

SOUTH CAROLINA

REPORT CARD | 2017




South Carolina's child sex trafficking statute does not require force, fraud, or coercion. Additionally, child victims are not subject to prosecution for offenses committed pursuant to their victimization, but access to specialized services is not statutorily mandated. Buyers of sex acts with children may be prosecuted under the trafficking law if a controlling third party or trafficker is identified.

Final Score

70.5

Final Grade

C

					
10	21	11	6	15.5	7
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

South Carolina's human trafficking statute includes sex trafficking without requiring use of force, fraud, or coercion when the victim is a minor. State commercial sexual exploitation of children (CSEC) laws include: "promoting prostitution of a minor," "participating in prostitution of a minor," first and second degree "sexual exploitation of a minor," "producing, directing or promoting sexual performance by child," "employment of person under eighteen to appear in public state of sexually explicit nudity," and "engaging child for sexual performance." Prostitution laws do not refer to the human trafficking law to acknowledge the intersection of prostitution with trafficking victimization, but the "trafficking in persons" law protects minors from prosecution on prostitution charges related to trafficking. The Criminal Gang Prevention Act includes human trafficking and CSEC offenses as predicate acts, making this law available to prosecute sex trafficking enterprises.

Criminal Provisions for Demand

The trafficking law applies to buyers through the term "solicits" and, following federal precedent, through the term "obtains," but a controlling third party must be identified. "Trafficking in persons" is punishable by up to 15 years imprisonment; an additional (consecutive) 15 year sentence may be imposed when the victim is a minor. The CSEC crime of "participating in prostitution of a minor" is punishable by 2–5 years imprisonment. South Carolina's solicitation laws distinguish between buying commercial sex acts with an adult versus a minor. "Criminal solicitation of a minor" may provide a means of prosecuting buyers who use the Internet, but no statute specifically criminalizes using the Internet or electronic communications to purchase sex with a minor. A mistake of age defense is prohibited under several offenses, including "trafficking in persons," "second degree sexual exploitation of a minor," and "participating in prostitution of a minor." Financial penalties may include asset forfeiture and restitution, but fines are not mandated for most buyer-applicable offenses. Purchasing and possessing images of child sexual exploitation (ICSE) carries penalties comparable to those for similar federal offenses. A buyer must register as a sex offender if convicted of "trafficking in persons," "participating in prostitution of a minor," or "criminal solicitation of a minor."

Criminal Provisions for Traffickers

"Trafficking in persons" is punishable by up to 15 years imprisonment; an additional (consecutive) 15 year sentence may be imposed when the victim is a minor. "Promoting prostitution of a minor," "first degree sexual exploitation of a minor" (which includes using or employing a minor for ICSE), and "engaging child for sexual performance" are punishable by 3–20 years imprisonment. "Criminal solicitation of a minor" is punishable by up to 10 years imprisonment; though not specific to use of the Internet or electronic communications, this offense may provide a means of prosecuting traffickers who recruit minors for illegal sex acts. Creating ICSE carries penalties comparable to those for similar federal offenses. Financial penalties may include asset forfeiture and restitution, but fines are not mandated for most buyer-applicable offenses. Traffickers must register as sex offenders if convicted of "trafficking in persons" or any offense related to "obscenity, material harmful to minors, child exploitation, and child prostitution." Grounds for terminating parental rights exist when a victim is hospitalized or dies as a result of trafficking in persons or offenses related to ICSE.



Criminal Provisions for Facilitators

South Carolina's human trafficking law penalizes one "who benefits, financially or by receiving anything of value" from sex trafficking with up to 15 years imprisonment; an additional (consecutive) 15 year sentence may also be imposed when the victim is a minor. Business owners who use their business to aid or assist sex trafficking face possible fines, up to 10 years imprisonment, and forfeiture of their business charter. Facilitators convicted of "promoting prostitution of a minor" or "first degree sexual exploitation of a minor," which includes transporting or financing the transportation of a minor for ICSE, face 3–20 years

imprisonment. Financial penalties may include asset forfeiture and restitution; however, fines are not mandated for the facilitator-applicable trafficking and CSEC laws. "Producing, directing or promoting sexual performance by a child" and distributing or transporting ICSE under "second degree sexual exploitation of a minor" are punishable by up to 10 years imprisonment, while "first degree sexual exploitation of a minor" for ICSE-related conduct is punishable by 3–20 years imprisonment. No laws in South Carolina address sex tourism.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims, as the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker. Although the prostitution laws do not limit applicability to adults, the human trafficking statute provides that minors are not subject to prosecution for prostitution as human trafficking victims. The human trafficking law also provides an affirmative defense for all offenses committed as a result of being a victim of trafficking and specifically provides that human trafficking victims are entitled to victim compensation. South Carolina law does not provide an avenue to specialized services. However, a victim found to be an abused or neglected child by a person responsible for the child's welfare may receive a protective response through social services. Child abuse and neglect are not expressly defined to include infliction of sex trafficking, CSEC, or ICSE offenses, but a child is considered abused when an adult allows a sexual offense to be committed against the child, potentially including CSEC or trafficking. A person responsible for the child's welfare is defined to include parents, guardians, and foster parents, thus restricting an intervention by child protective services where a non-familial trafficker has custody and control

of a minor. The human trafficking law expressly prohibits a defendant from asserting a defense based on the willingness of a minor to engage in a commercial sex act, but the CSEC laws do not prohibit this defense. While the "rape shield" law is not specifically available to limit traumatizing cross-examination of CSEC and trafficking victims, the human trafficking law bars a defense based on the victim's past sexual conduct. South Carolina law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a waiting period. Restitution is mandated for human trafficking convictions. Civil actions may be filed by victims of human trafficking or sexual abuse defined to include prostitution and ICSE related offenses. A criminal case may be brought at any time, and the time for a civil action brought under the human trafficking law may be extended to 3 years after the offender completes a criminal sentence, or after the end of the trafficking, or after the victim turns 18. Additionally, the statute of limitations can be tolled based on psychological trauma if a victim could not have reasonably discovered the cause of action.



Criminal Justice Tools for Investigation and Prosecution

South Carolina law does not mandate or authorize training or the development of training materials on domestic minor sex trafficking or human trafficking, but such training could be included in the training provided by the Missing Person Information Center on exploited children. Single party consent to audiotaping is permitted, but wiretapping is not authorized for investigations related to human trafficking or CSEC. The crime of "solicitation of a minor" expressly prohibits a defense based on the use of a

law enforcement decoy posing as a minor in an investigation for purchasing sex with a minor. Law enforcement officers are not clearly authorized to use the Internet to investigate the crime of buying or selling sex with minors. Law enforcement officers must report missing children and once a child is rescued, law enforcement must confirm and delete the records unless grounds for criminal prosecution exist.

The Report Card is based on the Protected Innocence Challenge Legislative Framework, an analysis of state laws performed by Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Challenge Legislative Framework Methodology, all state Report Cards, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.