

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## INDIANA REPORT CARD 2012

*Indiana law provides few options to prosecute demand and buyers are likely to avoid serious penalties. The sex trafficking law does not require the use of force, fraud or coercion to cause a minor to engage in commercial sex acts if the minor is under 16, but the trafficking law fails to protect older minors.*

FINAL SCORE

70.5

FINAL GRADE

C



7

10

13

25

12

15

3

10

21

27.5

14.5

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Indiana's human trafficking laws separately address sex trafficking of a minor under 16 without requiring proof of force, fraud, or coercion. However, proof of "force, threat of force, or fraud" is required in prosecutions involving older minors. The state commercial sexual exploitation of children (CSEC) laws include promoting prostitution and child exploitation; neither of these laws nor the prostitution law refer to the sex trafficking statute to identify commercially sexually exploited minors as victims of sex trafficking. Indiana's racketeering law defines racketeering activity to include sex trafficking and CSEC offenses as predicate acts.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

Because the state sex trafficking law provision that applies to buyers of commercial sex does not distinguish between trafficking an adult versus a minor, the buyer must have knowledge that a minor victim was forced to engage in the prostitution. No CSEC laws make it a crime to buy sex with a minor and the offense of patronizing a prostitute does not distinguish between purchasing commercial sex acts with minors versus adults. Statutes on inappropriate communications with a child and soliciting a child under 16 could provide a means of obtaining heightened penalties for buyers who use the Internet to commit illegal sex acts, potentially including commercial sex acts with a minor. The sex trafficking law is silent on mistake of age leaving open the possibility of buyers using this defense. 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 civil discretionary vehicle forfeiture applies to offenses involving possession of child pornography. 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.

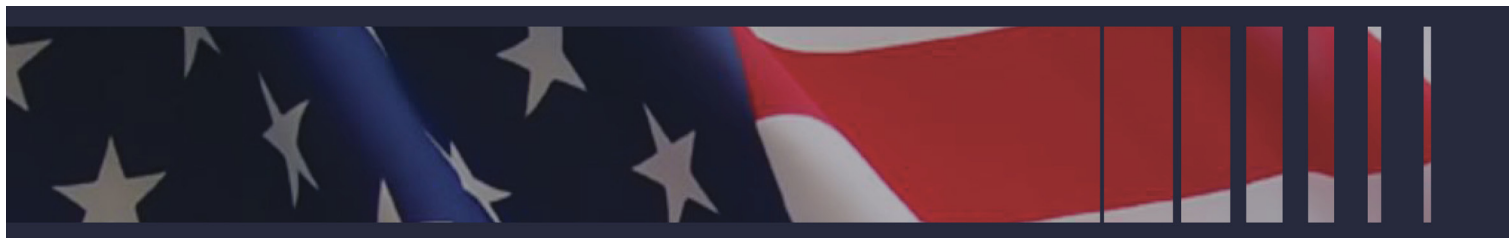
### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker faces prosecution under sex trafficking and CSEC laws. While promotion of human trafficking of a minor and promoting prostitution of a minor are Class B felonies punishable by 6–20 years imprisonment, sexual trafficking of a minor, which makes it a crime to sell a minor under 16 for purposes of prostitution, is a Class A felony punishable by 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. 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, whereas a trafficker convicted of a CSEC crime may be ordered to pay restitution. Traffickers face discretionary civil forfeiture of any assets purchased with proceeds of criminal activity and forfeiture of vehicles used in child exploitation. 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, leaving children of traffickers at potential risk.

#### 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.*



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking and CSEC crimes are vulnerable due to gaps in the laws. Consent of the minor is a prohibited defense for some, but not all, sex trafficking offenses, and this defense is not prohibited in prosecutions under CSEC laws. Prostituted minors are not identified as victims of sex trafficking and may be prosecuted under the age-neutral prostitution statute. A child victim of prostitution or pornography is considered by law an abused child and a child in need of services allowing a 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. CSEC victims are eligible for state crime victims’ compensation, although eligibility criteria may present barriers, 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. Although exceptions exist for victims of a child sex crime, defined to include non-commercial sex offenses, CSEC and trafficking offenses must be reported within 72 hours and an application for compensation must be submitted within 180 days, unless good cause is shown, which would extend the application period 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 and non-commercial sex offenses, 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 sexual trafficking of a minor, but a five year statute of limitations applies to all other prosecutions under the trafficking law, including promotion of human trafficking of a minor, and to all other CSEC felonies. 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 PROVISIONS FOR FACILITATORS

The state sex trafficking law does not include the crime of assisting, enabling, or financially benefiting from sex trafficking, limiting its impact on trafficking crimes. The crime of promoting prostitution may apply to facilitators, and facilitators face mandatory restitution for criminal gang activity, money laundering and racketeering law. 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 up to \$10,000. Although not mandatory, a facilitator could be ordered to pay restitution. Facilitators also face discretionary civil forfeiture of any assets purchased with proceeds of criminal activity and forfeiture of vehicles used in child exploitation. No laws in Indiana address sex tourism.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Training on human trafficking and sex trafficking is mandated by law. 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.

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](http://www.sharedhope.org).

