

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Oregon Report Card 2016

Oregon's trafficking in persons applies to buyers of sex with minors, but requires force, fraud, or coercion when the victim is 15 years of age or older. Child victims of domestic minor sex trafficking may be subject to prosecution for prostitution and could face detention; alternatively, CSEC or child sex trafficking may be identified as abused and receive the protection and services of child welfare.

Final Score

82

Final Grade

B



9.5

10

18

25

15

15

7.5

10

17

27.5

15

15

Criminalization of Domestic Minor Sex Trafficking

Oregon's trafficking in persons statute specifically includes child sex trafficking, but requires force, fraud, or coercion when a minor victim is 15 or older. Commercial sexual exploitation of children (CSEC) laws include purchasing sex with a minor, compelling prostitution of a minor, and using a child in a display of sexually explicit conduct. The prostitution law does not refer to the trafficking law, but the trafficking chapter provides an affirmative defense to trafficking victims charged with prostitution if force or threat of forced was used. Oregon's racketeering law includes human trafficking and most CSEC offenses as predicate acts, allowing it to be used to prosecute sex trafficking enterprises.

Criminal Provisions Addressing Demand

Following federal precedent, the human trafficking law applies to buyers through the term "obtains," but only in cases where the buyer knew or recklessly disregarded either the fact that force, fraud, or coercion was used or that the minor was under 15. Purchasing sex with a minor, a CSEC offense, applies to buyers. Online sexual corruption of a child may allow for the prosecution of buyers who use the Internet to engage in illegal sex acts such as attempted purchasing or trafficking. Buyers convicted of trafficking in persons, purchasing sex with a minor, or possession of child pornography are subject to discretionary criminal asset forfeiture and are required to pay restitution when economic loss can be shown. Purchasing sex with a minor permits an age mistake defense if the victim is 16 or older and the defendant has no prior conviction except in sex trafficking prosecutions. Buyers who possess and purchase child pornography are permitted an affirmative defense if the buyer had no reason to know that the sexually explicit conduct involved a child. Individuals convicted of purchasing sex with a minor (first offense) will only register as sex offenders at the court's discretion; a second conviction or any conviction for trafficking in persons requires registration.

Criminal Provisions for Traffickers

Trafficking in persons, compelling prostitution, and distributing child pornography are Class B felonies punishable by up to 10 years imprisonment and fines up to \$250,000. Using a child in a display of sexually explicit conduct and trafficking in persons involving commercial sex are Class A felonies punishable by up to 20 years imprisonment and a fine up to \$375,000. Online sexual corruption of a child may provide a means of prosecuting traffickers who use the Internet to recruit or sell illegal sex acts with a minor. Traffickers could also face prosecution under racketeering and money laundering laws, leading to additional penalties. Traffickers convicted of trafficking in persons or any CSEC offense are subject to discretionary criminal asset forfeiture for both the proceeds of the crime and instrumentalities used in the crimes and are required to make restitution to their victims when economic loss can be shown. Traffickers must register as sex offenders for convictions of compelling prostitution, using a child in a display of sexually explicit conduct, distributing child pornography, luring a minor, and trafficking in persons involving commercial sex. Convictions for trafficking in persons or CSEC offenses do not expressly establish grounds for termination of parental rights, but are likely included as acts of unfitness or extreme conduct that may serve as a basis for terminating parental rights.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Trafficking in persons (§ 163.266(1)(b), (c))	Class A felony	Max. 20 years	Max. \$375,000	●
Purchasing sex with a minor (Enacted Senate Bill 673, Ch. 720, § 4 (uncodified))	Class C felony (1st offense)	Mandatory min. 30 days, max. 5 years; john school (1st offense)	Mandatory min. \$10,000, max. \$125,000	●
Possessing and purchasing child pornography (with knowledge) (§ 163.686)	Class C Felony	Max. 5 years	Max. \$125,000	●
Possessing and purchasing child pornography (negligently) (§ 163.687)	Class A Misdemeanor	Max. 1 year	Max. \$6,250	●

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



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as sex trafficking victims, in part, because the sex trafficking law requires use of force, fraud or coercion when the victim is above the age of 15. Victims of child sex trafficking and CSEC are vulnerable due to gaps in the laws of Oregon. Trafficking in persons and CSEC offenses do not prohibit a defense based on consent of the minor, leaving this an issue in a victim's pursuit of justice. Prostitution laws apply to minors under 18. Juvenile sex trafficking victims could face criminalization for commercial sex acts committed as a result of their victimization, rather than being identified as a victim of trafficking in persons. As a result, a CSEC victim may enter the juvenile justice system and could face detention. However, for purposes of child welfare intervention, the definition of abuse includes a child victimized by sex trafficking, sexual exploitation, including prostitution, a CSEC offense, and child pornography. There is likely no caregiver barrier to a minor victim receiving child welfare protection and services in non-familial cases of trafficking and exploitation. Crime victims' compensation is available for trafficking and CSEC victims, and a victim subject to sexual exploitation is prima facie evidence of good cause for failure to notify law enforcement in a timely manner or for failure to cooperate with law enforcement removing these barriers to compensation. However, CSEC victims may be barred from recovery if the injury was substantially attributable to a wrongful act of the victim. Some victim-friendly trial procedures are available for CSEC victims, including allowing victims under 12 to testify via closed circuit television under specified circumstances and providing for address confidentiality for all victims of sexual offenses and human trafficking. Oregon's "rape shield" law is available to protect testifying victims in prosecutions of human trafficking and CSEC crimes. Juvenile records for prostitution offenses committed while a minor will be expunged upon application of the minor or the court's own motion, with no requisite waiting period. Victim restitution for economic damages and civil remedies are available. Prosecutions for trafficking in persons must be brought within three years of the crime, while prosecutions for compelling prostitution and using a child in a display of sexual conduct must be brought within six years, or if the child was under 18, the earlier of the victim turning 30 or within 12 years of the crime being reported. However, prosecutions for sexual non-CSEC offenses, including sexual abuse and rape, may be brought at any time so long as there is corroborating evidence. Civil actions by victims of trafficking must be brought within six years of the conduct giving rise to the claim, while those based on child abuse, which includes CSEC offenses, must be brought before the victim turns 40, or within five years of the victim's discovery of the "causal connection between the child abuse and the injury."

Criminal Justice Tools for Investigation and Prosecution

Training for law enforcement on domestic minor sex trafficking is expressly required by law. Single party consent for audiotaping phone calls is permitted and wiretapping is allowed in investigations of CSEC offenses, human trafficking, and racketeering. A defense based on the use of a decoy in an investigation for purchasing sex with a minor is prohibited and law enforcement may use the Internet to investigate CSEC offenses. Oregon has established a statewide reporting and response system for missing persons and requires the reporting of missing and located children.

Criminal Provisions for Facilitators

Oregon's trafficking in persons law includes the crime of financially benefitting from a venture that involves subjecting another person to involuntary servitude. Proof of knowledge or reckless disregard that force, fraud or coercion was used is required unless the victim was under 15. Compelling prostitution may apply to facilitators who aid or facilitate in the commission of prostitution of a minor. Trafficking in persons, compelling prostitution, and promoting and selling child pornography are Class B felonies punishable by up to 10 years imprisonment and fines up to \$250,000. Facilitators could also face prosecution under racketeering and money laundering laws, leading to additional penalties. Facilitators convicted of trafficking in persons or CSEC offenses are subject to discretionary criminal asset forfeiture and shall be required to pay restitution to their victims when economic loss can be shown. No laws in Oregon 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.