

SOUTH DAKOTA

REPORT CARD | 2017

South Dakota criminalizes human trafficking without regard to the use of force, fraud, or coercion when the victim is a minor. However, child sex trafficking victims are not provided with a mandated avenue to specialized services, and law enforcement officers are not provided with training or access to wiretapping—critical tools to aggressively pursue investigations and prosecution.

Final Score

67.5

Final Grade

D



8.5

10

17.5

25

15

15

7.5

10

9.5

27.5

9.5

15

Criminalization of Domestic Minor Sex Trafficking

South Dakota's human trafficking law includes the crime of trafficking for commercial sexual activity without requiring force, fraud, or coercion when the victim is a minor. A heightened penalty applies if the victim is under 18. State commercial sexual exploitation of children (CSEC) laws include: "promotion of prostitution." An affirmative defense to prostitution charges refers to the human trafficking law, which acknowledges the intersection of prostitution with trafficking victimization. South Dakota's street gang activity law increases sentences for crimes committed as a pattern of gang activity but the state has no racketeering law that could provide an efficient deterrent to trafficking enterprises.

Criminal Provisions for Demand

The state human trafficking law applies to buyers of sex with minors following federal precedent through the term "obtains." "First degree human trafficking" is punishable by up to 25 years imprisonment and a \$50,000 fine. "Penalty for hiring or attempting to hire someone to engage in sexual activity for a fee" is punishable by up to 2 years imprisonment and a \$4,000 fine. However, no CSEC laws apply to buyers. General solicitation laws do not differentiate buying sex with an adult versus a minor. "Solicitation of a minor" criminalizes use of the Internet or electronic communications to buy information about a minor in order to solicit that minor for a sex act. South Dakota does not prohibit a mistake of age defense to a prosecution for buying sex with a minor. Buyers may be required to pay victim restitution, and those who are convicted of human trafficking, soliciting a minor, or possessing images of child sexual exploitation (ICSE) are subject to asset forfeiture. Possession, manufacture, or distribution of ICSE carries penalties comparable to those for similar federal offenses. Buyers convicted of "first degree human trafficking" when the victim is a minor, "second degree human trafficking" that involves prostitution of a minor, "solicitation of a minor," and possessing ICSE are required to register as sex offenders.

Criminal Provisions for Traffickers

"First degree human trafficking" is punishable by up to 25 years imprisonment and a \$50,000 fine, while "second degree human trafficking" is punishable by up to 10 years imprisonment and a \$20,000 fine. "Promotion of prostitution" is punishable by up to 5 years imprisonment and a \$10,000 fine. Traffickers who manufacture or distribute ICSE face up to 10 years imprisonment and a \$20,000, penalties comparable to those for similar federal offenses. Under "solicitation of a minor," selling information online for the purpose of soliciting a minor to engage in a sex act (which could include sex trafficking) is punishable by up to 10 years imprisonment and a \$20,000 fine. Financial penalties may include fines, asset forfeiture, and restitution. Traffickers convicted of "first degree human trafficking" when the victim is a minor, "second degree human trafficking" that involves prostitution of a minor, "promotion of prostitution," "solicitation of a minor," and creating or distributing ICSE are required to register as sex offenders. Further, courts may find that good cause exists for termination of a trafficker's parental rights if the trafficker is convicted of sexual exploitation of a minor or any offense that requires sex offender registration, including human trafficking.

Criminal Provisions for Facilitators

South Dakota's human trafficking law makes it a crime to benefit financially or receive anything of value from trafficking. Benefitting financially from sex trafficking is a felony punishable by imprisonment up to 25 years and a \$50,000 fine. "Solicitation or procurement of prostitute for patron" is punishable by up to 2 years imprisonment and a \$4,000 fine. "Sale of child pornography" and "possession, manufacture, or distribution of child

pornography" are punishable by up to 10 years imprisonment and a \$20,000 fine. A facilitator is subject to mandatory criminal asset forfeiture if convicted of "solicitation or procurement of prostitute for a patron," an ICSE offense, or human trafficking, and may be required to pay restitution to any victim who suffers pecuniary damages. No law makes child sex tourism a crime in South Dakota.



Protective Provisions for the Child Victims

All commercially sexually exploited children are defined as sex trafficking victims. "Possession, manufacture, or distribution of child pornography," "solicitation of a minor," and "sexual exploitation of a minor" expressly prohibit a defendant from asserting a defense based on the minor's willingness to engage in the commercial sex act, but such a defense is not prohibited in sex trafficking prosecutions. Prostitution laws apply to minors aged 16 and older; however, child sex trafficking victims may assert an affirmative defense based on their victim status. South Dakota law does not provide an avenue to specialized services. For purposes of child welfare intervention, although "sexual exploitation" is included within the definition of abuse or neglect, the term is not defined, and the child must be subjected to sexual exploitation by a "parent, guardian, custodian, or any other person responsible for the care of the child." Furthermore, the limitation of the definition of "custodian" to "person legally responsible for a child's welfare in a residential setting" or day care may present a barrier to protective services intervention in non-familial trafficking cases. Child victims are eligible for state crime victims' compensation, although eligibility criteria may limit their ability to recover, including requirements to cooperate with law enforce-

ment and to report the crime within five days of when "a report could reasonably be made." Victims also must file a claim for compensation within one year unless good cause is shown, and victims become ineligible if determined to have contributed to their injury. South Dakota has no "rape shield" law to reduce the trauma of cross examination for testifying sex trafficking and CSEC victims and closed-circuit television testimony is limited to victims of sex offenses under age 12. South Dakota law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be sealed after a waiting period. A victim of sex trafficking or CSEC may seek restitution for pecuniary damages only, while victims of certain non-commercial sex offenses are specifically eligible for "any necessary medical, psychological, or psychiatric treatment, or foster care of the minor resulting from the act or acts." Victims of ICSE, promoting prostitution of a minor, and human trafficking have a statutorily authorized civil remedy against their exploiter. CSEC and sex trafficking prosecutions have a seven year statute of limitations, while civil actions must commence within six years beginning at age 18.



Criminal Justice Tools for Investigation and Prosecution

South Dakota law does not mandate or authorize training or development of training materials for law enforcement on domestic minor sex trafficking or human trafficking. Single party consent to audiotaping is permitted, but the law does not authorize wiretapping for CSEC or human trafficking investigations, leaving law enforcement without this valuable tool and resulting evidence for better prosecution. State CSEC and trafficking offenses do not prohibit a defense based on the use of a law enforcement decoy

posing as a minor during an investigation, but law enforcement may use the Internet to investigate under the non-commercial offense of "solicitation of a minor." Further, law enforcement are statutorily required to enter missing persons reports in the National Crime Information Center computer within 12 hours; additional information, which may include a child's location when recovered, must also be reported.



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.