

State Law Survey: Prohibiting Criminalization of Juvenile Sex Trafficking Victims Under State Prostitution Laws

State	State law protects minors from criminalization for prostitution ⁱ	Statutory Non-Criminalization Approach ⁱⁱ
Alabama	No	n/a
Alaska	No	n/a
Arizona	No	n/a
Arkansas	No	n/a
California	No	n/a
Colorado	No	n/a
Connecticut	Yes	Prostitution law does not apply to minors under 16
Delaware	No	n/a
DC	Yes	Minors may not be charged with prostitution
Florida	No	n/a
Georgia	No ⁱⁱⁱ	n/a
Hawaii	No	n/a
Idaho	No	n/a
Illinois	Yes	Minors may not be charged with prostitution
Indiana	No ^{iv}	n/a
Iowa	No	n/a
Kansas	No	n/a
Kentucky	Yes	Minors may not be charged with prostitution
Louisiana	No	n/a ^v
Maine	No	n/a
Maryland	No	n/a
Massachusetts	No	n/a
Michigan	Yes	Prostitution law does not apply to minors under 16
Minnesota	Yes	Definitions of delinquent juvenile and petty delinquent juvenile specifically exclude prostitution/loitering offenses
Mississippi	Yes	Trafficking law provides that all victims are immune from prosecution for prostitution
Missouri	No	n/a
Montana	Yes	Minors may not be charged with prostitution
Nebraska	Yes	Minors may not be charged with prostitution
Nevada	No	n/a
New Hampshire	Yes	Minors may not be charged with prostitution <i>if</i> “the conduct was committed as a direct result of being trafficked”
New Jersey	No	n/a
New Mexico	No	n/a
New York	No	n/a
North Carolina	Yes	Minors may not be charged with prostitution

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North Dakota	Yes	Minors may not be charged with prostitution
Ohio	No	n/a
Oklahoma	No	n/a
Oregon	No	n/a
Pennsylvania	No	n/a
Rhode Island	No	n/a
South Carolina	Yes	Minors may not be prosecuted for prostitution <i>if</i> the offense was committed “as a direct result of, or incidental or related to, trafficking” ^{vi}
South Dakota	No	n/a
Tennessee	Yes	Minors may not be charged with prostitution
Texas	No	n/a ^{vii}
Utah	No	n/a
Vermont	Yes	Minors who are human trafficking victims may not be charged with a delinquent offense
Virginia	No	n/a
Washington	No	n/a
West Virginia	No	n/a
Wisconsin	No	n/a
Wyoming	No	n/a
Totals	15	

ⁱ A protective system response for juvenile sex trafficking victims consists of a statutory mechanism to direct minor victims away from a punitive response *and* into services. Since a complete protective system response requires long term legislative and implementation efforts, this chart focuses on one component of that response—state legislative responses that specifically eliminate criminal liability for prostitution offenses for minors. Responses in the chart are solely based on statutory law as analyzed under component 5.3 of the [Protected Innocence Challenge](#) Legislative Framework, and do not reflect regulatory or practice-based responses. Except where otherwise indicated, evaluations of state laws are based on legislation enacted as of August 1, 2015.

ⁱⁱ Unless otherwise indicated, “minor” means a person under the age of 18.

ⁱⁱⁱ Ga. Code Ann. § 16-3-6(b)(1) (Affirmative defenses to certain sexual crimes) allows minors to assert a defense to prosecution but does not eliminate criminal liability for minors under prostitution laws.

^{iv} Enacted House Bill 1216 (Ind., April 15, 2015) allows minors to assert a defense to prosecution, but does not eliminate criminal liability for minors under prostitution laws.

^v Despite the specific exclusion in La. Child. Code Ann. art. 804(3) and (5) of prostitution offenses from the definition of “delinquent act” and “felony grade delinquent act” “for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes,” La. Child. Code Ann. art. 839(D) sets out a diversion process for minors charged with a delinquent act in violation of the prostitution laws. Thus, the exclusion of prostitution offenses from the definition of delinquent act appears to act as an affirmative defense because it only applies if the child was a victim of trafficking at the time of the offense, shifting the burden to the victim to prove that status in order to avoid prosecution. This interpretation of the Children’s Code also seems consistent with the protections provided under the criminal code. La. Rev. Stat. § 14:46.3(E) (Trafficking of children for sexual purposes) states, “No victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked.” However, Louisiana’s prostitution offenses, La. Rev. Stat. Ann. § 14:82(G) (Prostitution; definition; penalties; enhancement), § 14:83.3(D) (Prostitution by massage), and § 14:83.4 (Massage; sexual conduct prohibited) provide an affirmative defense from prosecution for prostitution offenses if “during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes” as provided in La. Rev. Stat. Ann. § 14:46.3(A), (B), or determined to be a victim of human trafficking pursuant to § 14:46.2 (F) (Human trafficking). Consequently, the prohibition on prosecution in § 14:46.3 when read together with the prostitution statutes also appears to establish an affirmative defense if a juvenile sex trafficking victim is charged as an adult.

^{vi} Protection from prosecution does not extend to all minors who are commercially sexually exploited, because pursuant to S.C. Code Ann. §§ 16-3-2010(Definitions), 16-3-2020 (Trafficking in persons; penalties; defenses), a child must be under the control of a third party in order to be considered a child sex trafficking victim. See SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf

^{vii} While Texas caselaw prohibits prosecution of minors under 14 for prostitution, this protection is not codified in Texas’ prostitution law. See *In re B.W.*, 313 S.W.3d 818, 821 (Tex. 2010) (holding that “a 13 year old child cannot consent to sex as a matter of law” and thus cannot satisfy the knowledge requirement of the prostitution statute.)