

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Issue Brief

### SECTION 5.2

<b>Area of Law</b>	Protective Provisions for the Child Victims
<b>The Policy Point</b>	The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.
<b>The Legislative Solution</b>	A minor cannot consent to commercial sex acts, which are in and of themselves, criminal acts. For the same reason, age of consent laws also are irrelevant for commercial sex transactions. Permitting a defense to prosecution or civil actions based on the child's consent incorrectly implies that a minor, or any person, could authorize criminal sex acts. Sex trafficking and commercial sexual exploitation laws that do not expressly prohibit a defense based on the child's consent to sex acts unfairly shifts the burden to the child to prove she or he did not in fact consent and may result in shielding buyers, traffickers and facilitators from prosecution and liability. Moreover, permitting a defense that presumes a minor can consent to commercial sex acts further undermines the reality of prostituted children as victims, instead supporting a perception of these children as willingly delinquent youth.

#### Select Statute Highlights

##### Alabama

Alabama's human trafficking statute lists evidence which cannot serve as a defense in the prosecution of a human trafficking case. Pursuant to Ala. Code § 13A-6-154(3) (Evidence of certain facts or conditions not deemed a defense), any facts relating to "consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance. . ." are excluded from evidence.

##### Georgia

Under Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude), "The age of consent for sexual activity or the accused's lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section."

##### Illinois

For the purpose of recovering civil damages and remedies from individuals who "recruited, harmed, profited from, or maintained" victims in the sex trade industry, 740 Ill. Comp. Stat. Ann. 128/25 (Non-defenses) provides that "(a) It is not a defense to an action brought under this Act that: . . . (6) the victim of the sex trade consented to engage in acts of the sex trade; . . ."

##### Louisiana

Pursuant to La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes), "Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this section."

##### Minnesota

Minn. Stat. Ann. § 609.325, subd. 2 (Defenses) expressly states that "[c]onsent . . . shall be no defense to prosecutions under 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties]." Furthermore, Minn. Stat. Ann. § 609.284, subd. 1 (Labor or sex trafficking crimes; defenses, civil liability; corporate liability) and § 609.283, subd. 3 (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) clarify that "[i]n an action under this section the consent or age of the victim is not a defense."

##### Vermont

Vt. Stat. Ann. tit. 13, § 2652(d) (Human trafficking) states, "In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted." Consent is also irrelevant with respect to Vt. Stat. Ann. tit. 13, § 2636(a)(3), (4) (Unlawful procurement), which criminalizes any person who "(3) Pay[s] money or other valuable consideration to procure a person for the purpose of placing such person for immoral purposes in a house of prostitution, with or without the person's consent; or (4) Knowingly receive money or other valuable thing for or on account of procuring or placing a person in a house of prostitution for immoral purposes, with or without the person's consent."