine up to \$25,000. Traffickers face mandatory asset forfeiture and mandatory restitution if convicted of trafficking in individuals. When personal injury results from the crime, a court must order a trafficker to pay restitution to the victim. Traffickers are required to register as sex offenders if convicted of certain CSEC offenses, child pornography offenses, or trafficking in individuals. Grounds for termination of parental rights do not include CSEC or trafficking in individuals convictions.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence (possible)	Fine (possible)	Asset Forfeiture (available)
Trafficking in individuals involving a minor victim of sexual servitude (18 Pa. Const. Stat. § 3011(b))	1st degree	20 years	\$25,000	●
Patronizing a victim of sexual servitude	2nd degree	10 years	\$25,000	○
Unlawful contact with a minor (for prostitution) (18 Pa. Cons. Stat. § 6318)	3rd degree Felony	Max. 7 years	Max. \$15,000	○
Possessing child pornography (18 Pa. Cons. Stat. § 6312(d)(1))	3rd degree Felony	Max. 7 years	Max. \$15,000	○

*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 the state legal framework. Trafficking in individuals and the CSEC laws do not prohibit a defense based on consent of the minor to sex acts. Prostitution laws apply to minors under 18 and juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. The human trafficking chapter provides an affirmative defense to prostitution charges, but it requires proof of compulsion or coercion. No protective provisions direct child victims of CSEC or trafficking in individuals away from the delinquency process and into services, allowing child sex trafficking victims to be adjudicated delinquent for prostitution offenses committed as a result of their victimization. Child welfare intervention may be possible since the definition of “abuse” includes sexual exploitation and prostitution, although not specifically sex trafficking. However the definitions of “custodian” and “person responsible for the welfare of the child” appear to be a barrier to child welfare serving sex trafficked children in non-familial trafficking cases. CSEC victims are likely eligible for state crime victims’ compensation, but eligibility criteria could threaten a victim’s ability to recover, including a bar to recovery for failure to cooperate with law enforcement and a reduction of an award for conduct contributing to the injury. Additionally, victims have a requirement to report the crime to law enforcement within 72 hours, unless the victim was under 18 and the alleged offender is a person responsible for the victim’s welfare or person with whom the victim resides. Various victim-friendly trial procedures are specifically available to victims of trafficking in individuals offenses, including availability of a support person during testimony, assessment of safety considerations, and confidentiality of the victim’s identity in public records. The “rape shield” law which limits the trauma of cross-examination for victims is available for trafficking but not CSEC victims. Certain child victims under 16 in sexual offense trials may testify through closed-circuit television to limit interaction with their exploiter. Juvenile criminal records may be expunged 5 years after final discharge of the minor or when the minor reaches 18 under certain circumstances. Victims of trafficking in individuals offenses are entitled to mandatory restitution and are provided civil remedies. While the statute of limitations has been extended for some CSEC crimes it has not been extended or eliminated for prosecutions under the trafficking in individuals law. Civil actions based on childhood sexual abuse have been extended and must be brought before a victim reaches 30.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

Pennsylvania law mandates training for law enforcement on human trafficking. The law requires both parties in an audiotaping to consent to the recording, although single party consent may be allowed with approval by the State or when an undercover officer records the conversation while meeting in person with the suspected offender. Wiretapping is allowed for specified offenses including trafficking in individuals, prostitution and related offenses and unlawful contact with a minor. Law enforcement may use decoys and the Internet to investigate CSEC offenses relying on the unlawful contact with a minor statute, which includes contacting, in person or via a computer, a law enforcement officer posing as a minor to solicit prostitution or engage in other forms of sexual exploitation of children. Law enforcement officers must report missing and recovered children through the Commonwealth Law Enforcement Assistance Network, providing important information to law enforcement about repeat runways who are at high-risk for sex trafficking.

## CRIMINAL PROVISIONS FOR FACILITATORS

The trafficking in individuals law includes the crime of benefiting financially or receiving anything of value from human trafficking and is punishable as a first degree felony by up to 20 years imprisonment and a possible fine up to \$25,000, or up to \$1,000,000 for business entities, when the sex trafficking victim is a minor. The CSEC crime of promoting prostitution applies to facilitators who lease or permit their premises to be utilized for prostitution or benefit from promoting prostitution. If the child involved is under 16, promoting prostitution is a third degree punishable by imprisonment up to 7 years and a possible fine up to \$15,000. If the minor is 16 or 17, promoting prostitution is a second degree misdemeanor punishable by up to 2 years imprisonment and a possible fine up to \$5,000. Facilitating child pornography by selling, distributing, or displaying child pornography is a felony punishable by imprisonment up to 7 years and a possible fine up to \$15,000, but providing information that directs buyers to a source for obtaining child pornography is punishable as a misdemeanor. Facilitators face mandatory asset forfeiture and mandatory restitution if convicted of trafficking in individuals. No laws in Pennsylvania make sex tourism a crime.

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).