

# National State Law Survey: Mistake of Age Defense

1

State <sup>1</sup>	Is there a buyer-applicable trafficking or CSEC law? <sup>2</sup>	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 or CSEC law(s) <sup>3</sup>
Alabama	Yes (trafficking)	Yes	Ala. Code § 13A-6-152 (Human trafficking in the first degree)	Trafficking = knowingly
Alaska	Yes (CSEC)	No	N/A	CSEC = silent
Arizona	Yes (trafficking)	Yes (under 15 <sup>4</sup> )	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 (Soliciting a child for prostitution), 18-7-405.5 (Inducement of child prostitution), and 18-7-406 (Patronizing a prostituted child)	Trafficking = knowingly CSEC = knowingly or silent
Connecticut	Yes (CSEC)	No	N/A	CSEC = knowingly, reasonably believes, or silent
Delaware	Yes	Yes	Del. Code Ann. tit. 11, §	Trafficking = knowingly

<sup>1</sup> Evaluations of state laws are based on legislation enacted as of August 1, 2017. 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](http://sharedhope.org/wp-content/uploads/2015/11/Issue_Briefs/Issue_Briefs_2.6.pdf).

<sup>2</sup> 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.

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

<sup>4</sup> 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.

## National State Law Survey: Mistake of Age Defense

2

	(trafficking)		787 (Trafficking an individual, forced labor and sexual servitude)	
<b>DC</b>	Yes (both)	No	N/A	Trafficking = knowingly CSEC = intent or silent
<b>Florida</b>	Yes (both)	Yes	Fla. Stat. Ann. § 787.06 (Human trafficking)	Trafficking = knowingly or in reckless disregard CSEC = knowingly or silent
<b>Georgia</b>	Yes (both)	Yes	Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude)	Trafficking = knowingly CSEC = knowingly or silent
<b>Hawaii</b>	Yes (CSEC)	Yes	Haw. Rev. Stat. Ann § 712-1209.1 (Solicitation of a minor for prostitution)	CSEC = intentionally, knowingly, or recklessly
<b>Idaho</b>	Yes (both)	No	N/A	Trafficking = silent CSEC = silent
<b>Illinois</b>	Yes (both)	No	N/A	Trafficking = knowingly CSEC = knowingly, intent, or silent
<b>Indiana</b>	Yes (trafficking)	No	N/A	Trafficking = knowingly or intentionally
<b>Iowa</b>	Yes (both)	Yes	Iowa Code § 710A.2 (Human trafficking)	Trafficking = “knowingly” CSEC = silent
<b>Kansas</b>	Yes (both)	Yes	Kan. Stat. Ann. § 21-5426 (Human trafficking; aggravated human trafficking)	Trafficking = intent, reckless disregard, or knowing CSEC = intent

## National State Law Survey: Mistake of Age Defense

3

<b>Kentucky</b>	Yes (both)	Yes* <sup>5</sup>	Ky. Rev. Stat. Ann. § 529.100 (Human trafficking) and § 529.110 (Promoting human trafficking)	Trafficking = intentionally or knowing CSEC = knowingly
<b>Louisiana</b>	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), and § 14:89.2 (Crime against nature by solicitation)	Trafficking = knowingly CSEC = knows, intent, or silent
<b>Maine</b>	Yes (CSEC)	Yes <sup>6</sup>	Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor or person with mental disability)	CSEC = knowingly, knows, or silent
<b>Maryland</b>	Yes (CSEC)	No	N/A	CSEC = knowingly or intent
<b>Massachusetts</b>	Yes (both)	No	N/A	Trafficking = knowingly CSEC = intent
<b>Michigan</b>	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
<b>Minnesota</b>	Yes (CSEC)	Yes	Minn. Stat. Ann. §§ 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) and 609.352 (Electronic solicitation of children)	CSEC = intentionally
<b>Mississippi</b>	Yes (both)	Yes	Miss. Code Ann. § 97-3-54.1 (Anti-Human	Trafficking = knowingly or knowing

<sup>5</sup> 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."

<sup>6</sup> 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.

## National State Law Survey: Mistake of Age Defense

4

			Trafficking Act; prohibited conduct; penalty)	<p>_____</p> <p>CSEC = knowingly, intentionally, maliciously, willfully, or fraudulently</p>
<b>Missouri</b>	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), and § 567.030 (Patronizing prostitution)	<p>Trafficking = knowingly</p> <p>_____</p> <p>CSEC = silent</p>
<b>Montana</b>	Yes (both)	Yes	Mont. Code Ann. § 45-5-704 (Sexual servitude), § 45-5-705 (Patronizing victim of sexual servitude) and § 45-5-601 (Prostitution)	<p>Trafficking = purposely or knowingly</p> <p>_____</p> <p>CSEC = silent</p>
<b>Nebraska</b>	Yes (both)	Yes	Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties)	<p>Trafficking = knowingly</p> <p>_____</p> <p>CSEC = silent</p>
<b>Nevada</b>	Yes (both)	Yes	Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking; definition; penalties; exception)	<p>Trafficking = silent</p> <p>_____</p> <p>CSEC = silent</p>
<b>New Hampshire</b>	Yes (both)	Yes	N.H. Rev. Stat. Ann. § 633:7 (Trafficking in persons) and § 645:2 (Prostitution and related offenses)	<p>Trafficking = silent</p> <p>_____</p> <p>CSEC = silent</p>
<b>New Jersey</b>	Yes (both)	Yes	N.J. Stat. Ann. § 2C:13-8 (Human trafficking), and § 2C:34-1 (Prostitution and related offenses)	<p>Trafficking = knowingly</p> <p>_____</p> <p>CSEC = knowingly</p>
<b>New Mexico</b>	Yes (both)	No	N/A	<p>Trafficking = intent or knowledge</p> <p>_____</p> <p>CSEC = knows, has reason to know, intentionally, or intent</p>

## National State Law Survey: Mistake of Age Defense

5

<b>New York</b>	Yes (CSEC)	No	N/A	CSEC = knows, reasonably should know, or silent
<b>North Carolina</b>	Yes (both)	Yes	N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude)	Trafficking = knowingly, willfully, or in reckless disregard CSEC = willfully, intent, or silent
<b>North Dakota</b>	Yes (trafficking <sup>7</sup> )	No	N/A	Trafficking = knowingly, intent, or silent
<b>Ohio</b>	Yes (CSEC)	Yes	Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution) and § 2907.24 (Soliciting; after positive HIV test; driver's license suspension)	CSEC = knowingly, knows, reasonably should know, has reckless disregard, or silent
<b>Oklahoma</b>	Yes (both)	Yes	Okla. Stat. Ann. tit. 21, § 748 (Human trafficking)	Trafficking = knowingly CSEC = intent or silent
<b>Oregon</b>	Yes (both)	No (only under 16 <sup>8</sup> )	O.R.S. § 163.413 (Purchasing sex with a minor)	Trafficking = know or recklessly disregard CSEC = knew or silent
<b>Pennsylvania</b>	Yes (both)	No (only under 14 <sup>9</sup> )	18 Pa. Cons. Stat. § 3011 (Trafficking in individuals) and § 3013 (Patronizing a victim of sexual servitude)	Trafficking = knowing, knows, or recklessly disregards CSEC = intentionally
<b>Rhode Island</b>	Yes (both)	No	N/A	Trafficking = intent, knowingly, knows, or silent CSEC = knowingly

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.

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), and § 16-15-405 (Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties)	Trafficking = knowing CSEC = silent
South Dakota	Yes (trafficking)	No	N/A	Trafficking = knew, should have known, or silent
Tennessee	Yes (both)	Yes <sup>*10</sup>	Tenn. Code Ann. § 39-13-514 (Patronizing prostitution) and § 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), and § 43.25 (Sexual performance by a child)	Trafficking = knowingly CSEC = knowingly, intent, or silent
Utah	Yes (both)	Yes <sup>*11</sup>	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).	Trafficking = silent CSEC = knowingly, intentionally, intent, or silent

<sup>10</sup> 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.”

<sup>11</sup> 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).

## National State Law Survey: Mistake of Age Defense

7

<b>Vermont</b>	Yes (trafficking)	No	N/A	Trafficking = knowingly
<b>Virginia</b>	Yes (CSEC)	No	N/A	CSEC = knowingly, intentionally, or silent
<b>Washington</b>	Yes (both)	Yes	Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.100 (Commercial sexual abuse of a minor)	Trafficking = knowing or reckless disregard _____ CSEC = silent
<b>West Virginia</b>	Yes (both)	No	N/A	Trafficking = knowingly and willfully, knowingly, knows, or has reason to know _____ CSEC = knowingly or intent
<b>Wisconsin</b>	Yes (both)	Yes	Wis. Stat. § 948.051 (Trafficking of a child), § 948.08 (Soliciting a child for prostitution), and § 948.07 (Child enticement)	Trafficking = knowingly _____ CSEC = intentionally or intent
<b>Wyoming</b>	Yes (trafficking)	No	N/A	Trafficking = knows, intentionally, knowingly, or recklessly
<b>Totals:</b>	<b>50 states &amp; DC</b> have a buyer- applicable trafficking and/or CSEC law.	<b>31 states</b> 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.		