

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Florida Report Card 2016

The human trafficking law includes sex trafficking of minors without regard to use of force, fraud, or coercion to cause the minor to engage in commercial sex act. Child victims are protected from being criminalized for prostitution and have access to specialized services through child welfare as a sexually exploited child.

Final Score

94

Final Grade

A



10

10

20.5

25

15

15

6

10

27.5

27.5

15

15

### Criminalization of Domestic Minor Sex Trafficking

Florida's human trafficking law includes sex trafficking of minors without proof of use of force, fraud, or coercion. Florida has several CSEC laws, which include lewd or lascivious battery of a person under 16 for prostitution, kidnapping and false imprisonment of a child under age 13 for prostitution, use of a child in a sexual performance, and selling or buying of minors for child pornography. The prostitution chapter expressly refers to the trafficking law to acknowledge the intersection of prostitution with trafficking victimization. Florida's racketeering law includes human trafficking, CSEC, and child pornography offenses as predicate acts making it a valuable tool to dismantle trafficking activities.

### Criminal Provisions Addressing Demand

The state sex trafficking law applies to buyers who "entice" or "solicit" a child for commercial sex acts. The CSEC law on lewd or lascivious battery makes it a crime to engage a minor under 16 in prostitution or to encourage, force, or entice a minor under 16 to engage in prostitution or sexual activity. Since the patronizing a prostitute statute does not distinguish between purchasing commercial sex acts with adults versus minors, this statute would apply in cases of buying commercial sex acts with minors aged 16 or 17 and when the purchase of sex acts with a minor is not identified as CSEC. Buyers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. The human trafficking law prohibits defendants from asserting a defense based on mistake of age; however, the CSEC laws do not expressly preclude a buyer from asserting mistake of age as a defense. Buyers must pay restitution to victims who suffer injury and face mandatory civil asset forfeiture for felony convictions. Buyers of sex with minors are required to register as sex offenders if convicted of lewd and lascivious battery, child pornography, or human trafficking offenses.

### Criminal Provisions for Traffickers

Human trafficking of a minor under 18 for commercial sex is punishable as a first degree or life felony by up to life imprisonment and a fine of \$10,000-\$15,000. Traffickers who obtain a minor for creating child pornography face up to 30 years imprisonment. CSEC crimes of lewd or lascivious battery, sexual performance by a child, and procuring a minor for prostitution are punishable by up to 15 years imprisonment. Kidnapping a child under 13 for prostitution is punishable by life imprisonment and a fine up to \$15,000. False imprisonment of a child under 13 for prostitution is punishable by up to 30 years imprisonment and a possible fine up to \$10,000. Traffickers face mandatory civil asset forfeiture and mandatory victim restitution. Traffickers using the Internet to solicit a minor to engage in prostitution, among other sexual offenses, are subject to prosecution for computer pornography. Registration as a sexual predator is required for human trafficking and many CSEC crimes. Human trafficking is not enumerated as a violent crime for which a trafficker's parental rights can be terminated; however, parental rights may be terminated if a trafficker is incarcerated for an extended period or is convicted of an offense as a habitual offender for which registration as a sexual predator is required.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Human trafficking (§ 787.06(3)(g))	1st degree felony	Max. life	Max. \$15,000	●
Lewd or lascivious battery (minor under 16) (§ 800.04(4))	2nd degree felony	Max. 15 years	Max. \$100,000	●
Patronizing a prostitute (§ 796.07(2)(i))	2nd degree misdemeanor (1st offense); 1st degree misdemeanor (2nd offense); 3rd degree felony (3rd offense)	Max. 60 days (1st offense); 1 year (2nd offense); 5 years (3rd offense)	Max. \$500 (1st offense); \$1,000 (2nd offense); \$5,000 (3rd offense)	●
Possessing child pornography (§ 827.071(5))	3rd degree felony	Max. 5 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

All commercially sexually exploited children are defined as juvenile sex trafficking victims under the core sex trafficking offense. Florida's sex trafficking law prohibits a defense based on the willingness of the minor to engage in the commercial sex act. Prostitution laws do not apply to minors under 18, protecting juvenile sex trafficking victims from criminalization for commercial sex acts committed as a result of their victimization. The definition of a dependent child includes victims of child sex trafficking and commercial sexual exploitation. Once identified as an alleged dependent child who is sexually exploited, law enforcement may deliver a child in custody to the Department of Children and Families. The Department must assess the child for specialized residential placement and develop a case plan including specialized services. While the definition of caregiver limits a juvenile sex trafficking victim's access to services through the dependency process, jurisdictional statutes provide other avenues for child sex trafficking victims to access specialized services through child welfare. Crime victims' compensation is available to victims of crime, and ineligibility factors do not apply to victims of child sex trafficking and CSEC crimes. Victim-friendly trial procedures are available to sex trafficking victims, including an appointed guardian ad litem, the ability to testify via closed-circuit television at the discretion of the court for victims of trafficking under 18, relocation assistance and availability of a victim's advocate, and confidentiality protections when seeking expungement of prostitution convictions. Victims of trafficking and CSEC are protected from retraumatizing cross examination under the "rape shield" law. Florida law allows expungement specifically for victims of human trafficking. Restitution to victims who suffer injury is mandatory, and victims may bring various civil claims for injuries arising from trafficking. Additionally, the payment of victim restitution is prioritized over existing claims to forfeited property. Prosecutions for human trafficking, kidnapping a child under 13, and lewd or lascivious offenses against a minor under 16 may be brought at any time, while a four year statute of limitations applies to prosecutions of false imprisonment of a child under 13 and a three year statute of limitations for all other felonies. For civil claims based on damages from being trafficked, a three year statute of limitations begins to run after the later of the conclusion of the criminal case, notice to the victim of pornographic images, or three years after the victim turns 18.

## Criminal Justice Tools for Investigation and Prosecution

Training for law enforcement on human trafficking is authorized in Florida. Single party consent to audiotaping is generally permitted and specifically permitted for investigation of unlawful sexual acts with children when the child is a party to the communication. Wiretapping is allowed in investigations of human trafficking and child pornography, but not for prostitution offenses. Several offenses prohibit a defense based on the use of a law enforcement decoy posing as a minor to investigate commercial sexual exploitation, but not human trafficking. For example, a defendant prosecuted under the law against computer pornography may not raise such a defense because it is enough that the defendant believed the person to be a minor, making the Internet an available tool for investigations. A statewide reporting and response system for missing children is in place in Florida and requires the reporting of missing and located children.

## Criminal Provisions for Facilitators

The human trafficking law applies to facilitators who benefit financially or by receiving anything of value from human trafficking. No CSEC crimes are applicable to facilitators. Several laws make selling and promoting child pornography a crime, including acts in connection with obscene materials, punishable by up to 5 years imprisonment and a possible fine up to \$5,000 when the materials involve minors; the same penalty applies to computer pornography and transmission of pornography by electronic device or equipment but increases to 15 years imprisonment with a possible fine of \$10,000 if the defendant possesses 10 or more images, at least one of which depicts certain types of abuse or very young minors. Facilitators must pay restitution to victims who suffer injury and face mandatory civil asset forfeiture for felony convictions. Facilitators who allow use of their premises for sex trafficking face the loss of their property if declared a nuisance under criminal gang laws. No laws in Florida address sex tourism.

The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: [www.sharedhope.org/reportcards](http://www.sharedhope.org/reportcards).