

TENNESSEE

REPORT CARD | 2018

Tennessee imposes substantial penalties for sex trafficking and provides tools for law enforcement to investigate effectively, but victims may be deterred from pursuing justice due to lack of trial protections and potential bars to victims' compensation. Tennessee prohibits the criminalization of minors for prostitution, but the lack of specialized protective responses may leave them vulnerable.

Final Score

96.5

Final Grade

A



10

10

25

25

15

15

9.5

10

22.5

27.5

14.5

15

Criminalization of Domestic Minor Sex Trafficking

Tennessee's sex trafficking law, "trafficking for a commercial sex act", does not require proof of force, fraud, or coercion and enhances penalties when the minor is under 15 or the offense occurs near a school, library, or park. Commercial sexual exploitation of children (CSEC) laws include: "patronizing prostitution," "promoting prostitution," "offense of especially aggravated sexual exploitation of a minor," "offense of solicitation of a minor," and "offense of soliciting sexual exploitation of a minor." The prostitution statute refers to the sex trafficking statute, and the patronizing prostitution and promoting prostitution laws refer to the sex trafficking law for penalties when the victim is a minor. Racketeering activity is defined under the racketeering law to include especially aggravated sexual exploitation of a minor, a CSEC offense, and criminal gang offenses, which include sex trafficking as a predicate offense.

Criminal Provisions for Demand

The state sex trafficking law expressly applies to buyers who "purchase" a commercial sex act with a minor. "Trafficking for commercial sex act" is punishable by 8–30 years imprisonment and a \$25,000 fine (or 15–60 years imprisonment and a \$50,000 when the victim is under 15). The CSEC crime of "patronizing prostitution" refers to the human trafficking statute for prosecution and significant penalties and fines. "Offense of soliciting sexual exploitation of a minor" is punishable by 8–30 years imprisonment and a \$25,000 fine. State law differentiates between soliciting an adult versus a minor for commercial sex. State law also prohibits the use of the Internet to commit trafficking and CSEC offenses. "Patronizing prostitution" and "offense of soliciting sexual exploitation of a minor" prohibit a mistake of age defense. Depending on the offense, financial penalties include fines, asset forfeiture, and restitution. Purchasing and possessing images of child sexual exploitation (ICSE) are distinct crimes that carry penalties comparable to those for similar federal offenses; enhanced penalties apply when the crime involves over a specified number of images. Buyers convicted of "trafficking for commercial sex act," purchasing or possessing ICSE, and certain CSEC offenses are required to register as sex offenders.

Criminal Provisions for Traffickers

"Trafficking for a commercial sex act" and "promoting prostitution" are felonies punishable by 8–30 years imprisonment and a \$25,000 fine (or 15–60 years imprisonment and a \$50,000 fine when the victim is under 15). "Offense of soliciting sexual exploitation of a minor" is punishable by 8–30 years imprisonment and a \$25,000 fine. Distributing ICSE or employing, using, or permitting a minor to participate in the production of ICSE are distinct crimes that carry penalties comparable to those for similar federal offenses. "Offense of solicitation of a minor" criminalizes using the Internet or other electronic communication to "command, request, hire, persuade, invite or attempt to induce" a minor to engage in sexual activity. Criminal asset forfeiture and victim restitution are mandatory in sex trafficking and "promoting prostitution" cases. Traffickers convicted of trafficking in persons, distributing or creating ICSE, and certain CSEC offenses are required to register as sex offenders. Child sex trafficking and severe child abuse, which includes some CSEC offenses, are enumerated as grounds upon which parental rights may be terminated.

Criminal Provisions for Facilitators

“Trafficking for a commercial sex act” applies to facilitators who benefit from or attempt to benefit from sex trafficking; a violation is punishable by 8–30 years imprisonment and a \$25,000 fine (or 15–60 years imprisonment and a \$50,000 fine when the minor is under 15 or the offense occurs near a school, library, or park). Advertising the sale of minors for commercial sex acts is punishable by 3–15 years imprisonment. Facilitators who own or control a business for the purpose of prostitution, encourage another to engage in prostitution, or procure a patron may be

found guilty of “promoting prostitution.” Money laundering laws may also apply. Criminal asset forfeiture and victim restitution are mandatory in sex trafficking and “promoting prostitution” cases. Selling and promoting ICSE are distinct offenses that carry penalties comparable to those for similar federal offenses. Tennessee law criminalizes the sale of travel services for prostitution, but that law is not specific to minors nor does it provide an enhanced penalty when the victim is a minor.



Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Tennessee’s trafficking law prohibits a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. Further, Tennessee prohibits the criminalization of minors for prostitution; however, victims are not provided with a specialized protective response, potentially leaving them to return home without mandated treatment or services. The definitions of “severe child abuse” and “child sexual abuse” include child sex trafficking and commercial sexual exploitation, and the definition of “caregiver” includes any person who uses a child for commercial sexual exploitation or child sex trafficking, including as a trafficker. Victims of sex trafficking are eligible for crime victims’ compensation; additionally, pain and suffering expenses are available to victims of ICSE offenses. However, a victim may be barred from recovering if determined to have been criminally responsible for the crime, did not cooperate with police, or did not file the claim within one year (extended for ICSE victims). Additionally, the crime must be reported within 48 hours unless good cause is shown (examples do not include

commercial sexual exploitation victimization). The appointment of a guardian ad litem could encourage child sex trafficking victims to pursue legal actions; however, the “rape shield” law, which can reduce the trauma of cross-examination for testifying victims, does not apply in sex trafficking or CSEC prosecutions, and closed circuit television testimony, although specifically permitted in cases of sex trafficking and “patronizing prostitution,” is limited to victims under 13. Tennessee law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization; however, state law allows a court to expunge juvenile records for prostitution offenses immediately after adjudication, but juvenile records related to other offenses may only be expunged after a waiting period except at the court’s discretion. Restitution is mandatory, and civil remedies are specifically authorized for victims of sex trafficking. The criminal statute of limitations is extended for some crimes. After the victim turns 18, prosecutions must be brought within 15 years for sex trafficking, 10 years for “patronizing prostitution,” and 25 years for “promoting prostitution.”



Criminal Justice Tools for Investigation and Prosecution

Tennessee law requires training for law enforcement on human trafficking as well as child sexual abuse, which covers sexual exploitation of a child, including exploitation through child sex trafficking, prostitution, or ICSE. Additionally, some funds realized through the human trafficking asset forfeiture provisions are allocated to training on human trafficking. Single party consent to audiotaping is permitted by law, and wiretapping is permitted in investigations of sex trafficking. Law enforcement decoys and

Internet or electronic investigation tools may be used for crimes of sex trafficking and sexual exploitation of minors; thus, a defendant would be prohibited from asserting a defense based on the fact that an actual minor was not involved in the communication. Law enforcement are mandated to report missing children, maintain data on missing children, and report located missing 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.