

DELAWARE REPORT CARD | 2018

Delaware law criminalizes child sex trafficking without requiring proof of force, fraud, or coercion. The trafficking law also applies to buyers who patronize a victim of sexual servitude but requires knowledge of the minor's victim status, limiting its usefulness for combatting demand. State law authorizes specialized services, but does not prohibit the criminalization of minors for prostitution offenses.



Criminalization of Domestic Minor Sex Trafficking

Delaware's human trafficking law includes sex trafficking of minors without requiring proof of force, fraud, or coercion; however, enhanced penalties apply if force or threat was used or if the child was recruited from a shelter. The commercial sexual exploitation of children (CSEC) laws include "sexual exploitation of a child" and promoting prostitution in the first and second degrees. The prostitution laws do not refer to the human trafficking law; however, an affirmative defense to prostitution charges is provided under the human trafficking law, thereby acknowledging the intersection of prostitution with trafficking victimization. Human trafficking and CSEC offenses fall under the definition of racketeering activity in Delaware's organized crime and racketeering law, making it available to prosecute criminal enterprises that engage in child sex trafficking.

Criminal Provisions for Demand



Delaware's trafficking law applies to buyers who patronize a victim of sexual servitude, a Class C felony punishable by up to 15 years imprisonment. No CSEC laws include the crime of buying sex with a minor. "Patronizing a prostitute" does not distinguish between soliciting an adult versus a minor; in either case, a violation is punishable by up to 30 days imprisonment and fine up to \$575. "Sexual solicitation of a child" may reach the conduct of buyers who seek to purchase sex acts with minors through the Internet, possibly providing penalties in such cases. Delaware law expressly prohibits a mistake of age defense for "patronizing a victim of sexual servitude" under the trafficking law and generally eliminates the defense for certain other offenses where age is an element of the crime. Depending on the offense, financial penalties include asset forfeiture and restitution; a discretionary fine may also be ordered. "Dealing in child pornography," which includes possessing images of child sexual exploitation (ICSE), carries penalties comparable to those for similar federal offenses. Buyers will be required to register as sex offenders if convicted of "patronizing a victim of sexual servitude," "dealing in child pornography," or "possession of child pornography."

Criminal Provisions for Traffickers



"Trafficking an individual," "sexual servitude" of a minor, and "forced labor" involving commercial sexual activity are Class B felonies punishable by up to 25 years imprisonment when the victim is a minor. "Sexual exploitation of a child" is also a Class B felony punishable by up to 25 years imprisonment, while "promoting prostitution in the first degree" is a Class C felony punishable by up to 15 years imprisonment. "Promoting prostitution in the second degree" and "dealing in children" are Class E felonies punishable by up to 5 years imprisonment. Creating and distributing ICSE carries penalties comparable to those for similar federal offenses. "Sexual solicitation of a child" may reach the conduct of traffickers who use the Internet to recruit or sell minors for illegal sex acts, possibly providing additional penalties in such cases. Depending on the offense, financial penalties include asset forfeiture and restitution; a discretionary fine may also be ordered. Traffickers must register as sex offenders if convicted of "trafficking an individual, forced labor and sexual servitude," CSEC, or ICSE offenses. Grounds for termination of parental rights include sex trafficking.

Criminal Provisions for Facilitators

The human trafficking law does not include the crime of assisting, enabling, or financially benefitting from sex trafficking, but the law may apply to facilitators who transport or harbor a minor in furtherance of sexual servitude. If convicted, a facilitator faces up to 25 years imprisonment. "Promoting prostitution in the first degree" is punishable by up to 15 years imprisonment, while

"promoting prostitution in the second degree" is punishable by up to 5 years imprisonment. Depending on the offense, financial penalties include asset forfeiture and restitution; a discretionary fine may also be ordered. No laws in Delaware address sex tourism.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims as the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. Prostitution laws apply to minors under 18, meaning child sex trafficking victims could face arrest and prosecution for commercial sex acts committed as a result of their victimization. Delaware law does not expressly require a specialized service response for juvenile sex trafficking victims through child welfare; rather, the provision of specialized services is only noted in conjunction with diversion. Although child sex trafficking is included within the definitions of "abuse" and "abused child" based on the definition of "sexual abuse," the investigative authority of child welfare is generally limited to "intrafamilial and institutional" abuse and neglect. Delaware's trafficking law prohibits a defense based on the minor's willingness to engage in the commercial sex act. Sex trafficking victims are expressly eligible to receive state crime victims' compensation but may face barriers to receiving an award based on non-cooperation with law enforcement or if the injury arises from collusion with

the perpetrator. Testifying sex trafficking victims may be provided separate waiting rooms during trial and non-disclosure of identifying information as trial protections. All child victims of sex trafficking and CSEC offenses may testify by means of secured video connection, pursuant to their identity as an abused or neglected child. The "rape shield" law protects victims of human trafficking offenses but not victims of CSEC offenses, leaving some victim-witnesses unprotected from the trauma of cross-examination at trials of their perpetrators. Delaware law allows child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and loitering offenses, but mandates a minimum 2 year waiting period. Victim restitution is mandatory in sex trafficking convictions and specialized civil remedies are available. No statute of limitations applies to prosecutions of human trafficking, sexual exploitation of a child, and promoting prostitution in the first and second degrees and the statute of limitations for civil actions based on human trafficking offenses has been extended.



Criminal Justice Tools for Investigation and Prosecution

Development of training materials and training for law enforcement on human trafficking or domestic minor sex trafficking is authorized. Single party consent to audiotaping is permitted, and wiretapping is permitted in investigations of suspected human trafficking and racketeering offenses. Neither the trafficking nor CSEC statutes prohibit a defense as to the use of a law enforcement decoy posing as minor in sex trafficking or CSEC

investigations; however, the defense may be prohibited under the non-CSEC offense criminalizing electronic sexual solicitation of a child. The Internet may be used as an investigative tool for investigating "sexual solicitation of a child" and "promoting sexual solicitation of a child." Delaware has established a statewide reporting and response system for missing children and requires the reporting of located 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.