

National State Law Survey: Mistake of Age Defense

| State ¹ | Is there a buyer-applicable trafficking or CSEC law? ² | Does a buyer-applicable trafficking or CSEC law expressly prohibit a mistake of age defense in prosecutions for buying a commercial sex act with a minor? | Buyer-applicable law(s) that prohibit a mistake of age defense | Mens Rea for <i>buyer-applicable</i> trafficking and/or CSEC law(s) ³ |
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| Alabama | Yes (both) | Yes | Ala. Code §§ 13A-6-152 (Human trafficking in the first degree), 13A-12-121.1 (Engaging in an act of prostitution with a minor) | Trafficking = knowingly ————— CSEC = silent, knowingly |
| Alaska | Yes (CSEC) | No | N/A | CSEC = silent |
| Arizona | Yes (trafficking) | Yes (under 15 ⁴) | Ariz. Rev. Stat. Ann. § 13-3212 (Child sex trafficking; classification; increased punishment; definition) | Trafficking = knowingly |
| Arkansas | Yes (both) | Yes | Ark. Code Ann. § 5-18-103 (Trafficking of persons) | Trafficking = knowingly ————— CSEC = knows or has reason to know |
| California | Yes (CSEC) | No | N/A | CSEC = specific intent, knew or should have known |
| Colorado | Yes (both) | Yes | Colo. Rev. Stat. Ann. §§ 18-3-504 (Human trafficking of a minor for sexual servitude), 18-7-402 | Trafficking = knowingly ————— CSEC = knowingly or silent |

¹ Evaluations of state laws are based on legislation enacted as of August 1, 2018. For related policy goals, background information, and select statute highlights, please visit http://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_2.6.pdf.

² Responses with an asterisk (*) indicate that, while the buyer-applicable trafficking or CSEC law does not expressly prohibit a mistake of age defense, another statute expressly includes the buyer-applicable trafficking or CSEC offense within a list of offenses prohibiting such a defense.

³ Analysis of the relevant mens rea for trafficking and CSEC statutes does not analyze case law or generally applicable statutes relating to mens rea.

⁴ Ariz. Rev. Stat. Ann. § 13-3212(B) (Child sex trafficking; classification; increased punishment; definition) prohibits a mistake of age defense when the minor is under 15. If the victim is 15–17, a mistake of age defense is permitted, and the penalty decreases substantially if the prosecution fails to prove that the defendant knew or should have known the victim's age.

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| | | | (Soliciting a child for prostitution), 18-7-405.5 (Inducement of child prostitution), 18-7-406 (Patronizing a prostituted child) | |
| Connecticut | Yes (CSEC) | No | N/A | CSEC = knowingly, reasonably believes, or silent |
| Delaware | Yes (trafficking) | Yes | Del. Code Ann. tit. 11, § 787 (Trafficking an individual, forced labor and sexual servitude) | Trafficking = knowingly |
| DC | Yes (both) | No | N/A | Trafficking = knowingly ————— CSEC = intent or silent |
| Florida | Yes (both) | Yes | Fla. Stat. Ann. § 787.06 (Human trafficking) | Trafficking = knowingly or in reckless disregard ————— CSEC = knowingly or silent |
| Georgia | Yes (both) | Yes | Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) | Trafficking = knowingly ————— CSEC = knowingly or silent |
| Hawaii | Yes (CSEC) | Yes | Haw. Rev. Stat. Ann § 712-1209.1 (Solicitation of a minor for prostitution) | CSEC = intentionally, knowingly, or recklessly |
| Idaho | Yes (both) | No | N/A | Trafficking = silent ————— CSEC = silent |
| Illinois | Yes (both) | No | N/A | Trafficking = knowingly ————— |

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| | | | | CSEC = knowingly, intent, or silent |
| Indiana | Yes (trafficking) | No | N/A | Trafficking = knowingly or intentionally |
| Iowa | Yes (both) | Yes | Iowa Code § 710A.2 (Human trafficking) | Trafficking = “knowingly” ————— CSEC = silent |
| Kansas | Yes (both) | Yes | Kan. Stat. Ann. § 21-5426 (Human trafficking; aggravated human trafficking) | Trafficking = intent, reckless disregard, or knowing ————— CSEC = intent |
| Kentucky | Yes (both) | Yes ⁵ | Ky. Rev. Stat. Ann. §§ 529.100 (Human trafficking), 529.110 (Promoting human trafficking) | Trafficking = intentionally or knowing ————— CSEC = knowingly |
| Louisiana | Yes (both) | Yes | La. Rev. Stat. Ann. §§ 14:46.2 (Human trafficking), 14:46.3 (Trafficking of children for sexual purposes), 14:81.1 (Pornography involving juveniles), 14:82.1 (Prostitution; persons under eighteen; additional offenses), 14:89.2 (Crime against nature by solicitation) | Trafficking = knowingly ————— CSEC = knows, intent, or silent |
| Maine | Yes (CSEC) | Yes ⁶ | Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or | CSEC = knowingly, knows, or silent |

⁵ Ky. Rev. Stat. Ann. § 529.180 (Ignorance of human trafficking minor victim's actual age not a defense) provides, “[i]n any prosecution under KRS 529.100 [Human trafficking] or 529.110 [Promoting human trafficking] involving commercial sexual activity with a minor, it shall not be a defense that the defendant was unaware of the minor's actual age.” Additionally, Ky. Rev. Stat. Ann. § 531.330(1) (Presumption as to minority) creates a rebuttable presumption for some CSEC prosecutions that “any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.”

⁶ While buyers may be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability) without regard to whether they knew that the child was a minor, enhanced liability applies if the offender knew the victim was under 18. Accordingly, a defendant may assert a mistake of age defense to avoid the enhanced penalty, but not ultimate liability.

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| | | | person with mental disability) | |
| Maryland | Yes (CSEC) | No | N/A | CSEC = knowingly or intent |
| Massachusetts | Yes (both) | No | N/A | Trafficking = knowingly ————— CSEC = intent |
| Michigan | Yes (both) | Yes | Mich. Comp. Laws Ann. § 750.462e (Forced labor or services; prohibited conduct as relates to age of minor) | Trafficking = knowingly ————— CSEC = silent |
| Minnesota | Yes (CSEC) | Yes | Minn. Stat. Ann. §§ 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), 609.352 (Electronic solicitation of children) | CSEC = intentionally |
| Mississippi | Yes (both) | Yes | Miss. Code Ann. § 97-3-54.1 (Anti-Human Trafficking Act; prohibited conduct; penalty) | Trafficking = knowingly or knowing ————— CSEC = knowingly, intentionally, maliciously, willfully, or fraudulently |
| Missouri | Yes (both) | Yes | Mo. Rev. Stat. §§ 566.211 (Sexual trafficking of a child—penalty), 566.210 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty), 567.030 (Patronizing prostitution) | Trafficking = knowingly ————— CSEC = silent |
| Montana | Yes (both) | Yes | Mont. Code Ann. §§ 45-5-704 (Sexual servitude), 45-5-705 (Patronizing victim of sexual servitude), 45-5-601 (Prostitution) | Trafficking = purposely or knowingly ————— CSEC = silent |

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| Nebraska | Yes (both) | Yes | Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) | Trafficking = knowingly ————— CSEC = silent |
| Nevada | Yes (both) | Yes | Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) | Trafficking = silent ————— CSEC = silent |
| New Hampshire | Yes (both) | Yes | N.H. Rev. Stat. Ann. §§ 633:7 (Trafficking in persons), 645:2 (Prostitution and related offenses) | Trafficking = silent ————— CSEC = silent |
| New Jersey | Yes (both) | Yes | N.J. Stat. Ann. §§ 2C:13-8 (Human trafficking), 2C:34-1 (Prostitution and related offenses) | Trafficking = knowingly ————— CSEC = knowingly |
| New Mexico | Yes (both) | No | N/A | Trafficking = intent or knowledge ————— CSEC = knows, has reason to know, intentionally, or intent |
| New York | Yes (CSEC) | No | N/A | CSEC = knows, reasonably should know, or silent |
| North Carolina | Yes (both) | Yes | N.C. Gen. Stat. §§ 14-43.11 (Human trafficking), 14-43.13 (Sexual servitude) | Trafficking = knowingly, willfully, or in reckless disregard ————— CSEC = willfully, intent, or silent |
| North Dakota | Yes (trafficking ⁷) | No | N/A | Trafficking = knowingly, intent, or silent |

⁷ The core human trafficking law, N.D. Cent. Code § 12.1-41-02 (Trafficking an individual), and the sex trafficking law, N.D. Cent. Code § 12.1-41-04 (Sexual servitude), do not apply to buyers, but two offenses within the human trafficking chapter are applicable to buyers.

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| Ohio | Yes (CSEC) | Yes | Ohio Rev. Code Ann. §§ 2907.21 (Compelling prostitution), 2907.24 (Soliciting; after positive HIV test; driver's license suspension) | CSEC = knowingly, knows, reasonably should know, has reckless disregard, or silent |
| Oklahoma | Yes (both) | Yes | Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) | Trafficking = knowingly ————— CSEC = intent or silent |
| Oregon | Yes (both) | No (only under 16 ⁸) | O.R.S. § 163.413 (Purchasing sex with a minor) | Trafficking = know or recklessly disregard ————— CSEC = knew or silent |
| Pennsylvania | Yes (both) | No (only under 14 ⁹) | 18 Pa. Cons. Stat. §§ 3011 (Trafficking in individuals), 3013 (Patronizing a victim of sexual servitude) | Trafficking = knowing, knows, or recklessly disregards ————— CSEC = intentionally |
| Rhode Island | Yes (both) | No | N/A | Trafficking = intent, knowingly, knows, or silent ————— CSEC = knowingly |
| South Carolina | Yes (both) | Yes | S.C. Code Ann. §§ 16-3-2020 (Trafficking in persons), 16-15-425 (Participating in prostitution of a minor defined; defenses; penalties), 16-15-405 (Second degree sexual exploitation of a minor) | Trafficking = knowing or knowingly ————— CSEC = silent |

⁸ O.R.S. § 163.413 (Purchasing sex with a minor) prohibits a mistake of age defense if the victim was under the age of 16 or if the defendant has a prior conviction under this section.

⁹ 18 Pa. Cons. Stat. § 3018 (Evidence and defenses to human trafficking) provides, "[e]xcept as provided in section 3102 (relating to mistake as to age), evidence of a defendant's lack of knowledge of a person's age, or a reasonable mistake of age, is not a defense for a violation of this chapter involving the sexual servitude of a minor." However, 18 Pa. Cons. Stat. § 3102 restricts the prohibition to cases where the victim was 14 years of age or younger.

| | | | defined; presumptions; defenses; penalties) | |
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| South Dakota | Yes (trafficking) | No | N/A | Trafficking = knew, should have known, or silent |
| Tennessee | Yes (both) | Yes* ¹⁰ | Tenn. Code Ann. §§ 39-13-514 (Patronizing prostitution), 39-13-529 (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) | Trafficking = knowingly or silent CSEC = intent, intentionally, knows, or should know |
| Texas | Yes (both) | Yes | Tex. Penal Code Ann. §§ 20A.02 (Trafficking of persons), 43.02 (Prostitution), 21.02 (Continuous sexual abuse of young child or children), 43.251 (Employment harmful to children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), 43.25 (Sexual performance by a child) | Trafficking = knowingly CSEC = knowingly, intent, or silent |
| Utah | Yes (both) | Yes* ¹¹ | Utah Code Ann. §§ 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), 76-5-308.5 (Human trafficking of a child—Penalties), 76-10-1303 (Patronizing a prostitute), 76-10-1313 (Sexual solicitation—Penalty). | Trafficking = silent CSEC = knowingly, intentionally, intent, or silent |
| Vermont | Yes (trafficking) | No | N/A | Trafficking = knowingly |
| Virginia | Yes (CSEC) | No | N/A | CSEC = knowingly, intentionally, or silent |
| Washington | Yes (both) | Yes | Wash. Rev. Code Ann. §§ 9A.40.100 (Trafficking), | Trafficking = knowing or reckless disregard |

¹⁰ Tenn. Code Ann. § 39-11-502 (Ignorance or mistake of fact) provides, “[i]t shall not be a defense to prosecution for a violation of § 39-13-514 [Patronizing prostitution] or § 39-13-529 [Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means] that the person charged was ignorant or mistaken as to the age of the minor.”

¹¹ Utah Code Ann. § 76-2-304.5 (Mistake as to victim’s age is not a defense) expressly prohibits a mistake of age defense for violations of Utah Code Ann. §§ 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), 76-5-308.5 (Human trafficking of a child—Penalties), 76-10-1303 (Patronizing a prostitute), and 76-10-1313 (Sexual solicitation—Penalty).

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| | | | 9.68A.100 (Commercial sexual abuse of a minor) | <p>_____</p> <p>CSEC = silent</p> |
| West Virginia | Yes (both) | No | N/A | <p>Trafficking = knowingly and willfully, knowingly, knows, or has reason to know</p> <p>_____</p> <p>CSEC = knowingly or intent</p> |
| Wisconsin | Yes (both) | Yes | Wis. Stat. §§ 948.051 (Trafficking of a child), 948.08 (Soliciting a child for prostitution), 948.07 (Child enticement), 948.081 (Patronizing a child) | <p>Trafficking = knowingly</p> <p>_____</p> <p>CSEC = intentionally or intent</p> |
| Wyoming | Yes (trafficking) | No | N/A | <p>Trafficking = knows, intentionally, knowingly, or recklessly</p> |
| Totals: | 50 states & DC have a buyer-applicable trafficking and/or CSEC law. | 31 states have a buyer-applicable trafficking or CSEC law that prohibits a mistake of age defense in prosecutions for buying a commercial sex act with any minor under 18. | | |