

CALIFORNIA

REPORT CARD | 2018







California law prohibits the criminalization of minors for prostitution, but provides minimal penalties for prosecuting demand. The human trafficking law protects victims of child sex trafficking without requiring proof of force, fraud, or coercion. However, paying for sex acts with a minor and benefitting financially from assisting or enabling sex trafficking are not punishable under the trafficking law.

Final Score

76

Final Grade

C

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| 10 | 15.5 | 13.5 | 3.5 | 21.5 | 12 |
| 10 | 25 | 15 | 10 | 27.5 | 15 |

Criminalization of Domestic Minor Sex Trafficking

California's human trafficking law criminalizes sex trafficking, imposing enhanced penalties where the victim is a minor, and does not require force, fraud, or coercion when a minor is used in a commercial sex act. Commercial sexual exploitation of children (CSEC) laws include "disorderly conduct," "procurement," "pimping," "pandering," "abduction of minor for prostitution," "employment of minor in sale or distribution of obscene matter or production of pornography," and "contact or communication with minor with knowledge and intent to commit specified offenses punishable by imprisonment." Although neither of California's prostitution-related offenses refer to the human trafficking law, California's evidence code acknowledges the intersection of prostitution with trafficking victimization. Predicate acts under the criminal profiteering statute include human trafficking and CSEC offenses.

Criminal Provisions for Demand

The human trafficking law does not apply to buyers of sex with a minor, but buyers may be prosecuted for "disorderly conduct," which distinguishes between soliciting sex with a minor versus an adult by enhancing the penalty when the defendant knew or should have known the person solicited was a minor. "Disorderly conduct" is punishable by up to 1 year imprisonment and a \$10,000 fine, penalties which do not reflect the seriousness of the offense. Contact or communication with a minor for the purpose of committing an illegal sex act is a separate crime that may be used to prosecute buyers who use the Internet or other electronic communications. A mistake of age defense is permitted in a prosecution for "disorderly conduct." Financial penalties include fines, asset forfeiture, and restitution. Further, images of child sexual exploitation (ICSE) may be seized and destroyed. Possessing ICSE is prohibited, but penalties are not comparable to similar federal offenses. A buyer convicted for "possession or control of child pornography" will be required to register as a sex offender; however, buyers convicted of "disorderly conduct" will not be required to register.

Criminal Provisions for Traffickers

Child sex trafficking is punishable by 5, 8, or 12 years imprisonment and a fine up to \$500,000. "Procurement of a child" is punishable by up to 8 years imprisonment and a \$15,000 fine when the victim is under 16, while "abduction of minor for prostitution" is punishable by up to 3 years imprisonment and a \$2,000 fine. "Pimping" or "pandering" are felonies punishable by up to 8 years imprisonment and a \$10,000 fine if the victim is under 16 years of age (up to 6 years imprisonment and a \$10,000 fine if the victim is 16 years of age or older). Distributing ICSE is prohibited, but penalties do not reflect the seriousness of the offense. Contact or communication with a minor for the purpose of committing an illegal sex act is a separate crime that may be used to prosecute traffickers who use the Internet or other electronic communication. Traffickers convicted of human trafficking face mandatory restitution. Traffickers whose property is deemed a nuisance in connection with prostitution-related offenses face asset forfeiture. Traffickers convicted of human trafficking, distributing ICSE, and CSEC will be required to register as sex offenders. Further, a conviction under the human trafficking law is included as a ground for terminating parental rights if the child has been adjudged dependent.

Criminal Provisions for Facilitators

Facilitators do not face prosecution under the human trafficking law for benefitting financially from sex trafficking; however, predicate offenses under the human trafficking statute are applicable to facilitators. “Procurement of a child” under 16 is a felony punishable by up to 8 years imprisonment and a \$15,000 fine, while “pimping” is a felony punishable by up to 8 years imprisonment and a \$10,000 fine if the victim is under 16 years of age (up to 6

years imprisonment and a \$10,000 fine if the victim is 16 years of age or older). A conviction for any crime may result in a victim restitution order. Facilitators whose property is deemed a nuisance in connection with prostitution-related offenses face asset forfeiture. None of California’s laws specifically prohibit child sex tourism. Advertising ICSE is prohibited, but penalties do not reflect the seriousness of the offense.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the trafficking law is inapplicable to buyers. The human trafficking law prohibits a defense based on the willingness of the minor to engage in the commercial sex act. California’s prostitution laws do not apply to minors under 18; further, juvenile sex trafficking victims are provided an affirmative defense to other crimes arising from trafficking victimization, but the victim must prove coercion in order for the affirmative defense to apply. Further, juvenile sex trafficking victims may receive specialized services through numerous points of entry. For purposes of child welfare intervention, the definition of child abuse includes child sex trafficking and commercial sexual exploitation; however, the definition requires some degree of fault by a parent or guardian. Crime victims’ compensation is available for victims of CSEC offenses, and California law prohibits human trafficking victims’ claims from being denied solely because the victim did not report the crime. Victim-friendly trial procedures are available to human trafficking victims, including

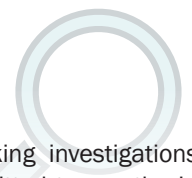
confidentiality for communications between a victim and trafficking caseworker. Additionally, child sex trafficking victims under the age of 16 may testify via closed-circuit television. Human trafficking victims receive protection under California’s “rape shield” law, but CSEC victim-witnesses remain unprotected from the trauma of cross-examination at trials of their traffickers. Victims of human trafficking and most CSEC offenses may have up to two support persons present during their testimony and are provided with special precautions for their comfort and support during trial. California law allows a child sex trafficking victim to vacate an adjudication for a non-violent offense without mandating a waiting period, and related records are automatically sealed and destroyed. Restitution and a civil remedy are available to victims of human trafficking. The statute of limitations for both civil and criminal cases of DMST is extended; it is eliminated altogether for criminal cases when means of force, fraud, fear, or coercion are employed.



Criminal Justice Tools for Investigation and Prosecution

California requires law enforcement officers with field or investigative duties to complete training on human trafficking. California allows single party consent to audiotaping during human trafficking investigations. Judges may authorize wiretapping in investigations of human trafficking, but not CSEC investigations. California’s laws do not expressly prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a

minor during prostitution, CSEC, or trafficking investigations. However, law enforcement officers are permitted to use the Internet or electronic communications to investigate buyers and traffickers. California has established a statewide reporting and response system that requires reporting of missing and located missing children.



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.