

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Alabama Report Card 2016

Alabama's human trafficking law requires the use of coercion or deception to cause a minor to engage in a commercial sex act. Demand is largely unaddressed in the law, leaving buyers undeterred. Sex trafficking victims seeking justice are not protected by a "rape shield" law or courtroom protections and are not assured non-punitive response and treatment.

Final Score

84

Final Grade

B



7

10

19

25

15

15

7.5

10

20.5

27.5

15

15



### Criminalization of Domestic Minor Sex Trafficking

Alabama's human trafficking statute makes trafficking for sexual servitude a crime, but requires proof of coercion or deception used to effect the trafficking. The trafficking statute provides an enhanced penalty when sexual servitude involves a minor under 18. The commercial sexual exploitation of children (CSEC) laws include promoting prostitution in the first degree and second degree, facilitating solicitation of unlawful sexual conduct with a child, and facilitating the travel of a child for an unlawful sex act. The definition of "sexually exploited child" within the prostitution article refers to the human trafficking law, helping to acknowledge the intersection of prostitution with trafficking victimization. Alabama has not enacted a racketeering or gang crimes law that could be used to prosecute sex trafficking enterprises.



### Criminal Provisions Addressing Demand

Following federal precedent, the human trafficking statute applies to buyers through the word "obtain," but only if the buyer uses coercion or deception to engage the minor in a commercial sex act. CSEC laws do not include the crime of buying sex with a minor, and the patronizing a prostitute statute does not distinguish between purchasing sex acts with minors versus adults. Computer-based communications and facilitating solicitation of unlawful sexual conduct could lead to heightened penalties for some buyers using the Internet to commit illegal sex acts, which could include trafficking. The sex trafficking law specifically prohibits an age mistake defense. Under the sex trafficking law, a buyer faces mandatory victim restitution and criminal asset forfeiture. If convicted of any other criminal offense, restitution is mandatory if the victim suffered pecuniary loss. Buyers also face criminal asset forfeiture for prostitution-related offenses and for possession of obscene material. Buyers of sex acts with minors are required to register as sex offenders if convicted of sex trafficking or possession of child pornography, but not for patronizing a prostitute even when a minor is involved.

#### Demand | Selected Commercial Sex Crimes

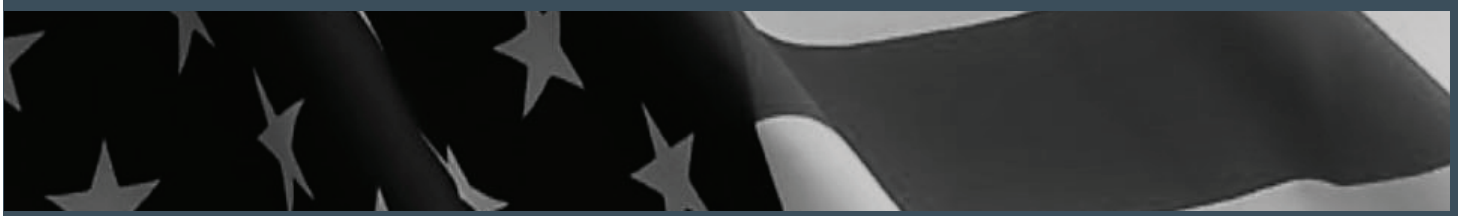
Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available)
Human trafficking in the first degree (§ 13A-6-152(a)(2))	Class A Felony	Life or 10-99 years	Max. \$60,000	●
Soliciting prostitution (§13A-12-121(b))	Class A misdemeanor	Max. 1 year	Max. \$6,000	○
Possession of child pornography (§ 13A-12-192(b))	Class C felony	1 year and 1 day-10 years	Max. \$15,000 (or double gain or loss from crime)	●

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



### Criminal Provisions for Traffickers

Sex trafficking of a minor and facilitating the travel of a child for an unlawful sex act are felonies punishable by 10–99 years or life imprisonment and a fine up to \$60,000. Promoting prostitution in the first degree is a felony punishable by 2–20 years imprisonment and a fine up to \$30,000, while promoting prostitution in the second degree is a felony punishable by up to 10 years imprisonment and a fine up to \$15,000. Electronic solicitation of a child under 16 is a felony punishable by 2–20 years imprisonment and a fine up to \$30,000. Permitting or allowing a child to engage in obscene matter and production of such matter are felonies punishable by up to life imprisonment and a possible fine up to \$60,000 or double the loss or gain resulting from the offense. A convicted sex trafficker faces mandatory restitution and criminal asset forfeiture. Traffickers convicted of prostitution-related offenses face forfeiture of "property, proceeds, or instrumental[ities] . . . used or intended for use in the course" of the crime. Traffickers must register as sex offenders if convicted of sex trafficking a minor, promoting prostitution of a minor, facilitating travel of a minor for an unlawful sex act, or allowing a child to engage in production of obscene matter. Convictions for sex trafficking or CSEC offenses are not express grounds for termination of parental rights, leaving children of traffickers at risk.



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law requires use of coercion or deception even when the victim is a minor. The sex trafficking law expressly prohibits a defense based on the willingness of the minor to engage in the commercial sex act. Additionally, Alabama law prohibits the criminalization of minors under 18 for prostitution offenses. Child sex trafficking victims may be treated as dependent or in need of services if identified as sexually exploited; if identified as sexually exploited, the child must have access to a range of community-based services, but these services are not mandated to be specialized to the needs of child sex trafficking victims. Although child sex trafficking is not identified as a type of abuse and neglect within Alabama's child protection statutes, the definition of abuse includes sexual exploitation of a child regardless of the child's relationship to the perpetrator of the abuse. CSEC victims who suffer serious personal injury are eligible for state crime victims' compensation but face barriers to recovery if the victim is considered an accomplice to a criminal act, fails to report the crime to law enforcement within 72 hours, or fails to file a claim within one year unless good cause is shown. Victim-friendly trial procedures are limited to children under 16 in criminal prosecutions for sexual offenses or sexual exploitation and include closed-circuit television testimony, and if the victim is under 12, admissibility of the child's out-of-court statements. Testifying victims in CSEC or sex trafficking cases do not get the protection of the "rape shield" law, which would reduce the trauma of cross-examination. If a minor has not been subsequently convicted or adjudicated delinquent following final discharge from custody, juvenile records may be sealed after two years and destroyed after five. Criminal restitution is mandatory in sex trafficking convictions, and civil actions against trafficking offenders and facilitators are expressly allowed for victims. While no statute of limitations applies to prosecutions of any sex offense involving a victim under 16 years of age, the definition of "sex offense" does not appear to include human trafficking; consequently, the statute of limitations for human trafficking and CSEC offenses would be 3 years. The statute of limitations on civil actions for damages from trafficking is five years after the victim is free from the sex trafficking situation but does not begin to run until the minor reaches 18.



## Criminal Justice Tools for Investigation and Prosecution

Alabama law does not mandate or authorize law enforcement training or development of training materials on domestic minor sex trafficking or human trafficking. Single party consent to audiotaping and body wires is permitted, and wiretapping is an available investigative tool for law enforcement. Two CSEC offenses, facilitating solicitation of unlawful sexual conduct with a child and facilitating the travel of a child for an unlawful sex act, prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a minor by explicitly permitting the use of a law enforcement decoy to investigate these crimes. Further, the electronic solicitation of a minor statute authorizes the use of the Internet to investigate this offense. Alabama has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.



## Criminal Provisions for Facilitators

Benefiting financially from sex trafficking is a felony punishable by 2–20 years imprisonment and a possible fine up to \$30,000 or double the loss or gain resulting from the offense. Promoting prostitution in the first degree is a felony punishable by 2–20 years imprisonment and a fine up to \$30,000, while promoting prostitution in the second degree is a felony punishable by up to 10 years imprisonment and a fine up to \$15,000. Facilitating solicitation of unlawful sexual conduct with a child is a felony punishable by up to 10 years imprisonment and a fine up to \$15,000. Facilitating the travel of a child for an unlawful sex act and permitting a child under 17 to engage in production of obscene matter are felonies punishable by 10–99 years imprisonment and a fine up to \$60,000. Facilitators convicted of sex trafficking are subject to criminal asset forfeiture and mandatory victim restitution, and facilitators convicted of prostitution-related offenses face forfeiture of "property, proceeds, or instrumental[ities] . . . used or intended for use in the course" of the crime. Facilitating the travel of a child for an unlawful sex act is a crime, but no laws in Alabama specifically criminalize sex tourism.

The Report Card is based on the Protected Innocence 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 Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org](http://www.sharedhope.org).