

NORTH DAKOTA

REPORT CARD | 2018

North Dakota's human trafficking law criminalizes child sex trafficking without requiring proof of force, fraud, or coercion and provides substantial penalties. State law further prohibits the criminalization of minors for prostitution and other offenses related to trafficking victimization, but specialized services are not mandated. Additionally, victims may face barriers to accessing crime victims' compensation to fund their recovery.

Final Score

77.5

Final Grade

C



10

10

16

25

15

15

5

10

21.5

27.5

10

15

Criminalization of Domestic Minor Sex Trafficking

North Dakota's human trafficking laws criminalize child sex trafficking without requiring proof of force, fraud, or coercion by making it a crime to maintain or make available a minor for commercial sexual activity. North Dakota's commercial sexual exploitation of children (CSEC) laws include: "facilitating prostitution" and "use of a minor in a sexual performance." The prostitution statute does not refer to the human trafficking statute, but a related provision refers to the trafficking law to provide an affirmative defense to trafficking victims and eliminate criminal liability for minors for prostitution offenses. The state RICO law includes human trafficking and CSEC offenses as predicate crimes.

Criminal Provisions for Demand

The child sex trafficking and "sexual servitude" laws do not apply to buyers; however, buyers can be charged with other offenses within the trafficking chapter—"patronizing a minor for commercial sexual activity" and "patronizing a victim of sexual servitude." Buyers cannot be charged with CSEC offenses, and the "solicitation of prostitution" statute does not distinguish between soliciting sex acts with an adult versus a minor. Convictions under the trafficking chapter are punishable as Class A felonies, carrying a maximum sentence of 20 years imprisonment and a fine up to \$20,000. Buyers who use the Internet in an attempt to commit sex acts against a minor may be charged with "luring minors by computer or other electronic means." While the "sexual servitude" law expressly prohibits a mistake of age defense, mandates victim restitution, and authorizes asset forfeiture, the buyer-applicable patronizing offenses do not. Buyers convicted of possessing images of child sexual exploitation (ICSE) face a maximum of 5 years imprisonment and a fine up to \$10,000. Convictions for "patronizing a minor for commercial sexual activity," "patronizing a victim of sexual servitude," "luring a minor by computer," and certain sex offenses require registration as a sex offender.

Criminal Provisions for Traffickers

"Trafficking an individual" and "sexual servitude" are Class AA felonies punishable by a maximum of life imprisonment when the victim is a minor. "Facilitating prostitution" and "use of a minor in a sexual performance," including creating ICSE, are Class A felonies punishable by up to 20 years imprisonment and a fine up to \$20,000. "Luring minors by computer or other electronic means" provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Discretionary civil asset forfeiture is available for these offenses. Restitution is mandated under the human trafficking statute and is required under other laws if pecuniary damages are proven; otherwise, restitution is discretionary. Traffickers convicted of "trafficking an individual," "sexual servitude," "luring minors by computer or other electronic means," ICSE offenses, and other prostitution-related offenses are required to register as sex offenders when the victim is a minor. Parental rights may be terminated for convictions of "sexual performance of the child" or "luring minors by computer or other electronic means" or if the child is a deprived child, which is defined to include a juvenile sex trafficking victim.

Criminal Provisions for Facilitators

The state human trafficking law does not specifically criminalize assisting, enabling, or financially benefitting from human trafficking, but business entities that commit trafficking crimes face financial penalties including a fine of up to \$1,000,000 and disgorgement of profits. The CSEC crime of “facilitating prostitution” also applies to facilitators and is a Class A felony when the victim is a ward of the defendant or when the defendant is otherwise responsible for the care, protection, or support of the victim. Various ICSE laws apply to facilitators with penalties for first viola-

tions ranging from Class A felonies (maximum 20 years imprisonment and a fine up to \$20,000) to Class C felonies (maximum 5 years imprisonment and a fine up to \$10,000). Penalties for ICSE offenses can be enhanced for both of these crimes if the offender acts for a corporation, partnership, or other legal entity. Facilitators are subject to asset forfeiture and mandatory restitution for a violation of the human trafficking law or possible restitution for violations of other applicable laws. No laws in North Dakota address sex tourism.

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. Perpetrators of “sexual servitude of a minor” cannot assert a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. North Dakota’s prostitution offenses prohibit the criminalization of minors and, instead, create a presumption that the minor is “a child in need of services.” However, services are not required to be specialized. Further, a trafficked minor may also be designated as a “neglected child,” a “sexually abused child,” or a “deprived child,” which is defined to specifically include a child sex trafficking victim. While the definition of “person responsible for the child’s welfare” may not be broad enough to allow for child welfare intervention in all non-familial trafficking cases, the definitions of deprived child and sexually abused child, together with the presumption that juvenile sex trafficking victims are children in need of services, appear to allow child welfare involvement without regard to whether a parent or caregiver was the perpetrator of the abuse or neglect. While CSEC victims would likely be eligible for state crime victims’ compensation, several eligibility criteria may limit their ability to recover, including reduction due to contributory misconduct and a requirement to file a claim within one

year unless “the interests of justice so require.” Victim-friendly court procedures may be available to child victims of certain sex offenses, including the “rape shield” law, but these protections do not specifically extend to victims of CSEC and trafficking offenses. Criminal justice records containing identifying information about victims of human trafficking or information regarding the use of a minor in a sexual performance are exempt from public record disclosure requirements, and minor victims of human trafficking may request a restraining order against their perpetrators. However, North Dakota law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a waiting period. Restitution to victims is a mandatory part of sentencing for human trafficking convictions, and restitution for pecuniary damages is available in all CSEC convictions. Victims may bring civil claims for human trafficking offenses. North Dakota has a 3 year statute of limitations for criminal actions, which can be lengthened in certain cases including corruption or solicitation of minors, but not for human trafficking or other CSEC crimes. The statute of limitations for civil actions by trafficking victims runs for 10 years after the date on which the victim turns 18 or was no longer subject to trafficking, whichever occurs later.

Criminal Justice Tools for Investigation and Prosecution

Training on human trafficking is not mandatory, but the Attorney General is authorized to establish a human trafficking commission that is tasked with promoting training for law enforcement, service providers, and other government employees on human trafficking. Single party consent to audiotaping is permitted, and wiretapping is allowed in some scenarios although no law specifically authorizes wiretapping for CSEC investigations. No trafficking or CSEC law expressly prohibits a defense based on the

use of a law enforcement decoy posing as a minor in prostitution or sex trafficking investigations, but law enforcement may utilize the Internet to investigate buyers and traffickers, relying on the crime of “luring minors by computer or other electronic means,” a non-CSEC offense which includes luring a person the offender believes is a minor. North Dakota requires a statewide reporting and response system for lost, missing, or runaway 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.