

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## UTAH REPORT CARD 2015

*Utah has a criminal offense of human trafficking of a child for sexual exploitation without regard to force, fraud, or coercion. 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

81

FINAL GRADE

B



7.5  
10

23  
25

15  
15

7.5  
10

18  
27.5

10  
15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Utah's law on human trafficking of a child for sexual exploitation is without regard to force, fraud, or coercion, and includes all forms of commercial sexual activity with a child, including pornography and sexual performance. 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. The prostitution law does not refer to the sex trafficking offense, making it less 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 buyer conduct. 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 or electronic communications to solicit a minor to engage in any illegal sexual activity. Although mistake of age defenses are not permitted in most CSEC or trafficking charges, the defense is not prohibited for the offense of Human Trafficking of a child. 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 convicted of human trafficking of a child is not required to register as a sex offender, although buyers convicted of possessing child pornography or enticing a minor via the Internet or text messages to engage in a sex act must register.



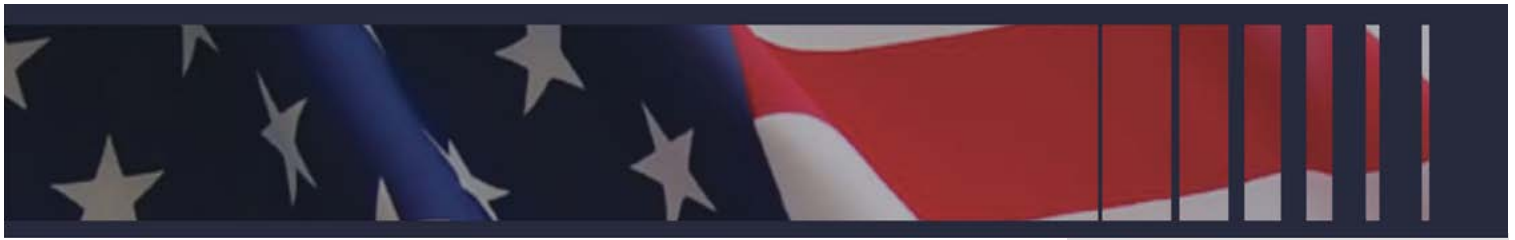
### CRIMINAL PROVISIONS FOR TRAFFICKERS

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 or text messages to solicit a minor to engage in any illegal sexual activity. 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 most CSEC offenses and child pornography, but registration is not required for convictions of human trafficking of a child. Utah law does not expressly provide for the termination of parental rights for the conviction of sex trafficking or CSEC offenses, but parental rights may be terminated for subjecting a minor to abuse, defined to include sexual exploitation.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Human trafficking of a child (\$ 76-5-308.5)	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 may be able to access a protective response under 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 laws may apply to minors under 18, and juvenile sex trafficking victims may face criminalization for commercial sex acts committed as a result of their victimization. However, law enforcement must refer all minors suspected of committing a prostitution offense to the Division of Child and Family Services (DCFS) and they will not be subject to delinquency proceedings unless they have been referred to DCFS for a prior offense. For purposes of child welfare intervention by DCFS, an abused child is defined to include children exploited through pornography, which does not include all victims of CSEC or human trafficking offenses. There is no definition of "caregiver" in the child welfare statutes, but jurisdictional statutes clarify DCFS's responsibility to serve minor victims of sex trafficking and commercial sexual exploitation. 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. Although victims of human trafficking, aggravated human trafficking, human smuggling and aggravated human smuggling may file a civil action against the offender, minor victims of Human Trafficking of a Child may not. Prosecutions of CSEC offenses of aggravated sexual abuse of a child through prostitution and aggravated exploitation of prostitution involving a child, and some human trafficking offenses may be commenced at any time, but the statutes of limitations for human trafficking of a child and other criminal CSEC offenses are not extended and must be brought within four years. Actions against a perpetrator of sexual abuse may be brought at any time. The statute of limitations for actions based on most human trafficking offenses do not begin to run until the minor reaches 18 and then runs for ten years, but human trafficking of a child is excluded.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

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 prostitution, involving a minor. Although, wiretapping is authorized for human trafficking investigations, it is not authorized for the crime of human trafficking of a child. 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 or electronic communications to investigate sex trafficking. Utah law requires law enforcement to report missing and recovered children.



## 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. A facilitator who "recruits, harbors, transports or obtains a child for sexual exploitation" could be convicted of human trafficking of a child, punishable by 5 years to life 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.

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).