

## State Survey Law: Mistake of Age Defense For Buyers of Sex Acts with Minors

State <sup>1</sup>	Trafficking or CSEC law applies to buyers <sup>2</sup>	Mistake of Age Defense prohibited under buyer-applicable CSEC <sup>3</sup> or sex trafficking offense	Buyer-applicable laws under which mistake of age defense is prohibited	Mens Rea for buyer applicable trafficking or CSEC law <sup>4</sup>
Alabama	Yes, trafficking**	Yes	Ala. Code § 13A-6-152(a)(3) (Human trafficking in the first degree)	Trafficking = “knowingly”
Alaska	Yes, CSEC	No	n/a	CSEC = silent
Arizona	Yes, both*	No (only under 15) <sup>5</sup>	Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution)	Trafficking = specific “intent” or “knowledge” CSEC = “knowingly”
Arkansas	Yes, both	Yes	Ark. Code Ann. § 5-18-103 (Trafficking of persons)	Trafficking = “knowingly” CSEC = “knows or has reason to know” or “knowingly”
California	No	n/a <sup>6</sup>	n/a	n/a
Colorado	Yes, CSEC	Yes	Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child)	CSEC = Specific “intent”
Connecticut	Yes, CSEC	No	n/a	CSEC = “knew or should have known” or “knowingly”
Delaware	Yes, trafficking	Yes	Del. Code Ann. tit. 11, § 787(b)(2)(b) (Trafficking of persons and involuntary servitude) <sup>7</sup>	Trafficking = “knowingly”
DC	Yes, both*	No <sup>8</sup>	n/a	Trafficking = “knowingly” CSEC = Specific “intent” or silent for some statutes

1 The information compiled in this survey chart is based on the 2013 Protected Innocence Challenge- State Analysis and Recommendation Reports and reflects legislation enacted on or before August 1, 2013.

2 Evaluations of state laws are based on legislation enacted as of August 1, 2013. Responses with an asterisk (\*) indicate that the human trafficking law applies to buyers based on federal precedent, and responses with a double asterisk (\*\*) indicate that the human trafficking law applies to buyers based on federal precedent but is limited in application because proof of force, fraud or coercion is required.

3 Commercial sexual exploitation of children (CSEC).

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

5 Buyers prosecuted under Ariz. Rev. Stat. Ann. § 13-3212(B) (Child prostitution) involving a victim under 15 years of age can be convicted without proof that the buyer knew the victim was a minor, but the penalty drops substantially when the victim is aged 15–17 unless the prosecution proves the buyer knew the victim was a minor, and the defense is not specifically prohibited.

6 Prop 35 eliminated mistake of age defense under trafficking law, but the trafficking law does not apply to buyers.

7 However, Delaware permits a defense in certain child pornography prosecutions that the defendant

believed a child under 14 years of age was over 16.

8 Under Fla. Stat. Ann. § 787.06(3) (Human trafficking), if the defendant had a reasonable opportunity to observe the victim, the government is not required to prove the defendant knew that the victim was a minor, but otherwise the defendant is not prohibited from raising a mistake of age defense.

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<b>Florida</b>	Yes, both*	No <sup>9</sup>	n/a	Trafficking = “knowingly or in reckless disregard” CSEC = silent or “knowingly”
<b>Georgia</b>	Yes, both*	Yes	Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude)	Trafficking = “knowingly” CSEC = partially “knowingly” and partially silent
<b>Hawaii</b>	Yes, CSEC	No	n/a	CSEC = silent
<b>Idaho</b>	Yes, both	No	n/a	Trafficking = silent CSEC = silent
<b>Illinois</b>	Yes, both*	No	n/a	Trafficking = “knowingly” CSEC = specific “intent” or “knowingly”
<b>Indiana</b>	Yes, trafficking	No	n/a	Trafficking = “knowingly”
<b>Iowa</b>	Yes, both	Yes	Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking)	Trafficking = “knowingly” CSEC = silent
<b>Kansas</b>	Yes, both*	No	n/a	Trafficking = specific “intent” CSEC = “silent”
<b>Kentucky</b>	Yes, both	No <sup>10</sup>	n/a	Trafficking = “intentionally” CSEC = “knowingly”
<b>Louisiana</b>	Yes, both	Yes	La. Rev. Stat. Ann. §§ 14:46.3(A)(1) (Trafficking of children for sexual purposes), 14:82.1(A)(1) (Prostitution; persons under eighteen), 14:82(C)(4), (5) (Prostitution)	Trafficking = “knowingly” CSEC = silent or “intentional”
<b>Maine</b>	Yes, CSEC	Yes <sup>11</sup>	Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) (Patronizing prostitution of minor)	CSEC = silent
<b>Maryland</b>	Yes, CSEC	No	n/a	CSEC = specific “intent” and

9 A mistake of age defense is not specifically prohibited under Fla. Stat. Ann. § 787.06(3) (Human trafficking) but the government is not required prove that the defendant knew the minor’s age in a sex trafficking prosecution if the defendant had a reasonable opportunity to observe the victim.

10 However there is a presumption as to minority in applicable CSEC and sex trafficking prosecutions that a victim who “appears to be under 18” is under 18.

11 While buyers may be prosecuted for patronizing prostitution of minor without regard to their knowledge of the age of the minor, enhanced liability applies if the offender knew the victim was under 18.

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				"knowingly"
<b>Massachusetts</b>	Yes, both	No	n/a	Trafficking = "knowingly" CSEC = specific "intent"
<b>Michigan</b>	No <sup>*12</sup>	No	n/a	n/a
<b>Minnesota</b>	Yes, CSEC	Yes	Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties)	CSEC = "intentionally"
<b>Mississippi</b>	Yes, trafficking	Yes	Miss. Code Ann. § 97-3-54.1(1)(c) (Anti-Human Trafficking Act; prohibited conduct; penalty)	Trafficking = "knowingly"
<b>Missouri</b>	Yes, both	Yes	Mo. Rev. Stat. § 566.212(1)(2) (Sexual trafficking of a child) and § 566.213(1)(2) (Sexual trafficking of a child under age twelve) Mo. Rev. Stat. § 567.030 (Patronizing prostitution)	Trafficking = "knowingly" CSEC = silent
<b>Montana</b>	Yes, both	Yes	Mont. Code Ann. § 45-5-601(1) (Prostitution)	Trafficking = "purposely" or "knowingly" CSEC = silent
<b>Nebraska</b>	Yes, both	No	n/a	Trafficking = "knowingly" CSEC = silent
<b>Nevada</b>	Yes, both*	Yes	Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Sex trafficking)	Trafficking = "knowingly" CSEC = silent
<b>New Hampshire</b>	Yes, trafficking**	No	n/a	Trafficking = "knowing or believing"
<b>New Jersey</b>	Yes, both*	Yes	N.J. Stat. Ann. § 2C:13-8 (Human trafficking) N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses)	Trafficking = "knowingly" CSEC = "knowingly"
<b>New Mexico</b>	Yes, both*	No	n/a	Trafficking = "knowingly" CSEC = "knowingly" or specific

<sup>12</sup> While Michigan's human trafficking law might apply to buyers through the term "obtains," the definition of "services" which includes commercial sexual activity, requires "an ongoing relationship" between the defendant and the victim that renders application to buyers unlikely.

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				"intent"
<b>New York</b>	Yes, CSEC	No	n/a	CSEC = silent
<b>North Carolina</b>	Yes, both	No	n/a	Trafficking = "knowingly or in reckless disregard of the consequences" CSEC = silent or "willfully"
<b>North Dakota</b>	Yes, trafficking*	Yes	N.D. Cent. Code § 12.1-40-01(3) (Human trafficking)	Trafficking = knowledge
<b>Ohio</b>	Yes, CSEC	Yes	Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution)	CSEC = "knowingly"
<b>Oklahoma</b>	Yes, both	No	n/a	Trafficking = "knowingly" CSEC = silent
<b>Oregon</b>	Yes, both**	No (only for second or subsequent CSEC offenses)	Enacted Senate Bill 673, Section 4 (Purchasing sex with a minor)	Trafficking = knows or recklessly disregards CSEC = silent
<b>Pennsylvania</b>	Yes, CSEC	No	n/a	CSEC = silent or "intentionally"
<b>Rhode Island</b>	Yes, both	No <sup>13</sup>	n/a	Trafficking = silent CSEC = "believes"
<b>South Carolina</b>	Yes, both**	Yes	S.C. Code Ann. § 16-3-2020(K)(5) (Trafficking in persons) S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined)	Trafficking = "knowing" CSEC = silent
<b>South Dakota</b>	Yes, trafficking**	No	n/a	Trafficking = "knowing"
<b>Tennessee</b>	Yes, both	Yes	Tenn. Code Ann. § 39-13-309 <sup>14</sup> (Trafficking for commercial sex acts) Tenn. Code Ann. § 39-13-514(b) (Patronizing prostitution)	Trafficking = "knowingly" CSEC = "intent"

13 However, the government need not prove that the defendant knew the minor's age in a sex trafficking prosecution.

14 The text of Tenn. Code Ann. § 39-13-309 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 2371 during the Tennessee 107th General Assembly, 2012 Tenn. Public Acts (effective July 1, 2012).

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<b>Texas</b>	Yes, both	Yes	Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons)	Trafficking = “knowingly” CSEC = “knowingly” or specific “intent”
<b>Utah</b>	Yes, both*	Yes	Utah Code Ann. § 76-5-310 (Aggravated human trafficking) Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) Utah Code Ann. § 76-10-1313 (Sexual solicitation)	Trafficking = silent CSEC = silent or specific “intent”
<b>Vermont</b>	Yes, trafficking	No	n/a	Trafficking = “knowingly”
<b>Virginia</b>	Yes, CSEC	No	n/a	CSEC = silent or “with lascivious intent, knowingly, and intentionally”
<b>Washington</b>	Yes, both	Yes, but with exception <sup>15</sup>	Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor)	Trafficking = “knowing or in reckless disregard of the fact” CSEC = silent
<b>West Virginia</b>	Yes, both*	No	n/a	Trafficking = “knowingly” CSEC = “knowingly”
<b>Wisconsin</b>	Yes, both*	No	n/a	Trafficking = “knowingly” CSEC = “intentionally” or “with intent”
<b>Wyoming</b>	Yes, trafficking	No	n/a	Trafficking = “intentionally or knowingly”
<b>Totals</b>	<b>49</b>	<b>21</b>	<b>13 (trafficking), 13 (CSEC)</b>	

<sup>15</sup> While an age mistake defense is generally prohibited for CSEC offenses, a buyer may assert an age mistake defense if the buyer made an attempt to ascertain the minor’s age by actions beyond relying on the oral statements or apparent age of the minor, such as requiring a driver’s license.