



## Status of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in National Law

### UNITED STATES

#### Applicability of the Convention and its Optional Protocols

<b>Convention on the Rights of the Child (CRC)</b>	<b>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)</b>	<b>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)</b>
<b>Signature:</b> February 16, 1995 <b>Ratification:</b> Not yet ratified	<b>Signature:</b> July 5, 2000 <b>Ratification:</b> December 23, 2002	<b>Signature:</b> July 5, 2000 <b>Ratification:</b> December 23, 2002
<b>Reservations/Declarations:</b> N/A	<b>Declaration:</b> <i>"The Government of the United States of America declares, pursuant to Article 3 (2) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict that –            (A) the minimum age at which the United</i>	<b>Reservation:</b> <i>“To the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3 (1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over</i>

	<p><i>States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age;</i></p> <p><i>(B) The United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505 (a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control;</i></p> <p><i>(C) each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and</i></p> <p><i>(D) all persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service.</i></p> <p><i>Understandings:</i></p> <p><i>(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD.-The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.</i></p> <p><i>(2) IMPLEMENTATION OF OBLIGATION NOT TO PERMIT CHILDREN TO TAKE</i></p>	<p><i>that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4 (1) of the Protocol.</i></p> <p><i>The Senate's advice and consent is subject to the following understandings:</i></p> <p><i>(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD.-The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.</i></p> <p><i>(2) THE TERM "SALE OF CHILDREN".-The United States understands that the term "sale of children" as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.</i></p> <p><i>(3) THE TERM "CHILD PORNOGRAPHY".-The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.</i></p>
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	<p><i>DIRECT PART IN HOSTILITIES.-The United States understands that, with respect to Article 1 of the Protocol -</i></p> <p><i>(A) the term "feasible measures" means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;</i></p> <p><i>(B) the phrase "direct part in hostilities"-</i></p> <p><i>(i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and</i></p> <p><i>(ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and</i></p> <p><i>(C) any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.</i></p>	<p><i>(4) THE TERM "TRANSFER OF ORGANS FOR PROFIT".-The United States understands that- (A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and</i></p> <p><i>(B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payreasonable [sic] amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.</i></p> <p><i>(5) THE TERMS "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS" AND "IMPROPERLY INDUCING CONSENT".-</i></p> <p><i>(A) UNDERSTANDING OF "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS".-The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").</i></p> <p><i>(B) NO OBLIGATION TO TAKE CERTAIN ACTION.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by</i></p>
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	<p><i>(3) MINIMUM AGE FOR VOLUNTARY RECRUITMENT.- The United States understands that Article 3 of the Protocol obligates States Parties to the Protocol to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of 15 years of age.</i></p> <p><i>(4) ARMED GROUPS.- The United States understands that the term "armed groups" in Article 4 of the Protocol means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups.</i></p> <p><i>(5) NO BASIS FOR JURISDICTION BY ANY INTERNATIONAL TRIBUNAL.- The United States understands that nothing in the Protocol establishes a basis for jurisdiction by any international tribunal, including the International Criminal Court."</i></p>	<p><i>Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.</i></p> <p><i>(C) UNDERSTANDING OF "IMPROPERLY INDUCING CONSENT".-The United States understands that the term "Improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.</i></p> <p><i>(6) IMPLEMENTATION OF THE PROTOCOL IN THE FEDERAL SYSTEM OF THE UNITED STATES.-The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall as necessary, take appropriate measures to ensure the fulfillment of the Protocol."</i></p>
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OPSC Status in National Law

Although ratified treaties generally become the "supreme law of the land" under the Supremacy Clause of the United States Constitution<sup>1</sup>, not all treaties supersede national or state legislation. To establish the status a treaty will have in national law, the United States decides at ratification whether the treaty will be "self-executing" or "not self-executing." Treaties that are deemed "self-executing" are given direct force in United States

<sup>1</sup> The United States Constitution is available in full via the Legal Information Institute at <http://www.law.cornell.edu/constitution/>.

law and may be enforced by the courts from the date of ratification. Treaties that are deemed "not self-executing", however, must be implemented via federal and state legislation to bring laws into compliance with the treaty provisions. The United States Government has to date adopted the view that human rights treaties such as the OPSC are "not self-executing", meaning that they would not be directly enforceable in national law or take precedence over conflicting national or state legislation.<sup>2</sup>

In addition, it should be noted that the United States operates a federal system of governance, meaning that the powers, duties and functions of government are shared between the national (federal) government and its constituent states. Notably, control over certain areas of the law, including criminal matters, is typically vested with the states. Nonetheless, federal criminal laws exist as the national government retains the power under the Constitution to legislate on issues that involve interstate or foreign commerce.<sup>3</sup> This report will largely focus on federal law, with broad discussions of state law presented where possible and relevant.

Sale of Children (“any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”)

<b>MEASURE REQUIRED (PROHIBITION)</b>	<b>CURRENT LAW</b>	<b>LEGAL REFORM</b>	<b>COMPLIANCE</b>
Selling children (Art. 3.1. (a))	United States federal law does not specifically prohibit the sale of children, but does criminalise the sale of children for certain purposes including child prostitution, child pornography and adoption under anti-trafficking legislation as discussed in further detail below. <sup>4</sup>	As described in further detail in the appropriate sections below, relevant additions and amendments to federal legislation relate primarily to the prohibition on trafficking in persons. <sup>6</sup>	On the need to address all instances where a child might be or has been sold: “In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party... (d) Intensify its efforts to prevent and punish all the

2 Indeed, the United States has confirmed that the OPSC is largely “not self-executing” under U.S. law. See CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 3, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.USA.doc> (“The provisions of the Protocol are not self-executing under U.S. domestic law, with one exception. That exception is Article 5, discussed below, which permits States parties to consider the offenses covered by Article 3(1) as extraditable offenses in any existing extradition treaty between States parties.”).

3 United States Constitution, Article 1, Section 8.

4 See A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 18, available at <http://www.ohchr.org/EN/Issues/Children/Pages/CountryVisits.aspx>.

	<p>In addition, selling or purchasing a child is in and of itself a punishable offence under the laws of some states.<sup>5</sup></p> <p>Notably, the United States has also registered a declaration to the OPSC in which it states that its understanding of the term “sale of children” covers “any transactions in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto authority over the child.”</p>		<p>cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale...<sup>7</sup></p>
Offering, delivering or accepting, by whatever means, a child for the purpose of:			
Sexual exploitation of the child (Art. 3.1 (a) (i) a.)	Federal law prohibits recruiting, enticing, harbouring, transporting, providing, obtaining, or maintaining a child in foreign or interstate commerce knowing that the child will be caused to engage in a commercial sex act (18 U.S.C. § 1591). <sup>8</sup> This offence is punishable by a fine and between 15	The Trafficking Victims Protection Act was passed in 2000 <sup>10</sup> to prohibit, among other acts, trafficking for the purposes of sexual exploitation. Notably, the Act introduced 18 U.S.C. § 1591, which specifically criminalises the trafficking of children for the purposes of sexual exploitation	On criminalising child trafficking, enabling the prosecution of offenders, providing assistance to child victims, and enhancing the penalties for offences related to the sexual exploitation of children: “The Committee further welcomes the passing of numerous pieces of

5 For a compilation of state statutes related to sale, kidnapping and trafficking for adoption, visit: <http://www.state.gov/documents/organization/135993.pdf>.

6 A text tracking the introduction of and amendment to the primary federal statute related to human trafficking, the Trafficking Victims Protection Act, is available at <http://www.protectionproject.org/wp-content/uploads/2010/09/tvpa4colors.pdf>.

7 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 31, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>.

8 Title 18 of the United States Code (Crimes and Criminal Procedure) available via the Legal Information Institute at <http://www.law.cornell.edu/uscode/text/18>.

	<p>years' and life imprisonment if the child is under 14 years of age or the offence was committed by means of force, threats of force, fraud, or coercion (18 U.S.C. § 1591(b)(1)), or between 10 years' and life imprisonment if the child is 14 to 17 years of age (18 U.S.C. § 1591(b)(2)).</p> <p>Buying or selling a child in foreign or interstate commerce for the purposes of child pornography is punishable by a fine and between 30 years' and life imprisonment (18 U.S.C. § 2251A).</p> <p>Interstate and international transportation of any person for the purposes of prostitution or other unlawful sexual activity is also prohibited and punishable by a fine, up to 10 years' imprisonment, or both (18 U.S.C. § 2421). If the offence involves a child under 18, the penalty rises to a fine and imprisonment for a minimum of 10 years and a maximum of life (18 U.S.C. § 2423(a)).</p> <p>Enticing or coercing a person to travel across a state or international border to engage in prostitution or other illegal sexual activity is punishable by a fine, up to 20 years' imprisonment, or both</p>	<p>(Trafficking Victims Protection Act, Section 112). The Act as a whole was subsequently re-authorised and amended in 2003<sup>11</sup>, 2005<sup>12</sup> and 2008.<sup>13</sup></p> <p>The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today ("PROTECT") Act of 2003<sup>14</sup> increased the maximum penalty for violating 18 U.S.C. § 2422(a) from 10 years' to 20 years' imprisonment, 18 U.S.C. § 2422(b) from 15 years' to 30 years' imprisonment, 18 U.S.C. § 2423(a) from 15 years' to 30 years' imprisonment, and 18 U.S.C. § 1591(b)(2) from 20 years' to 40 years' imprisonment; increased the minimum sentence for violating 18 U.S.C. § 2251A from 20 years' to 30 years' imprisonment; and set mandatory minimum sentences for violating 18 U.S.C. § 2422(b) and 18 U.S.C. § 2423(a) at 5 years' imprisonment and a fine (PROTECT Act, Section 103).</p> <p>The PROTECT Act also introduced a "two strikes and you're out" provision amending 18 U.S.C. § 3559 such that offenders found guilty of a second serious sexual offence against a child (including under 18 U.S.C. §§ 2251A, 2422(b), 2423(a)) are sentenced to life</p>	<p>legislation which demonstrates the State party's commitment in the fight against the commercial sexual exploitation of children, including: (a) The Trafficking Victims Protection Act 2000 and its re-authorizations in 2003 and 2005, which strengthened state programmes to prosecute those responsible for child prostitution and enhanced assistance to victims of trafficking in the United States and in other countries; (b) The PROTECT Act of 2003, which expanded extra-territorial jurisdiction to prosecute State party's citizens committing sex crimes against children abroad; (c) The Adam Walsh Child Protection and Safety Act, passed in 2006, which increased penalties for child sex offenders... for criminal offences against children."<sup>16</sup></p>
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	<p>(18 U.S.C. § 2422(a)). Using the mail or any other interstate communications including telephone and internet to entice or coerce a child under 18 to engage in prostitution or other unlawful sexual activity is punishable by a fine and imprisonment for a minimum of 10 years and a maximum of life (18 U.S.C. § 2422(b)).</p> <p>In addition, most states criminalise the sale of children for sexual exploitation.<sup>9</sup></p>	<p>imprisonment (PROTECT Act, Section 106).</p> <p>The Adam Walsh Child Protection and Safety Act of 2006<sup>15</sup> again increased the penalty for violating 18 U.S.C. § 1591. The Act established a mandatory minimum sentence of 15 years' imprisonment if the offence involves a child under 14 years old, a mandatory minimum sentence of 10 years' imprisonment if the offence involves a child aged 14 to 17, and a maximum sentence of life imprisonment for both (Adam Walsh Child Protection and Safety Act,</p>	
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- 9 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 165, available at [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.USA.2\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.USA.2_en.pdf). The sale of children for sexual exploitation is often prohibited in state laws relating to human trafficking, child prostitution and pornography. For a compilation of state statutes on the subject of human trafficking and involuntary servitude, visit <http://www.ndaa.org/pdf/Human%20Trafficking%20and%20Involuntary%20Servitude.pdf>; for a compilation of state statutes on the subject of child prostitution, visit <http://www.ndaa.org/pdf/Prostitution%20Statutes-Jan2012.pdf>.
- 10 Public Law No. 106-386, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+106-386&granuleId=&packageId=PLAW-106publ386>. The U.S. Government has published a Fact Sheet on the Trafficking Victims Protection Act, available at [http://www.acf.hhs.gov/trafficking/about/TVPA\\_2000.pdf](http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf).
- 11 Trafficking Victims Protection Reauthorization Act of 2003, Public Law No. 108-193, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+No.+108-193&granuleId=&packageId=PLAW-108publ193>.
- 12 Trafficking Victims Protection Reauthorization Act of 2005, Public Law No. 109-164, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+109-164&granuleId=&packageId=PLAW-109publ164>.
- 13 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law No. 110-457, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+110-457&granuleId=&packageId=PLAW-110publ457>.
- 14 Public Law No. 108-21, available at <http://www.gpo.gov/fdsys/pkg/PLAW-108publ21/content-detail.html>. The U.S. Government has published a Fact Sheet on the PROTECT Act, available at [http://www.justice.gov/opa/pr/2003/April/03\\_ag\\_266.htm](http://www.justice.gov/opa/pr/2003/April/03_ag_266.htm).
- 15 Public Law No. 109-248, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=public+law+109-248&granuleId=&packageId=PLAW-109publ248>. The U.S. Government has published a Fact Sheet on the Adam Walsh Child Protection and Safety Act, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-7.html>.
- 16 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 6.

		Section 208). The Act also increased the penalties for violating 18 U.S.C. § 2422(b) and 18 U.S.C. § 2423(a) from the previous level of 5 to 30 years' imprisonment (Adam Walsh Child Protection and Safety Act, Sections 203, 204).	
Transfer of organs of the child for profit (Art. 3.1 (a) (i) b.)	<p>Federal law prohibits knowingly acquiring, receiving or otherwise transferring any human organ sold in interstate commerce for use in human transplantation, an offence punishable by fines of up to \$50,000 and imprisonment up to 5 years (42 U.S.C. § 274E)<sup>17</sup>.</p> <p>These provisions contain certain exceptions to facilitate organ donation, allowing for, among other things, the reimbursement of reasonable expenses incurred as a result of the donation (42 U.S.C. § 274E). Notably, the United States entered a declaration to the OPSC to indicate its understanding that these arrangements would be</p>		

<sup>17</sup> Title 42 of the United States Code (The Public Health and Welfare) is available via the Legal Information Institute at <http://www.law.cornell.edu/uscode/text/42>.

	<p>lawful under the Protocol.<sup>18</sup></p> <p>In addition, although the sale of children for the purposes of transferring organs for profit is not always expressly criminalised under state law, the actions concerned may in any event be illegal under a number of state-level statutes.<sup>19</sup></p>		
Engagement of the child in forced labour (Art. 3.1 (a) (i) c.)	<p>Knowingly providing or obtaining any person for the purposes of forced labour, or knowingly receiving benefits from participating in a venture involved in these activities, is prohibited under federal law. Offenders face fines and/or up to 20 years' imprisonment, or up to life imprisonment if the violation includes kidnapping, sexual abuse, or attempts to kidnap, sexually abuse or kill the victim (18 U.S.C. § 1589). Similarly, knowingly recruiting, harbouring, transporting, providing or obtaining any person for labour in violation of federal law on peonage, slavery,</p>	<p>The Trafficking Victims Protection Act of 2000<sup>22</sup> provided for a specific prohibition on trafficking in persons for forced labour with the introduction of 18 U.S.C. § 1589 (Trafficking Victims Protection Act, Section 112), which was amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008<sup>23</sup> to criminalise receiving benefits from participating in a venture involved in these activities (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 222).</p>	

18 The text of this Declaration reads: “(4) THE TERM ‘TRANSFER OF ORGANS FOR PROFIT’. The United States understands that- (A) the term ‘transfer of organs for profit’, as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and (B) the term ‘profit’, as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payreasonable [sic] amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.”

19 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 169. These laws might include those prohibiting battery, maiming, child abuse and criminal homicide (see CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 19). For a compilation of state statutes related to the sale of organs, visit <http://www.state.gov/documents/organization/135994.pdf>.

	<p>involuntary servitude, forced labour or trafficking is an offence punishable to the same extent (18 U.S.C. § 1590; 18 U.S.C. §§ 1581, 1583, 1584, 1591, 1592).</p> <p>Generally, the Fair Labor Standards Act and its related regulations set out federal labour protections for children including setting a minimum age for jobs and limiting both working hours and the type of work with which children can be involved.<sup>20</sup></p> <p>In addition, most states criminalise the sale of children for forced labour.<sup>21</sup></p>		
<b>Adoption:</b>			
Improperly inducing consent for adoption in violation of international instruments (Art. 3.1 (a) (ii))	<p>Adoption services are heavily regulated and may in most circumstances only be offered by certain accredited entities and approved persons (42 U.S.C. § 14921).</p> <p>Providing unauthorised adoption services; making a material false or fraudulent statement in connection with an adoption; or offering, giving,</p>	<p>The Intercountry Adoption Act of 2000<sup>26</sup> was passed in part to prohibit certain actions surrounding adoption. A number of its provisions became effective immediately, while others including civil and criminal sanctions for improperly inducing adoption became effective in 2008 with the entry into force of the Hague Convention on Protection of Children</p>	<p>On the ratification and implementation of the Hague Convention on Intercountry Adoption:          “The Committee welcomes the recent ratification of the Hague Convention on Inter-Country Adoption and notes that the Department of State has been identified as the Central Authority. In this respect, the Committee is concerned about the fact that for-profit</p>

20 Federal legislation related to Fair Labor Standards is available as amended via the Legal Information Institute at <http://www.law.cornell.edu/uscode/text/29/chapter-8>.

21 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 176. The sale of children for forced labour is often prohibited in state laws relating to human trafficking. For a compilation of state statutes on the subject of human trafficking and involuntary servitude, visit <http://www.ndaa.org/pdf/Human%20Trafficking%20and%20Involuntary%20Servitude.pdf>.

	<p>soliciting or accepting compensation to induce consent for adoption gives rise to civil liability for fines of up to \$50,000 for the first violation and up to \$100,000 for each successive violation. Knowingly or willfully engaging in these actions is an offence punishable by a fine of up to \$250,000 and imprisonment for up to 5 years (42 U.S.C. § 14944).</p> <p>Federal regulations also prohibit adoption services and prospective adoptive parents from giving money or other compensation to induce adoption, excluding certain permissible medical, legal and other administrative expenses (8 CFR § 204.304; 22 CFR §§ 96.34, 96.36, 96.40).<sup>24</sup></p> <p>In addition, a number of states criminalise improper inducement of consent for adoption.<sup>25</sup></p>	<p>and Co-Operation in Respect of Intercountry Adoption (Intercountry Adoption Act, Section 505).</p>	<p>persons may be approved to perform Central Authority functions, though they must comply with the requirements and qualifications indicated in article 22, paragraphs 2 (a) and (b), of the Hague Convention, including integrity, professional competence and accountability. The Committee is also concerned at the information that, according to the current regulations, the payment of prenatal and other expenses to birth mothers abroad would still be possible.”<sup>27</sup></p> <p>“In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party: (a) Adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes; (b) Ensure that not only the accredited agencies, but also the approved persons, pursue only non-profit objectives; (c) Expressly prohibit all forms of possible active solicitation for children, including the</p>
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23 Public Law No. 110-457.

22 Public Law No. 106-386.

24 Title 8 of the Code of Federal Regulations (Aliens and Nationality) is available via the Legal Information Institute at <http://www.law.cornell.edu/cfr/text/8>; Title 22 of the Code of Federal Regulations (Foreign Relations) is available via the Legal Information Institute at <http://www.law.cornell.edu/cfr/text/22>.

25 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 245. For a compilation of state statutes related to sale, kidnapping and trafficking for adoption, visit <http://www.state.gov/documents/organization/135993.pdf>.

			payment of pre-natal and other expenses;... (e) Seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention...’’ <sup>28</sup>
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Child Prostitution (“the use of a child in sexual activities for remuneration or any other form of consideration”)

MEASURE REQUIRED (PROHIBITION)	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Offering, obtaining, procuring or providing a child for child prostitution (Art. 3.1 (b))	Federal law does not specifically define or prohibit child prostitution. Nevertheless, it does prohibit transporting any person across state or foreign borders for the purposes of prostitution (18 U.S.C. § 2421); knowingly transporting a child in interstate or foreign commerce with the intent that that child engage in prostitution (18 U.S.C. § 2423(a)); traveling into the U.S. or across state lines or facilitating for financial gain the travel of another person for the	Certain actions related to child prostitution have been prohibited since the OPSC was first contemplated, and penalties for federal offences involving child prostitution have been increased on a number of occasions via the Trafficking Victims Protection Act of 2000 and its successive amendments and reauthorisations, <sup>32</sup> the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act of 2003 <sup>33</sup> , and the Adam Walsh Child	On the failure to specifically define or prohibit child prostitution: “The Committee welcomes the fact that the State party has generally developed adequate legislation at the federal level concerning...the transporting of children between states for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at state and at federal levels may result in certain lacunae in the definition and

26 Public Law No. 106–279, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+No.+106-279+&granuleId=&packageId=PLAW-106publ279>.

27 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 30.

28 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 31.

	<p>purposes of engaging in illicit sexual conduct, including commercial sex with a child (18 U.S.C. § 2423(b),(d)); enticing or coercing any person to travel across a state or international border to engage in prostitution; enticing a child under 18 to engage in prostitution (18 U.S.C. § 2422(a)(b)); and trafficking children for the purposes of commercial sexual exploitation (18 U.S.C. 1591) (see “sexual exploitation of the child” above).</p> <p>In addition, all 50 states and the District of Columbia prohibit prostitution activities involving children, including patronising a child engaged in prostitution, inducing a child into prostitution, and assisting in the promotion of child prostitution.<sup>29</sup> However, these laws are not uniform or consistent; for example, some state child prostitution laws define a child as under 18, while others limit the definition of a child to those under 16 or even 15.<sup>30</sup> More generally, state</p>	<p>Protection and Safety Act of 2006<sup>34</sup> (see “sexual exploitation of the child” above).</p> <p>In addition, many state laws have been amended to increase penalties for offences related to child prostitution.<sup>35</sup></p>	<p>prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, inter alia, that: (a) There is no federal law defining or prohibiting child prostitution per se...<sup>36</sup> “The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party: (a) Define and prohibit child prostitution in accordance with articles 2 and 3 of the Optional Protocol both at federal and state levels...<sup>37</sup></p> <p>On the criminalisation of children involved in prostitution: “In the States the Special Rapporteur visited, she observed that prostitution and acts related thereto are widely criminalized.... Some States do not</p>
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29 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 122. For a compilation of state statutes related to prostitution and promoting prostitution, visit <http://www.ndaa.org/pdf/Prostitution%20Statutes-Jan2012.pdf>.

33 Public Law No. 108-21.

30 See ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: United States, 2006, p. 18, available at [http://www.ecpat.net/A4A\\_2005/PDF/Americas/Global\\_Monitoring\\_Report-USA.pdf](http://www.ecpat.net/A4A_2005/PDF/Americas/Global_Monitoring_Report-USA.pdf).

	<p>laws also widely prohibit pandering, enticing any person into prostitution, knowingly advancing or profiting from prostitution, keeping premises that are used for prostitution, and placing a person in premises used for prostitution.<sup>31</sup></p>		<p>have exemptions for children, including those who have not reached the age of consent for sexual intercourse. This often leads to criminalization of children who are victims of commercial sexual exploitation.”<sup>38</sup>  “Reportedly children involved in prostitution are charged, detained and processed through the juvenile justice system for a number of reasons, depending on the jurisdiction. They can be detained because the State law criminalizes prostitution, and thus the girls are considered as criminals; or they can be detained for their own safety, and in order to secure their cooperation in eventual prosecutions against the pimp.”<sup>39</sup>  “As mentioned above, the Special Rapporteur expresses concern at ongoing social perceptions that</p>
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31 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 26.

37 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 33.

36 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 32.

35 See ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: United States, 2006, p. 17.

34 Public Law No. 109-248.

32 Public Law No. 106-386; Public Law No. 108-193; Public Law No. 109-164; Public Law No. 110-457.

38 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 26.

39 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 53.

<p>children involved in prostitution ‘choose the life’. She welcomes information [about] recent success in training law enforcement on the nature of commercial sexual exploitation of children: children under 18 involved in prostitution are victims of commercial sexual exploitation, rather than criminals, irrespective of the age of sexual consent.”<sup>40</sup></p> <p>“[L]aw enforcement in certain jurisdictions still identifies children involved in prostitution as criminals rather than as victims. Detaining children involved in prostitution also occurs due to a lack of viable and safe placement alternatives for children where they can receive the care and protection they need.”<sup>41</sup></p> <p>“Regarding legislation, the Special Rapporteur recommends that the Government and States as appropriate... (b) Decriminalize the involvement of children under 18 in prostitution; (c) Effectively implement safe harbour laws for child prostitution to ensure that all children under 18 are not treated as criminals or juvenile</p>
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40 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 84.

41 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 102.

		<p>delinquents, irrespective of the age of sexual consent in the State.”<sup>42</sup></p> <p>“Regarding prevention, the Special Rapporteur recommends that the Government and States as appropriate... (e) Promote social norms with a view to changing perceptions and attitudes regarding child prostitution; (f) Increase research and analysis on the phenomena and on the profile of clients of child prostitution... with a view to tackling demand.”<sup>43</sup></p> <p>“Regarding training, the Special Rapporteur recommends that the Government, and States as appropriate: (a) Strengthen capacity of law enforcement officers, prosecutors, judges, teachers and other professionals working directly with children on how to identify cases of commercial sexual exploitation of children, and on how to address them within their respective environments. Training activities should identify and address social perceptions, and highlight that the involvement of children in prostitution is exploitation</p>
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42 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 105.

43 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 109.

		<p>not a choice... ”<sup>44</sup></p> <p>On inconsistencies in the definition of a child:  “However, a key challenge remains the lack of harmonization between Federal and state legislation, and between States, for instance regarding the definition of the age of a child.”<sup>45</sup></p> <p>On the prevalence of child prostitution and the low enforcement of state child prostitution laws:  “The Committee notes the State party’s efforts in addressing child prostitution, with programmes focused on a victim-centred approach. However, the Committee is concerned at the information that prostitution of children is a widespread and increasing phenomenon in the State party. It is also concerned at the information that enforcement of child prostitution laws is quite low at the state level and that the resources allocated for protection programmes, training and education are not sufficient.”<sup>46</sup></p>
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44 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 110.

45 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 102.

			<p>“The Committee recommends that the State party continue to combat child prostitution, both involving foreign children trafficked into the country and ‘internal’ child prostitution. To this end, the Committee recommends, inter alia, that the State party monitor enforcement and implementation of child prostitution laws at the state level and consider increasing human and financial resources for protection programmes, including awareness campaigns and training.”<sup>47</sup></p>
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Child Pornography (“any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”)

<b>MEASURE REQUIRED (PROHIBITION)</b>	<b>CURRENT LAW</b>	<b>LEGAL REFORM</b>	<b>COMPLIANCE</b>
Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography (Art. 3.1 (c))	Federal law prohibits producing, distributing, receiving, selling, advertising and possessing child pornography where the pornographic depiction or any materials used in its creation have ever been the subject of	In 2003, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act <sup>49</sup> criminalised the production of child pornography outside the United States for	On inconsistencies in state legislation concerning child pornography: “The Committee welcomes the fact that the State party has generally developed adequate legislation at the federal level concerning child pornography, the

46 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 24.

47 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 25.

49 Public Law No. 108-21.

	<p>interstate or foreign commerce (18 U.S.C. §§ 2251, 2252, 2252A).</p> <p>Using, enticing, employing, coercing, inducing or transporting a child for the production of child pornography is punishable by a fine and between 15 years' and 30 years' imprisonment for a first offence, between 25 years' and 50 years' imprisonment if the offender already has a prior conviction for a specified sexual offence, or between 35 years' and life imprisonment if the offender has two such convictions. Seeking or offering child pornography or to participate in the making of child pornography is similarly punishable, and parents, legal guardians and custodians are also liable to receive the same sentence if they permit a child in their charge to engage in child pornography (18 U.S.C. § 2251).</p> <p>Transferring, selling, purchasing or receiving children in interstate or foreign commerce for use in child pornography is punishable by a fine and 30 years' to life imprisonment (18 U.S.C. § 2251A).</p> <p>Transporting, shipping, receiving, distributing, selling, reproducing,</p>	<p>importation into the country (PROTECT Act, Section 506; 18 U.S.C. § 2251). It also made fines mandatory for all sentences under 18 U.S.C. § 2251 and increased sentences from previous levels of between 10 and 20 years' imprisonment for first offences, between 15 and 30 years' imprisonment if the offender already has a prior conviction for a specified sex offence, and between 30 years' and life imprisonment if the offender had two such convictions (PROTECT Act, Section 103). Similarly, the Act made fines for all sentences under 18 U.S.C. § 2252 mandatory and increased sentences from previous levels of up to 15 years' imprisonment for first offences, or between 5 and 30 years' imprisonment if the offender already has a prior conviction for a specified sex offence (PROTECT Act, Section 103). Penalties for possessing child pornography were increased from up to 5 years' imprisonment for first offences and between 2 years' and 10 years' imprisonment if the offender already has a prior conviction for a specified sexual offence (PROTECT Act, Section 103). The Act also made fines mandatory and increased penalties for transporting, shipping,</p>	<p>transporting of children between states for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at state and at federal levels may result in certain lacunae in the definition and prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, inter alia, that... (b) While activities related to child pornography are a felony at federal level, they may be only a misdemeanor in some states...<sup>54</sup></p> <p>“The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party... (b) Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state levels...<sup>55</sup></p> <p>“While the Special Rapporteur is encouraged by the breadth of the state legislation covering a wide range of</p>
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	<p>advertising, promoting or presenting child pornography in foreign or interstate commerce is punishable by a fine and between 5 years' and 20 years' imprisonment for a first offence, or by a fine and between 15 years' and 40 years' imprisonment if the offender already has a prior conviction for a specified sexual offence (18 U.S.C. §§ 2252, 2252A). Possessing child pornography is punishable by a fine, up to 10 years' imprisonment, or both for a first offence, or a fine and between 10 years' and 20 years' imprisonment if the offender already has a prior conviction for a specified sexual offence (18 U.S.C. §§ 2252, 2252A). Distributing or producing with the intent to distribute child pornography involving a modified depiction of an identifiable child is punishable by a fine, up to 15 years' imprisonment, or both (18 U.S.C. § 2252A).</p> <p>Using a minor to produce child pornography for importation into the United States and the receipt, distribution, sale, or possession of child pornography intended for importation into the United States are punishable as though those offences</p>	<p>receiving, distributing, selling, reproducing, advertising, promoting or presenting child pornography under 18 U.S.C. § 2252A from previous levels of up to 15 years' imprisonment for first offences, or 5 years' to 30 years' imprisonment if the offender already has a prior conviction for a specified sexual offence (PROTECT Act, Section 103).</p> <p>Additionally, the PROTECT Act expanded the list of designated offences that would subject an offender to be sentenced as a repeat offender under 18 U.S.C. § 2251 and § 2252, and includes a "two strikes and you're out" provision amending 18 U.S.C. § 3559 such that offenders found guilty of a second serious sexual offence against a child (including under §§ 2251 and 2251A) are sentenced to life imprisonment (PROTECT Act, Sections 106, 507).</p> <p>In 2006, the Adam Walsh Child Protection and Safety Act<sup>50</sup> further expanded the list of designated offences that would subject an offender to be sentenced as a repeat offender under 18 U.S.C. § 2252 and 18 U.S.C. § 2252A (Adam Walsh</p>	<p>acts relating to child pornography, it is of concern that there seems to be no uniformity in the definition of a child for the purpose of child pornography. In some States, a child is a person under 16 years old or 17 years old, depending on the nature of acts involved."<sup>56</sup></p> <p>On the prevalence of child pornography:      "The Committee appreciates the State party's efforts in combating child pornography both internally and as a worldwide phenomenon, including the numerous investigations and prosecutions in this respect, but is concerned that the State party is one of the world's largest producers, distributors and consumers of child pornography and that the incidence of cyber-crimes involving children, facilitated by the emergence of new technologies, is on the rise."<sup>57</sup>      "The Committee recommends that the State party (a) Improve enforcement of the existing legislative framework on child pornography; (b) Intensify its efforts to take the necessary measures to address the rapidly changing nature of technology; (c) Strengthen its measures to identify and assist child</p>
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	<p>has occurred in the country (18 U.S.C. §§ 2251, 2260).</p> <p>In general, producers of sexually explicit content must verify the age of any person appearing in that content and meet certain record-keeping and labeling requirements. Violating these requirements is a criminal offence punishable by a fine, up to 5 years' imprisonment, or both for a first offence, or a fine and from 2 years' to 10 years' imprisonment for each subsequent offence (18 U.S.C. §§ 2257, 2257A; 28 CFR § 75).</p> <p>Internet service providers with knowledge of child pornography on their servers are required to report this information subject to fines of \$150,000 for the first violation and \$300,000 for each additional violation (18 U.S.C. § 2258A).</p> <p>In addition, all 50 states have enacted laws to prohibit producing, procuring, distributing, transmitting, selling and in some cases possessing child pornography.<sup>48</sup></p>	<p>Child Protection and Safety Act, Section 206). The Act also increased penalties under 18 U.S.C. § 2260 from previous levels of a fine, up to 10 years' imprisonment, or both for first offences and a fine, up to 20 years' imprisonment, or both for successive offences (Adam Walsh Child Protection and Safety Act, Section 206).</p> <p>In 2008, the Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act ("PROTECT Our Children Act")<sup>51</sup> amended 18 U.S.C. § 2251 and § 2260 to prohibit the broadcast of live images of child pornography (PROTECT Our Children Act, Sections 301, 303). The PROTECT Our Children Act also added the offence of distributing or producing with the intent to distribute child pornography involving a modified depiction of an identifiable child under 18 U.S.C. § 2252A (PROTECT Our Children Act, Section 304).</p> <p>In terms of record-keeping, the PROTECT Act updated requirements</p>	<p>victims of child pornography; (d) Continue to strengthen international cooperation to prevent and punish child pornography."<sup>58</sup></p>
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48 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 194. For a compilation of state statutes related to child pornography, visit <http://www.ndaa.org/pdf/Child%20Pornography%20Statutory%20Compilation%206-2010.pdf>.

	<p><i>Definition:</i> Notably, the United States has registered a declaration to the OPSC in which it states that its understanding of the term “child pornography” covers “the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.”</p> <p>As such, federal law defines child pornography as any visual depiction, including photographs, films, videos, pictures, or computer or computer-generated images or pictures produced by any means that involve an actual or simulated child engaged in actual or simulated sexually explicit conduct (18 U.S.C. § 2256).</p>	<p>under 18 U.S.C. § 2257 and enhanced penalties from previous levels of up to 2 years’ imprisonment for first offences and between 2 years’ and 5 years’ imprisonment for repeat offences (PROTECT Act, Section 511). The Adam Walsh Child Protection and Safety Act further amended § 2257 to account for digital images, and introduced new requirements for producers of simulated sexually explicit content under § 2257A (Adam Walsh Act, Sections 502, 503). Regulations implementing these requirements were published in 2008 (73 Fed. Register 77432<sup>52</sup>, 28 CFR § 75).<sup>53</sup></p> <p>The definition of child pornography under 18 U.S.C. § 2256 has been amended, updated and clarified on a number of occasions, including in the PROTECT Act to enhance the prohibition on virtual pornography and in the PROTECT Our Children Act to account for changing technology (PROTECT Act, Section 502;</p>	
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50 Public Law No. 109-248.

51 Public Law No. 110-401, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+106-386&granuleId=&packageId=PLAW-110publ401>.

52 Revised Regulations for Records Relating to Visual Depictions of Sexually Explicit Conduct; Inspection of Records Relating to Depiction of Simulated Sexually Explicit Performance, available at <https://www.federalregister.gov/articles/2008/12/18/E8-29677/revised-regulations-for-records-relating-to-visual-depictions-of-sexually-explicit-conduct>.

		<p>PROTECT Our Children Act, Section 302).</p> <p>Lastly, the PROTECT Our Children Act added requirements that internet service providers with knowledge of pornography on their servers report it under 18 U.S.C. § 2258A (PROTECT Our Children Act, Section 501).</p>	
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### Liability for Prosecution

<b>MEASURE REQUIRED</b>	<b>CURRENT LAW</b>	<b>LEGAL REFORM</b>	<b>COMPLIANCE</b>
Attempt, complicity and participation in cited activities prohibited (Art. 3.2)	<p>Attempts to commit federal offences are not universally criminalised, but may be classified as offences where specifically provided. Similarly, attempts to commit offences under state law related to the OPSC may be but are not always criminalised.<sup>59</sup></p> <p>In terms of the of the OPSC, attempts</p>	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 <sup>61</sup> enhanced the penalty for conspiring to traffic children for forced labour or sexual exploitation under 18 U.S.C. §§ 1589 and 1591 to a fine, imprisonment for life, or both (William Wilberforce Trafficking Victims Protection Reauthorization	<p>On the failure to criminalise attempts to commit or participation in the commission of offences covered by the OPSC:</p> <p>“The Committee welcomes the fact that the State party has generally developed adequate legislation at the federal level concerning child pornography, the transporting of children between states</p>

53 Title 28 of the Code of Federal Regulations (Judicial Administration) is available via the Legal Information Institute at <http://www.law.cornell.edu/cfr/text/28>.

58 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 27.

54 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 32.

55 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 33.

56 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 34.

57 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 26.

59 CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 38.

	<p>to commit offences related to trafficking for the purposes of sexual exploitation under 18 U.S.C. §§ 1591<sup>60</sup>, 2421, 2422 and 2423 and those related to child pornography under §§ 2251, 2252 and 2252A are punishable to the same extent as if the offence had been committed.</p> <p>Aiding, abetting, counseling, commanding, inducing or procuring the commission of a federal offence, however, is punishable to the same extent as committing that offence (18 U.S.C. § 2). In addition, conspiracy to commit certain federal offences is typically punishable by a fine, up to 5 years' imprisonment, or both, and is also specifically criminalised with enhanced sentences for certain offences under the OPSC (18 U.S.C § 371; 18 U.S.C. §§ 1591, 2423).</p>	<p>Act, Section 222).</p>	<p>for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at state and at federal levels may result in certain lacunae in the definition and prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, inter alia, that... (c) Attempts to commit, or all forms of participation in, the offences covered by the Optional Protocol are not always punished under federal and state legislation.”<sup>62</sup></p> <p>“The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party... (c) Ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the</p>
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60 See 18 U.S.C. § 1594.

61 Public Law No. 110-457.

62 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 32.

			Optional Protocol.” <sup>63</sup>
Legal persons liable to be prosecuted (Art 3.4)	<p>U.S. law does not specifically provide for the liability of legal persons, but corporations can be held criminally liable for the acts of employees or agents if these acts are within the scope of employment and are motivated at least in part to benefit the corporation. In some cases, legal persons can be held liable even where an employee’s conduct was not within his or her authority or where the conduct was contrary to the organisation’s stated policies.<sup>64</sup></p> <p>In addition, individuals participating in “ventures” – defined as two or more persons working in association, whether as part of a legal entity or not – face criminal liability for offences related to trafficking in children for the purposes of sexual exploitation or forced labour (18 U.S.C. § 1589, 1591).</p>	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 <sup>65</sup> amended 18 U.S.C. § 1589 to penalise benefitting financially from participation in a venture engaged in trafficking for the purposes of forced labour (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 221).	

63 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 33.

64 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 239.

65 Public Law No. 110-457.

Additional Considerations

MEASURE	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Aggravating factors	<p>Offences committed against victims who are especially vulnerable due to age are liable to be punished with longer sentences under Section 3A1.1 of the Federal Sentencing Guidelines.<sup>66</sup></p> <p>In addition, most states also provide for enhanced penalties based on the victim's age and other vulnerabilities.<sup>67</sup></p>		
Definition of child	<p>Although there is no overarching single definition of a child under federal law, children are defined as individuals under 18 for offences related to child sexual exploitation under the OPSC (18 U.S.C. §§ 1591, 2256, 2423).</p>		
Removal of parental authority	<p>As family law matters are largely the purview of state law, there are no federal statutes that provide for the automatic removal of parental authority following conviction for an offence under the OPSC. Nevertheless, serious criminal convictions are often grounds for removal of parental</p>		

66 The 2011 Federal Sentencing Guidelines Manual is available at [http://www.uscourts.gov/Guidelines/2011\\_Guidelines/index.cfm](http://www.uscourts.gov/Guidelines/2011_Guidelines/index.cfm).

67 Information provided by Shared Hope.

	authority under state law. <sup>68</sup>		
Statute of limitations	<p>In general, the statute of limitations for any offence under federal law is 5 years (18 U.S.C. § 3282). However, there is no statute of limitations for offences related to the sexual exploitation of children under 18 U.S.C. §§ 1591, 2241 – 2248, 2251 – 2260A (except 2257(1), 2257A), or 2421 – 2428 (18 U.S.C. § 3299), and the statute of limitations has been extended to 10 years for offences related to trafficking including those under 18 U.S.C. §§ 1581, 1583, 1584, 1590 or 1592 (18 U.S.C. § 3298). In addition, 18 U.S.C. § 3283 provides that for offences against children involving the sexual abuse, physical abuse or kidnapping of a child, the statute of limitations is the longer of either the life of the child or 10 years.</p> <p>State statutes of limitations vary, but there exist a number of provisions that toll, extend or abolish statutes of limitations for offences committed against children.<sup>69</sup></p>	<p>The Adam Walsh Child Protection and Safety Act of 2006<sup>70</sup> abolished the statute of limitations for offences related to the sexual exploitation of children with the introduction of 18 U.S.C. § 3299 (Adam Walsh Child Protection and Safety Act, Section 211).</p> <p>The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act of 2003<sup>71</sup> amended 18 U.S.C. § 3283 to provide that the statute of limitations not preclude prosecution for an offence related to the sexual abuse, physical abuse, or kidnapping of a child during that child’s lifetime, an increase over the previous provision allowing for prosecution until the child reached 25 years of age (PROTECT Act, Section 202). The Violence Against Women and Department of Justice Reauthorization Act of 2005<sup>72</sup> further amended this provision to clarify that the statute of limitations would either</p>	<p>On eliminating the statute of limitations for offences against children:  “‘The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party’s commitment in the fight against the commercial sexual exploitation of children, including... (c) The Adam Walsh Child Protection and Safety Act, passed in 2006, which... eliminated statutes of limitations for criminal offences against children.’”<sup>73</sup></p>

68 See U.S. Department of Health & Human Services, Administration for Children & Families, Grounds for Involuntary Termination of Parental Rights, available at [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/groundtermin.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.cfm).

69 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 214. For a compilation of state statutes of limitation related to prosecuting offences against children, visit <http://www.ndaa.org/pdf/Statute%20of%20Limitations%20for%20Prosecution%20of%20Offenses%20Against%20Children>

		be the lifetime of the child or ten years, whichever is longer (Violence Against Women and Department of Justice Reauthorization Act, Section 1182).	
Confiscation of proceeds	<p>Federal law authorises the forfeiture of all proceeds from and assets or property involved in the commission of offences relating to the exploitation of children. Forfeiture is required for offences related to forced labour and trafficking for sexual exploitation under 18 U.S.C. §§ 1589 and 1591 (18 U.S.C. § 1594); for offences related to transportation for illegal sexual activity, including child prostitution, under 18 U.S.C. §§ 2421, 2422 and 2423 (18 U.S.C. § 2428); and in most instances for child pornography offences under 18 U.S.C. §§ 2251, 2251A, 2252, and 2252A (18 U.S.C. §§ 2253, 2254).</p> <p>In addition, 18 U.S.C. §§ 2253 and 2254 provide for the confiscation of pornographic depictions of children</p>	<p>Mandatory forfeiture under 18 U.S.C. § 1594 for offences related to forced labour and trafficking for sexual exploitation was introduced in the Trafficking Victims Protection Act of 2000<sup>75</sup> (Trafficking Victims Protection Act, Section 112); this was expanded to cover offences related to transportation for illegal sexual activity with the introduction of 18 U.S.C. § 2428 in the Trafficking Victims Protection Reauthorization Act of 2005<sup>76</sup> (Trafficking Victims Protection Reauthorization Act, Section 103). The Adam Walsh Child Protection and Safety Act of 2006<sup>77</sup> further amended 18 U.S.C. §§ 1467, 2253 and 2254 to authorise forfeiture for offences related to child pornography (Adam Walsh Child Protection and Safety Act, Section</p>	

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70 Public Law No. 109-248.

71 Public Law No. 108-21.

72 Public Law No. 109-162, available at <http://www.gpo.gov/fdsys/search/pagedetails.action?st=Pub.+L.+106-386&granuleId=&packageId=PLAW-109publ162>.

73 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 6.

	underlying child pornography offences. Forfeiture is also authorised for obscene materials in general and for any proceeds from and assets or property involved in the commission of obscenity offences (18 U.S.C. § 1467, 19 U.S.C. § 1305). <sup>74</sup>	505).	
Protection from Deportation	<p>Victims of severe forms of trafficking are eligible for visas to remain in the United States, to receive public assistance and to apply for permanent residency after 3 years' time. Child victims are generally able to apply for lawful immigration status for their parents and siblings (8 U.S.C. § 1101(a)(15)(T); 8 CFR § 214.11; 8 U.S.C. § 1255(l)).</p> <p>In addition, U.S. authorities can grant "Continued Presence" to child victims of severe forms of trafficking, which allows them and in some cases their immediate relatives to remain in the country to facilitate the investigation and prosecution of those responsible for the offence (22 U.S.C. § 7105(c)(3); 8 U.S.C. § 1229B(b)(6)). Where these circumstances do not apply, U.S. authorities also have the ability to</p>	<p>The Trafficking Victims Protection Act of 2000<sup>79</sup> first provided for special visas to allow victims of severe forms of trafficking to remain in the United States (Trafficking Victims Protection Act, Section 107; see 8 U.S.C. § 1101(a)(15)(T); 8 CFR § 214.11).</p> <p>The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008<sup>80</sup> amended 22 U.S.C. § 7105(c)(3) to expand the authority to permit the "Continued Presence" of victims of severe forms of trafficking and to allow for certain relatives of victims to remain in the country (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 205).</p>	<p>On providing federal assistance to child victims of trafficking:          "The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party's commitment in the fight against the commercial sexual exploitation of children, including: (a) The Trafficking Victims Protection Act 2000 and its re-authorizations in 2003 and 2005, which...enhanced assistance to victims of trafficking in the United States and in other countries;..."<sup>81</sup></p> <p>On the deportation of unidentified foreign national child victims:          "The Committee is further concerned at the information that in some cases foreign victims of trafficking for sexual exploitation may face deportation as unidentified trafficked victims."<sup>82</sup></p>

74 Title 19 of the United States Code (Customs Duties) is available via the Legal Information Institute at <http://www.law.cornell.edu/uscode/text/19>.

75 Public Law No. 106-386.

	<p>defer deportation if circumstances, including humanitarian considerations, so warrant.<sup>78</sup></p> <p>Notably, federal immigration law specifically provides that child victims of trafficking may not be deported based solely on information provided by their trafficker (8 U.S.C. § 1367).</p>		<p>“The Committee recommends that the State party...(b) Ensure that foreign children victims of the offences covered by the Protocol are not deported...”<sup>83</sup></p>
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Jurisdiction

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Offences committed in territory or aboard registered ship or aircraft (Art. 4.1)</p>	<p>The U.S. extends jurisdiction over offences occurring on any ship or aircraft on or over the high seas belonging in whole or in part to any U.S. citizen or corporation that involve, among other things, child pornography under 18 U.S.C. §§ 2252 or 2252A or sex trafficking under 18 U.S.C. § 1591 (18 U.S.C § 7). Federal</p>		

76 Public Law No. 109-164.

77 Public Law No. 109-248.

78 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 416.

79 Public Law No. 106-386.

80 Public Law No. 110-457.

81 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 6.

82 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 39.

83 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 40.

	<p>jurisdiction also covers a number of offences committed on aircraft registered in the U.S., although none of these relate directly to the sexual exploitation of children as detailed in the OPSC (49 U.S.C. §§ 46501, 46506).<sup>84</sup></p> <p>Notably, the United States has registered a reservation to the OPSC on the subject of jurisdiction, which reads:          “To the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3 (1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4 (1) of the Protocol.”</p>		
Offender is a national or resident (Art. 4.2 (a))	The U.S. does not generally grant jurisdiction over its nationals or	The PROTECT Act increased the penalty for transporting a child in	On expanding jurisdiction to cover sexual offences committed against

84 Title 49 of the United States Code (Transportation) is available via the Legal Information Institute at <http://www.law.cornell.edu/uscode/text/49>.

	<p>residents as offenders.<sup>85</sup> However, federal law grants jurisdiction over offences committed outside the jurisdiction of any country by U.S. nationals that involve, among other things, sex trafficking under 18 U.S.C. § 1591 (18 U.S.C § 1596). Child pornography offences committed abroad are also punishable under 18 U.S.C. §§ 2252, 2252A and 2260. In addition, U.S. citizens and residents are prohibited from engaging in or facilitating travel to engage in illegal sexual conduct, including child prostitution, in foreign jurisdictions subject to a maximum punishment of a fine and 30 years' imprisonment (18 U.S.C. § 2423).<sup>86</sup> Extraterritorial jurisdiction also extends to offences committed by U.S. citizens or residents related to forced labour and child trafficking and to transporting children in foreign commerce for the production of child pornography or transporting child pornography itself (18 U.S.C. §§ 1589, 1591, 1596, 2251, 2252 and 2252A).</p>	<p>foreign commerce with the intent to engage in illegal sexual activity under 18 U.S.C. § 2423(a) from a fine, up to 15 years' imprisonment or both to a fine and between 5 years' and 30 years' imprisonment (PROTECT Act, Section 103). The Adam Walsh Child Protection and Safety Act of 2006<sup>87</sup> further increased this penalty to a fine and 10 years' to life imprisonment (Adam Walsh Child Protection and Safety Act, Section 204).</p> <p>The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008<sup>88</sup> introduced 18 U.S.C. § 1596 to add extra-territorial jurisdiction over offences related to forced labour and child trafficking under 18 U.S.C. §§ 1589 and 1591 (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 223).</p>	<p>children abroad:          “The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party’s commitment in the fight against the commercial sexual exploitation of children, including... (b) The PROTECT Act of 2003, which expanded extra-territorial jurisdiction to prosecute State party’s citizens committing sex crimes against children abroad.”<sup>89</sup></p> <p>On efforts to combat child sex tourism:          “The Committee welcomes the launch in 2004 of the ‘Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism’ as well as that the adoption of the PROTECT Act of 2003 has resulted in more than 50 indictments and 29 convictions of State party’s nationals involved in child sex tourism abroad. It also appreciates the funding of deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at United States child sex tourists. However, the Committee is concerned at the</p>
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85 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 303.

86 The constitutionality of these provisions has been challenged and most recently upheld by the Federal Court of Appeals for the Third Circuit in a 2011 decision; see U.S. v. Pendleton, Case No. 10-1755 (April 12, 2011), available at <http://www.ca3.uscourts.gov/opinarch/101755p.pdf>.

87 Public Law No. 109-248.

88 Public Law No. 110-457.

89 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 6.

information that the State party remains among the main source countries for child sex tourism.”<sup>90</sup>

“The Committee recommends that the State party continue to strengthen its measures to combat sex tourism, including by raising awareness to tackle attitudes, such as the idea that is acceptable to abuse and exploit children living in poverty in foreign countries. The Committee also recommends that the State party take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and cooperating closely with travel operators, media, NGOs and civil society organizations to combat all forms of commercial sexual exploitation of children in travel and tourism.”<sup>91</sup>

On the failure of U.S. law to extend jurisdiction to all offences covered under the OPSC:

“The Committee, while welcoming the possibility for the State party to establish extraterritorial jurisdiction for sex tourism and child pornography offences committed outside the United States, is concerned that the State party’s

<sup>90</sup> CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 28.

<sup>91</sup> CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 29.

			<p>extraterritorial jurisdiction based on the nationality of the offender, while provided by some federal laws, such as 18 U.S.C., paragraphs 1585 and 1587, does not reach all offences covered by the Optional Protocol...<sup>92</sup></p> <p>“The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4...<sup>93</sup></p>
Victim is a national (Art. 4.2 (b))	<p>The U.S. does not generally grant jurisdiction over its nationals or residents as victims.<sup>94</sup></p> <p>However, federal law grants jurisdiction over offences committed outside the jurisdiction of any country against U.S. nationals that involve, among other things, sex trafficking under 18 U.S.C. § 1591 (18 U.S.C § 1596).</p>		<p>On the failure of U.S. law to extend jurisdiction to offences where the victim is a national:</p> <p>“...The Committee also [notes] that federal law does not generally provide for the assertion of extraterritorial jurisdiction where the victim is a State party’s national.”<sup>95</sup></p>

92 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 35.

93 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 36.

94 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 303.

95 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 35.

<p>Offender is in territory and no provisions for extradition (Art. 4.3)</p>	<p>Federal law does not provide for jurisdiction over offenders present in U.S. territory where there are no provisions for extradition, but notably, U.S. nationality is not grounds for denying extradition (18 U.S.C. § 3196).</p>		<p>On the inability of U.S. authorities to prosecute offenders present in the territory but not extradited:  “...Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Optional Protocol abroad – if it does not extradite him or her to another State party - even if the country where the offence was committed is not a Party to the Optional Protocol or does not criminalize these acts in its legislation.”<sup>96</sup></p>
<p>Extradition (Art. 5)</p>	<p>In general, the U.S. does not extradite offenders without a treaty in place.<sup>97</sup> All such treaties require that offences be punishable under the laws of both States, usually for a minimum of one year’s imprisonment.<sup>98</sup></p>		

Child-Friendly Justice

96 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 36.  
97 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, paras. 308, 309.  
98 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 309.

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Procedures adapted to children's special needs as witnesses (Art. 8.1 (a))</p>	<p>Child victims of sexual exploitation are permitted to testify live by closed circuit television or pre-recorded videotape if the court finds the child is unable to testify due to fear, a substantial likelihood that the child would suffer emotional trauma, a mental or other disability, or conduct by the defendant or defense lawyer that stops the child from testifying (18 U.S.C. § 3509(b)). Alternatively, the court may close the courtroom to the public if testifying in open court would harm the child or impair his or her ability to communicate (18 U.S.C. § 3509(e)). Children testifying or attending a judicial proceeding have the right to be accompanied by an adult to provide emotional support (18 U.S.C. § 3509(i)). If deemed appropriate by the court and a child welfare professional, children may also be permitted to use anatomical dolls or other aids while testifying (18 U.S.C. § 3509(l)).</p> <p>The U.S. Attorney General has issued Guidelines on Victim and Witness Assistance, including specific guidance for child victims and witnesses.<sup>99</sup> Among other things, the</p>		<p>On the criminalisation of children involved in prostitution:          “In the States the Special Rapporteur visited, she observed that prostitution and acts related thereto are widely criminalized, including pandering, enticing persons into prostitution, engaging in and soliciting for prostitution, knowingly advancing or profiting from prostitution (pimping), keeping a place of prostitution, and placing a person in the house of prostitution. Some States do not have exemptions for children, including those who have not reached the age of consent for sexual intercourse. This often leads to criminalization of children who are victims of commercial sexual exploitation.”<sup>115</sup>          “Regarding legislation, the Special Rapporteur recommends that the Government and States as appropriate... (b) Decriminalize the involvement of children under 18 in prostitution; (c) Effectively implement safe harbour laws for child prostitution to ensure that all children under 18 are not treated as criminals or juvenile delinquents, irrespective of the age of sexual consent in the State...”<sup>116</sup>          “...[T]he Committee is concerned at</p>

	<p>Guidelines explain the need to be aware of the risk of retraumatization for children during the investigation process and provide a variety of means to reduce this risk.<sup>100</sup> In addition, there is also a national network of federal, state and locally-funded Child Advocacy Centers in place which make efforts to consolidate interviews conducted by various professionals involved in the investigation of a child sexual exploitation case.<sup>101</sup> Federal funds also provide for training of those who work with child victims<sup>102</sup> and programmes designed to reduce the trauma to child victims of sexual abuse.<sup>103</sup></p> <p>State laws make similar provisions for special accommodation of child victims and witnesses<sup>104</sup>, including the use of videotaped or closed-circuit</p>		<p>the information that there are instances where child victims, especially those who are victims of trafficking within the United States and those used in prostitution, may be penalized or criminalized, since state laws have not yet uniformly exempted children, notably those involved in prostitution, from arrest and prosecution.”<sup>117</sup></p> <p>“The Committee recommends that the State party: (a) Ensure that all persons below the age of 18 victims of any of the offences penalized under the Optional Protocol are as such neither criminalized nor penalized at federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country...”<sup>118</sup></p> <p>“As a result of her observations in San Francisco, the Special Rapporteur was</p>
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99 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 334; U.S. Attorney General Guidelines on Victim and Witness Assistance, Article VI (Guidelines for Child Victims and Witnesses) available at [http://www.justice.gov/olp/pdf/ag\\_guidelines.pdf](http://www.justice.gov/olp/pdf/ag_guidelines.pdf).

100 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 334; U.S. Attorney General Guidelines on Victim and Witness Assistance, Article VI (Guidelines for Child Victims and Witnesses).

101 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 328.

102 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 345.

103 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 328; see also the Children’s Justice Act, established in the Victims of Crime Act (VOCA) (42 U.S.C. § 5101 et seq.), available as codified at <http://www.law.cornell.edu/uscode/text/42/chapter-67/subchapter-I>;; and the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. § 5116 et seq.), available as codified at <http://www.law.cornell.edu/uscode/text/42/chapter-67/subchapter-III>.

104 For a compilation of state statutes related to the competency of child witnesses to testify in criminal proceedings, visit <http://www.ndaa.org/pdf/Competency%20of%20Child%20Witnesses%282011%29.pdf>.

	<p>testimony<sup>105</sup>, support persons<sup>106</sup>, comfort items<sup>107</sup>, anatomical dolls<sup>108</sup>, limited interviews<sup>109</sup>, specialised child interviewers<sup>110</sup>, and non-leading questioning.<sup>111</sup></p> <p>Despite these measures, concerns have been voiced that sexually exploited children – in particular children engaged in prostitution – may be treated as offenders rather than victims, particularly under state law.<sup>112</sup> While federal law makes clear that children induced to perform commercial sexual acts are to be treated as victims<sup>113</sup>, these children</p>		<p>particularly concerned that the criminal justice system, by criminalizing prostitution, treats child victims of prostitution as offenders, in the same way as murderers and other criminals. This classification and resulting imprisonment in juvenile detention halls frequently victimize the child further, aggravating the trauma, if adequate social services and counseling are not available. In response to the Special Rapporteur's concerns, however, the Assistant Chief Probation Officer of San Francisco replied that the juvenile justice system only fills a void for victims by</p>
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105 For a compilation of statutes related to testimony via closed-circuit television, visit <http://www.ndaa.org/pdf/CCTV%20June%202010.pdf>; for a compilation of state statutes related to the admissibility of videotaped interviews/statements in criminal child abuse proceedings, visit [http://www.ndaa.org/pdf/Admissibility%20of%20Videotaped%20Interviews-Statements%20in%20Criminal%20Child%20Abuse%20Proceedings\\_2010.pdf](http://www.ndaa.org/pdf/Admissibility%20of%20Videotaped%20Interviews-Statements%20in%20Criminal%20Child%20Abuse%20Proceedings_2010.pdf).

106 For a compilation of state statutes related to the presence of support persons, visit <http://www.ndaa.org/pdf/Presence%20of%20Support%20Persons%20for%20Child%20Witnesses%202010.pdf>.

107 For a compilation of state statutes related to the use of comfort items, visit <http://www.ndaa.org/pdf/Comfort%20Items%202011.pdf>.

108 For a compilation of state statutes related to the use of anatomical dolls, visit <http://www.ndaa.org/pdf/3u13c7yj.pdf>.

109 For a compilation of state statutes limiting the number of interviews with child victims, visit <http://www.ndaa.org/pdf/Legislation%20Limiting%20the%20Number%20of%20Interviews%20for%20Child%20Victims%20%282011%29.pdf>.

110 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 337.

111 For a compilation of state statutes related to leading questions and child witnesses, visit <http://www.ndaa.org/pdf/Leading%20Questions%20and%20Child%20Witnesses6-2011.pdf>.

112 See CRC/C/OPSC/USA/Q/1, 26 February 2008, List of issues to be taken up in connection with the consideration of the initial report of the United States of America, Question 9, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.USA.Q.1.pdf>; ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: United States, 2006, p. 17; ECPAT –USA, December 2007, Alternative Report to the Report of the United States of America to the Committee on the Rights of the Child, pp. 18, 21, 22, available at [http://www.crin.org/docs/USA\\_ECPAT\\_NGO\\_Report\\_OPSC.pdf](http://www.crin.org/docs/USA_ECPAT_NGO_Report_OPSC.pdf).

113 See Trafficking Victims Protection Act of 2000, Section 102 (“Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses.”).

	<p>may still be criminally liable under state law. All states criminalise prostitution to some degree, and children engaged in prostitution are often liable to be arrested and charged where not specifically exempted from prosecution under state law.<sup>114</sup></p>		<p>criminalizing the child or youth in order to be able to provide them with care, rehabilitation and counselling, which would not be available to them outside the system. It was noted that alternative services providing support for child victims are urgently needed in the community in order to rehabilitate child victims without criminalizing them.”<sup>119</sup></p> <p>On the difficulty of securing the cooperation of child victims in legal proceedings:  “Virtually all stakeholders, including law enforcement, state attorneys, federal prosecutors and members of civil society complained of difficulties in securing the cooperation of child victims with the authorities in legal proceedings against pimps or traffickers.”<sup>120</sup></p> <p>On the problem of requiring child victims to offer live courtroom testimony:  “Several stakeholders in numerous states visited reported on the problem</p>
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114 ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: United States, 2006, p. 17. For more information on state laws relating to the criminal liability of children engaged in prostitution, see Shared Hope International, The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation's Children (2011), available at [http://www.sharedhope.org/Portals/0/Documents/Report%20Cards\\_FINAL/PII\\_ChallengeReport\\_FINAL2.pdf](http://www.sharedhope.org/Portals/0/Documents/Report%20Cards_FINAL/PII_ChallengeReport_FINAL2.pdf).

		<p>of requiring child victims to testify in open court in front of their trafficker or pimp. The Special Rapporteur expresses concern that for instance, in New York State, testimony through closed circuit television is only available in the case of “demonstrated risk of significant emotional trauma” to the child. The Special Rapporteur is concerned that requiring victims to testify against their exploiters in open court as a means of obtaining a conviction can lead to re-victimization...”<sup>121</sup></p> <p>“[P]rocedural reforms are needed to allow prosecution of perpetrators without victim/witness testimony. Requiring victims to testify against their exploiters can sometimes lead to re-victimization as the child must relive the trauma in a courtroom.”<sup>122</sup></p>
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118 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 38.

117 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 37.

116 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 105.

115 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 26.

119 See E/CN.4/1997/95/Add.2, 7 February 1997, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 100, available at <http://www.ohchr.org/EN/Issues/Children/Pages/CountryVisits.aspx>.

120 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 75.

121 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 76.

122 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of

			<p>“Regarding legislation, the Special Rapporteur recommends that the Government and States as appropriate... (b) Decriminalize the involvement of children under 18 in prostitution; (c) Effectively implement safe harbour laws for child prostitution to ensure that all children under 18 are not treated as criminals or juvenile delinquents, irrespective of the age of sexual consent in the State; (d) More readily consider allowing the use of closed circuit television and/or video testimony for children under 18 years of age.”<sup>123</sup></p>
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“The major problem faced by police officers when seeking victims to testify against their recruiter or pimp is the fact that the police, for lack of public services, such as shelters, cannot offer anything in return for the testimony and that child victims do not want to talk to the police nor leave their pimps. For many children and youth, a return home would simply mean a return to sexual and physical abuse. In addition, the criminal justice system is primarily geared to arresting the perpetrator and not to identifying the victim, which

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America, para. 78.  
123 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 105.

makes it relatively easy for victims to change their identity and monitoring victims difficult.”<sup>124</sup>

On measures taken to adapt procedures to child witnesses:

“The Committee welcomes the measures taken for the protection of child victims of the offences covered by the Optional Protocol in the criminal justice system, including the access to support persons, alternatives for live in-court testimony when it is determined that a child should not testify, the use in many states of closed-circuit television (CCTV) testimony of children, child interview specialists and developmentally appropriate questioning...”<sup>125</sup>

On the need to offer specialised services to children involved in prostitution and to strengthen Child Advocacy Centers:

“Regarding care and assistance programs the Special Rapporteur recommends that the Government, and States as appropriate: (a) Create a special section within state/county

124 E/CN.4/1997/95/Add.2, 7 February 1997, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 66.

125 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 37.

			child protective services trained and specialized in working with children involved in prostitution;... (e) Strengthen Child Advocacy Centres across the country by ensuring that they have child friendly spaces and are provided with sufficient financial and human resources. <sup>126</sup>
Children informed of rights/role and scope/timing/progress/disposition of cases (Art. 8.1 (b))	The Attorney General Guidelines on Victim and Witness Assistance state that law enforcement authorities should inform victims about their role in the criminal justice system and the scheduling of proceedings for the prosecution of the alleged perpetrator. <sup>127</sup>  In addition, similar victims' rights guidelines and laws exist on the state level. <sup>128</sup>		
Children's views/needs/concerns presented (Art. 8.1 (c))	As part of the investigation and prosecution of child sexual exploitation offences, federal law provides for the preparation of a victim		

126 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 108.

127 U.S. Attorney General Guidelines on Victim and Witness Assistance, Article VI (Guidelines for Child Victims and Witnesses); see also CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 69.

128 CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 69.

	<p>impact statement in cases involving child victims (18 U.S.C. § 3509(f)). Courts are also authorised to appoint guardians ad litem for child victims or witnesses of offences involving abuse or exploitation (18 U.S.C. § 3509(h)). A guardian ad litem is required to make every effort to ascertain and report on the child's and his/her family's views, and may attend all relevant depositions, hearings and courtroom proceedings and offer recommendations to the court on the child's welfare. Notably, federal law requires that all states receiving funds under the Child Abuse Prevention and Treatment Act<sup>129</sup> appoint guardians ad litem for all proceedings related to child abuse (42 U.S.C. § 5106a(b)(2)(A)(xiii)).</p> <p>In addition, states provide for the presentation of victims' views at different stages of criminal proceedings through various guidelines and statutes.<sup>130</sup></p>		
Support services provided throughout legal process	Where feasible, federal law requires that a multidisciplinary child abuse	The Trafficking Victims Protection Act of 2000 <sup>136</sup> first made foreign national	On the need to expand assistance for child victims:

129 Public Law No. 93-247, available at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/cblaws/capta/](http://www.acf.hhs.gov/programs/cb/laws_policies/cblaws/capta/).

130 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 326.

<p>(Art. 8.1 (d))</p>	<p>team be appointed to provide a wide array of medical, psychological and psychiatric services for a child victim in criminal justice proceedings and give training for judges, lawyers and court officers involved in those proceedings (18 U.S.C. § 3509(g)). Federal law grants the Secretary of Health and Human Services the authority to provide interim and long-term social assistance to suspected and actual foreign national victims of child trafficking, and requires that federal, state or local officials who discover a child who may have been victimised by a severe form of trafficking contact the Secretary within 24 hours to arrange for this assistance (22 U.S.C. § 7105). These children are also eligible to receive benefits under the Department of Health and Human Services' Unaccompanied Refugee Minors programme (8 U.S.C. § 1522(d)).<sup>131</sup></p> <p>Federal law further requires that unaccompanied foreign national children be offered safe and secure placements and wherever possible be given access to legal counsel and an independent child advocate (William</p>	<p>victims of trafficking eligible for federal social assistance under 22 U.S.C. § 7105 (Trafficking Victims Protection Act, Section 107).</p> <p>The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008<sup>137</sup> introduced provisions for temporary and long-term assistance, safe and secure placements, and legal representation for child victims of severe forms of trafficking (William Wilberforce Trafficking Victims Protection Reauthorization Act, Sections 212, 213, 235).</p>	<p>“Regarding care and assistance programs the Special Rapporteur recommends that the Government, and States as appropriate... (b) Increase the number of programs, at the local level, which provide multidisciplinary care and assistance (medical, legal, psychological) to child victims of commercial sexual exploitation...”<sup>138</sup></p> <p>“The Committee notes that a significant amount of financial resources is allocated to the prevention of human trafficking, but is concerned that only a small proportion of it is specifically allocated to child victims of trafficking and to victims of other offences covered by the Optional Protocol.”<sup>139</sup></p> <p>On the need to protect child victims and witnesses of sexual exploitation: “The Committee recommends that the State party... (b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention of the offences, protection and rehabilitation of child victims and prosecution of the perpetrators of all the offences covered by the Protocol...”<sup>140</sup></p>
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131 CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, paras. 76-77.

	<p>Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235).</p> <p>U.S. Immigration and Customs Enforcement also has a staff of victim witness coordinators who have been trained to recognise potential indicators of trafficking and sexual exploitation. These coordinators are able both to provide victims with immediate support and assistance and to make referrals to local services.<sup>132</sup></p> <p>In addition, the Victims of Crime Act funds support to thousands of victim services programmes around the country,<sup>133</sup> and all states provide some level of support services for child victims of sexual exploitation.<sup>134</sup></p> <p>Nevertheless, there are reports that</p>		<p>“The Committee recommends that the State party... (c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels. The State party should be also guided in this respect by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime...”<sup>141</sup></p> <p>On the need for training of persons who work with child victims:  “‘The Committee recommends that the State party... (c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the</p>
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136 Public Law No. 106-386.

132 United States Submission to World Congress III against Sexual Exploitation of Children and Adolescents, November 2008, p. 10, available at <http://www.state.gov/documents/organization/135992.pdf>.

140 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 17.

139 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 16.

138 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 108.

137 Public Law No. 110-457.

133 Public Law No. 98-473, as codified at 42 U.S.C. § 10601 et seq. See also CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 89.

134 CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 71.

	child victims of sexual exploitation face a variety of challenges in accessing assistance, and that these victims may not receive adequate mental health assistance. <sup>135</sup>		Protocol... <sup>142</sup>
Privacy/identity protected (Art. 8.1 (e))	Federal law requires that the name and other information concerning a child victim involved in criminal proceedings be kept confidential and that any images of child pornography implicated remain in the in the custody of the authorities during criminal proceedings (18 U.S.C. § 3509(d), (m)). Many states make similar legal provisions. <sup>143</sup>  Additionally, Government authorities are prohibited from disclosing any information related to child victims of trafficking pursuing or in receipt of lawful immigration status (8 U.S.C. § 1367).		
Providing for safety of victims/families involved (Art. 8.1 (f)/ Art. 8.5)	As above, federal law requires that unaccompanied foreign national children be offered safe and secure	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 <sup>146</sup> introduced provisions	On the need for adequate resources to protect child victims: “The Committee recommends that the

135 ECPAT –USA, December 2007, Alternative Report to the Report of the United States of America to the Committee on the Rights of the Child, pp. 23-24.

142 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 40.

141 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 38.

143 United States Submission to World Congress III against Sexual Exploitation of Children and Adolescents, November 2008, pp. 17-18; CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 72.

	<p>placements (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235).</p> <p>State and federal safe havens are available to children escaping sexual exploitation in some instances<sup>144</sup>, and federal law provides for the protection of witnesses in criminal proceedings from intimidation and harassment.<sup>145</sup></p>	<p>requiring safe and secure placements for unaccompanied foreign national children (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235).</p>	<p>State party... (b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the... protection... of child victims ...”<sup>147</sup></p> <p>“The Committee recommends that the State party... (c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels.”<sup>148</sup></p>
<p>Avoid delay in disposition/compensation (Art. 8.1 (g))</p>	<p>Cases involving child witnesses may be designated as of special public importance and expedited “to minimise the length of time the child must endure the stress of involvement with the criminal process” (18 U.S.C. § 3509(j)). In general, speedy trials for all criminal cases are required under the U.S. Constitution<sup>149</sup>, and the Speedy Trial Act sets out strict</p>		

144 See CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 73; CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para.347.

146 Public Law No. 110-457.

145 See, e.g., Federal Witness Protection Act, as codified at 18 U.S.C. § 3521.

147 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 17.

148 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 38.

149 United States Constitution, Amendment VI.

	<p>deadlines for charging and prosecuting criminal cases.<sup>150</sup></p> <p>In addition, a number of states also provide for expedited trials where proceedings involve child witnesses.<sup>151</sup></p>		
Best interests a primary consideration (Art. 8.3)	<p>There does not appear to be a general provision in federal law that children's best interests be a primary consideration in criminal proceedings that concern them.</p> <p>Nonetheless, federal law does authorise the appointment of independent child advocates who are tasked with advocating for the best interests of the child for child trafficking victims and unaccompanied foreign national children (William Wilberforce Trafficking Victims Protection Reauthorization Act, Section 235(c)(6)).</p>	The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 introduced independent child advocates for child trafficking. <sup>152</sup>	

## Remedial Measures

<sup>150</sup> Public Law No. 93-619, as codified at 18 U.S.C. § 3161 et seq.

<sup>151</sup> CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 340. For a compilation of state statutes providing for speedy trials in cases involving child victims and witnesses, visit <http://www.ndaa.org/pdf/NCPCA%20Speedy%20Trial%202011.pdf>.

<sup>152</sup> Public Law No. 110-457.

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Assistance given to facilitate victims' recovery (Art. 9.3)</p>	<p>Unaccompanied foreign national children in the custody of the Government receive counseling and other mental health services as part of federal assistance programmes (see "Support services provided throughout legal process").<sup>153</sup></p> <p>In addition, state victim assistance programmes provide child victim with assistance during court proceedings, emotional support, and referrals to further services.<sup>154</sup></p>	<p>Federal assistance programmes for child victims of sexual exploitation were first provided for under the Trafficking Victims Protection Act of 2000<sup>155</sup> and later expanded under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008<sup>156</sup> (see "Support services provided throughout legal process").</p>	<p>On the need to increase assistance to child victims:          "The Special Rapporteur echoes the concerns raised by the vast majority of stakeholders she met with regarding the insufficient number of residential treatment facilities that provide integrated, comprehensive care to child victims of commercial sexual exploitation. While the TVPRA 2005 and 2008 provide for such facilities, the Special Rapporteur was informed that the funding had not yet been granted. The need for increased access to mental health services was also cited."<sup>157</sup></p> <p>"Detaining children involved in prostitution also occurs due to a lack of viable and safe placement alternatives for children where they can receive the care and protection they need."<sup>158</sup></p> <p>"Regarding care and assistance programs the Special Rapporteur recommends that the Government, and States as appropriate... (b) Increase the number of programs, at the local level, which provide multidisciplinary care</p>

153 CRC/C/OPSC/USA/2, 25 January 2010, Report of state party to the Committee on the Rights of the Child, para. 362.

154 CRC/C/OPSC/USA/1, 10 May 2007, Report of state party to the Committee on the Rights of the Child, para. 88.

155 Public Law No. 106-386.

			<p>and assistance (medical, legal, psychological) to child victims of commercial sexual exploitation...<sup>159</sup></p> <p>“Regarding prevention, the Special Rapporteur recommends that the Government and States as appropriate... (c) Increase and strengthen the provision of mental health care services at the state and local level...<sup>160</sup></p> <p>“The Committee recommends that the State party... (b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the... rehabilitation of child victims...<sup>161</sup></p> <p>On the lack of assistance for U.S. national child victims and the need for effective recovery and reintegration programmes for all child victims: “The Committee notes with</p>
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156 Public Law No. 110-457.

157 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 74.

158 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 102.

159 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 108.

160 A/HRC/16/57/Add.5, 7 February 2011, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mission to the United States of America, para. 109.

161 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 17.

			<p>appreciation that, with the Trafficking Victims Protection Act, in the United States, non-citizens who are victims of severe forms of trafficking - which include a person under 18 years of age induced to perform a commercial sex act - are allowed to remain in the country and are eligible to receive certain kinds of public assistance to the same extent as refugees. However, the Committee is concerned that while there are certain services available for child victims of trafficking from other countries, children victim of internal commercial sexual exploitation often lack the adequate services, including transitional shelters, necessary for their physical and psychological recovery and social reintegration...<sup>162</sup></p> <p>“The Committee recommends that the State party: (a) Ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol; (b) Ensure that foreign children victims of the offences covered by the Protocol are...</p>
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<sup>162</sup> CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 39.

			granted the necessary services aimed at their physical and psychological recovery...” <sup>163</sup>
Child victims have access to procedures to seek compensation from offenders (Art. 9.4)	<p>Federal law provides for mandatory restitution for victims of forced labour and trafficking under 18 U.S.C. §§ 1589 and 1591, and for victims of child pornography offences under 18 U.S.C. §§ 2251, 2251A, 2252, 2252A and 2260. Restitution should cover the full amount of the victim’s losses, including any mental or physical health costs, transportation and housing, attorneys’ fees and any other losses resulting from the offence (18 U.S.C. §§ 1593, 2259). In the case of forced labour, it should also include compensation for the work performed (18 U.S.C. § 1593).</p> <p>Victims of trafficking and forced labour under 18 U.S.C. §§ 1589 and 1591 also have the right to seek a civil remedy within 10 years of the offence</p>	<p>The Trafficking Victims Protection Act of 2000<sup>164</sup> introduced 18 U.S.C. § 1593 requiring mandatory restitution for child victims of trafficking and forced labour (Trafficking Victims Protection Act, Section 112).</p> <p>The Trafficking Victims Protection Reauthorization Act of 2003<sup>165</sup> further granted these victims the right to pursue a civil action seeking compensation from offenders under 18 U.S.C. § 1595 (Trafficking Victims Protection Reauthorization Act, Section 4).<sup>166</sup></p> <p>The Adam Walsh Child Protection and Safety Act of 2006<sup>167</sup> increased the amount of damages deemed to be suffered by child victims of sexual exploitation who have suffered a</p>	<p>On the need to ensure child victims can access procedures to seek compensation from offenders: “The Committee recommends that the State party... (d) Ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.”<sup>168</sup></p>

163 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 40.

164 Public Law No. 106-386.

165 Public Law No. 108-193.

166 In 2011, the Federal Court of Appeals for the Ninth Circuit ruled that victims of trafficking can seek punitive in addition to compensatory damages. See *Ditullio v. Boehm*, Case No. 1036012 (November 7, 2011), available at <http://www.ca9.uscourts.gov/datastore/opinions/2011/11/07/10-36012.pdf>.

167 Public Law No. 109-248.

168 CRC/C/OPSC/USA/CO/1, 25 June 2008, Concluding observations of the Committee on the Rights of the Child, para. 40.

	<p>(18 U.S.C. § 1595). Child victims of sexual exploitation under 18 U.S.C. §§ 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, and 2423 are similarly able to seek a civil remedy within 6 years where they have suffered a physical injury (18 U.S.C. § 2255). Under this provision, child victims are deemed to have suffered no less than \$150,000 in damages (18 U.S.C. § 2255).</p>	<p>physical injury under 18 U.S.C. § 2255 from the previous level of \$50,000 (Adam Walsh Child Protection and Safety Act, Section 707).</p>	
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Further Resources:

Child Welfare Information Gateway, Major Federal Legislation Concerned with Child Protection, Child Welfare, and Adoption, U.S. Department of Health and Human Services (2011), available at <http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.pdf>.

Institute for the Study of International Migration, Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States, U.S. Dept. of Justice (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221891.pdf>.

National Institute of Justice, Commercial Sexual Exploitation of Children: What Do We Know and What Do We Do About It?, U.S. Department of Justice (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/215733.pdf>.

The Protection Project, Mohamed Mattar, Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective (2010), available at [http://www.protectionproject.org/wp-content/uploads/2010/09/PP\\_Chartbook\\_English.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/PP_Chartbook_English.pdf).

The Protection Project, The TVPA [(Trafficking Victims Protection Act)] in 4 Colors, available at <http://www.protectionproject.org/wp-content/uploads/2010/09/tvpa4colors.pdf>.

Shared Hope International, The Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation's Children (2011), available at [http://www.sharedhope.org/Portals/0/Documents/Report%20Cards\\_FINAL/PII\\_ChallengeReport\\_FINAL2.pdf](http://www.sharedhope.org/Portals/0/Documents/Report%20Cards_FINAL/PII_ChallengeReport_FINAL2.pdf).

Shared Hope International et al., Report from the U.S. Mid-Term Review on the Commercial Sexual Exploitation of Children in America (2006), available at [http://www.humantrafficking.org/uploads/publications/Final\\_Report\\_11.6.06.pdf](http://www.humantrafficking.org/uploads/publications/Final_Report_11.6.06.pdf).

University of Pennsylvania, The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico (2002), available at [http://www.sp2.upenn.edu/restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf).