

# KENTUCKY

## REPORT CARD | 2017

Kentucky's human trafficking law includes trafficking minors under 18 for commercial sexual activity without regard to use of force, fraud, or coercion, provides serious penalties, and mandates a comprehensive protective response for child sex trafficking victims; however, law enforcement are without the critical investigative tool of wiretaps.

Final Score

87

Final Grade

B



10

10

20.5

25

15

15

6

10

23

27.5

12.5

15

## Criminalization of Domestic Minor Sex Trafficking

Kentucky's human trafficking law includes trafficking minors under 18 for commercial sexual activity without requiring use of force, fraud, or coercion. State commercial sexual exploitation of children (CSEC) laws include: "use of a minor in a sexual performance," "promoting a sexual performance by a minor," "using minors to distribute material portraying a sexual performance by a minor," "unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities," and "unlawful transaction with a minor in the third degree," which includes transactions for purposes of prostitution. The prostitution law refers to the human trafficking statute to eliminate criminal liability for minors under the prostitution law and establishes an affirmative defense to other non-violent offenses for victims of human trafficking. Kentucky's organized crime law includes human trafficking as a predicate offense, allowing this law to be used for prosecuting trafficking enterprises.

## Criminal Provisions for Demand



The human trafficking law applies to buyers who intentionally subject a minor to commercial sexual activity and, following federal precedent, through the term "obtains." The criminal solicitation statute does not distinguish between purchasing sex acts with an adult versus a minor, but "unlawful transaction with a minor in the third degree" may be used to prosecute buyers of sex with minors. Buyers convicted of child sex trafficking face 10–20 year imprisonment and a \$1,000–\$10,000 fine, while convictions under the CSEC law carry a maximum prison term of 1 year imprisonment and a fine up to \$500. Buyers face criminal liability for using the Internet to procure a minor to commit sex trafficking or "pornography." Buyers are prohibited from asserting a mistake of age defense in a prosecution for human trafficking, but not for CSEC offenses. Buyers convicted of CSEC must pay restitution to their victims. Buyers are required to register as offenders if convicted of human trafficking or possessing images of child sexual exploitation (ICSE). Buyers convicted of possessing ICSE and "using the Internet to procure a minor for unlawful sex acts" face mandatory criminal asset forfeiture.

## Criminal Provisions for Traffickers



Under the human trafficking law, a person convicted of sex trafficking a minor is subject to 10–20 years imprisonment. "Using a minor [under 16] in a sexual performance" and "promoting a sexual performance of a minor" are also punishable by 10–20 years imprisonment, while "using a minor [age 16 or 17] in a sexual performance" and "promoting human trafficking" are punishable by 5–10 years imprisonment. All of these crimes are subject to a fine of \$1,000–\$10,000 or "double [the] gain from commission of the offense." Traffickers convicted of "human trafficking" or "promoting human trafficking" face an additional \$10,000 fee. Using a communication system, including the Internet, to procure a minor or to promote a minor for sex trafficking or ICSE is a separate offense. Kentucky's sex offender registration law requires convicted offenders of "human trafficking," "promoting human trafficking" involving commercial sexual activity, promoting prostitution when involving a minor, and producing ICSE to register. A court can terminate a trafficker's parental rights for any criminal charge relating to the physical or sexual abuse of any child if the trafficker's child is also at risk. A trafficker is subject to mandatory criminal asset forfeiture for violations of CSEC laws, ICSE offenses, or using the Internet to procure a minor, but not for "human trafficking" or "promoting prostitution" of a minor. Convicted traffickers must pay victim restitution.



## Criminal Provisions for Facilitators

Those who benefit financially from human trafficking are guilty of “promoting human trafficking.” “Promoting human trafficking” and “promoting a sexual performance of a minor” age 16 or 17 are felonies punishable by 5–10 years imprisonment. When the victim is under 16, “promoting a sexual performance of a minor” is a felony punishable by 10–20 years imprisonment. Facilitators convicted of “promoting human trafficking” are also subject to an additional \$10,000 fee. Sex tourism is not a crime in Ken-

tucky. First offenses for distribution and advertisement of ICSE are felonies punishable by 1–5 years imprisonment and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense.” However, a first offense for selling ICSE is only a Class A misdemeanor punishable by up to 1 year imprisonment and a fine up to \$500. A facilitator is subject to mandatory criminal asset forfeiture for violations of ICSE offenses, but not “promoting human trafficking.” Victim restitution is mandatory.



## Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as child sex trafficking victims. Willingness of a minor to engage in a commercial sex act is not a prohibited defense, leaving this as an issue in a case of child sex trafficking. Kentucky provides child sex trafficking victims with a comprehensive protective response through the child welfare process. Minors who engage in prostitution or commit status offenses pursuant to their victimization are protected from prosecution and must be referred to child welfare for assessment and treatment. Further, a juvenile sex trafficking victim does not have to be identified as an abused or neglected child in order to receive protection through child protective services since child welfare is authorized to provide specialized services and treatment to child sex trafficking victims regardless of whether a parent or guardian was responsible for the child’s exploitation. Victims of sex trafficking are eligible for crime victims’ compensation but face potential barriers to recovery. Claims must be filed within 5 years, and the crime must be reported to law enforcement within 48 hours; both may be waived for good cause. A victim who is found to have contributed to the injury may have compensation reduced or denied.

Kentucky’s “rape shield” law, which applies in any proceeding involving alleged sexual misconduct to limit traumatizing cross-examination of testifying victims, may provide protection to sex trafficking and CSEC victims. CSEC and trafficking victims who are under 12 years of age are permitted to testify via closed circuit television. Kentucky law allows minors to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, but relief is not immediately available. Victims of any crime are entitled to restitution for pecuniary losses, and civil remedies are available for human trafficking and some CSEC offenses, including “use of a minor in a sexual performance” and “promoting a sexual performance by a minor.” Prosecutions for sex trafficking of minors are not subject to a statute of limitations, but misdemeanor CSEC offenses, such as promoting the prostitution of one victim, must be brought within 1 year. A victim must bring a civil case by the time the victim reaches 23 or within 5 years of the time that the victim should have known of the offense, limiting a child sex trafficking victim’s access to civil remedies.



## Criminal Justice Tools for Investigation and Prosecution

Kentucky law mandates law enforcement training on human trafficking. State law permits single party consent to audiotaping, but prohibits wiretaps without exception, leaving law enforcement without this important tool for sex trafficking investigations and prosecutions. The offense that criminalizes use of electronic communications to procure or promote a minor for sex trafficking or ICSE permits the use of a law enforcement decoy to investi-

gate child sex trafficking and enables law enforcement officers to use the Internet to investigate traffickers and buyers, meaning that a defendant would be barred from asserting a defense to prosecution based on the fact that an actual minor was not involved. State law mandates reporting by law enforcement of both missing and located children to the state database and the National Crime Information Center within 24 hours.

*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](http://www.sharedhope.org/reportcards).*