

# NEW HAMPSHIRE

## REPORT CARD | 2017

New Hampshire's trafficking in persons law criminalizes child sex trafficking without regard to force, fraud, or coercion. Buyers of sex with minors face penalties under the human trafficking law. Commercially sexually exploited children are identified as sex trafficking victims and are not criminalized for prostitution offenses, but state law does not provide statutory access to specialized services.

Final Score

82.5

Final Grade

B



7.5

10

24

25

15

15

5

10

22

27.5

9

15

## Criminalization of Domestic Minor Sex Trafficking

New Hampshire's "trafficking in persons" law includes sex trafficking and does not require proof that force, fraud, or coercion was used to compel a minor victim to engage in a commercial sex act. The state criminalizes commercial sexual exploitation of children (CSEC) under the following law: "prostitution and related offenses." The "prostitution and related offenses" law references the "trafficking in persons" statute to provide trafficking victims with an affirmative defense to prostitution charges, acknowledging the intersection of prostitution with trafficking victimization. Crimes committed as gang activities can result in penalty enhancements; however, child sex trafficking and CSEC are not predicate offenses, and New Hampshire has not enacted a racketeering law, leaving the state without a tool that could be used to prosecute sex trafficking enterprises.

## Criminal Provisions for Demand

The state trafficking in persons law applies to buyers of sex with a minor and is punishable as a Class B felony, carrying a maximum prison term of 7 years and a fine up to \$4,000. The state CSEC law, "prostitution and related offenses," applies to buyers and is also punishable as a Class B felony, carrying a maximum prison term of 7 years and a fine up to \$4,000. The "solicitation" law distinguishes between buying sex with an adult versus a minor by enhancing the penalty if a minor victim is involved. However, penalties for buyers of commercial sex acts with minors are not as high as federal penalties. New Hampshire's "computer pornography prohibited" offense applies to buyers who use a computer to solicit sexual conduct from a minor. New Hampshire's "trafficking in persons" and "prostitution and related offenses" laws prohibit a mistake of age defense. Although state law does not stagger penalties based on the age of a minor victim, base penalties are not sufficiently high. Though not mandatory, buyers may be required to pay restitution to the victim, and asset forfeiture is authorized for trafficking convictions. Buyers of sex with minors must register as sex offenders if convicted of "trafficking in persons," "prostitution and related offenses," "computer pornography," or possessing images of child sexual exploitation (ICSE).

## Criminal Provisions for Traffickers

"Trafficking in persons," when committed against a minor under 18, is a felony punishable by 7–30 years imprisonment, and a fine up to \$4,000 (\$100,000 for corporations), or double the amount of the defendant's gain from the crime. The CSEC offense of "prostitution and related offenses," as well as the offense of "computer pornography prohibited," are felonies punishable by up to 7 years imprisonment and fines up to \$4,000, or double the amount of gain received by the trafficker. Creating and distributing ICSE are felonies punishable by 15–30 and 10–20 years imprisonment, respectively, and possible fines up to \$4,000, or double the amount of any gain received. Traffickers convicted of "trafficking in persons" must pay the victim restitution and are subject to asset forfeiture. Though not mandatory, traffickers convicted of other crimes may be required to make restitution. The "computer pornography prohibited" law establishes a separate crime for selling information about a minor to solicit sexual conduct with a child. Traffickers must register as sex offenders if convicted of "trafficking in persons," "prostitution and related offenses," "computer pornography prohibited," or creating or distributing ICSE. Convictions for trafficking in persons or CSEC offenses do not establish grounds for termination of parental rights.



## Criminal Provisions for Facilitators

“Trafficking in persons” does not include the crime of assisting, enabling, or financially benefitting from sex trafficking. The CSEC crime of “prostitution and related offenses” applies to facilitators who transport a child with the purpose of facilitating prostitution or knowingly permit a place under the facilitator’s control to be used for prostitution. Both trafficking and “prostitution and related offenses” are punishable as felonies by up to 7 years imprisonment, asset forfeiture, and a fine up to \$4,000, or double

the amount of any gain received by the facilitator. Facilitators convicted of any crime may be required to make restitution but will not be subject to asset forfeiture, unless convicted of “trafficking in persons.” Selling ICSE is punishable by 10–20 years imprisonment and a fine up to \$4,000, or double the amount of any gain received by the facilitator. No laws in New Hampshire address sex tourism.



## Protective Provisions for the Child Victims

All commercially sexually exploited minors are included as victims of sex trafficking under the “trafficking in persons” law, which prohibits a defense based on the willingness of the minor to engage in the commercial sex act. Further, a minor under 18 years of age cannot be charged with prostitution. Although a juvenile sex trafficking victim is not subject to delinquency charges for prostitution, New Hampshire law does not provide a statutory avenue to specialized services. For purposes of child welfare intervention, an “abused child” includes a child who has been sexually exploited through “prostitution” or ICSE offenses, but not expressly sex trafficking. The definition of an abused child under the state’s child welfare statutes does not appear to require that the abuse be caused by a caregiver, allowing for child welfare intervention on behalf of child sex trafficking victims regardless of the perpetrator of abuse. Crime victims’ compensation is available for victims of the CSEC offense; however, several ineligibility requirements limit CSEC victims’ ability to recover, including a bar to recovery when contributory fault leads to the injuries and

a requirement to file a claim within two years, unless good cause is shown. Some victim-friendly trial procedures are available to trafficking victims. These include a prohibition on admitting evidence of a trafficking victim’s prior personal or commercial sexual activity, and videotaped testimony for crime victims or witnesses under 16. New Hampshire law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records will only be closed and made inactive after a waiting period. Offenders convicted of “trafficking in persons” are required to pay victim’s restitution, and offenders convicted of other offenses may be ordered to pay restitution. Civil remedies are specifically provided for “trafficking in persons” offenses, but not the CSEC offense. Prosecution for “trafficking in persons” must be brought within 20 years of the minor turning eighteen, and prosecutions for the felony CSEC law must be brought within six years of the crime. The civil statute of limitations is only extended for minor victims of certain crimes, which does not include trafficking or CSEC.



## Criminal Justice Tools for Investigation and Prosecution

New Hampshire law does not mandate or authorize training on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping is not permitted generally, and the exception for law enforcement does not apply in investigations of sex trafficking or CSEC. Wiretapping is only allowed for the offense of “computer pornography prohibited,” denying law enforcement critical tools for investigation and collection of evidence. The buyer-applicable provision of the “trafficking in persons” law au-

thorizes the use of a decoy in investigating prostitution of minors through reverse stings. Law enforcement may utilize the Internet to investigate certain uses of “computer services prohibited,” which criminalizes using the Internet to commit a sex offense. New Hampshire has established a statewide reporting and response system for missing children and requires the reporting of missing and recovered missing children.

*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).*