

# PROTECTED INNOCENCE INITIATIVE

STATE ACTION . NATIONAL CHANGE.

## INDIANA REPORT CARD

Indiana law provides few options to prosecute demand and buyers are likely to avoid serious penalties. The sex trafficking law requires the use of force, fraud or coercion to cause a minor to engage in commercial sex acts, unless trafficked by a parent. Child victims are not assured a protective response and are not protected by the “rape shield” law when testifying.

FINAL SCORE

62.5

FINAL GRADE

D



3.5

7.5

13

25

10

15

3

10

18.5

27.5

14.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Indiana’s human trafficking laws separately address sex trafficking of a minor under 18 by a parent, guardian or custodian without regard to the use of force, fraud, or coercion. However, the sex trafficking statute applicable to those who are not parents, guardians, or custodians does not distinguish between the sex trafficking of adults versus minors and requires proof of “force, threat of force, or fraud.” The state commercial sexual exploitation of children (CSEC) laws include promoting prostitution and child exploitation; neither refers to the sex trafficking statute for prosecution or victim protection.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state sex trafficking law applies to buyers of commercial sex from trafficking victims but only if the buyer has knowledge that force was used against the minor to cause the prostitution. No CSEC laws include the crime of buying sex with a minor and the patronizing a prostitute statute does not distinguish between purchasing commercial sex acts with an adult versus a minor. Statutes on inappropriate communications with a child and soliciting a child under 16 could provide a means of obtaining heightened penalties for buyers using the Internet to commit illegal sex acts, which could include commercial sex acts with a minor. The sex trafficking law is silent on mistake of age leaving open the possibility of using this defense. Penalties are not staggered based on the age of the victim for the sex trafficking statute; however, possessing child pornography only applies if the victim portrayed is under 16, leaving older minors unprotected. Buyers convicted under the sex trafficking law face mandatory restitution to the victim and could be liable for civil damages, and if convicted of any other felony or misdemeanor sex offense, restitution is not mandatory but may be ordered by the court. Buyers of sex with minors may be required to register as sex offenders if convicted of sex trafficking or possession of child pornography, but not patronizing a prostitute even when a minor is involved.

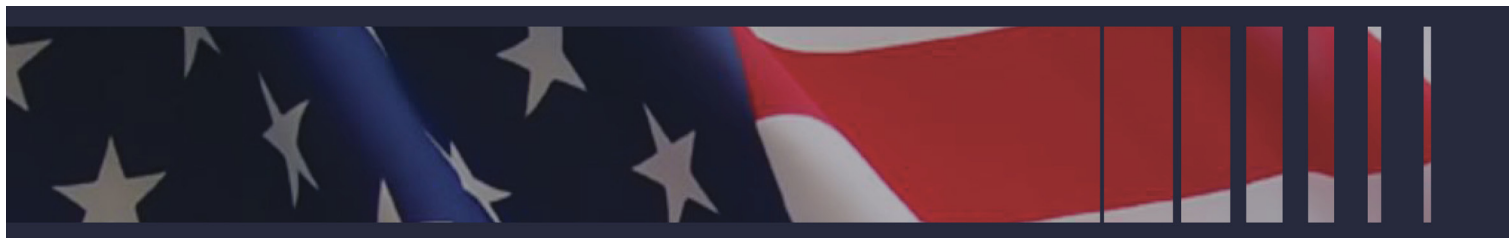
#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available penalty)
Human Trafficking (knowing victim forced into prostitution) (§ 35-42-2.5-1(c))	Class C felony	2–8 years	Max. \$10,000	○
Patronizing a prostitute (§ 35-45-4-3)	Class A misdemeanor	Max. 1 year	Max. \$5,000	○
Possessing child pornography (§ 35-42-4-4(c))	Class D felony	6 months –3 years	Max. \$10,000	●

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

### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under sex trafficking and CSEC laws, and could be subject to criminal gang, money laundering and racketeering laws. The statutes on solicitation of a child under 16 and inappropriate communication with children provide a sentence enhancement to sexual offenses that could reach traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. When convicted of sex trafficking, restitution to the victim is mandatory, and the trafficker could face a civil claim from the victim as well. If convicted of CSEC crimes, a trafficker may be ordered to pay restitution. Traffickers convicted of any crime are subject to asset forfeiture. Traffickers must register as sex offenders if convicted of sex trafficking a minor or promoting prostitution of a minor. Convictions for sex trafficking or CSEC offenses do not result in termination of parental rights. Sex trafficking and promoting prostitution of a minor are felonies punishable by 6–20 years imprisonment, comparable to federal penalties. If a parent, guardian or custodian is convicted of sex trafficking a child, the sentence is heightened to 20–50 years imprisonment. Creating child pornography is a felony punishable by 2–8 years imprisonment. Both sex trafficking and CSEC crimes carry a possible fine not to exceed \$10,000.



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

CSEC victims are vulnerable due to gaps in the laws. Sex trafficking and CSEC laws do not prohibit a defense based on consent of the minor. Prostitution offenses are not limited in application to adults, leaving prostituted minors vulnerable to arrest and detention for prostitution. Minors in prostitution are not identified as victims of sex trafficking. A child victim of prostitution or pornography is considered by law an abused child and a child in need of services and, if identified properly, will receive a protective response through child welfare. Also, the definition of custodian is not limited to those with legal custody of the child and includes “a person with whom the child resides,” making the term broad enough to potentially include a trafficker and therefore allow for child welfare intervention. However, a victim of CSEC could be treated as a delinquent for committing a delinquent act or running away from home and receive possible detention. If identified as a victim and suffering bodily injury, CSEC victims would likely be eligible for state crime victims’ compensation, although several criteria may limit their eligibility, including a bar to recovery if the victim participated or assisted in a criminal act, and possible bar for refusal to cooperate with law enforcement. Also, the crime must be reported within 180 days, unless good cause is shown, which would extend the reporting time to up to two years later. Victim-friendly criminal justice procedures are available to sex trafficking victims, which prevent the release of identifying information and provide separate waiting rooms during trial. Child victims of trafficking under 14 may testify via closed-circuit television. However, the “rape shield” law is limited to victims of child pornography, leaving other CSEC victim-witnesses unprotected from traumatizing cross-examination at trials of their traffickers. Any person, at any time, can petition to have a minor’s criminal record expunged. Criminal restitution is mandatory for victims of sex trafficking and restitution may be awarded to other victims. Civil remedies are also provided for sex trafficking victims. No statute of limitation applies to prosecutions of sex trafficking when a parent or guardian is the trafficker, but there is a five year statute of limitations on prosecutions of other CSEC felonies and a two year statute of limitations for misdemeanors. For civil claims based on damages from being trafficked, a two year statute of limitations begins to run after the offender’s conviction on criminal charges.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human and sex trafficking is mandated. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations for sex trafficking, but not for child pornography or prostitution-related offenses. No laws expressly authorize the use of a decoy or the Internet in sex trafficking investigations, but these investigative tools could be used relying on the child solicitation statute, applicable to in-person and online solicitations when a person over 18 solicits a child under 14 or a person over 21 solicits a person under 16 to engage in sexual activity, which could include trafficking. Similarly, the statute on inappropriate communication with a child could permit a decoy when a person over 21 communicates with a minor under 14 concerning sexual activity. Indiana has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state sex trafficking law does not include the crime of assisting, enabling, or financially benefitting from sex trafficking. The crime of promoting prostitution may apply to facilitators, and facilitators could be subject to criminal gang activity, money laundering and racketeering law. Though not mandatory, a facilitator could be ordered to pay restitution. Facilitators are also subject to asset forfeiture. No laws in Indiana address sex tourism. CSEC crimes applicable to facilitators—promoting prostitution and sponsoring, producing and selling child pornography—are felonies punishable by 2–8 years imprisonment and a possible fine not to exceed \$10,000.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org/reportcards.aspx](http://www.sharedhope.org/reportcards.aspx).

