

TEXAS

REPORT CARD | 2018

Texas has a full range of criminal laws against the commercial sexual exploitation of children; however, minors are subject to prosecution for prostitution and may face barriers to treatment and victims' compensation to fund their recovery.

Final Score

91

Final Grade

A



10

10

25

25

15

15

7.5

10

18.5

27.5

15

15

Criminalization of Domestic Minor Sex Trafficking

Texas's sex trafficking law criminalizes the use of a minor under the age of 18 in a commercial sex act regardless of force, fraud, or coercion. State commercial sexual exploitation of children (CSEC) laws include: "compelling prostitution," "promotion of prostitution," "aggravated promotion of prostitution," "prostitution of a minor," "criminal solicitation of a minor," "employment harmful to children," and "continuous sexual abuse of young child or children through means such as sex trafficking," "aggravated sexual assault," and "sexual performance by a child." The prostitution law refers to the sex trafficking law to provide an affirmative defense for sex trafficking victims. Texas' organized criminal activity law specifically targets trafficking of persons and includes certain CSEC offenses as predicate crimes, allowing use of this law to prosecute sex trafficking networks.

Criminal Provisions for Demand

Texas's "trafficking in persons" law applies to buyers who engage in sexual conduct with a trafficked child or, following federal precedent, who obtain and cause a child to engage in various CSEC offenses; a violation is punishable by up to life imprisonment and a \$10,000 fine. Buyers who commit two or more acts of sex trafficking during a period of 30 or more days may be found guilty of "continuous trafficking of persons." CSEC laws include the crime of buying sex with a minor; depending on the offense and/or the victim's age, a violation is punishable by 2 years to life imprisonment and a fine up to \$10,000. Solicitation laws distinguish between soliciting sex with an adult versus a minor. "Online solicitation of a minor" includes using the Internet or electronic communications to solicit a minor to engage in sexual conduct. "Trafficking in persons," "prostitution, and "continuous sexual abuse of young child or children," as well as several sexual offenses, specifically prohibit a age mistake defense. Financial penalties may include fines, asset forfeiture, and restitution. Possessing images of child sexual exploitation (ICSE) carries penalties comparable to those for similar federal offenses. Buyers convicted of "trafficking in persons," "continuous trafficking in persons," "prostitution," "possession or promotion of child pornography," "sexual performance by a child," and other CSEC offenses are required to register as sex offenders.

Criminal Provisions for Traffickers

"Trafficking in persons" and "compelling prostitution" are punishable by up to life imprisonment and a \$10,000 fine. Traffickers with two or more trafficking violations within a 30 day period may be guilty of "continuous trafficking in persons" (also punishable by up to life imprisonment and a \$10,000 fine). A trafficker who employs a child to work in sexually oriented commercial activity or employs a child to appear in a sexual performance is guilty of a felony punishable by up to 20 years imprisonment and a \$10,000 fine (or up to 99 years imprisonment and a \$10,000 fine when the victim is under 14). Promoting prostitution is punishable by up to 20 years imprisonment and a \$10,000 fine, while "aggravated promotion of prostitution" involving a minor is punishable by up to 99 years imprisonment and a \$10,000 fine. Traffickers could also be subject to organized crime and criminal street gang laws, leading to additional penalties. Creating ICSE carries penalties comparable to those for similar federal offenses and provides heightened penalties when the victim is under 14. "Online solicitation of a minor" includes using the Internet or electronic communications to solicit a minor to engage in sexual contact with another person. Financial penalties may include fines, asset forfeiture, and restitution. Traffickers convicted of "trafficking in persons," "continuous trafficking in persons," "compelling prostitution," "possession or promotion of child pornography," "sexual performance by a child," and other CSEC and ICSE offenses are required to register as sex offenders.

Criminal Provisions for Facilitators

The state sex trafficking law, which includes the crime of benefiting from child sex trafficking, is punishable by up to life imprisonment and a \$10,000 fine. A facilitator who engages in two or more violations of this law within a 30 day period may be convicted of “continuous trafficking of persons.” Promoting a sexual

performance by a child is a punishable by up to 10 years imprisonment and a \$10,000 fine (or up to 20 years imprisonment and a \$10,000 fine when the victim is under 14). Financial penalties may include fines, asset forfeiture, and restitution. No laws in Texas specifically address sex tourism.

Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as juvenile sex trafficking victims. Texas’s sex trafficking and CSEC laws do not prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Texas’s prostitution laws do not prohibit the criminalization of minors under 18, but case law has held that a child under 14 may not be charged with prostitution. Although a juvenile sex trafficking victim faces criminalization for commercial sex acts committed as a result of their victimization, he or she may assert an affirmative defense based on being trafficked. Additionally, a juvenile sex trafficking victim may be able to avoid a delinquency adjudication through participation in the Trafficked Persons Program, but entrance to the program is not mandated. Specialized services are available under the Governor’s Program for Victims of Child Sex Trafficking. For purposes of child welfare involvement, the definition of “abuse” includes child sex trafficking, CSEC, prostitution, and ICSE; however, child protective services is only required to investigate reports of abuse, neglect, or exploitation committed by a “person responsible for a child’s care, custody, or welfare.” Crime victims’ compensation is available for victims of CSEC and trafficking offenses, and child sex trafficking victims are exempt from some ineligibility require-

ments. Victim-friendly trial procedures are available to sex trafficking and CSEC victims, which may encourage them to pursue justice, including the ability to testify through closed circuit television and the inadmissibility of evidence of crimes or acts committed by sex trafficking and CSEC victims under 18; however, victims may be required under statute to testify about sex trafficking offenses. Texas law allows child sex trafficking victims to seal delinquency records related to their trafficking victimization after a waiting period or upon completion of a trafficked persons program; the sealing order results in automatic vacatur of the underlying adjudication. Offenders of sex trafficking of a minor, compelling prostitution of a minor, and possession or promotion of ICSE are required to pay victim restitution, and a court may order offenders convicted of other crimes to pay victim restitution. A victim of sex trafficking also has a civil cause of action against an offender. A criminal action for sex trafficking and compelling prostitution may be brought at any time, while a prosecution for the crime of sexual performance by a child under 17 must be brought within 20 years of the victim turning 18. For civil actions, the statute of limitations for sex trafficking or compelling prostitution is 15 years.

Criminal Justice Tools for Investigation and Prosecution

Texas law mandates that law enforcement and judges receive training on human trafficking. Single party consent to audiotaping is permitted, and wiretapping is permitted for investigations of sex trafficking, prostitution offenses, and possession or promotion of ICSE crimes, giving law enforcement powerful tools to investigate and collect actionable evidence for prosecutions. Texas’s criminal solicitation of a minor statute prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor; the offender need only believe that the decoy is a mi-

nor of a certain age. Law enforcement may utilize the Internet to investigate cases of sex trafficking, relying on the online solicitation of a minor law, which includes soliciting a person who represents himself or herself to be under 17 to meet for the purpose of engaging in sexual contact. Texas law requires law enforcement to report missing and located missing children, and the Department of Family and Protective Services is required to interview located children to determine whether the child is a victim of sex trafficking.

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.