

NEW YORK

REPORT CARD | 2018







The sex trafficking law does not apply to buyers, and penalties under the buyer-applicable commercial sexual exploitation of children (CSEC) laws do not reflect the seriousness of those offenses. Further, minors may be arrested for prostitution; however, minors involved in commercial sex are presumed to be trafficking victims.

Final Score

66

Final Grade

D

					
8.5	14	12.5	9	12	10
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

New York's sex trafficking law requires a showing that force, fraud, or coercion was used, even when the victim is a minor. New York's CSEC laws include: "patronizing a person for prostitution" in the first and second degree, "patronizing a person for prostitution in a school zone," "aggravated patronizing a minor for prostitution" in the first, second, and third degree, "advance prostitution," "profit from prostitution," "promoting prostitution in a school zone," "promoting prostitution" in the first, second, and third degree, "compelling prostitution," "use of a child in a sexual performance," and "luring a child." New York's prostitution and loitering statutes do not refer to the human trafficking statute to acknowledge the intersection of prostitution with trafficking victimization. New York's racketeering statute includes sex trafficking and CSEC offenses as predicate acts.

Criminal Provisions for Demand

The state sex trafficking law does not prohibit purchasing commercial sex with minors, leaving buyers subject only to a few state CSEC laws. "Patronizing a person for prostitution" distinguishes between soliciting sex with adults versus minors under 15, with penalties varying based on the age of the minor; however, defendants may assert a mistake of age defense to these crimes. Buyers convicted under the applicable CSEC offenses face penalties ranging from 1–25 years imprisonment and fines up to \$5,000. Buyers who use the Internet to purchase sex acts with a minor could be prosecuted under "disseminating indecent material to minors in the first degree." Buyers may be required to pay restitution and face forfeiture of assets constituting the proceeds or instrumentality of any crime. Buyers are required to register as sex offenders if convicted of possessing images of child sexual exploitation (ICSE) or any degree of "patronizing a prostitute" when a minor under 17 is involved.

Criminal Provisions for Traffickers

Convictions for sex trafficking, "compelling prostitution" of one less than 18 by force, fraud, or coercion, or "promoting prostitution in the first degree" are felonies punishable by 1–25 years imprisonment. "Promoting prostitution in the second degree" or "use of a child [under 16] in a sexual performance" are felonies punishable by 1–15 years imprisonment, whereas "promoting prostitution in the third degree" is a felony punishable by up to 7 years imprisonment. All felony sentences may include fines up to \$5,000 or "double the amount of the defendant's gain from the commission of the crime," whichever is higher, and victim restitution may be ordered. Traffickers may face forfeiture of all proceeds and instrumentalities of a felony, and forfeiture of all equipment used to create ICSE is mandatory. New York's law that prohibits the dissemination of indecent material to minors (although not specifically commercial) could be used to prosecute the growing number of traffickers using the Internet to commit their crimes. Traffickers are required to register as sex offenders for convictions of sex trafficking, creating ICSE, and some CSEC offenses. Convictions for sex trafficking or CSEC offenses are not included as grounds for terminating parental rights.

Criminal Provisions for Facilitators

The sex trafficking statute includes profiting from prostitution but requires use of force, fraud, or coercion. Facilitators could be charged with certain CSEC offenses. Conduct amounting to aiding or facilitating in an act or enterprise of prostitution of a minor under 19 is a felony with varying penalties based on the age of the victim: a conviction is punishable by 1–25 years imprisonment if the victim is under 13, or 1–15 years if 13–18. Additionally, “promoting prostitution in the third degree” addresses sex tourism and includes the crime of controlling or owning a business selling travel for the purpose of prostitution. Convictions

of “promoting prostitution in the third degree” and “promoting sexual performance of a minor” under 17 are felonies punishable by up to 7 years imprisonment. All felonies are punishable with possible fines up to \$5,000 or “double the amount of the defendant’s gain from the commission of the crime,” whichever is higher. For a felony conviction, facilitators may be required to pay restitution and forfeit all proceeds gained from commission of the felony. Facilitators also face mandatory criminal forfeiture of all equipment used to manufacture or distribute ICSE.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are identifiable as child sex trafficking victims; the trafficking offense is not applicable to buyers and requires force, fraud, or coercion and third party control. Sex trafficking and CSEC offenses do not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Prostitution laws apply to minors under 18, and while an affirmative defense is available for sex trafficking victims, they still face criminalization for commercial sex acts committed as a result of their victimization. However, a minor under 16 is presumed to be a victim of a severe form of trafficking, and if the minor consents, law enforcement may deliver the victim to a safe house. Upon a motion, the court may substitute a “person in need of supervision” (PINS) petition for the delinquency petition. A minor victim aged 16 or 17 who is arrested for prostitution or loitering may have the criminal charges converted to a PINS proceeding as long as a guilty plea has not been entered. Minor victims may be referred to specialized services, including placement in safe houses staffed by specially trained advocates. However, if the CSEC victim is unwilling to cooperate with specialized services, the delinquency proceedings will continue. For purposes of child welfare intervention, the definition of

abused child includes victims of sex trafficking, CSEC, and ICSE offenses. The definition of “person legally responsible” includes any “person responsible for the child’s care at the relevant time” but requires presence in the household, which may create a barrier to child welfare intervention. Child sex trafficking victims who suffer physical, mental, or emotional injury are provided exceptions to crime victims’ compensation prompt reporting requirements. Victim-friendly criminal justice procedures are limited. Only children under 14 may testify via closed-circuit television, and the “rape shield” law, which reduces the trauma of cross-examination for testifying victims, does not extend to CSEC victims. Child victims of CSEC offenses are eligible to receive psychosocial and advocacy support services. New York law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be sealed after a minor turns 16. Victim restitution for personal injury may be ordered, and sex trafficking victims may bring civil actions for damages. Victims of sex trafficking and CSEC are afforded an extended statute of limitations for civil and criminal actions.



Criminal Justice Tools for Investigation and Prosecution

Training or development of training materials for law enforcement on sex trafficking is not statutorily mandated or authorized, but the social services commissioner is authorized to contract with NGOs experienced in working with CSEC victims to train law enforcement. Single party consent to audiotaping is allowed, and wiretapping is authorized for investigations of sex trafficking and “promoting prostitution” in the first, second, and third degree. No law expressly authorizes the use of the Internet by law enforce-

ment to investigate cases of sex trafficking, and neither New York’s CSEC laws nor its trafficking law prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor in an investigation for the buying and selling of sex acts with a child. New York maintains a Statewide Central Register for Missing Children, and state law requires reporting of closed missing children cases.



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.