

PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

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The human trafficking law requires proof of use of force, fraud, or coercion even when the victim is a minor. Domestic minor sex trafficking victims are provided protective responses but do not receive the protections of the “rape shield” law or closed-circuit television testimony which could reduce trauma and encourage victims to pursue justice against their perpetrators.

FINAL SCORE

82

FINAL GRADE

B



8

10

21.5

25

13.5

15

9.5

10

19.5

27.5

10

15



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Washington’s human trafficking law includes exploitation for commercial sex acts, but proof that force, fraud, or coercion was used is required even when the victim is a minor. Commercial sexual exploitation of children (CSEC) laws include: commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, promoting travel for commercial sexual abuse of a minor, permitting commercial sexual abuse of a minor, and sexual exploitation of a minor. The CSEC laws do not refer to the trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking; however, the juvenile justice law and an affirmative defense in the prostitution chapter for human trafficking victims both establish a presumption that any juvenile arrested for prostitution-related offenses qualifies as a victim of a severe form of trafficking in persons and as a victim of commercial sexual abuse of a minor, therefore identifying prostituted minors as victims of trafficking. Washington’s criminal profiteering statute includes some CSEC offenses, but not human trafficking, as predicate acts.



CRIMINAL PROVISIONS ADDRESSING DEMAND

The state trafficking law tracks the federal definition and could, following federal precedent, be applied to buyers who “obtain” a person for commercial sex acts. The commercial sexual abuse of a minor statute specifically applies to buyers, and separately criminalizes paying a minor to engage in sexual conduct. Although no statute expressly criminalizes use of the Internet to purchase sex acts with minors, the offense of communicating via electronic communications with a minor for “immoral purposes” might apply to the purchase of commercial sex acts online. Buyers face a mandatory \$3,000 if convicted of trafficking and may be required to forfeit assets involved in violations of trafficking, CSEC and child pornography offenses. 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. A buyer is required to register as a sex offender for convictions of CSEC offenses and child pornography offenses.



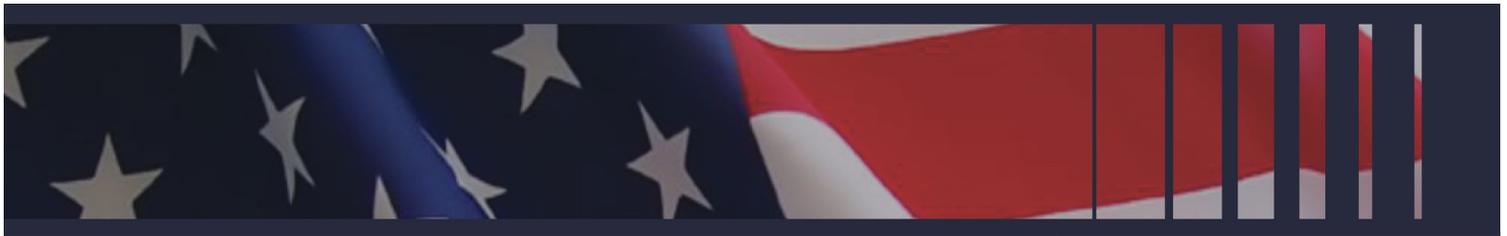
CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under trafficking and CSEC laws and may be subject to criminal profiteering laws. Trafficking and promoting commercial sexual abuse of a minor are felonies punishable by imprisonment between 93–318 months and a possible fine up to \$50,000 (\$5,000 is mandatory for promoting commercial sexual abuse of a minor convictions and \$3,000 is mandatory for trafficking). When trafficking includes a sexual motivation, kidnapping, or results in a death, the crime is punishable by 123–397 months imprisonment. Sexual exploitation of a minor, which includes using a minor in child pornography or performance, is a felony punishable by 31 months–10 years imprisonment and a possible fine up to \$20,000. Promoting travel for commercial sexual abuse is a felony punishable by a maximum of 12 months imprisonment and a possible fine up to \$10,000. While no statute expressly makes using the Internet to recruit a minor to engage in commercial sex acts a crime, the communication with a minor for immoral purposes statute—which includes electronic communications but does not specifically reference commercial sex acts—might apply. Traffickers are subject to asset and vehicle forfeiture for trafficking and CSEC crimes. A trafficker may also be ordered to pay victim restitution. Traffickers are required to register as sex offenders for convictions of promoting sexual abuse of a minor, child pornography related offenses, and repeat offenses of promoting prostitution in the first and second degree, but a special allegation of sexual motivation in trafficking convictions is necessary to require registration. Convictions for trafficking or CSEC offenses do not expressly result in termination of parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES

| Crime (name of law abridged) | Classification | Sentence | Fine | Asset Forfeiture (available) |
|---|----------------|----------------------|------------------|------------------------------------|
| Commercial sexual abuse of a minor (§ 9.68A.100) | Class B felony | 21 months–10 years | \$5,000–\$20,000 | ● |
| Possession or viewing child pornography (§ 9.68A.070) | Class B felony | 12 months–102 months | Max. \$20,000 | ● |

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Washington law requires a protective response for CSEC victims, who are defined as victims throughout the state laws, though minors are not identified specifically in the trafficking law. There is no prohibition to a defense to prosecution for sex trafficking or CSEC based on consent of the minor to the commercial sex acts, potentially shifting the burden to the victim to prove no consent. The general prostitution law fails to make minors immune from prosecution and a separate juvenile prostitution law continues to hold minors accountable for prostitution if they are not found to be trafficking or commercial sexual abuse victims. Nonetheless, diversion is mandated for a juvenile's first offense and optional diversion exists for subsequent offenses. A CSEC victim is included in the definition of child in need of services, leading to a child protection response which includes crisis residential shelters and services; however, there is no guarantee they will not be detained as delinquents for prostitution or other offenses committed in the course of their exploitation. Sexual exploitation through prostitution or child pornography is a form of abuse or neglect allowing for child protective services involvement, though caregiver is defined as an adult in the home at least semi-permanently which would limit child welfare intervention to familial trafficking. Crime victims' compensation is specifically made available to victims of commercial sexual abuse of a minor, regardless of whether the victim is charged with prostitution. Additionally, the rights of child victims of criminal acts do not accrue until "the time the victim discovers or reasonably should have discovered the elements of the crime." If eligible for crime victims' compensation, a court must order the offender to pay restitution to the victim. Some victim-friendly court procedures are in place, for example, victims of sexual assault including sexual exploitation or commercial sexual abuse of a minor have the right to be accompanied by a personal representative to court proceedings, but closed-circuit television testimony is limited to victims under ten years old and the rape shield statute does not apply in trafficking or CSEC cases. Criminal records of juveniles may be expunged upon application if two years have passed without incident and other conditions are satisfied. Civil remedies can be asserted by victims of human trafficking and certain CSEC offenses. Statutes of limitations have not been eliminated for trafficking or CSEC victims.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Washington law mandated the development of model policy and training on procedures relating to identifying and responding to victims of domestic minor sex trafficking by January 2011. Single party consent to audiotaping and judicially approved wiretapping is permitted for law enforcement pursuing trafficking and CSEC investigations. No laws expressly authorize the use of a decoy in sex trafficking or CSEC investigations; however, minors may aid investigations in which they are an alleged victim and their participation is limited to telephone or electronic communications with the defendant. Additionally, law enforcement may use the Internet to investigate cases of sex trafficking. Reporting of missing children is mandated within twelve hours and law enforcement must also report when missing children are recovered.

CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law includes financially benefitting or receiving anything of value from the trafficking; however, knowledge that force, fraud, or coercion was used is necessary. Advertising commercial sexual abuse of a minor, which has been temporarily enjoined by a federal court, and CSEC laws are also applicable to facilitators. Trafficking and promoting commercial sexual abuse of a minor are felonies punishable by imprisonment between 93–318 months and a possible fine up to \$50,000 (\$5,000 is mandatory for promoting commercial sexual abuse of a minor convictions and \$3,000 is mandatory for trafficking). When trafficking includes a sexual motivation, kidnapping, or results in a death, the crime is punishable by 123–397 months imprisonment. Selling, sending, and bringing images of sexual conduct into the state are felonies generally punishable by 15–116 months imprisonment and a possible fine up to \$20,000. Facilitators are subject to asset and vehicle forfeiture for trafficking and CSEC crimes. Promoting travel for commercial sexual abuse, which specifically addresses sex tourism by including selling travel for the purpose of engaging commercial sexual abuse with a minor, is a felony punishable by a maximum of 12 months imprisonment and a possible fine up to \$10,000. A facilitator may be ordered to pay restitution.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: www.sharedhope.org.

