

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## IDAHO REPORT CARD 2013

*Idaho's human trafficking law includes sex trafficking of minors, relying on certain predicate crimes of commercial sexual exploitation of children (CSEC), sex exploitation for child pornography and general sexual offenses. Minors are not statutorily immune from prosecution for prostitution and may face barriers to victims' compensation to fund their recovery.*

FINAL SCORE

64

FINAL GRADE

D



7.5

10

18

25

15

15

5

10

8.5

27.5

10

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Idaho's human trafficking law includes the sex trafficking of minors without regard to force, fraud, or coercion; however, human trafficking is not punished as an independent crime, but rather may be punished only where the offender engages in human trafficking while committing another specified crime. The state CSEC crimes include: inducing a minor into prostitution, utilizing a person under eighteen years of age for prostitution and sexual exploitation of a child. The prostitution law does not refer to the human trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. Idaho's racketeering law includes several predicate human trafficking offenses in the definition of racketeering activity, but not the offense of human trafficking.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The human trafficking offense can apply to buyers who induce a minor to perform a commercial sex act while violating patronizing prostitution law or certain sex offense laws. Buyers may also be prosecuted for the CSEC offense of utilizing a person under eighteen years of age for prostitution. Buyers convicted of human trafficking face mandatory restitution to the victim. Buyers are not subject to asset forfeiture. Buyers may be prosecuted for enticing children under 16 through the Internet or other communication device to engage in a sexual act, although this offense does not specifically include purchasing sex with a child. Idaho's human trafficking law and the CSEC offense of utilizing a person under eighteen years of age for prostitution are silent on mistake of age. Buyers convicted of sex trafficking, utilizing a person under eighteen years of age for prostitution, or enticing children under 16 through the Internet or other communication device are required to register as sex offenders.

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers face prosecution for human trafficking when they traffic a child while violating another sexual offense, including inducing a minor into prostitution, sexual exploitation of a child, enticing children through the Internet or other communication device, and any of Idaho's prostitution-related laws. Human trafficking is punishable by up to 25 years imprisonment. Inducing a minor into prostitution and sexual exploitation of a child for child pornography are felonies punishable by possible fines up to \$50,000 and imprisonment for 2 years—life and up to 30 years, respectively. Traffickers could also be subject to money laundering, criminal gang, and racketeering laws leading to additional penalties. Enticing children under 16 through the Internet or other communication device also provides a means of prosecuting traffickers who use the Internet to solicit minors for child pornography, but does not expressly apply to recruiting or selling commercial sex acts with a minor. Traffickers convicted of human trafficking face mandatory restitution, while those convicted of other crimes may be ordered to make restitution. Traffickers face civil asset forfeiture if convicted of the prostitution offense of procurement or the CSEC offense of inducing persons under 18 into prostitution, or if the property is deemed a moral nuisance in connection with prostitution offenses. Traffickers must register as sex offenders for convictions of human trafficking and all CSEC offenses. Convictions for human trafficking or CSEC offenses do not establish grounds for termination of parental rights, leaving children of traffickers at potential continuing risk.

#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and)	Asset Forfeiture (available)
Human trafficking (§ 18-8602)	Felony	Max. 25 years	None specified	<input type="radio"/>
Utilizing a person under 18 years of age for prostitution (§ 18-5610)	Felony	2 years-life	Max. \$50,000	<input type="radio"/>
Patronizing prostitution (§ 18-5614(1))	Misdemeanor	Max. 6 months	Max. \$1,000	<input type="radio"/>
Possessing and purchasing child pornography (§ 18-1507A)	Felony	Max. 10 years	Max. \$10,000	<input type="radio"/>

*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 sex trafficking and CSEC are not fully protected as victims under Idaho's laws. Human trafficking and CSEC laws do not prohibit a defense based on consent of the minor. Prostitution offenses are not limited in application to adults, do not identify a juvenile involved in prostitution as a victim of human trafficking, and provide no affirmative defenses to a minor charged with the offense. As a result, a CSEC victim may enter the juvenile justice system as an offender and could face detention. However, if properly identified, a victim could receive a protective response through child welfare, as the definition of abuse includes the commercial sexual exploitation of a child through prostitution and child pornography. This protection may be limited by the definition of custodian, which does not clearly apply to a trafficker and could prevent a child welfare response. Crime victims' compensation is available for victims of CSEC offenses; however, being considered an accomplice to the crime, not fully cooperating with law enforcement, and not reporting the crime and filing a claim for compensation within specified time limits could prevent CSEC victims from receiving compensation. Victim-friendly criminal justice procedures are also limited. While child witnesses are allowed to give testimony via an alternative method preventing interaction with the perpetrator at trial, Idaho's "rape shield" law only applies in criminal cases of rape, leaving testifying CSEC victims unprotected from the trauma of cross-examination at trials of their traffickers. A juvenile's records may be expunged on the later of the juvenile's 18th birthday, five years from release from a juvenile corrections center, or five years after the end of the continuing jurisdiction of the court, provided the juvenile has not been convicted of specified crimes and the court determines that expungement is appropriate. Criminal restitution is mandatory for victims of human trafficking and may be awarded to victims of other crimes; however, civil remedies are only available to victims of sexual exploitation of a child or racketeering. Prosecutions for human trafficking and CSEC offenses must be brought within six years of the crime. For civil actions for childhood sexual abuse, including sexual exploitation of a child, a five year statute of limitations does not begin until the earlier of the victim turning 18, or the time the victim "reasonably should have discovered" the exploitation. Civil remedies for racketeering must be brought within three years of the crime, except that the statute of limitations will toll for six months past a minor victim's 18th birthday.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Idaho law encourages, but does not require, law enforcement to receive training on human trafficking. The state allows single party consent to audiotaping and wiretapping is allowed in investigations for any crime that is dangerous to "life, limb or property" and that may be punished by imprisonment for more than one year, which includes CSEC and human trafficking offenses (but not the predicate offense of patronizing prostitution for buyers). No law expressly authorizes the use of a decoy or the Internet in the investigation of prostitution of children, but investigations into sexual exploitation for child pornography may use the Internet, relying on the crime of enticing children under 16 over the Internet for sexual exploitation. Idaho has established a statewide reporting and response system and law enforcement must report missing and located children.



## CRIMINAL PROVISIONS FOR FACILITATORS

Human trafficking does not include the crime of benefitting from or assisting and aiding human trafficking and none of the CSEC laws apply to facilitators, though facilitators may face prosecution under prostitution-related laws that are not specific to the prostitution of children. Promoting or selling child pornography is punishable under sexual exploitation of a child as a felony by up to 30 years imprisonment and/or a fine up to \$50,000. Facilitators could also be subject to money laundering, criminal gang, and racketeering laws leading to additional penalties and will be subject to asset forfeiture if convicted under racketeering laws, or if the facilitator's property is deemed a moral nuisance. No laws in Idaho address sex tourism.

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).

