

# ARKANSAS

## REPORT CARD | 2018

*The trafficking of persons law does not require proof of force, fraud, or coercion when the victim is a minor, and buyers of sex with minors face prosecution under human trafficking and commercial sexual exploitation of children laws. Minors have some protections under the law as victims of a crime but may still be treated as delinquent for offenses committed as a result of being commercially sexually exploited.*

Final Score

85

Final Grade

B



10

10



22

25



15

15



10

10



13.5

27.5



14.5

15

## Criminalization of Domestic Minor Sex Trafficking

Arkansas's "trafficking of persons" law does not require the use of force, fraud, or coercion when the victim is a minor and provides a heightened penalty when the offense involves a minor victim. Commercial sexual exploitation of children (CSEC) laws include "promoting prostitution in the first degree," "engaging children in sexually explicit conduct for use in visual or print medium," "transportation of minors for prohibited sexual conduct," "employing or consenting to use of a child in a sexual performance," "producing, directing, or promoting a sexual performance by a child," and "sexually grooming a child." Prostitution statutes refer to the trafficking of persons law by providing an affirmative defense to victims of human trafficking. Arkansas's RICO statute does not specifically include trafficking or CSEC as predicate offenses, although they may qualify as predicate criminal offenses if violence or pecuniary gain is involved.

## Criminal Provisions for Demand

"Trafficking of persons" applies to buyers through the term "solicits" and, following federal precedent, through the term "obtains." "Patronizing a victim of human trafficking" and "transportation of minors for prohibited sexual conduct," a CSEC offense, provide additional means of prosecuting buyers. "Trafficking of persons" is punishable by up to life imprisonment, while "patronizing a victim of human trafficking" and "transportation of minors for prohibited sexual conduct" are felonies punishable by up to 30 years imprisonment and a fine up to \$15,000. "Sexual solicitation" does not distinguish between soliciting sex acts with a minor versus an adult. "Internet stalking of a child" prohibits a person over 21 from knowingly using the Internet to entice, lure, or buy information about a child 15 or younger to arrange a meeting for sexual intercourse. "Computer child pornography" also prohibits using the Internet to lure or entice a minor under 17 for sexual conduct. "Trafficking of persons" expressly prohibits an age mistake defense, but "patronizing a victim of human trafficking" and "transportation of minors for prohibited sexual conduct" do not. Financial penalties include fines, asset forfeiture, and restitution. Two offenses criminalize buying and possessing images of child sexual exploitation (ICSE). Buyers convicted of "trafficking of persons" and most CSEC crimes must register as sex offenders.

## Criminal Provisions for Traffickers

Depending on the prohibited conduct, "sex trafficking in the first degree" is punishable by 3–6 years imprisonment and a fine up to \$250,000 or 20–35 years imprisonment and a fine up to \$500,000. "Human trafficking in the first degree" is punishable by 3–6 years imprisonment and a fine up to \$250,000, while "unlawful exploitation of a minor" is punishable by 5–15 years imprisonment and a fine up to \$100,000. Creating ICSE carries penalties comparable to those for similar federal offenses. "Online enticement of a minor" prohibits use of the Internet to entice a minor under 16 to engage in certain sexual acts. Financial penalties include fines, discretionary and mandatory asset forfeiture, and restitution. Traffickers must register as sex offenders if convicted of sex trafficking, CSEC, and ICSE offenses. Child sex trafficking and certain CSEC offenses are included as grounds for terminating parental rights based on the definition of "sexual abuse."

## Criminal Provisions for Facilitators

The trafficking law applies to those who benefit financially from participation in a trafficking venture, but only when the trafficking has been accomplished by force, fraud, or coercion. "Trafficking of persons" is punishable by up to life imprisonment. "Transportation of minors for prohibited sexual conduct" is punishable by up to 30 years imprisonment and a \$15,000 fine, while "promoting prostitution in the first degree" is punishable by up to 6 years

imprisonment and a \$10,000 fine. Asset forfeiture applies to "any conveyance" used during the commission of the crime, and a court may order a facilitator to pay victim restitution. Promoting a sexual performance by a child and selling ICSE carry penalties comparable to those for similar federal offenses. Arkansas's trafficking law criminalizes child sex tourism by prohibiting the sale of travel services that involve trafficking-related activity.



## Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Arkansas's trafficking and CSEC offenses do not expressly prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Prostitution laws apply to minors under 18, meaning juvenile sex trafficking victims face criminalization for commercial sex acts committed as a result of their victimization. Arkansas law provides juvenile sex trafficking victims with a statutory avenue to services; however, the resulting service response is not required to be specialized to the needs of commercially sexually exploited youth. For the purpose of child welfare intervention, the definition of "dependent juvenile" includes trafficking as does the definition of "dependent-neglected juvenile" through the definition of "sexual abuse." While parent or caregiver fault is required under the definition of "abuse," the definition of "dependent juvenile" specifically includes juvenile sex trafficking victims regardless of the child's relationship to the perpetrator. DMST and CSEC victims could be eligible for Crime Victims Reparations, but face some ineligibility barriers such as requirements to report the crime with-

in 72 hours of its occurrence and filing claims within one year, unless the victim can show good cause for the delay. The award may also be reduced for failure to cooperate with law enforcement officers. Victim-friendly court procedures are limited: one applies to children under 13 ("Closed-circuit television") and the "rape shield" law, which limits traumatizing cross-examination of testifying victims, only applies to sexual offense victims, not victims of CSEC or sex trafficking. Arkansas law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, but juvenile records may be expunged immediately if the offense was not one for which the minor could have been tried as an adult. A court may order restitution to victims for actual economic loss and the cost of necessary medical or professional services. Additionally, the statute of limitations for civil actions is tolled until a minor turns 18. The criminal statute of limitations is not eliminated for "trafficking of persons"; however, it is extended or eliminated for several CSEC offenses.



## Criminal Justice Tools for Investigation and Prosecution

Arkansas law authorizes law enforcement training on sexual exploitation of children. State law allows single party consent to audiotaping and, if done "under the color of law," interception of telephone, wire, landline, or wireless communications for criminal investigations. No state trafficking or CSEC law prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor during an investigation. However, law enforcement may utilize the Internet to investigate "Internet

stalking of a child" when the child is believed to be under 15 and "computer child pornography" when the child is believed to be under 17. Arkansas law requires law enforcement to immediately report missing and located missing children to the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center; this provides law enforcement officers with a tool to track high-risk runaways for prevention and intervention of sex trafficking.



*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).*