

NEW MEXICO

REPORT CARD | 2018

New Mexico criminalizes sex trafficking of a minor under 18 without regard to force, fraud, or coercion, except when applied to facilitators, and laws exist to prosecute demand. However, minors are vulnerable to arrest for prostitution in conflict with their status as sex trafficking victims under the sex trafficking law.

Final Score

69.5

Final Grade

D



7.5

10

17.5

25

13

15

7.5

10

12

27.5

12

15

Criminalization of Domestic Minor Sex Trafficking

New Mexico's human trafficking law criminalizes sex trafficking of children and clearly defines a minor under the age of 18 used in a commercial sex act as a sex trafficking victim. Proof of force, fraud, or coercion is not required except when applied to facilitators who benefit from sex trafficking. Commercial sexual exploitation of children (CSEC) laws include: "sexual exploitation of children by prostitution," "sexual exploitation of children," and "enticement of child." The prostitution law does not refer to the sex trafficking statute. New Mexico's racketeering law does not include sex trafficking or CSEC offenses as predicate activity.

Criminal Provisions for Demand

Following federal precedent, New Mexico's child sex trafficking law can be applied to buyers who "obtain" a minor for commercial sex acts. Buyers also face liability under two CSEC offenses: "sexual exploitation of children by prostitution" and "enticement of child," each differentiates the crime of soliciting sex with a minor under 16 from soliciting sex with an adult. Depending on the age of the minor victim, buyers convicted of trafficking face 3–18 years imprisonment and a fine ranging from \$5,000–\$15,000. Convictions under the CSEC offenses carry 1–10 years imprisonment and fines ranging from \$1,000–\$10,000. "Child solicitation by electronic communication device" may provide a heightened penalty for buyers using the Internet to commit illegal sex acts. Sex trafficking and CSEC laws do not prohibit a mistake of age defense. A buyer convicted of trafficking must pay restitution to victims; however, neither asset forfeiture or mandatory minimums are required. New Mexico does not require those convicted of child sex trafficking to register as sex offenders, although registration is required for CSEC and possession of images of child sexual exploitation (ICSE).

Criminal Provisions for Traffickers

A trafficker faces prosecution under sex trafficking and CSEC laws and could face prosecution under state racketeering and money laundering laws. Sex trafficking is a felony offense punishable by imprisonment and fines based on victim age as follows: third degree (victim 16–17)—3 years/up to \$5,000, second degree (victim 13–15)—9 years/up to \$10,000, and first degree (victim under 13)—18 years/up to \$15,000. A convicted trafficker faces mandatory victim restitution. Traffickers may also be convicted of "sexual exploitation of children by prostitution," a felony punishable as follows: second degree (victim 13–15)—9 years/up to \$10,000, and first degree (victim under 13)—18 years/up to \$15,000. Racketeering charges may apply, which allows for asset forfeiture. The offense of "child solicitation by electronic communication device" provides a sentence enhancement to reach traffickers who use the Internet or electronic communications to recruit minors for illegal sex acts, which may include sex trafficking. Creating and distributing ICSE is punishable by imprisonment for 11 years and a fine of \$5,000 (or 12 years and \$5,000 if the minor is under 13). Sex offender registration is required for many crimes, but not child sex trafficking. Sex trafficking of children and CSEC crimes are not enumerated as violent crimes for which a trafficker's parental rights can be terminated.



Criminal Provisions for Facilitators

Facilitators may be prosecuted for benefitting financially from sex trafficking of minors only when the facilitator knows force, fraud, or coercion was used. If convicted, facilitators face the same penalties as traffickers: 3, 9 or 18 years imprisonment and a possible fine of \$5,000, \$10,000 or \$15,000, depending on the age of the victim. Facilitators, like traffickers, may also be prosecuted under the “sexual exploitation of a child” law. Distribution

of ICSE is punishable by up to 11 years imprisonment and a fine of \$5,000. Facilitators are subject to asset forfeiture if found to have violated racketeering laws through their criminal activities. No laws in New Mexico make sex tourism a crime. If convicted of sex trafficking, victim restitution is mandatory along with a crime victims reparation fee.

Protective Provisions for the Child Victims



All commercially sexually exploited children are defined as juvenile sex trafficking victims. Sex trafficking of a minor and CSEC crimes are silent on the permissibility of a defense based on the willingness of a minor to engage in the commercial sex act, making it possible that a victim may have to prove a lack of consent to pursue justice against the perpetrator. Prostitution laws apply to minors under 18, and juvenile sex trafficking victims face criminalization 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 involvement, the definition of abuse includes sexual abuse or exploitation of a child, which includes allowing the child to engage in prostitution or a sexual performance; however, sex trafficking is not expressly included as an act of child abuse. Further, the definition of custodian is not broad enough to allow for child welfare intervention in most non-familial CSEC and trafficking cases. Victims of sex trafficking, but not CSEC offenses, are eligible for crime victims’ compensation, yet eligibility criteria requiring a report to law enforce-

ment within 30 days and a claim filed within two years (unless they are also victims of certain sex offenses) present barriers to their claims. In addition, failure to cooperate with law enforcement deems a victim ineligible. The “rape shield” law reduces the trauma of cross-examination for testifying victims in sex trafficking cases; however, self-incriminating testimony by minor victims may be compelled in prostitution cases. Child sex trafficking victims may vacate a delinquency adjudication and expunge related records regardless of the offenses after a waiting period. Restitution is expressly allowed for victims of human trafficking, but the requirement of reporting within 5 days and an obligation to cooperate with law enforcement may present barriers to recovery. Civil actions against trafficking offenders and facilitators are expressly provided. Depending on the age of the victim and the classification of the offense, the statute of limitations for criminal prosecutions may be 1–6 years or eliminated entirely. The statute of limitations on civil actions for damages from trafficking may be filed within 10 years of the offense or upon the victim reaching 18 years of age.

Criminal Justice Tools for Investigation and Prosecution



New Mexico does not have mandated training on human trafficking specifically; however, training on best practices for working with victims of sexual crimes is required. State law allows for single party consent for audiotaping, but wiretapping is not available as an investigative tool in sex trafficking cases. Neither New Mexico’s human trafficking law nor its CSEC offenses prohibit a defense based on the use of a law enforcement decoy pos-

ing as a minor to investigate buying or selling sex with a child. However, use of a decoy and use of the Internet to investigate the crime of arranging to engage in sexual conduct with a real or fictitious child is authorized under the “child solicitation by electronic communication device” law. New Mexico 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.