

HAWAII

REPORT CARD | 2018

Hawaii criminalizes child sex trafficking without requiring proof of force, fraud, or coercion, but demand is expressly excluded under the sex trafficking law. Instead, buyers of sex with minors face penalties that do not reflect the seriousness of the offense. While child sex trafficking is identified as a form of child abuse and neglect regardless of the child's relationship to the perpetrator of the abuse, Hawaii law does not provide victims with a statutory avenue to specialized services or eliminate a minor's criminal liability for prostitution.

Final Score

76.5

Final Grade

C



10

10

17.5

25

15

15

9.5

10

13

27.5

11.5

15

Criminalization of Domestic Minor Sex Trafficking

Hawaii's sex trafficking law prohibits advancing or profiting from prostitution of a minor, regardless of the use of force, fraud, or coercion when the victim is a minor. The commercial sexual exploitation of children (CSEC) laws include: "employment of minors under eighteen years of age," "solicitation of a minor for prostitution," "kidnapping," "promoting child abuse in the first degree," "prostitution," and "electronic enticement of a child in the first degree." The prostitution law refers to the sex trafficking law to provide a heightened penalty for purchasing or soliciting sex with a sex trafficking victim. The definition of racketeering activity in the state racketeering statute includes offenses related to prostitution and kidnapping, bringing most CSEC offenses and sex trafficking within the definition.

Criminal Provisions for Demand

"Sex trafficking" expressly excludes buyers from liability based on the definition of "advances prostitution." "Solicitation of a minor for prostitution" criminalizes soliciting and buying sex with a minor and distinguishes between soliciting sex acts with an adult versus a minor; a violation is punishable by up to 5 years imprisonment and a fine up to \$10,000 regardless of the minor's age. Buyers may also face a heightened penalty under the prostitution statute for purchasing or soliciting sex in reckless disregard of the fact that the other person is a victim of sex trafficking, a violation of which is punishable by up to 5 years imprisonment and a fine up to \$10,000. Hawaii separately criminalizes the use of the Internet or electronic communications to commit certain felonies, which can include luring, enticing, or purchasing commercial sex acts with a minor. A mistake of age defense is prohibited under "solicitation of a minor for prostitution." Restitution is mandatory upon a victim's request if there was a verified loss. Civil asset forfeiture is available for certain CSEC convictions. Possessing images of child sexual exploitation (ICSE) is prohibited, but penalties do not reflect the seriousness of the offense. Buyers convicted of "solicitation of a minor for prostitution" and state ICSE offenses are required to register as sex offenders.

Criminal Provisions for Traffickers

Traffickers convicted of "sex trafficking," "kidnapping," and "promoting child abuse in the first degree" face up to 20 years imprisonment and a fine up to \$50,000, while those convicted of "electronic enticement of a child in the first degree" face up to 10 years imprisonment and a \$25,000 fine. Producing ICSE carries penalties comparable to those for similar federal offenses. Using the Internet to lure or recruit a minor for commercial sex would be prohibited under Hawaii's electronic enticement offense. Traffickers found to have violated the "sex trafficking" law or certain CSEC and ICSE offenses are subject to asset forfeiture. Restitution to the victim for losses, including medical costs, is mandatory upon request by the victim. Traffickers convicted of "sex trafficking," "kidnapping" with intent to subject the minor to a sexual offense, "electronic enticement of a child," or "promoting child abuse in the first degree" are required to register as sex offenders. While state law does not enumerate convictions for "sex trafficking" and CSEC as grounds for terminating parental rights, being required to register as a sex offender under the federal Adam Walsh Act is considered an aggravated circumstance for which parental rights may be terminated.

Criminal Provisions for Facilitators

Hawaii's sex trafficking law criminalizes aiding or facilitating sex trafficking of a child. A facilitator convicted of "sex trafficking" faces up to 20 years imprisonment and a fine up to \$50,000. Disseminating or reproducing ICSE is a felony punishable by up to 10 years imprisonment and a fine up to \$25,000. Facilitators may also be subject to Hawaii's racketeering and money laundering laws for their criminal actions. Laws which prohibit selling,

advertising, and promoting travel for the purpose of prostitution make sex tourism a felony punishable by up to 5 years imprisonment and a fine up to \$10,000. Facilitators may be subject to asset forfeiture for "sex trafficking," "promoting prostitution," and promoting child abuse by disseminating ICSE. Restitution is mandatory if a victim requests it and can prove losses or medical costs caused by an offense.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. Further, Hawaii's "sex trafficking" and CSEC offenses do not expressly prohibit a defense to prosecution based on the minor's willingness to engage in the commercial sex act. The prostitution law reduces, but does not eliminate, liability for minors by lowering the class of offense from a misdemeanor to a violation when the person charged with prostitution is a minor. However, minors are still directed into the juvenile justice system as law violators for commercial sex acts committed as a result of their victimization. Although available, services are not required to be specialized to the needs of juvenile sex trafficking victims. For purposes of child welfare intervention, the definition of child abuse and neglect includes acts of child sex trafficking regardless of the child's relationship to the perpetrator of the abuse. Victims of enumerated violent crimes are eligible for crime victim compensation; while this includes child sex trafficking victims, ineligibility criteria may result in child victims' compensation awards being reduced or denied. Victim-friendly trial procedures may be

limited for victims of CSEC crimes. A child victim of a sexual offense may be permitted to testify via closed circuit television, and the "rape shield" law reduces the trauma of cross-examination for testifying victims of sexual offenses, which are not defined expressly to include CSEC offenses. Child victims of sex trafficking may be eligible to participate in a statewide witness protection program. Hawaii law does not provide a mechanism for minors to vacate delinquency adjudications or expunge related records for offenses arising from trafficking victimization. Civil remedies are available to victims of "sex trafficking" and CSEC for injuries arising from sex offenses. Restitution for losses including medical expenses is statutorily authorized. Neither criminal nor civil statutes of limitations are eliminated, presenting potential barriers to a sex trafficking victim with typically slow recovery from the unique trauma of CSEC. Civil statutes of limitations do not begin to run until the victim reaches 18, and the statutes of limitations for civil actions arising from sexual offenses do not run until 22 years after the minor turns 18 or 10 years after discovery of the injury caused by sexual abuse.



Criminal Justice Tools for Investigation and Prosecution

Training or development of training materials for law enforcement on human trafficking is not mandated or authorized. Single party consent to audiotaping is permissible in Hawaii, and sex trafficking is included as a crime for which a wiretapping order may be issued. A defendant is expressly prohibited from asserting a defense based on the use of a law enforcement decoy pos-

ing as a minor in an investigation into the CSEC offense of solicitation; however, the defense is not prohibited in a prosecution for sex trafficking. Law enforcement may utilize the Internet to investigate buyers and sex traffickers in violation of the electronic enticement of a child statute. State law mandates reporting of missing, but not 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.