

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2015 ANALYSIS AND RECOMMENDATIONS INDIANA

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Legal Analysis¹:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) criminalizes sex trafficking of a minor under 18 years of age without requiring proof of force, fraud or coercion under two subsections: “promotion of human trafficking of a minor” in subsection (b) and “sexual trafficking of a minor” in subsection (c).

Subsection (b) provides,

A person who knowingly or intentionally recruits, harbors, or transports a child less than:
(1) eighteen (18) years of age with the intent of:

¹This report includes legislation enacted as of August 1, 2015.

- (A) engaging the child in:
 - (i) forced labor; or
 - (ii) involuntary servitude; or
 - (B) inducing or causing the child to:
 - (i) engage in prostitution; or
 - (ii) participate in sexual conduct (as defined by IC 35-42-4-4);
- (2) sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct (as defined by IC 35-42-4-4);
- commits promotion of human trafficking of a minor, a Level 3² felony. Except as provided in subsection (e),³ it is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.

Subsection (c) states, “A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Level 2⁴ felony.”

Ind. Code Ann. § 35-42-3.5-1(d) is age neutral and provides,

A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

- (1) forced labor;
- (2) involuntary servitude; or
- (3) prostitution; commits human trafficking, a Level 5⁵ felony.

² A Level 3 felony is punishable with a term of imprisonment between 3-20 years, “with the advisory sentence being six (6),” and a possible fine up to \$10,000. Ind. Code Ann. §35-50-2-5(b).

³ Pursuant to Ind. Code Ann. § 35-42-3.5-1(e),

It is a defense to a prosecution under subsection (b)(2) if:

- (1) the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or
- (2) all the following apply:
 - (A) The person is not more than four (4) years older than the victim.
 - (B) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
 - (C) The crime:
 - (i) was not committed by a person who is at least twenty-one (21) years of age;
 - (ii) was not committed by using or threatening the use of deadly force;
 - (iii) was not committed while armed with a deadly weapon;
 - (iv) did not result in serious bodily injury;
 - (v) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and
 - (vi) was not committed by a person having a position of authority or substantial influence over the victim.
 - (D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.

⁴ A Level 2 felony is punishable by an imprisonment term of 10–30 years, “with the advisory sentence being 17 1/2 years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-4.5.

Subsection (a), which is also age-neutral, provides,

A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person: by force, threat of force, or fraud:

- (1) to engage the other person in:
 - (A) forced labor; or
 - (B) involuntary servitude; or
- (2) to force the other person into:
 - (A) marriage; or
 - (B) prostitution; or
 - (C) participating in sexual conduct (as defined by IC 35-42-4-4); commits promotion of human trafficking, a Level 4⁶ felony.

1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*

Two laws treat CSEC separately from non-commercial sex offenses in Indiana.

1. Ind. Code Ann. § 35-45-4-4 (Promoting prostitution) states,

A person who:

- (1) Knowingly or intentionally entices or compels another person to become a prostitute;
- (2) Knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution;
- (3) Having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution;
- (4) Receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or
- (5) Knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution.

commits promoting prostitution, a Level 5⁷ felony. However, the offense is a Level 4⁸ felony under subdivision (1) if the person enticed or compelled is under eighteen (18) years of age.

2. Ind. Code Ann. § 35-42-4-4(b) (Child exploitation) states

A person who knowingly or intentionally:

- (1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;
- (2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual

⁵ A Level 5 felony is punishable by an imprisonment term of 2-8 years, “with the advisory sentence being four (4) years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-6(c).

⁶ A Level 4 felony is punishable by a term of imprisonment between 2-12 years, “with the advisory sentence being four (4) years” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-5.5.

⁷ See *supra* note 5.

⁸ See *supra* note 6.

conduct by a child under eighteen (18) years of age; or
(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;
commits child exploitation, a Level 5⁹ felony.

Certain non-commercial sexual offenses may be applicable in cases involving the commercial sexual exploitation of a child. These include the following:

1. Ind. Code Ann. § 35-42-4-6 (Child solicitation), which states,

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits¹⁰ a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) other sexual conduct (as defined in IC 35-31.5-2-221.5¹¹); or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Level 5¹² felony.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) other sexual conduct (as defined in IC 35-31.5-2-221.5); or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Level 5¹³ felony.

2. Ind. Code Ann. § 35-42-4-9(a) (Sexual misconduct with a minor) states

A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits sexual misconduct with a minor, a Level 5¹⁴ felony. However,

⁹ See *supra* note 5.

¹⁰ Solicitation is defined as “to command, authorize, urge, incite, request, or advise an individual.” Ind. Code Ann. § 35-42-4-6(a).

¹¹ Other sexual conduct is defined as “an act involving: (1) a sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object.” Ind. Code Ann. § 35-31.5-2-221.5.

¹² See *supra* note 5.

¹³ See *supra* note 5.

¹⁴ See *supra* note 5.

the offense is:

(1) a Level 4¹⁵ felony if it is committed by a person at least twenty-one (21) years of age. . .

3. Comparatively, Ind. Code Ann. § 35-42-4-9(b) (Sexual misconduct with a minor) states
A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Level 6¹⁶ felony. However, the offense is:
(1) a Level 5¹⁷ felony if it is committed by a person at least twenty-one (21) years of age. . .
4. Ind. Code Ann. § 35-42-4-13(c) (Inappropriate communication with child) makes it illegal if a person 18 or older, other than a parent, guardian, or custodian of the child, or a person acting with the child's parent, guardian's, or custodian's permission, "knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity¹⁸ with the intent to gratify the sexual desires of the person or the individual"¹⁹
5. Ind. Code Ann. § 35-42-4-3(a) (Child molesting) makes it illegal if a person "knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct" if the child is under 14. Generally, a violation is a Level 3²⁰ felony.²¹ Ind. Code Ann. §§ 35-42-4-3(a), 35-50-2-5.

Similarly, Ind. Code Ann. § 35-42-4-3(b) (Child molesting) makes it illegal if a person "performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person" if the child is under 14. Generally, a violation is a Level 4²² felony. Ind. Code Ann. §§ 35-42-4-3(b), 35-50-2-6(a).²³

6. Under Ind. Code Ann. § 35-42-4-5(a) (Vicarious sexual gratification), "A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or herself or another child under the age of sixteen (16) with intent to arouse

¹⁵ See *supra* note 6.

¹⁶ A Level 6 felony is punishable by an imprisonment term of six (6) months to two and one half (2 ½) years, with a 1-year advisory sentence, and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-7(b).

¹⁷ See *supra* note 5.

¹⁸ "Sexual activity" is defined as "sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or the fondling or touching of the buttocks, genitals, or female breasts." Ind. Code Ann. § 35-42-4-13(b).

¹⁹ Ind. Code Ann. § 35-42-4-13(c) states in part that violation of the statute is classified as: ". . . . a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a))." A Class B misdemeanor is punishable by a sentence of up to 180 days' imprisonment and a possible fine up to \$1,000. If the buyer communicates with the victim via computer network, the offense increases to a Class A misdemeanor with up to one year imprisonment and a maximum fine of \$5,000. Ind. Code Ann. §§ 35-42-4-13(c), 35-50-3-2.

²⁰ See *supra* note 2.

²¹ Pursuant to Ind. Code Ann. § 35-42-4-3(a), the penalty for this offense is enhanced to a Level 1 felony if "(1) it is committed by a person at least twenty-one (21) years of age; (2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon; (3) it results in serious bodily injury" or it involves drugs or a controlled substance being given to the victim without the victim's knowledge.

²² See *supra* note 6.

²³ Pursuant to Ind. Code Ann. § 35-42-4-3(b) the offense increases to a Level 2 felony when conditions of deadly force, a deadly weapon, or drugs given to the victim without his or her knowledge are present. Ind. Code Ann. § 35-42-4-3(b)(1). See *supra* note 4.

or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification” This crime is a Level 5²⁴ felony. Ind. Code Ann. §§ 35-42-4-5(a), 35-50-2-6(c).

7. Ind. Code Ann. § 35-42-4-5(b) states,

A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

- (1) engage in sexual intercourse with another child under sixteen (16) years of age;
 - (2) engage in sexual conduct with an animal other than a human being; or
 - (3) engage in other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person;
- with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Level 4²⁵ felony. . . .

It is also unlawful under Ind. Code Ann. § 35-42-4-5(c) when an adult “knowingly or intentionally: (1) engages in sexual intercourse; (2) engages in other sexual conduct (as defined in IC 35-31.5-2-221.5); or (3) touches or fondles the person’s own body; in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person” A violation of Ind. Code Ann. §§ 35-42-4-5(c) is classified as a Level 6²⁶ felony. Ind. Code Ann. § 35-50-2-7(b).

1.3 *Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Ind. Code Ann. § 35-45-4-2(b)²⁷ (Prostitution) provides that

It is a defense to a prosecution under this section that the person was:

- 1) a child (as defined in IC 35-47-10-3); and
 - 2) a victim or an alleged victim of an offense under IC 35-42-3.5-1 [Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking];
- at the time the person engaged in the prohibited conduct.”

1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Ind. Code Ann. § 35-45-6-2 (Corrupt business influence) states,

A person:

- (1) who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise;

²⁴ See *supra* note 5.

²⁵ See *supra* note 6. Pursuant to Ind. Code Ann. § 35-42-4-5(b), the offense is raised one degree if the victim is less than 14 and four degrees if it committed with deadly force, a deadly weapon, results in serious bodily injury, or if drugs or controlled substances were given to the victim without his or her knowledge.

²⁶ See *supra* note 16.

²⁷ The text of Ind. Code Ann. § 35-45-4-2 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1216 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

(2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise; or
(3) who is employed by or associated with an enterprise, and who knowingly or intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity;
commits corrupt business influence, a Level 5²⁸ felony.

Pursuant to Ind. Code Ann. § 35-45-6-1(e) (Definitions), “racketeering activity means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

- ...
(8) Human and sexual trafficking crimes (IC 35-42-3.5)
(9) Child exploitation (IC 35-42-4-4)
(24) Promoting prostitution (IC 35-45-4-4).

A “pattern of racketeering activity” is defined in Ind. Code Ann. § 35-45-6-1(d) as “engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents.” The definition also states, “[T]he incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.”

Ind. Code Ann. § 35-45-6-2 (Corrupt business influence) makes it a Level 5²⁹ felony if a person, among other things, “knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and . . . uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise.”

Where the alleged enterprise is a criminal gang³⁰ other statutes also apply. Ind. Code Ann. § 35-45-9-3(c) states, “A person who knowingly or intentionally commits an act (1) with the intent to benefit, promote, or further the interests of a criminal gang; or (2) for the purpose of increasing the person’s own standing or position within a criminal gang; commits criminal gang activity.”

“Criminal gang” is defined as “a group with at least three (3) members that specifically: (1) either: (A) promotes, sponsors, or assists in; or (B) participates in; or (2) requires as condition of membership or continued membership; the commission of a felony or an act that would be a felony if committed by an adult . . .” Ind. Code Ann. § 35-45-9-1. Criminal gang activity is a Level 6³¹ felony. Ind. Code Ann. §§ 35-45-9-3(c)(2), 35-50-2-7(b).

²⁸ See *supra* note 5.

²⁹ See *supra* note 5.

³⁰ A person who “knowingly or intentionally solicits, recruits, entices, or intimidates another to join a criminal gang or remain in a criminal gang” commits criminal gang recruitment, a Level 6 felony. Ind. Code Ann. §§ 35-45-9-5, 35-50-2-7(a). See *supra* note 16.

³¹ See *supra* note 16.

Legal Components:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
 - 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
 - 2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
 - 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
 - 2.5 *Using the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
 - 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
 - 2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*
 - 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
 - 2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*
 - 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*
-

Legal Analysis:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*

Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) makes it a crime to purchase sex with a trafficking victim when force was used. That section states, “A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into: (1) forced labor; (2) involuntary servitude; or (3) prostitution; commits human trafficking, a Level 5³² felony.”

However, Ind. Code Ann. § 35-42-3.5-1(d) does not distinguish between or provide heightened penalties for buyers of commercial sex with a minor as opposed to buyers of commercial sex with an adult. Moreover, subsection (d) of the human trafficking statute requires the buyer to have knowledge that the victim was forced into prostitution by restricting its application to a person who knowingly purchases sex with “an individual who the person knows has been forced into . . . prostitution.” Ind. Code Ann. § 35-42-3.5-1(d)(3). This crime is a Level 5³³ felony. Ind. Code Ann. §§ 35-42-3.5-1(d).

³² See *supra* note 5.

³³ See *supra* note 5.

2.1.1 Recommendation: Amend Ind. Code Ann. § 35-42-3.5-1(d) to eliminate the requirement that the buyer have knowledge that the victim was forced into prostitution when the victim is a minor and provide a heightened penalty for these offenses.³⁴

2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*

Indiana's CSEC offenses do not make it a crime to purchase commercial sex acts with a minor. While not expressly commercial, Ind. Code Ann. § 35-42-4-6(b) (Child solicitation) makes it illegal if an adult "knowingly or intentionally solicits³⁵ a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in: sexual intercourse; other sexual conduct (as defined in IC 35-31.5-2-221.5);³⁶ or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person." Similarly, Ind. Code Ann. § 35-42-4-6(c) makes it illegal if a person 21 years of age or older "knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in: (1) sexual intercourse; (2) other sexual conduct; or (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person." Ind. Code Ann. § 35-42-4-6(c). Both of these offenses are generally Level 5³⁷ felonies. Ind. Code Ann. § 35-42-4-6(b), (c).

Additionally, under Ind. Code Ann. § 35-42-4-6(b)(2) if a person solicits a child or person they believe to be younger than 14 years of age "to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) and: commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual person believed to be a child; or has a previous unrelated conviction for committing an offense under this section" they have committed a Level 4³⁸ felony. Ind. Code Ann. § 35-42-4-6(b) additionally adds that the person whom solicits the "child or individual person believed to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) and makes the solicitation by using a computer network (as defined in IC 35-43-2-3(a))" a Level 5³⁹ felony. However, there is still a divisional difference between the solicitation of an older and younger minor, as 16 and 17-year-old minors are not included. Ind. Code Ann. § 35-42-4-6.

Other non-commercial sexual offense laws could also be used to prosecute buyers of sex with minors. However, most apply only to minors under the ages of 14 or 16. Specifically, buyers of sex with a younger minor may be prosecuted under Ind. Code Ann. § 35-42-4-9(a) (Sexual misconduct with a minor), § 35-42-4-9(b) (Sexual misconduct with a minor), § 35-42-4-3 (Child molesting), § 35-42-4-5(a) (Vicarious sexual gratification), and § 35-42-4-13(c) (Inappropriate communication with child). Violations of these laws range

³⁴ See generally SHARED HOPE INTERNATIONAL, "Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims," JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

³⁵ See *supra* note 10.

³⁶ See *supra* note 11.

³⁷ See *supra* note 5.

³⁸ See *supra* note 6.

³⁹ See *supra* note 5.

from Class B misdemeanors to Level 2 felonies, and penalties range from an imprisonment term of 180 days–50 years with possible fines between \$1,000 and \$10,000.⁴⁰

2.2.1 Recommendation: Enact a law that separately criminalizes buying sex with a minor.

2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*

Ind. Code Ann. § 35-45-4-3 (Patronizing a prostitute) does not differentiate between buying sex with an adult and the buying of sex with a minor. A Class A misdemeanor is committed when a person

knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person:
(1) For having engaged in, or on the understanding that the other person will engage in, sexual intercourse or other sexual conduct (as defined in IC-35-31.5-2-211.5) with the person or with any other person; or
(2) For having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person. Ind. Code Ann. § 35-45-4-3.

A violation is punishable by a prison sentence up to 1 year and a possible fine not to exceed \$5,000. Ind. Code Ann. §§ 35-45-4-3, 35-50-3-2. Buyers with two prior convictions will be charged with a Level 6⁴¹ felony. Ind. Code Ann. §§ 35-50-2-7(a),⁴² 35-45-4-3. The same penalties apply regardless of the prostituted person's age.

2.3.1 Recommendation: Amend Ind. Code Ann. § 35-45-4-3 (Patronizing a prostitute) to refer cases of patronizing a prostitute where the victim is under 18 to Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) to clarify that purchasing sex with a minor is trafficking.

2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*

A buyer of a commercial sex act from a child can be charged with a variety of offenses under Indiana law. For example, when applicable to buyers, a violation of Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) is a Level 5⁴³ felony.

Also, several non-commercial sexual offenses may apply to buyers, including violations of Ind. Code Ann. § 35-42-4-3(a) (Child molesting), which is a Level 3⁴⁴ felony, and Ind. Code Ann. § 35-42-4-9(a) and (b) (Sexual misconduct with a minor), which are Level 5⁴⁵ and 6⁴⁶ felonies respectively. An adult buyer convicted under Ind. Code Ann. § 35-42-4-6(b) or (c) (Child solicitation) is guilty of a Level 5⁴⁷ felony.

Numerous crimes could be charged under Ind. Code Ann. § 35-42-4-5 (Vicarious sexual gratification), which result in a Level 4, 5⁴⁸ or 6⁴⁹ felony depending on the exact conduct.⁵⁰

⁴⁰ See *supra* Section 1.2 for a full description of these offenses.

⁴¹ See *supra* note 16.

⁴² See *supra* note 16.

⁴³ See *supra* note 5.

⁴⁴ See *supra* note 2.

⁴⁵ See *supra* note 5.

⁴⁶ See *supra* notes 16.

⁴⁷ See *supra* note 5.

⁴⁸ See *supra* note 5.

Additionally, a conviction under Ind. Code Ann. § 35-42-4-13(c) (Inappropriate communication with child), is punishable as a Class A misdemeanor if done over a computer network (as defined in IC 35-43-2-3(a)); and a Level 6⁵¹ felony if the person has a prior unrelated conviction for a sex offense.⁵² Ind. Code Ann. §§ 35-42-4-13(c), 35-50-3-3.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA),⁵³ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense⁵⁴ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,⁵⁵ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.⁵⁶

- 2.4.1 Recommendation: Amend Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) to increase the penalty to reflect the seriousness of the offense.

⁴⁹ See *supra* note 16.

⁵⁰ See *supra* note 25.

⁵¹ See *supra* note 16.

⁵² Ind. Code Ann. § 35-42-4-13 states that the offense is a Class B misdemeanor punishable as by up to 180 days' imprisonment and a maximum fine of \$1,000. If committed over a computer network the offense is a Class A misdemeanor.

⁵³ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

⁵⁴ Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

⁵⁵ 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

⁵⁶ 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both.); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

2.5 *Using the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*

No Indiana law independently makes it a crime to use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor. However, several laws include penalty enhancements for the buyers using the Internet to commit an offense.

Under Ind. Code Ann. § 35-42-4-13(c) (Inappropriate communication with child), the penalty is raised from a Class B misdemeanor, which carries a sentence of no more than 180 days' imprisonment and a possible fine up to \$1,000, to a Class A misdemeanor, which carries a sentence of no more than 1 year imprisonment and a possible fine up to \$5,000, if "the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a))."⁵⁷

Similarly, Ind. Code Ann. § 35-42-4-6 (Child solicitation), imposes a penalty enhancement for a buyer who uses a computer network to solicit a minor or "individual believed to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse," making the crime a Level 5⁵⁸ felony. A buyer who did not use a computer network to solicit the child would only be guilty of a Level 6⁵⁹ felony. Ind. Code Ann. § 35-42-4-6(b).

2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*

Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) is silent on the availability of a mistake of age defense for a person prosecuted under these statutes for sex trafficking a minor under 18. A mistake of age defense is not expressly provided for in Ind. Code Ann. § 35-42-4-6(a) or (b) (Child solicitation) or § 35-42-4-13(c) (Inappropriate communication with child), as these provisions apply where the buyer *believes* the victim to be under the relevant age.

Some sexual offense laws, however, do expressly provide buyers with the defense of mistake of age. For some violations of Ind. Code Ann. § 35-42-4-9(a) and (b) (Sexual misconduct with a minor) and § 35-42-4-3(a) and (b) (Child molesting), buyers who "reasonably believed" that the child was at least 16 years old at the time of the offense may assert the defense of mistake of age. Ind. Code Ann. §§ 35-42-4-9(c), 35-42-4-3(c).

In any case, Ind. Code Ann. § 35-41-3-7 (Mistake of fact) states, "It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense."

2.6.1 Recommendation: Enact a law expressly prohibiting the defense of mistake of age in any prosecution for purchasing commercial sex acts with a minor.

2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*

⁵⁷ See *supra* note 19.

⁵⁸ See *supra* note 5.

⁵⁹ See *supra* note 16.

Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) does not distinguish between purchasing sex with a minor and purchasing sex with an adult. A buyer convicted of this offense faces a Level 5⁶⁰ felony. Ind. Code Ann. § 35-42-3.5-1(d).

None of Indiana’s CSEC laws make it a crime to purchase commercial sex acts with a minor.⁶¹ Therefore, buyers who purchase sex with minors over the age of 16 would be prosecuted under Ind. Code Ann. § 35-45-4-3 (Patronizing a prostitute). A conviction under Ind. Code Ann. § 35-42-4-6 is punishable as a Level 5⁶² felony, whereas a conviction under Ind. Code Ann. § 35-45-4-3 is punishable as a Class A misdemeanor by a sentence no greater than 1 year imprisonment and a possible fine up to \$5,000. Ind. Code Ann. §§ 35-42-4-6(b)-(c), 35-45-4-3, 35-50-2-6(c), 35-50-3-2.

2.7.1 Recommendation: Amend Ind. Code Ann. § 35-42-3.5-1(d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) to provide substantial penalties for all offenses involving a minor under 18.

2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*

Buyers of sex with minors convicted of Level 1, 3, 5, or 6, felonies (i.e. human trafficking, third violations of patronizing a prostitute, child solicitation, sexual misconduct with a minor, child molesting, vicarious sexual gratification, and child exploitation) may be ordered to pay a possible fine not exceeding \$10,000. Ind. Code Ann. §§ 35-50-2-4 to -7. Those convicted of Class A misdemeanors (patronizing a prostitute for a first or second time and inappropriate communication with a child using a computer network) can be ordered to pay a possible fine up to \$5,000, while those convicted of Class B misdemeanors (inappropriate communication with a child without use of a computer network) can be required to pay a possible fine up to \$1,000. Ind. Code Ann. §§ 35-50-3-2, 35-50-3-3.

A court shall order a buyer convicted of violating Indiana’s human trafficking law to make restitution to the victim Ind. Code Ann. § 35-42-3.5-2 (Restitution to victim) states, “In addition to any sentence or fine imposed for a conviction of an offense under Section 1 [IC 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking)] of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.” Ind. Code Ann. § 35-50-5-3(k) states,

The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim’s labor or services.
- (2) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of:

(A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or

(B) IC 22-2-2 (Minimum Wage); whichever is greater.

Restitution may be ordered, at the discretion of the court, for violations of CSEC and sexual offense laws under Ind. Code Ann. § 35-50-5-3(a) (Restitution orders), which permits the court to order a defendant convicted of a felony or misdemeanor to make restitution to the victim. In determining the amount of restitution a defendant must pay, pursuant to Ind. Code Ann. § 35-50-5-3(a), the court will consider the following:

⁶⁰ See *supra* note 5.

⁶¹ See *supra* Section 2.2.

⁶² See *supra* note 5.

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

Buyers are also subject to some limited seizure provisions, which are civil and discretionary in nature. Vehicles used by buyers to “(A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of . . . child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4) [including possession of child pornography]” may be seized pursuant to Ind. Code Ann. § 34-24-1-1(a)(4) (Property which may be seized). Ind. Code Ann. § 34-24-1-1(18)⁶³ also provides for forfeiture of “[r]eal or personal property, including a vehicle, that is used by a person to: (A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of; a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4 (promoting prostitution).” Pursuant to Ind. Code Ann. §34-24-1-9, “The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.” Seizure of forfeitable property is governed by Ind. Code Ann. § 34-24-1-9.

Buyers may also face forfeiture under nuisance laws.⁶⁴ Ind. Code Ann. § 32-30-7-1⁶⁵ (“Indecent nuisance” defined) provides,

As used in this chapter, “indecent nuisance” means a:

- (1) place in or upon which prostitution (as described in IC 35-45-4);
 -
 - (4) public place in or upon which human trafficking (as described in IC 35-42-3.5-1);
- is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Ind. Code Ann. § 32-30-7-24.5⁶⁶ (Distribution of money) provides,

⁶³ The text of Ind. Code Ann. § 34-24-1-1 included here and elsewhere in this report includes amendments made by the passage of S.E.A. No. 532 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

⁶⁴ Ind. Code Ann. § 32-30-7-1 (“Indecent nuisance” defined) provides in part,

(a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

- (1) direct the removal of all personal property and contents that:
 - (A) are located at the place described in the complaint;
 - (B) are used in conducting the indecent nuisance

⁶⁵ The text of Ind. Code Ann. § 32-30-7-1 included here and elsewhere in this report includes amendments made by the passage of S.E.A. No. 532 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

Money collected under this chapter concerning a public place in or upon which human trafficking (as described in IC 35-42-3.5-1) is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose shall be distributed as follows:

(1) Eighty percent (80%) of the money collected shall be deposited in the human trafficking prevention and victim assistance fund established by IC 5-2-6-25, to be used for the purposes of the fund.

(2) Twenty percent (20%) of the money collected shall be transferred to the county auditor for deposit in the county general fund. Money deposited in the county general fund under this subdivision may only be appropriated to the prosecuting attorney to defray expenses incurred in the:

(A) collection of the funds; and

(B) investigation or prosecution of human trafficking.

2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*

Although purchasing child pornography is not individually criminalized, possession of child pornography is unlawful under Ind. Code Ann. § 35-42-4-4(c) (Child exploitation). The provision states that it is illegal for a person to knowingly or intentionally possess pornography⁶⁷ “that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value.” This violation is a Level 6⁶⁸ felony. Ind. Code Ann. § 35-42-4-4(c).

In comparison, a federal conviction for possession of child pornography⁶⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁷⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁷¹

⁶⁶ The text of Ind. Code Ann. § 32-30-7-24.5 included here and elsewhere in this report includes amendments made by the passage of S.E.A. No. 532 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

⁶⁷ Ind. Code Ann. § 35-42-4-4(c) (Child exploitation) defines “child pornography” as “(1) a picture; (2) a drawing; (3) a photograph; (4) a negative image; (5) undeveloped film; (6) a motion picture; (7) a videotape; (8) a digitized image; or (9) any pictorial representation”

⁶⁸ See *supra* note 16.

⁶⁹ 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

⁷⁰ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

⁷¹ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

2.9.1 Recommendation: Amend Ind. Code Ann. § 35-42-4-4 (Child exploitation) to increase penalties to reflect the seriousness of the offense.

2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*

Pursuant to Ind. Code Ann. § 11-8-8-7(a) (Persons who must register), “A sex or violent offender who resides in Indiana,” who is or intends to be employed for a certain time period in Indiana, or “who is enrolled or intends to be enrolled” as a student must register under the sex offender chapter. A “sex or violent offender” is defined to include, among others, persons convicted under Ind. Code Ann. § 35-42-4-3 (Child molesting), § 35-42-4-5 (Vicarious sexual gratification), § 35-42-4-6 (Child solicitation), § 35-42-4-9 (Sexual misconduct with a minor) as a Level 1, Level 2, Level 4, or Level 5 felony, except for under some circumstances where the person convicted is not more than 5 years older than the victim), § 35-44.1—3-10(c) (Sexual misconduct by a service provider with a detained child), § 35-42-4-4(c) (Possession of child pornography), 35-42-3.5-1(c) (Sexual trafficking of a minor), and § 35-42-3.5-1(d)(3) (Human trafficking, where the victim is under 18). Ind. Code Ann. § 11-8-8-5(a)(3), (5), (6), (8), (13), (17), (20). A buyer convicted of these offenses will also be deemed a “sex offender” under Ind. Code Ann. §§ 11-8-8-4.5(a)(3), (5), (6), (8), (13), (17), (18).

Legal Components:

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child pornography carries penalties as high as those for sex trafficking of a minor and commercial sexual exploitation of a child, as well as similar federal offenses.*
- 3.3 *Use of the Internet or electronic communications to lure, entice, recruit or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*
- 3.4 *Financial penalties for traffickers are sufficiently high to expose the crime and reach assets for forfeiture and vehicles for impound.*
- 3.5 *Sex offender registry laws include domestic minor sex trafficking as an offense for which the perpetrator must register.*
- 3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.*

Legal Analysis:

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*

A trafficker can be prosecuted under Ind. Code Ann. § 35-42-3.5-1(a)(2)(B), (C) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) if one “by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person. . . to force the other person into . . . prostitution; or . . . participating in sexual conduct (as defined by IC 35-42-4-4 [Child exploitation]).” Promotion of human trafficking is a Level 4⁷² felony. Ind. Code Ann. §§ 35-42-3.5-1(a), 35-50-2-55. In addition, “[a] person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property for an individual who the person knows has been forced into . . . prostitution; commits human trafficking, a Level 5⁷³ felony.” Ind. Code Ann. §§ 35-42-3.5-1(d), 35-50-2-6(a).

Ind. Code Ann. §§ 35-42-3.5-1(b), (c) are drafted to more specifically target domestic minor sex trafficking. If a trafficker is “at least eighteen (18) years of age” and “knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution or participating in sexual conduct,” the trafficker could be convicted of “sexual trafficking of a minor, a Level 2⁷⁴ felony.” Ind. Code Ann. §§ 35-42-3.5-1(c), 35-50-2-4.5. Lastly, a trafficker could be convicted of promotion of human trafficking of a minor under § 35-42-3.5-1(b) for recruiting, harboring, or transporting a minor under 16 years of age “with the intent of:

- (A) engaging the child in:
 - (i) forced labor; or
 - (ii) involuntary servitude; or
- (B) inducing or causing the child to:
 - (i) engage in prostitution; or

⁷²See *supra* note 6.

⁷³See *supra* note 5.

⁷⁴See *supra* note 4.

(ii) engaging in a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) (child exploitation); or sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct (as defined by IC 35-42-4-4);

Promotion of human trafficking of a minor under § 35-42-3.5-1(b) is a Level 3⁷⁵ felony. Ind. Code Ann. §§ 35-42-3.5-1(b), 35-50-2-5.

Traffickers may also face prosecution under a number of other laws. A trafficker convicted under Ind. Code Ann. § 35-45-4-4 (Promoting prostitution) ordinarily faces punishment for a Level 5⁷⁶ felony. Ind. Code Ann. § 35-45-4-4. However, if the trafficker “entices or compels” a person under 18 “to become a prostitute,” the trafficker will be guilty of a Level 4⁷⁷ felony. Ind. Code Ann. §§ 35-45-4-4, 35-50-2-5.

In addition, because Ind. Code Ann. § 35-42-4-6(a) (Child solicitation) defines “solicit” broadly,⁷⁸ subsections (b) and (c) also could apply to traffickers. A trafficker 18 or older who solicits a child under 14, or a trafficker 21 or older who solicits a child between 14-15 years old, is guilty of a Level 5⁷⁹ felony. Ind. Code Ann. §§ 35-42-4-6(b)-(c), 35-50-2-6(c).

In addition, under Ind. Code Ann. § 35-45-15-5(a), a person commits money laundering if, “knowingly or intentionally,” he does any of the following:

- (1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;
 - (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or
 - (3) invests, expends, receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that are the proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity;
-

“Criminal activity” is defined as including “any offense . . . classified as a felony under Indiana or United States law,” while “proceeds” is defined as “funds acquired or derived directly or indirectly from, produced through, or realized through an act.” Ind. Code Ann. §§ 35-45-15-1, 35-45-15-4. Based on those definitions, a trafficker who receives money from domestic minor human sex trafficking could be convicted of money laundering, generally a Level 6⁸⁰ felony. Ind. Code Ann. §§ 35-45-15-5(a), 35-50-2-7(a). The offense is also subject to penalty enhancements, including where the proceeds are at least \$50,000, which increases the offense to a Level 5⁸¹ felony. Ind. Code Ann. §§ 35-45-15-5(a), 35-50-2-6(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁸² for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17 a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C.

⁷⁵ See *supra* note 2.

⁷⁶ See *supra* note 5.

⁷⁷ See *supra* note 6.

⁷⁸ See *supra* note 10.

⁷⁹ See *supra* note 5.

⁸⁰ See *supra* note 16.

⁸¹ See *supra* note 5.

⁸² See *supra* note 53.

§§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the trafficker has a prior conviction for a federal sex offense⁸³ against a minor.

3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*

Traffickers who create or distribute child pornography in violation of Ind. Code Ann. § 35-42-4-4(b) (Child exploitation) can be subject to a Level 5⁸⁴ felony. Ind. Code Ann. §§ 35-42-4-4(b), 35-50-2-6(c).

Also, Ind. Code Ann. § 35-49-3-2 (Obscene performance) states, “A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance⁸⁵ commits a Class A misdemeanor. However, the offense is a Level 6⁸⁶ felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (18) years of age.”

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17 a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the trafficker has a prior conviction for a federal sex offense⁸⁷ against a minor. Additionally, a federal conviction for distribution of child pornography⁸⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed 250,000.⁸⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁹⁰

⁸³ See *supra* note 54.

⁸⁴ See *supra* note 5.

⁸⁵ “‘Performance’ means any play, motion picture, dance, or other exhibition or presentation, whether pictured, animated, or live, performed before an audience of one (1) or more persons.” Ind. Code Ann. § 35-49-1-7. Additionally, pursuant to Ind. Code Ann. § 35-49-2-1 (Obscene matter or performance),

A matter or performance is obscene for purposes of this article if:

- (1) The average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;
- (2) The matter or performance depicts or describes, in a patently offensive way, sexual conduct; and
- (3) The matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

⁸⁶ See *supra* note 16.

⁸⁷ See *supra* note 54.

⁸⁸ 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

⁸⁹ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2) or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

⁹⁰ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b)

3.3 *Using the Internet or electronic communications to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*

No Indiana law independently criminalizes the use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor, however, two laws include penalty enhancements when the Internet is used to commit the offense.

Ind. Code Ann. § 35-42-4-6 (Child solicitation), imposes a penalty enhancement for a trafficker who uses a computer network⁹¹ to solicit a minor or individual that is believed to be a child under 16 to engage in sexual intercourse, making the crime a Level 5⁹² felony. Ind. Code Ann. §§ 35-42-4-9(b), (c), 35-50-2-6(a). A trafficker who did not use a computer network to solicit the child would only be guilty of a Level 6⁹³ felony. Ind. Code Ann. §§ 35-42-4-9(b), (c), 35-50-2-7(b).

Ind. Code Ann. § 35-42-4-13 (c) (Inappropriate communication with child) imposes a penalty enhancement where a defendant uses a computer network. The use of a computer network enhances the crime from a Class B misdemeanor to a Class A misdemeanor, punishable by imprisonment up to 1 year and a possible fine not to exceed \$5,000. Ind. Code Ann. §§ 35-42-4-13(c), 35-50-3-2.

3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*

Traffickers convicted of crimes related to domestic minor sex trafficking under Indiana law may be ordered to pay fines, make restitution to the victim, and forfeit proceeds of the crime or property used in connection with the crime. Traffickers convicted under Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking), § 35-45-4-4 (Promoting prostitution), § 35-52-4-6 (Child solicitation), § 35-42-4-4(b) (Child exploitation), or § 35-45-15-5 (Money laundering), all felonies, can be ordered to pay a possible fine up to \$10,000. Ind. Code Ann. §§ 35-50-2-4 to -7. Additionally, under Ind. Code Ann. § 35-50-5-2 (Fines as alternative penalty for felony or misdemeanor), “In the alternative to the provisions concerning fines in this article, a person may be fined a sum equal to twice his pecuniary gain, or twice the pecuniary loss sustained by victims of the offense he committed.”

A court shall order a trafficker convicted of violating Indiana’s human trafficking law to make restitution to the victim of the crime. Ind. Code Ann. § 35-42-3.5-2 (Restitution to victim) states, “In addition to any sentence or fine imposed for a conviction of an offense under section 1 [IC 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking)] of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.” Ind. Code Ann. § 35-50-5-3(k) states,

The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim’s labor or services.
- (2) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of:

applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

⁹¹ *See supra* Section 2.4.

⁹² *See supra* note 5.

⁹³ *See supra* note 16.

- (A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or
- (B) IC 22-2-2 (Minimum Wage); whichever is greater.

Restitution may be ordered, at the court's discretion, for violations of CSEC, sexual offense laws, or criminal gang recruitment under Ind. Code Ann. § 35-50-5-3(a) (Restitution orders), which permits the court to order a defendant convicted of a felony or misdemeanor to make restitution to the victim. In determining the amount of restitution a defendant must pay, pursuant to Ind. Code Ann. § 35-50-5-3(a), the court will consider the following:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

Moreover, restitution is mandatory for criminal gang members. Pursuant to Ind. Code Ann. § 35-45-9-6, "In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3."

Several forfeiture provisions, which are civil and discretionary in nature, apply to traffickers. Ind. Code Ann. § 34-24-1-1(a)(3) (Property which may be seized) permits seizure of "[a]ny portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute." Furthermore, vehicles used by traffickers to "(A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of; . . . kidnapping (IC 35-42-3-2) . . . child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4)" may also be seized. Ind. Code Ann. § 34-24-1-1(a)(4). In addition, "[a]ny equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4 [Sex crimes]" may be seized, but only if it is proven "by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10)." Ind. Code Ann. § 34-24-1-1(a)(10), (c). Ind. Code Ann. § 34-24-1-1(18)⁹⁴ also provides for forfeiture of "[r]eal or personal property, including a vehicle, that is used by a person to: (A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of; a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4 (promoting prostitution)." Pursuant to Ind. Code Ann. §34-24-1-9, "The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations." Seizure of such forfeitable property is governed by Ind. Code Ann. § 34-24-1-9.

Traffickers may also face forfeiture under nuisance laws.⁹⁵ Ind. Code Ann. § 32-30-7-1⁹⁶ ("Indecent nuisance" defined) provides,

⁹⁴ See *supra* note 65.

⁹⁵ Ind. Code Ann. § 32-30-7-1 ("Indecent nuisance" defined) provides in part,

As used in this chapter, “indecent nuisance” means a:

(1) place in or upon which prostitution (as described in IC 35-45-4);

....

(4) public place in or upon which human trafficking (as described in IC 35-42-3.5-1); is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Ind. Code Ann. § 32-30-7-24.5⁹⁷ (Distribution of money) provides,

Money collected under this chapter concerning a public place in or upon which human trafficking (as described in IC 35-42-3.5-1) is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose shall be distributed as follows:

(1) Eighty percent (80%) of the money collected shall be deposited in the human trafficking prevention and victim assistance fund established by IC 5-2-6-25, to be used for the purposes of the fund.

(2) Twenty percent (20%) of the money collected shall be transferred to the county auditor for deposit in the county general fund. Money deposited in the county general fund under this subdivision may only be appropriated to the prosecuting attorney to defray expenses incurred in the:

(A) collection of the funds; and

(B) investigation or prosecution of human trafficking.

3.5 *Convicted traffickers are required to register as sex offenders.*

Pursuant to Ind. Code Ann. § 11-8-8-7(a) (Persons who must register), “A sex or violent offender who resides in Indiana,” who is or intends to be employed for a certain time period in Indiana, or “who is enrolled or intends to be enrolled” as a student must register under the sex offender chapter. A “sex or violent offender” is defined to include, among others, persons convicted under Ind. Code Ann. § 35-42-4-4(b) (Child exploitation), § 35-42-4-6 (Child solicitation), § 35-45-4-4 (Promoting prostitution when the prostituted person is a minor), § 35-44.1—3-10(c) (Sexual misconduct by a service provider with a detained child), § 35-42-3.5-1(a)(2) (Promotion of human trafficking if the victim is less than eighteen (18) years of age, § 35-42-3.5-1(c) (Sexual trafficking of a minor), §35-42-3.5-1(d)(3) (Human trafficking). Ind. Code Ann. § 11-8-8-5(a)(4), (6), (14), (15), (16). A trafficker convicted of these offenses will also be deemed a “sex offender” under Ind. Code Ann. § 11-8-8-4.5(a) (4), (6), (14), (15), (16).

(a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

(1) direct the removal of all personal property and contents that:

(A) are located at the place described in the complaint;

(B) are used in conducting the indecent nuisance

⁹⁶ See *supra* note 65.

⁹⁷ See *supra* note 66.

3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.*

Ind. Code Ann. § 31-35-3-1 (Applicability of chapter) states, “This chapter applies the termination of the parent-child relationship between an individual convicted of an offense listed in section 4(1) [IC 31-35-3-4(1)] of this chapter and a child described in section 4(2) [IC 31-35-3-4(2)] of this chapter.” The list of offenses in Ind. Code Ann. § 31-35-3-4(1) (Filing of a petition) does not include violations of Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking), § 35-42-4-6 (Child solicitation) or § 35-45-4-4 (Promoting prostitution). However, the list does include Ind. Code Ann. § 35-42-4-4 (Child exploitation), § 35-42-4-3 (Child molesting), and § 35-42-4-9 (Sexual misconduct with a minor).⁹⁸ Under Ind. Code Ann. § 31-35-3-4(2), the victim must be under 16 and the offender’s child or the offender’s spouse’s child. If the requirements of Ind. Code Ann. § 31-35-3-4 are met, “the attorney for the department, the child’s guardian ad litem, or the court appointed special advocate may file a petition with the juvenile or probate court to terminate the parent-child relationship of the individual who has committed the offense with the victim of the offense, the victim’s siblings, or any biological or adoptive child of that individual.” Ind. Code Ann. § 31-35-3-4. “If the court finds that the allegations in a petition described in section 4 [IC 31-35-3-4] of this chapter are true, the court shall terminate the parent-child relationship.” Ind. Code Ann. § 31-35-3-9(a).

In addition, chapter 2, pursuant to Ind. Code Ann. § 31-35-2-1 (Applicability of chapter), “applies to the termination of the parent-child relationship involving: (1) a delinquent child; or (2) a child in need of services.” Ind. Code Ann. § 31-34-1-3(a)(1) (Victim of sex offenses) defines a “child in need of services” as, among other things, a child who, before the age of 18, is the victim of a specified sex offense, including victims of Ind. Code Ann. § 35-42-4-3 (Child molesting), § 35-42-4-4 (Child exploitation), § 35-42-4-9 (Sexual misconduct with a minor), § 35-45-4-2 (Prostitution), or “the law of another jurisdiction . . . that is substantially equivalent to any of the offenses listed,” and who “needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.” A petition may be filed to terminate parental rights to a delinquent child or a child in need of services, by the department’s attorney or the child’s guardian ad litem or court appointed special advocate. Ind. Code Ann. § 31-35-2-4(a). Pursuant to Ind. Code Ann. § 31-35-2-4(b)(2) (Petition; contents), among other things,

The petition [filed for in the case of a delinquent child or a child in need of services] must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 [When efforts to reunify or preserve family not required] that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

⁹⁸ Other crimes constituting grounds for a petition for terminating parental rights include Ind. Code Ann. § 35-42-1-1 (Murder), § 35-42-1-1 (Causing suicide), § 35-42-1-3 (Voluntary manslaughter), § 35-42-1-4 (Involuntary manslaughter), § 35-42-4-1 (Rape), and § 35-46-1-3 (Incest). Ind. Code Ann. § 31-35-3-4.

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
- (C) that termination is in the best interests of the child; and
- (D) that there is a satisfactory plan for the care and treatment of the child.

Where the court determines that the allegations in the petition, as provided under Ind. Code Ann. § 31-35-2-4, are true, and no exceptions under Ind. Code Ann. § 31-35-2-4.5(d) exist, the court will terminate parental rights to a delinquent child or a child in need of services. Ind. Code Ann. § 31-35-2-8(a).

Legal Components:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*
 - 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*
 - 4.3 *Promoting and selling child sex tourism is illegal.*
 - 4.4 *Promoting and selling child pornography is illegal.*
-

Legal Analysis:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) may apply to some facilitators, such as those who harbor or transport victims, but it does not include language aimed at those who knowingly benefit from trafficking. Other laws might apply to facilitators of domestic minor sex trafficking. Ind. Code Ann. § 35-45-4-4 (Promoting prostitution), which is a Level 5⁹⁹ felony, could apply to a facilitator who “[h]aving control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution” or “[k]nowingly or intentionally conducts or directs another person to a place for the purpose of prostitution.” Ind. Code Ann. § 35-45-4-4(3), (5); Ind. Code Ann. §§ 35-45-4-4, 35-50-2-6(c). If a facilitator “[k]nowingly or intentionally entices or compels another person [under the age of 18] to become a prostitute,” he faces a Level 4¹⁰⁰ felony. Ind. Code Ann. §§ 35-45-4-4(1)(5), 35-50-2-5.5.¹⁰¹

In addition, under Ind. Code Ann. § 35-45-15-5, a facilitator commits money laundering if, “knowingly or intentionally,” he does any of the following:

- (1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;
 - (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or
 - (3) invests, expends, receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that are the proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity;
-

“Criminal activity” is defined as including “any offense . . . classified as a felony under Indiana or United States law,” while “proceeds” is defined as “funds acquired or derived directly or indirectly from, produced through, or realized through an act.” Ind. Code Ann. §§ 35-45-15-1, 35-45-15-4. Based on those definitions, a facilitator who receives money from promoting prostitution, sponsoring or distributing child pornography, or criminal

⁹⁹ See *supra* note 5.
¹⁰⁰ See *supra* note 6.
¹⁰¹ See *supra* note 6.

gang activity could be convicted of money laundering, a Level 6¹⁰² felony. Ind. Code Ann. §§ 35-45-15-5(a), 35-50-2-7(b). The offense is also subject to penalty enhancements, including where the proceeds are at least \$50,000, which increases the offense to a Level 5¹⁰³ felony. Ind. Code Ann. §§ 35-45-15-5(a), 35-50-2-6(c).

- 4.1.1 Recommendation: Amend Ind. Code Ann. § 35-42-3.5-1(a) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) to include those who “knowingly benefit” from trafficking to include more facilitators within the trafficking crime.

4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*

Facilitators convicted of Ind. Code Ann. § 35-45-4-4 (Promoting prostitution), § 35-42-4-4(b) (Child exploitation), § 35-45-9-3 (Criminal Gang Activity), § 35-45-6-2(1) (Corrupt business influence), or § 35-45-15-5 (Money laundering), all felonies, may be ordered to pay fines up to \$10,000. Ind. Code Ann. §§ 35-50-2-4 to -7. Additionally, under Ind. Code Ann. § 35-50-5-2 (Fine as alternative penalty for felony or misdemeanor), “In the alternative to the provisions concerning fines in this article, a person may be fined a sum equal to twice his pecuniary gain, or twice the pecuniary loss sustained by victims of the offense he committed.” Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) applies to some facilitators, subjecting those facilitators to a possible fine not to exceed \$10,000 and the trafficking law’s mandatory restitution orders. Ind. Code Ann. § 35-42-3.5-2 (Restitution to victim) states, “In addition to any sentence or fine imposed for a conviction of an offense under section 1 [IC 35-42-3.5-1] of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.” Ind. Code Ann. § 35-50-5-3(k) states,

The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim’s labor or services.
- (2) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of:
 - (A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or
 - (B) IC 22-2-2 (Minimum Wage);whichever is greater.

Restitution may be ordered, at the court’s discretion, for violations of CSEC and sexual offense laws under Ind. Code Ann. § 35-50-5-3(a) (Restitution orders), which permits the court to order a defendant convicted of a felony or misdemeanor to make restitution to the victim. In determining the amount of restitution a defendant must pay, pursuant to Ind. Code Ann. § 35-50-5-3(a), the court will consider the following:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

¹⁰² See *supra* note 16.

¹⁰³ See *supra* note 5.

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

Moreover, restitution is mandatory for criminal gang members. Pursuant to Ind. Code Ann. § 35-45-9-6, “In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.” Also, under Ind. Code Ann. § 34-24-3-1 (Damages in civil action),

[i]f a person . . . suffers a pecuniary loss as a result of a violation of . . . IC 35-45-9 [Criminal gang control], the person may bring a civil action against the person who caused the loss for the following:

- (1) An amount not to exceed three (3) times:
 - (A) the actual damages of the person suffering the loss, in the case of a liability that is not covered by IC 24-4.6-5, and other listed expenses.

Additional financial penalties apply to facilitators convicted of racketeering. Ind. Code Ann. § 35-45-6-2 (Corrupt business influence) is a Level 5¹⁰⁴ felony. Ind. Code Ann. §§ 35-45-6-2, 35-50-2-6(c).

Ind. Code Ann. § 34-24-1-1(a)(3) (Property which may be seized) permits civil asset forfeiture at the discretion of the court. Ind. Code Ann. §34-24-1-1 permits the seizure of “[a]ny portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute. In addition, “[a]ny equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4 [Sex crimes]” may be seized, but only if it is proven “by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).” Ind. Code Ann. § 34-24-1-1(a)(10), (c). Ind. Code Ann. § 34-24-1-1(18)¹⁰⁵ also provides for forfeiture of “[r]eal or personal property, including a vehicle, that is used by a person to: (A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of; a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4 (promoting prostitution).” Pursuant to Ind. Code Ann. §34-24-1-9, “The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.” Seizure of such forfeitable property is governed by Ind. Code Ann. § 34-24-1-9.

Facilitators may also face forfeiture under nuisance laws.¹⁰⁶ Ind. Code Ann. § 32-30-7-1¹⁰⁷ (“Indecent nuisance” defined) provides,

As used in this chapter, “indecent nuisance” means a:

- (1) place in or upon which prostitution (as described in IC 35-45-4);
. . . .

¹⁰⁴ See *supra* note 5.

¹⁰⁵ See *supra* note 63.

¹⁰⁶ Ind. Code Ann. § 32-30-7-1 (“Indecent nuisance” defined) provides in part,

(a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

- (1) direct the removal of all personal property and contents that:
 - (A) are located at the place described in the complaint;
 - (B) are used in conducting the indecent nuisance

¹⁰⁷ See *supra* note 65.

(4) public place in or upon which human trafficking (as described in IC 35-42-3.5-1); is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Ind. Code Ann. § 32-30-7-24.5¹⁰⁸ (Distribution of money) provides,

Money collected under this chapter concerning a public place in or upon which human trafficking (as described in IC 35-42-3.5-1) is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose shall be distributed as follows:

(1) Eighty percent (80%) of the money collected shall be deposited in the human trafficking prevention and victim assistance fund established by IC 5-2-6-25, to be used for the purposes of the fund.

(2) Twenty percent (20%) of the money collected shall be transferred to the county auditor for deposit in the county general fund. Money deposited in the county general fund under this subdivision may only be appropriated to the prosecuting attorney to defray expenses incurred in the:

(A) collection of the funds; and

(B) investigation or prosecution of human trafficking.

4.3 *Promoting and selling child sex tourism is illegal.*

There is no specific provision under Indiana's laws prohibiting child sex tourism.

4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor or prostitution of a minor, if the travel is occurring in Indiana.

4.4 *Promoting and selling child pornography is illegal.*

Sponsoring, producing, and selling child pornography is illegal under Ind. Code Ann. § 35-42-4-4(b) (Child exploitation). Ind. Code Ann. § 35-42-4-4(b) (Child exploitation) states that it is illegal when a person does any of the following:

(1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

...

Child exploitation is a Level 5¹⁰⁹ felony. Ind. Code Ann. §§ 35-42-4-4(b), 35-50-2-6(c).

¹⁰⁸ See *supra* note 66.

¹⁰⁹ See *supra* note 5.

Ind. Code Ann. § 35-49-3-2 (Activities related to obscene performance) states, “A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance¹¹⁰ commits a Class A misdemeanor. However, the offense is a Level 6¹¹¹ felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (18) years of age.” Ind. Code Ann. § 35-49-3-1 (Importation or distribution of obscene matter) states,

A person who knowingly or intentionally:

- (1) Sends or brings into Indiana obscene matter for sale or distribution; or
 - (2) Offers to distribute, distributes, or exhibits to another person obscene matter;
- commits a Class A misdemeanor. However, the offense is a Level 6¹¹² felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under sixteen (18) years of age.

¹¹⁰ *See supra* note 85.

¹¹¹ *See supra* note 16.

¹¹² *See supra* note 16.

Legal Components:

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, preventing criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Legal Analysis:

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*

For the purposes of Ind. Code Ann. Title 35, Article 40 (Victim rights), a “victim” is “a person that has suffered harm as a result of a crime that was perpetrated directly against the person. The term does not include a person that has been charged with a crime arising out of the same occurrence.” Ind. Code Ann. § 35-40-4-8.

Ind. Code Ann. § 35-42-3.5-4(a) (Additional rights of victim) specifically states in part that “an alleged victim of an offense” under the human trafficking law,

- (1) may not be detained in a facility that is inappropriate to the victim’s status as a crime victim;
- (2) may not be jailed, fined, or otherwise penalized due to having been the victim of the offense; and
- (3) shall be provided protection if the victim’s safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense, including:
 - (A) taking measures to protect the alleged victim and the victim’s family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the

offense or the person’s agent; and

(B) ensuring that the names and identifying information of the alleged victim and the victim’s family members are not disclosed to the public.

This subsection shall be administered by law enforcement agencies and the Indiana criminal justice institute as appropriate.

For purposes of crime victim compensation, Ind. Code Ann. § 5-2-6.1-7 (Compensation for victims of violent crime). A “victim” is defined as “an individual who suffers bodily injury or death as a result of a violent crime.” Violent crimes include, with some exceptions, those felonies or Class A misdemeanors that result in bodily injury or death to the victim. Ind. Code Ann. § 5-2-6.1-8(1). Violent crimes also include “Child Molesting [IC 35-42-4-3] and Child Seduction [IC 35-42-4-7].” Ind. Code Ann. § 5-2-6.1-8(1). “Bodily injury” is defined as: “(1) an impairment of a physical condition; (2) a visible injury; (3) physical pain; or (4) emotional trauma that stems directly from the impairment of a physical condition, a visible injury, or physical pain.” Ind. Code Ann. § 5-2-6.1-0.5.

5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

Ind. Code Ann. § 35-42-3.5-1(b) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) prohibits a defense to prosecution for promotion of human trafficking of a minor under subsection (b) based on the child’s consent “to engage in prostitution or to participate in sexual conduct,” but a consent defense is not expressly prohibited for prosecutions under subsection (c), suggesting availability of this defense.

Similarly, no defense based on the consent of the minor to the unlawful sex act is referred to in Ind. Code Ann. § 35-45-4-4 (Promoting prostitution) or §35-42-4-4¹¹³ (Child exploitation).

5.3 *Prostitution laws apply only to adults, preventing criminalization of minors under 18 for prostitution offenses.*

Ind. Code Ann. § 35-45-4-2(a)¹¹⁴ (Prostitution) is age neutral, stating only, “A person who knowingly or intentionally: (1) Performs, or offers or agrees to perform, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5); or (2) Fondles, or offers or agrees to fondle, the genitals of another person; for money or other property commits prostitution, a Class A misdemeanor. . . .” While, Ind. Code Ann. § 35-45-4-2(b) provides that “[i]t is a defense to a prosecution under this section that the person was: 1) a child (as defined in IC 35-47-10-3)¹¹⁵; and 2) a victim or an alleged victim of an offense under IC 35-42-3.5-1; at the time the person engaged in the prohibited conduct,” this defense fails to eliminate criminal liability for minors under the prostitution law.

5.3.1 Recommendation: Amend Ind. Code Ann. § 35-45-4-2 (Prostitution) to eliminate criminal liability for minors under 18 years of age.

5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*

If identified properly as a victim of domestic minor sex trafficking, a minor is entitled to specific protections pursuant to Ind. Code Ann. § 35-42-3.5-4(a) (Additional rights of victim), however minor victims remain

¹¹³ See *supra* note 9.

¹¹⁴ See *supra* note 27.

¹¹⁵ Under Ind. Code Ann. § 35-47-10-3 (“Child” defined), “‘child’ means a person who is less than eighteen (18) years of age.”

subject to arrest and detention for prostitution charges. However, some minor victims may receive a protective response through child welfare, although specialized services are not mandated.

Child Identified as Abused/Neglected

I. Initial Custody

a. Authority

Pursuant to Ind. Code Ann. § 31-34-2-1 (Taking a child into custody), in Article 34 (Juvenile Law: Child in Need of Services), “A child may be taken into custody by a law enforcement officer under an order of the court.” Upon a report of suspected child abuse or neglect to a law enforcement agency, Ind. Code Ann. § 31-33-7-7(a) requires the agency to “immediately communicate the report to the department, whether or not the law enforcement agency has reason to believe there exists an imminent danger to the child’s health or welfare; and . . . conduct an immediate, onsite assessment of the report along with the department whenever the law enforcement agency has reason to believe that an offense has been committed.” In addition, Ind. Code Ann. § 35-42-3.5-4(c)¹¹⁶ (Rights of alleged victims) specifically requires that “[i]f a law enforcement agency detains an alleged victim of an offense under section 1 of this chapter who is less than eighteen (18) years of age, the law enforcement agency shall immediately notify the department of child services that the alleged victim (1) has been detained; and (2) may be a victim of child abuse or neglect.”

Child Identified as CHINS

Ind. Code Ann. § 31-34-1-3 (Victims of sex offenses) explains,

- (a) A child is a child in need of services if, before the child becomes eighteen (18) years of age:
 - (1) the child is the victim of a sex offense under:
 - (A) IC 35-42-4-1 [Rape];
 - (C) IC 35-42-4-3 [Child molesting];
 - (D) IC 35-42-4-4 [Child exploitation];
 - (E) IC 35-42-4-7 [Child seduction];
 - (F) IC 35-42-4-9 [Sexual misconduct with a minor];
 - (G) IC 35-45-4-1 [Public indecency];
 - (H) IC 35-45-4-2 [Prostitution];
 - (I) IC 35-46-1-3 [Incest]; or
 - (J) the law of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) through (I); and
 - (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

Also, pursuant to subsection Ind. Code Ann. § 31-34-1-3(b), “A child is a child in need of services if, before the child becomes eighteen (18) years of age: (1) the child lives in the same household as another child who is the victim of a sex offense” listed above and,

¹¹⁶ The text of Ind. Code Ann. § 35-42-3.5-4 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1216 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

- (2) the child lives in the same household as the adult who
 - (A) committed the sex offense under subdivision (1) and the sex offense resulted in a conviction or a judgment under IC 31-34-11-2; or
 - (B) has been charged with a sex offense listed in subdivision (1) and is awaiting trial;
- (3) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court; and
- (4) a caseworker assigned to provide services to the child:
 - (A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or
 - (B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

A child could also be considered in need of services if a “parent, guardian, or custodian” allows the child “to participate in an obscene performance (as defined by IC 35-49-2-2 or IC 35-49-3-2)” or “to commit a sex offense prohibited by IC 35-45-4 [Public indecency—Prostitution]” and the child needs care or treatment that he or she is not receiving and is not likely to receive without court intervention. Ind. Code Ann. §§ 31-34-1-4, 31-34-1-5.

I. Initial Custody

a. Authority

Law enforcement officers may bring a child in need of services into custody pursuant to Ind. Code Ann. § 31-34-2-3(a) (Protection of safety of child—Probation officer or caseworker may take child into custody—Written documentation), which states,

If a law enforcement officer’s action under section 2 [IC 31-34-2-2] of this chapter will not adequately protect the safety of the child, the child may be taken into custody by a law enforcement officer, probation officer, or caseworker acting with probable cause to believe the child is a child in need of services if:

- (1) it appears that the child’s physical or mental condition will be seriously impaired or seriously endangered if the child is not immediately taken into custody;
- (2) there is not a reasonable opportunity to obtain an order of the court; and
- (3) consideration for the safety of the child precludes the immediate use of family services to prevent removal of the child.

Under subsection (c), “If a person takes a child into custody under this section, the person shall make written documentation not more than twenty-four (24) hours after the child is taken into custody as provided in section 6 [IC 31-34-2-6] of this chapter.”

A person also may “give an intake officer written information indicating that a child is a child in need of services. If the intake officer completing the preliminary inquiry has reason to believe that the child is a child in need of services, the intake officer shall (1) make a preliminary inquiry to determine whether the interests of the child require further action; and (2) complete the dual status screening tool on the child, as described in IC 31-

41-1-3.”¹¹⁷ Whenever practicable, the preliminary inquiry should include information on the child’s background, current status, and school performance.” Ind. Code Ann. § 31-34-7-1.¹¹⁸ After completing the preliminary inquiry, “and upon approval by the juvenile court, the intake officer may implement a program of informal adjustment if the officer has probable cause to believe that the child is a child in need of services.” Ind. Code Ann. § 31-34-8-1.

II. Placement process pending adjudication/investigation

Once taken into custody, a detention hearing must be held within 48 hours, weekends and holidays excluded, or the child will be released. Ind. Code Ann. § 31-34-5-1(a). A child in need of services may be detained if the court “makes written findings of fact upon the record of probable cause to believe that the child is a child in need of services and that: (1) detention is necessary to protect the child; (2) the child is unlikely to appear before the juvenile court for subsequent proceedings; (3) the child has a reasonable basis for requesting that the child not be released; (4) the parent, guardian, or custodian: (A) cannot be located; or (B) is unable or unwilling to

¹¹⁷ Pursuant to Ind. Code Ann. § 31-41-1-3 (“Dual status screening tool”), “‘Dual status screening tool’ means a factual review of a child’s status and history conducted by the case manager under IC 31-34 or the probation officer under IC 31-37 to determine whether a child meets the criteria for being a dual status child as defined by section 2 of this chapter.” Pursuant to Ind. Code Ann. § 31-41-1-2 (“Dual status child”), dual status child is defined as,

- (1) a child who is alleged to be or is presently adjudicated to be a child in need of services under IC 31-34-10 or IC 31-34-11 and is alleged to be or is presently adjudicated to be a delinquent child under IC 31-37-12 or IC 31-37-13;
- (2) a child who is presently named in an informal adjustment under IC 31-34-8 and who is adjudicated a delinquent child under IC 31-37-12 or IC 31-37-13;
- (3) a child who is presently named in an informal adjustment under IC 31-37-9 and who is adjudicated to be a child in need of services under IC 31-34-10 or IC 31-34-11;
- (4) a child who:
 - (A) has been previously adjudicated to be a child in need of services under IC 31-34-10 or IC 31-34-11; or
 - (B) was a participant in a program of informal adjustment under IC 31-34-8; and who was under a wardship that had been terminated or was in a program of informal adjustment that had concluded before the current delinquency petition;
- (5) a child who was:
 - (A) previously adjudicated to be a delinquent child under IC 31-37-12 or IC 31-37-13 that was closed; and
 - (B) a participant in a program of informal adjustment under IC 31-37-9 which was concluded prior to a child in need of services proceeding; and
- (6) a child:
 - (A) who is eligible for release from commitment of the department of correction;
 - (B) whose parent, guardian, or custodian:
 - (i) cannot be located; or
 - (ii) is unwilling to take custody of the child; and
 - (C) for whom the department of correction is requesting a modification of the dispositional decree under IC 31-30-2-4.

The text of Ind. Code Ann. § 31-41-1-3 and 31-41-1-2 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1196 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

¹¹⁸ The text of Ind. Code Ann. § 31-34-7-1 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1196 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015)..

take custody of the child; or (5) consideration for the safety of the child precludes the use of family services to prevent removal of the child.” Ind. Code Ann. § 31-34-5-3(a). An alleged child in need of services may not be placed in “(1) a secure facility; (2) a community based correctional facility for children; (3) a juvenile detention facility; or (4) a shelter care facility that houses persons charged with, imprisoned for, or incarcerated for crimes.” Ind. Code Ann. § 31-34-6-1.¹¹⁹

Child Identified as Delinquent

Pursuant to Ind. Code Ann. §§ 31-37-1-2, “A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits an act that would be an offense if committed by an adult, except an act committed by a person over which the juvenile court lacks jurisdiction under IC 31-30-1.”¹²⁰ A child also “commits a delinquent act” if, before becoming eighteen (18) years of age, the child leaves home or a specific location previously designated by the child's parent, guardian, or custodian: (1) without reasonable cause; and (2) without permission of the parent, guardian, or custodian, who requests the child's return.” Ind. Code Ann. § 31-37-2-2.¹²¹

Pursuant to Ind. Code Ann. § 31-37-2-1 (Delinquent child), a child is deemed “delinquent” if,

before becoming eighteen (18) years of age, the child:

- (1) commits a delinquent act described in this chapter; and
- (2) needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving;
 - (B) the child is unlikely to accept voluntarily; and
 - (C) is unlikely to be provided or accepted without the coercive intervention of the court.

I. Initial Custody

b. Authority

Law enforcement officers in Indiana may take a child into custody pursuant to Ind. Code Ann. § 31-37-4-2 (Probable cause), without a court order, when they have “probable cause to believe that the child has committed a delinquent act.” Under Ind. Code Ann. § 31-37-4-1 (Order of court), “A child may be taken into custody by a law enforcement officer under an order of the court.”

¹¹⁹ The text of Ind. Code Ann. § 31-34-6-1 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1434 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

¹²⁰ Pursuant to Ind. Code Ann. § 31-30-1-1(1) (Juvenile court jurisdiction) “A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 [IC 31-30-1-9, IC 31-30-1-10, IC 31-30-1-12, and IC 31-30-1-13] of this chapter, in the following: (1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under IC 31-37.” The titles for the bracketed statutes are: Ind. Code Ann. § 31-30-1-9 (Felony court concurrent jurisdiction); § 31-30-1-10 (Establishment of paternity); § 31-30-1-12 (Concurrent jurisdiction with court having jurisdiction of child custody proceeding in a marriage dissolution); § 31-30-1-13 (Concurrent jurisdiction with court having jurisdiction of child custody proceeding in a paternity proceeding).

¹²¹ The text of Ind. Code Ann. § 31-37-2-2 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1304 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

Domestic minor sex trafficking victims also may be taken into custody, although not always detained, for curfew violations pursuant to Ind. Code Ann. §§ 31-37-3-2 to -3 (Curfew violations).

c. Placement

Once in custody without a court order, the child may be released to his or her “parent, guardian, or custodian upon the person’s written promise to bring the child before the juvenile court at a time specified.” Ind. Code Ann. § 31-37-5-5(a). Additionally, under Ind. Code Ann. § 31-37-5-3(a), if a law enforcement officer taking a child into custody may place the child in detention if there is a reasonable belief that

- (1) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (2) the child has committed an act that would be murder or a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony if committed by an adult;
- (3) detention is essential to protect the child or the community;
- (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
- (5) the child has a reasonable basis for requesting that the child not be released.¹²²

Pursuant to subsection (b), “If a child is detained for a reason specified in subsection (a)(4) or (a)(5), the child shall be detained under IC 31-37-7-1.”¹²³

II. Placement process pending adjudication/investigation

If the intake officer does not release the child, a detention hearing must be held no later than 48 hours (excluding weekends and Sundays) after the child is taken into custody, otherwise the child will be released. Ind. Code Ann. §§ 31-37-5-6, 31-37-6-2, 31-37-6-4. At the hearing, the juvenile court may release the child to the child’s parent, guardian, or custodian or detain the child based on a consideration of similar factors to those the intake officer considered under Ind. Code Ann. § 31-37-5-3(a). Ind. Code Ann. § 31-37-6-6. If the child is detained because a parent is not available or will not take the child, returning the child home would be harmful to the child or contrary to his best interests, or “the child has a reasonable basis for requesting that the child not be released,” the court must not detain the child in a secure facility or certain other facilities that house persons imprisoned for crimes unless they meet the exception in Ind. Code Ann. § 31-37-7-3. Ind. Code Ann. §§ 31-37-6-6(a),(b), 31-37-7-1. Ind. Code Ann. § 31-37-7-3 (Length of confinement) permits a

child alleged to be a delinquent child because of an act under IC 31-37-2-2 [Delinquent act; leaving home without permission of parent, guardian, or custodian] may be held in a juvenile detention facility for:

- (1) not more than twenty-four (24) hours before; and
- (2) not more than twenty-four (24) hours immediately after; the initial court appearance, not including Saturdays, Sundays, and nonjudicial days.

¹²² Ind. Code Ann. § 31-37-5-3(c) states, “Unless a law enforcement officer determines that detention is essential to protect a child or the community, the law enforcement officer who detains a child for a violation of the curfew law under IC 31-37-3 shall make a good faith effort to release the child to the child’s parent, guardian, or custodian within a reasonable time after the child is detained.”

¹²³ Ind. Code Ann. § 31-37-7-1 (Places in which child may not be held) states “A child alleged to be a delinquent child under IC 31-37-2, except as provided in section 3 [IC 31-37-7-3] of this chapter, may not be held in: (1) a secure facility; or (2) a shelter care facility, a forestry camp, or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes.”

However, a child alleged to be delinquent and detained under Ind. Code Ann. § 31-37-6-6 for reasons other than those mentioned above may be held in a secure facility for limited purposes, for up to six hours, or a juvenile detention facility. Ind. Code Ann. § 31-37-7-2. Nothing in Ind. Code Ann. § 31-37-7 (Detention of alleged delinquent child) refers to Ind. Code Ann. § 35-42-3.5-4(a) (Additional rights of victim) or states that a minor's involvement in prostitution does not constitute a delinquent act.

III. Adjudication or referral to alternate process

a. Diversion or alternate process

For children delinquent under Ind. Code Ann. § 31-37-1, Ind. Code Ann. § 31-37-19-5(b) provides the juvenile court with several dispositional alternatives that may be taken in conjunction with the placement options in Ind. Code Ann. § 31-37-19-6, including ordering probationary supervision of the child, ordering outpatient treatment, ordering wardship, and ordering the attendance of an alcohol and drug program.

IV. Outcomes

For a child who admits to being a delinquent child, or one found by the court to be a delinquent child, the court must enter judgment of delinquency, order a predispositional report, and schedule a dispositional hearing, at which it must consider, among other things, “[a]lternatives for the care, treatment, rehabilitation, or placement of the child.” Ind. Code Ann. §§ 31-37-18-1(1), 31-37-12-9(a), 31-37-13-2(a)(1-3). Ind. Code Ann. § 31-37-13-2(a)(4)¹²⁴ also requires that the court to “[c]omplete a dual status screening tool on the child, as described in IC 31-41-1-3, and determine whether the child is a dual status child as described in IC 31-41-1-2.”¹²⁵ “If a child is determined to be a dual status child, the court may refer the child for an assessment by a dual status assessment team as described in IC 31-41.”¹²⁶ Ind. Code Ann. § 31-37-13-2(b). Pursuant to Ind. Code Ann. § 31-37-19-1(a) (Delinquent children—Decrees), if the child is found to be delinquent under Ind. Code Ann. § 31-37-2 (Delinquent children who commit certain other acts and who need care, treatment, or rehabilitation), the court may enter certain dispositional decrees, including placing the child under the supervision of the probation department, ordering outpatient treatment for the child, removing the child from his or her home and placing the child in a different home or a shelter, making the child a ward of a person or a shelter, and partially or completely emancipating the child. The juvenile court must meet several requirements under Ind. Code Ann. § 31-37-19-1(b) to remove a child from the home including approving a permanency plan, designating responsibility to the probation department for the child's care and placement, determining whether “reasonable efforts were made to prevent or eliminate the need for removal,” and whether the child's best interests, health, and welfare will benefit from removal from the home.

Ind. Code Ann. § 31-37-19-6 provides the placement options through a juvenile court disposition for a child determined delinquent pursuant to Ind. Code Ann. § 31-37-1 (Delinquent children who commit acts that would be offenses if committed by adults) including awarding wardship to the department of correction or a “community based correctional facility for children,” awarding wardship to a person or to a shelter, removing the child from the home to be placed in another home or shelter, order the child confined for a period of time in

¹²⁴ The text of Ind. Code Ann. § 31-37-13-2 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1196 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

¹²⁵ See *supra* note 117.

¹²⁶ Ind. Code Ann. § 31-41-1-4 (“Dual status assessment”) states, “‘Dual status assessment’ means a review by a dual status assessment team to assess a dual status child's: (1) status; (2) best interests; (3) need for services; and (4) level of needs, strengths, and risks of the child.”

a juvenile detention facility, or placing the child in a secure private facility. Juveniles who have committed more serious offenses are confined pursuant to Ind. Code Ann. § 31-37-19-10.

Children under 12 may not be awarded to the department of corrections under Ind. Code Ann. § 31-37-19-6(b)(2)(A) unless the child is 10 or 11 and “committed an act that would have been murder if committed by an adult.” Ind. Code Ann. § 31-37-19-7(a), (b).

5.4.1 Recommendation: Enact a mandatory protective response for juvenile sex trafficking victims that provides an avenue to specialized services outside detention.

5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*

For purposes of investigating possible instances of child abuse and neglect within family law, under Ind. Code Ann. § 31-32-11-1 (Privileged communications), § 31-33 (Juvenile law: reporting and investigation of child abuse and neglect), § 31-34-7-4 (Persons accused of child abuse or neglect entitled to access to report), and § 31-39-8-4 (Probative value of information—Unsubstantiated information), “child abuse and neglect . . . refers to a child described in IC 31-34-1-1 through IC 31-34-1-5, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.”¹²⁷ Ind. Code Ann. § 31-9-2-14. However, subsection (b) specifies that “child abuse and neglect” does not apply to a child who is alleged to be “a victim of a sexual offense under IC 35-42-4-3 [Child molesting] unless the alleged offense under IC 35-42-4-3 involves the fondling or touching of the buttocks, genitals, or female breasts, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.” Under subsection (c), “‘Child abuse or neglect’, for purposes of IC 31-34-2.3 [Child protective orders for removal of alleged perpetrators], refers to acts or omissions by a person against a child as described in IC 31-34-1-1 through IC 31-34-1-9, regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.”

Ind. Code Ann. § 31-34-1-3(a)(1) (Victim of sex offenses) defines a “child in need of services” as a child who, before reaching the age of 18, is the victim of a specified sex offense, including a victim of Ind. Code Ann. § 35-42-4-3 (Child molesting), § 35-42-4-4 (Child exploitation), § 35-42-4-9 (Sexual misconduct with a minor), § 35-45-4-2 (Prostitution), or “the law of another jurisdiction . . . that is substantially equivalent to any of the offenses listed,” and “the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.”

A child also is a child in need of services if “the child lives in the same household as another child who is the victim of a sex offense” listed above; “the child lives in the same household as the adult who committed the sex offense,” and the offense “resulted in a conviction or judgment,” or the adult “has been charged with a sex offense listed in subdivision (1) and is awaiting trial;” the child needs care or treatment as noted above, and

a caseworker assigned to provide services to the child:

(A) places the child in a program of informal adjustment or other family or rehabilitative services based upon the existence of the circumstances described in subdivisions (1) and (2) and the assigned caseworker subsequently determines further intervention is necessary; or

¹²⁷ Ind. Code Ann. § 31-34-1-1 (Impairment or serious endangerment of physical or mental condition); Ind. Code Ann. § 31-34-1-2 (Endangerment of physical or mental health); Ind. Code Ann. § 31-34-1-3 (Victims of sex offenses); Ind. Code Ann. § 31-34-1-4 (Participation in obscene performances); Ind. Code Ann. § 31-34-1-5 (Sex offenses committed by child).

(B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate. Ind. Code Ann. § 31-34-1-3(b).

In addition, law enforcement must report suspected child abuse when taking a minor into custody on prostitution charges. Ind. Code Ann. § 35-42-3.5-4(c)¹²⁸ (Rights of alleged victims) states that “[i]f a law enforcement agency detains an alleged victim of an offense under section 1 of this chapter who is less than eighteen (18) years of age, the law enforcement agency shall immediately notify the department of child services that the alleged victim may be a victim of child abuse or neglect.”

5.5.1 Recommendation: Amend Ind. Code Ann. § 31-34-1-3 (Victim of sex offenses) to include victims of Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking), § 35-42-4-5 (Vicarious sexual gratification), § 35-42-4-6 (Child solicitation), § 35-45-4-3 (Patronizing a prostitute), and § 35-45-4-4 (Promoting prostitution) as children in need of services.

5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

For juvenile law, “custodian” is defined as “a person with whom a child resides.” Ind. Code Ann. § 31-9-2-31(a). For purposes of the chapter on child in need of services, “custodian” is defined in Ind. Code Ann. § 31-9-2-31(b), in part, as, including “any person who is . . . (3) a child caregiver, as defined in section 16.4 [IC 31-9-2-16.4] of this chapter;¹²⁹ (4) a member of the household of the child’s noncustodial parent; or (5) an individual who has or intends to have direct contact, on a regular and continuing basis, with a child for whom the individual provides care and supervision.” These definitions may not be sufficiently broad to capture a trafficker in the definition of “caregiver.”

5.6.1 Recommendation: Amend Ind. Code Ann. Chapt. 31-9-2 (Definitions) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*

Pursuant to Ind. Code Ann. § 5-2-6.1-12(1), a victim of a violent crime is eligible to receive compensation under Title 5, Article 2, Chapter 6.1 (Compensation for victims of violent crime). A “victim” is defined as “an individual who suffers bodily injury or death as a result of a violent crime.” Ind. Code Ann. § 5-2-6.1-7. Violent crimes include, with some exceptions, those felonies or Class A misdemeanors that result in bodily injury or death to the victim. Ind. Code Ann. § 5-2-6.1-8(1). Violent crimes also include Ind. Code Ann. § 35-42-4-3 (Child molesting) and § 35-42-4-7 (Child seduction). Ind. Code Ann. § 5-2-6.1-8(1). “Bodily injury” is defined as: “(1) an impairment of a physical condition; (2) a visible injury; (3) physical pain; or (4) emotional trauma that stems directly from the impairment of a physical condition, a visible injury, or physical pain.” Ind. Code Ann. § 5-2-6.1-0.5.

¹²⁸ See *supra* note 116.

¹²⁹ A “child caregiver” is defined in Ind. Code Ann. § 31-9-2-16.4 as “a person who provides, or is responsible for providing, care and supervision of a child (other than a child of whom the person is a parent, stepparent, grandparent, aunt, uncle, sibling, legal guardian or custodian with whom the person resides) at a residential property that is not the child’s place of residence, if the person: (1) is not required to be licensed as the operator of . . . a child care home . . . a foster family home . . . ; (2) provides care and supervision of a child while unattended by the child’s: (A) parent; (B) guardian; or (C) custodian with whom the child resides; and (3) receives more than two thousand dollars (\$2,000) in annual compensation for providing care and supervision of a child or children.”

After proving “bodily injury,” other requirements and ineligibility factors present special difficulties for domestic minor sex trafficking victims. A victim who “sustained the injury as a result of participating in or assisting in . . . a criminal act,” or “profited or would have profited from the criminal act” may not receive victim’s compensation benefits. Ind. Code Ann. § 5-2-6.1-13(a)(1), (3).¹³⁰ However, an exception to the reporting requirement exists for alleged victims of child sex crimes and may apply to CSEC victims. Ind. Code Ann. § 5-2-6.1-17(a) states “(a) Except for an alleged victim of a child sex crime,¹³¹ the division may not award compensation under this chapter unless the violent crime was reported to a law enforcement officer not more than seventy-two (72) hours after the occurrence of the crime.” In addition, if an eligible victim’s application for compensation is not received within 180 days after the date of the crime, or within 2 years given a showing of good cause, compensation will not be granted to the victim. Ind. Code Ann. § 5-2-6.1-16(b). Nothing in Ind. Code Ann. § 5-2-6.1 (Compensation for victims of violent crime), however, explains what constitutes “good cause” for purposes of Ind. Code Ann. § 5-2-6.1-16(b) (Applications for assistance). An exception to this requirement may also apply to CSEC victims in some cases since “an alleged victim of a child sex crime may submit an application to the division until the victim becomes thirty-one (31) years of age.” Ind. Code Ann. § 5-2-6.1-16(e). Finally, if “the claimant fails to fully cooperate with law enforcement personnel in the investigation, apprehension, and prosecution of the offender,” compensation may be denied. Ind. Code Ann. § 5-2-6.1-18.

5.7.1 Recommendation: Amend Ind. Code Ann. § 5-2-6.1-13(a) to specifically extend the exceptions to the reporting requirement and ineligibility criteria to victims of domestic minor sex trafficking.

5.7.2 Recommendation: Amend Ind. Code Ann. § 5-2-6.1-8(1) to include Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) within the definition of a violent crime, regardless of whether the victim suffers bodily injury or death as a result of the offense.

5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*

Ind. Code Ann. § 35-42-3.5-4(a)(3) (Additional rights of victim) provides that human trafficking victims shall be provided protection if their “safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense” Protections include “ensuring that the names and identifying information of the alleged victim and the victim’s family members are not disclosed to the public.” Ind. Code Ann. § 35-42-3.5-4(a)(3)(B).

In addition, victims of trafficking and sexual offenses who are under 14 are entitled to certain victim-friendly protections throughout the criminal justice process, as listed in Ind. Code Ann. Title 35, Article 37, Chapter 4 (Evidence). In prosecutions for certain listed crimes, including, Ind. Code Ann. § 35-42-3.5-1 (Promotion of

¹³⁰ Pursuant to Ind. Code Ann. § 5-2-6.1-13(b), “If the victim is a dependent child or dependent parent of the person who commits a violent crime, compensation may be awarded where justice requires.”

¹³¹ Ind. Code Ann. § 5-2-6.1-7.5 provides,

As used in this chapter, “victim of a child sex crime” means an individual who was the victim of:

- (1) child molesting (IC 35-42-4-3(a));
- (2) vicarious sexual gratification (IC 35-42-4-5);
- (3) child solicitation (IC 35-42-4-6);
- (4) child seduction (IC 35-42-4-7); or
- (5) incest (IC 35-46-1-3);

and was less than eighteen (18) years of age at the time the crime occurred.

human trafficking—Sexual trafficking of a minor—Human trafficking) and § 35-42-4 (Sex crimes), “On the motion of the prosecuting attorney, the court may order that the testimony of a protected person be taken in a room other than the courtroom, and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television arrangement that: (1) allows the protected person¹³² to see the accused and the trier of fact; and (2) allows the accused and the trier of fact to see and hear the protected person.” Ind. Code Ann. § 35-37-4-8(c). Videotaped testimony of a “protected person” may also be ordered by the court upon motion of the prosecuting attorney or the defendant under the same requirements of Ind. Code Ann. § 35-37-4-8(c). Ind. Code Ann. § 35-37-4-8(d). Pursuant to Ind. Code Ann. § 35-37-4-8(e), the court may not allow closed-circuit or videotaped testimony unless certain conditions are met, including the conditions outlined in subsection (e)(1)(B) that the court find that the protected person should testify outside of court because

- (i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person’s testifying in the physical presence of the defendant would cause the protected person to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;
- (ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or
- (iii) evidence has been introduced concerning the effect of the protected person’s testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person’s testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person.

Ind. Code Ann. § 35-37-4-8 does not permit the defendant to be present in the room while the witness gives testimony via closed-circuit television. Ind. Code Ann. § 35-37-4-8(f). If the court allows testimony to be given via videotape, Ind. Code Ann. § 35-37-4-8(g) provides that only certain persons may be present in the room during the witness’s testimony, including the defendant if he is not represented by an attorney. Ind. Code Ann. § 35-37-4-8(g)(3). Also, “if the defendant is not represented by an attorney, the defendant may question the protected person.” Ind. Code Ann. § 35-37-4-8(g)(7).

¹³² Pursuant to Ind. Code Ann. § 35-37-4-8(b), “protected person” is defined by referring to Ind. Code Ann. § 35-37-4-6. Ind. Code Ann. § 35-37-4-6(c) states,

As used in this section, “protected person” means:

- (1) a child who is less than fourteen (14) years of age;
- (2) an individual with a mental disability who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
 - (A) is manifested before the individual is eighteen (18) years of age;
 - (B) is likely to continue indefinitely;
 - (C) constitutes a substantial impairment of the individual's ability to function normally in society; and
 - (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or
- (3) an individual who is:
 - (A) at least eighteen (18) years of age; and
 - (B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:
 - (i) managing or directing the management of the individual's property; or
 - (ii) providing or directing the provision of self-care.

The court also must provide safeguards all sex trafficking victims, such as separate waiting rooms, “to minimize the contact of the victim of an offense” with the defendant and the defendant’s friends and relatives during criminal proceedings. Ind. Code Ann. § 35-37-4-11(a), (b).

Furthermore, in prosecutions under Ind. Code Ann. § 35-42-4 (Sex crimes), evidence of the victim’s past sexual conduct, including both opinion and reputation evidence, may not be admitted or referred to in the presence of the jury. Ind. Code Ann. § 35-37-4-4(a). However, pursuant to Ind. Code Ann. § 35-37-4-4(b), evidence

- (1) Of the victim’s or a witness’s past sexual conduct with the defendant;
- (2) Which in a specific instance of sexual activities shows that some person other than the defendant committed the act upon which the prosecution is founded; or
- (3) That the victim’s pregnancy at the time of the trial was not caused by the defendant; may be introduced if the judge finds, under the procedure provided in subsection (c) of this section, that it is material to a fact at issue in the case and its inflammatory or prejudicial nature does not outweigh its probative value.

Certain additional protections are afforded to children who are the victims of sex crimes. Under Ind. Code Ann. § 35-40-5-11 (Interview by defense counsel of child less than sixteen who is alleged victim of sex offense), defense counsel who wish to interview victims of sexual offenses under 16 after charges are filed must “contact the prosecuting attorney” rather than the child, and “[t]he child has the right . . . to confer with the prosecuting attorney before the interview occurs.” Ind. Code Ann. § 35-40-5-11(c). “If the parties are unable to agree to the terms of the interview, the parties may petition the court for a hearing on the terms of the interview prior to the interview taking place. The court shall review the terms suggested by the parties and consider the age of the child, any special considerations, and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the interview.” Ind. Code Ann. § 35-40-5-11(d).

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Under Ind. Code Ann. § 31-39-8-2 (Petition to juvenile court for removal of records), “Any person may petition a juvenile court at any time to remove from: (1) the court’s files; (2) the files of law enforcement agencies; and (3) the files of any other person who has provided services to a child under a court order; those records pertaining to the person’s involvement in juvenile court proceedings.” In determining whether to grant such a petition, Ind. Code Ann. § 31-39-8-3 states the court may consider the following:

- (1) the best interests of the child;
- (2) the age of the person during the person’s contact with the juvenile court or law enforcement agency;
- (3) the nature of any allegations;
- (4) whether there was an informal adjustment or an adjudication;
- (5) the disposition of the case;
- (6) the manner in which the person participated in any court ordered or supervised services;
- (7) the time during which the person has been without contact with the juvenile court or with any law enforcement agency;
- (8) whether the person acquired a criminal record; and
- (9) the person’s current status.

Furthermore, a person who was arrested but not charged with a criminal offense, or if the charges were dropped, may petition the court to have records related to the arrest expunged. Ind. Code Ann. § 35-38-5-1(a). If the petition is granted, “no information concerning the arrest may be placed or retained in any state central

repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. However, this chapter does not require any change or alteration in any record (such as a police blotter entry) made at the time of the arrest or in the record of any court in which the criminal charged were filed.” Ind. Code Ann. § 35-38-5-3.

5.10 Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.

Victim restitution for victims of human trafficking offenses is mandatory. Ind. Code Ann. § 35-42-3.5-2 (Restitution to victim) states, “In addition to any sentence or fine imposed for a conviction of an offense under section 1 [Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking)] of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.” Ind. Code Ann. § 35-50-5-3(k) states,

The court shall order a person convicted of an offense under IC 35-42-3.5 to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim’s labor or services.
- (2) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of:
 - (A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or
 - (B) IC 22-2-2 (Minimum Wage);whichever is greater.

In addition, persons convicted of Ind. Code Ann. § 35-42-3.5-1 may also be liable to the victim for civil damages, including actual and punitive damages, reasonable attorney’s fees, and court costs. Ind. Code Ann. § 35-42-3.5-3(a).

Victims are entitled to restitution more broadly under Ind. Code Ann. § 35-50-5-3(a) (Restitution orders), which permits the court to order a defendant convicted of any felony or misdemeanor to make restitution to the victim. This restitution provision is subject to the discretion of the court. In determining the amount of restitution a victim is entitled to, pursuant to Ind. Code Ann. § 35-50-5-3(a), the court will consider the following:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

Victims may also be entitled to receive “[a]n amount not to exceed three (3) times . . . the actual damages” they suffered as a result of a violation of Ind. Code Ann. § 35-45-9-3 (Criminal gang activity). Ind. Code Ann. § 34-24-3-1.

Lastly, victims whose offenders are convicted of racketeering may pursue additional remedies. A victim who has suffered damages as a result of a violation of Ind. Code Ann. § 35-45-6-2 (Corrupt business influence) may bring a civil suit to recover three times the amount of damages incurred, attorney’s fees, court costs, and any

punitive damages the court may award. Ind. Code Ann. § 34-24-2-6(b). The trafficker or facilitator can also be ordered to forfeit “any property: (1) used in the course of; (2) intended for use in the course of; (3) derived from; or (4) realized through; conduct in violation of IC 35-45-6-2 [Corrupt business influence].” Ind. Code Ann. § 34-24-2-2(a). Pursuant to Ind. Code Ann. § 34-24-2-6(d), “an aggrieved person has a right or claim to forfeited property or to the proceeds derived from forfeited property superior to any right or claim the state has in the same property or proceeds.”

However, victims may be required to subrogate some of these civil claims to the state for services provided to cover the cost of the services. Ind. Code Ann. § 5-2-6-25¹³³ (Human trafficking prevention and victim assistance fund)¹³⁴ provides,

- (g) The state is subrogated to the rights of a victim to whom services are provided, to the extent of the services. The subrogation rights are against the perpetrator of the crime or a person otherwise liable for the loss. If the victim brings a civil action against the perpetrator of the crime or against the person otherwise liable for the loss, the victim shall promptly notify the institute of the filing of the civil action.
- (h) In addition to the subrogation rights under subsection (g), the state is entitled to a lien in the amount of the services provided on a recovery made by or on behalf of the victim. The state may: (1) recover the amount of services in a separate action; or (2) intervene in an action brought by or on behalf of the victim.
- (h) In addition to the subrogation rights under subsection (g), the state is entitled to a lien in the amount of the services provided on a recovery made by or on behalf of the victim. The state may:
 - (1) recover the amount of services in a separate action; or
 - (2) intervene in an action brought by or on behalf of the victim.

5.11 Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Pursuant to Ind. Code Ann. § 35-41-4-2(c), no statute of limitations applies to criminal prosecutions of Class A felonies (for a crime committed before July 1, 2014), or a Level 1 or 2 felony (for a crime committed after June 30, 2014), such as violations of Ind. Code Ann. § 35-42-3.5-1(b) (Sexual trafficking of a minor) and, when aggravating factors are present, Ind. Code Ann. § 35-42-4-9(a) (Sexual misconduct with a minor).

Pursuant to Ind. Code Ann. § 35-41-4-2(m), a statute of limitations applies to sex offenses listed within IC 11-8-8-4.5 (sex offender defined) if the offense is committed against a child. The case must be brought within 10 years of the offense, or within 4 years of when the victim gains their dependence from the alleged offender, “whichever occurs later.” There are two exceptions to this rule. The first is for sex offenses that are Class A felonies (if committed prior to July 1, 2014), Level 1 or Level 2 felonies (if committed after June 30, 2014); actions for these offenses may be brought at any time. The second exception is for actions brought under Ind. Code Ann. §§ 35-42-4-3(a) (Child molesting), 35-42-4-5 (Vicarious sexual gratification), 35-42-4-6 (Child solicitation), 35-42-4-7 (Child seduction), and 35-46-1-3 (Incest). These cases may be brought until the victim reaches 31 years of age. Ind. Code Ann. § 35-41-4-2(e).

¹³³ The text of Ind. Code Ann. § 5-2-6-25 included here and elsewhere in this report includes amendments made by the passage of S.E.A. No. 532 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

¹³⁴ Ind. Code Ann § 5-2-6-25(a) establishes the human trafficking prevention and victim assistance fund for the purpose of providing funds for: 1) human trafficking victim services; and 2) human trafficking prevention programs provided by community based organizations. Money in the fund can only be used to carry out the purpose of the fund.

Pursuant to Ind. Code Ann. § 35-41-4-2(a)(1), a statute of limitations of 5 years applies to criminal prosecutions of Level 4, Level 5, or Level 6 felonies, such as violations of Ind. Code Ann. § 35-45-9-3 (Participation in criminal gang), § 35-45-9-5 (Criminal gang recruitment), § 35-45-6-2(1) (Corrupt business influence), and § 35-45-15-5 (Money laundering). Pursuant to Ind. Code Ann. § 35-41-4-2(a)(2), a statute of limitations of 2 years applies to criminal prosecutions for any misdemeanor, such as Ind. Code Ann. § 35-42-4-13(c) (Inappropriate communication with a child) and § 35-45-4-3 (Patronizing a prostitute).

For civil claims, a 2-year statute of limitations, running from the date of the offender's conviction, applies to domestic minor sex trafficking victims civil claims for damages under Ind. Code Ann. § 35-42-3.5-3(a) (Civil cause of action). Ind. Code Ann. § 35-42-3.5-3(b).

- 5.11.1 Recommendation: Amend Ind. Code Ann. § 35-41-4-2(e) to include Ind. Code Ann. § 35-42-3.5-1(a) and (d) (Promotion of human trafficking—Sexual trafficking of a minor—Human trafficking) as an offense for which prosecution is not barred until the victim of the offense reaches the age of 31.

Legal Components:

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
 - 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
 - 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
 - 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
 - 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
 - 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*
-

Legal Analysis:

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*

Pursuant to Ind. Code Ann. § 5-2-1-9(a)(10), which discusses mandatory training for law enforcement officers, the Indiana Law Enforcement Training Board is required to provide the following:

Minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for in service training programs for law enforcement officers. The course must cover the following topics:

- (A) Examination of the human and sexual trafficking laws (IC 35-42-3.5).
- (B) Identification of human and sexual trafficking.
- (C) Communicating with traumatized persons.
- (D) Therapeutically appropriate investigative techniques.
- (E) Collaboration with federal law enforcement officials.
- (F) Rights of and protections afforded to victims.
- (G) Providing documentation that satisfies the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B) requirements established under federal law.
- (H) The availability of community resources to assist human and sexual trafficking victims.

A law enforcement officer appointed after June 30, 1993 may not “(1) make an arrest; (2) conduct a search or a seizure of a person or property; or (3) carry a firearm” unless they complete basic training requirements. Ind. Code Ann. § 5-2-1-9(d).

Police reserve officers must also receive training on human trafficking. Ind. Code Ann. § 36-8-3-20(l)¹³⁵ (Police reserve officers) states,

¹³⁵ The text of Ind. Code Ann. § 36-8-3-20 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1242 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).

(l) After June 30, 2015, a police reserve officer who has satisfactorily completed pre-basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the police reserve officer satisfactorily completes the mandatory inservice training requirements established by rules adopted by the law enforcement training board (created by IC 5-2-1-3). Inservice training must include training in interacting with persons with mental illness, addictive disorders, intellectual disabilities, autism, developmental disabilities, and Alzheimer's disease or related senile dementia, to be provided by persons approved by the secretary of family and social services and the board. The inservice training must also concern human and sexual trafficking and high risk missing persons (as defined in IC 5-2-17-1). . . .

6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*

Pursuant to Ind. Code Ann. § 35-33.5-5-4(a)(1), “[a] person whose communications are intercepted, disclosed, or used in violation of this article: (1) has a civil cause of action against a person who intercepts, discloses, uses, or procures another person to intercept, disclose, or use a communication in violation of this article.” However, pursuant to Ind. Code Ann. § 35-31.5-2-176 (Definitions), “[i]nterception,” for purposes of IC 35-33.5, means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment under this article.”

6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*

In general, an application for a warrant for intercepting electronic communications must be in writing and include, among other things, pursuant to Ind. Code Ann. § 35-33.5-2-2(a)(2)(A), “(2) An affidavit setting forth the facts relied upon by an applicant to show why a warrant should be issued or an extension granted, including the following: (A) Facts establishing probable cause for the belief that a designated offense allegedly has been, is being, or may be committed.”

“Designated offense” is defined in Ind. Code Ann. § 35-31.5-2-91 “for purposes of IC 35-33.5” as including “human and sexual trafficking crimes under IC 35-42-3.5,” as well as Ind. Code Ann. § 35-42-4-6 (Child solicitation). Notably, Ind. Code Ann. § 35-44-4-2 (Prostitution), § 35-45-4-3 (Patronizing a prostitute) and § 35-45-4-4 (Promoting prostitution) are not included as designated offenses.

Because human and sexual trafficking crimes under Ind. Code Ann. § 35-42-3.5-1 are considered “designated offenses,” wiretapping may be used in domestic minor sex trafficking investigations. Furthermore, the contents and evidence received from the interception may be received into evidence, but only if “each party, not less than fourteen (14) days before the proceeding, has been furnished with a copy of the application, warrant, and any orders for an extension under which the interception was authorized.” Ind. Code Ann. § 35-33.5-5-1. However, “[t]he fourteen (14) day period may be waived by the court if” certain findings are made by the court. Ind. Code Ann. § 35-33.5-5-1.

6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*

The use of a decoy by law enforcement in the investigation of prostitution or sex trafficking appears to be permitted under both Ind. Code Ann. § 35-42-4-6(b) and (c) (Child solicitation) and § 35-42-4-13(c) (Inappropriate communication with a child). Ind. Code Ann. § 35-42-4-6(b) (Child solicitation) uses the phrase “a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age.” Similarly, Ind. Code Ann. § 35-42-4-6(c) (Child solicitation) uses the phrase “a child at least

fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age.” Ind. Code Ann. § 35-42-4-13(c) (Inappropriate communication with child) uses the phrase “an individual whom the person believes to be a child less than fourteen (14) years of age.” These phrases indicate that the victim does not have to be a minor.

Indiana does provide a defense of entrapment when, “(1) The prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and (2) The person was not predisposed to commit the offense.” Ind. Code Ann. § 35-41-3-9(a) (Entrapment). However, “merely affording a person an opportunity to commit the offense does not constitute entrapment.” Ind. Code Ann. § 35-41-3-9(b).

Ind. Coe Ann. § 35-41-5-1 prohibits a defense based on the fact that the victim was a law enforcement decoy. It states:

(a) A person attempts to commit a crime when, acting with the culpability required for commission of the crime, he the person engages in conduct that constitutes a substantial step toward commission of the crime. An attempt to commit a crime is a felony or misdemeanor of the same class as the crime attempted.

...
(b) It is no defense that, because of a misapprehension of the circumstances, including the age of the intended victim in a prosecution for attempted child molesting (IC 35-42-4-3), it would have been impossible for the accused person to commit the crime attempted.

(c) For purposes of subsection (a), a person engages in conduct that constitutes a substantial step if the person, with the intent to commit a sex crime against a child or an individual the person believes to be a child:

- (1) communicates with the child or individual the person believes to be a child concerning the sex crime; and
- (2) travels to another location to meet the child or individual the person believes to be a child.

6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*

Law enforcement can likely use the Internet to investigate offenses under Ind. Code Ann. § 35-42-4-6(b), (c) (Child solicitation). Ind. Code Ann. § 35-42-4-6(b) makes it illegal if a person 18 or older to “knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in” certain sexual acts.¹³⁶ Similarly, Ind. Code Ann. § 35-42-4-6(c) makes it illegal if a person 21 years of age or older to “knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in” certain sexual acts. Ind. Code Ann. § 35-42-4-6(c). Ind. Code Ann. § 35-42-4-6(a) defines “solicit” as, “to command, authorize, urge, incite, request, or advise an individual: . . . (4) by using a computer network (as defined in IC 35-43-2-3(a)); . . . to perform an act described in [Ind. Code Ann. § 35-42-4-6(b) or (c)].”

Both of the above offenses provide enhanced crime classifications in the event the offense is committed through use of a computer network. Ind. Code Ann. § 35-42-4-6(b), (c).

6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

¹³⁶ See *supra* Section 1.2 for discussion of relevant provisions.

Pursuant to Ind. Code Ann. § 10-13-5-5 (Indiana clearing house for information on missing children and missing endangered adults established), Indiana has established the Indiana Clearinghouse for Information on Missing Children and Missing Endangered Adults (Clearinghouse). The Clearinghouse staff's duties include operating a "central data storage, retrieval, and information distribution system designed for the exchange of information on missing children,"¹³⁷ publishing a quarterly directory of missing children, and compiling statistics on missing children cases handled by the Clearinghouse each year. Ind. Code Ann. § 10-13-5-6(b)(2), (7), (8).

Law enforcement agencies that receive notification of a missing child are required to prepare a report on the missing child within 5 hours. Ind. Code Ann. §§ 31-36-1-1, 31-36-1-2.¹³⁸ After completing the report, the law enforcement agency must immediately forward its contents to, among others, all law enforcement agencies having jurisdiction in areas where the child lives and last was seen, as well as to the Clearinghouse and the National Crime Information Center's Missing Person File. Ind. Code Ann. § 31-36-1-3. Within 24 hours of receiving notification that a child is missing, the law enforcement agency must begin an investigation. Ind. Code Ann. § 31-36-2-1. When a law enforcement agency is notified that a child previously reported missing has been found, it must promptly notify all those to whom the report was filed pursuant to Ind. Code Ann. § 31-36-1-3 and § 31-36-1-4. Ind. Code Ann. § 31-36-2-6.

Pursuant to Ind. Code Ann. § 5-2-17-7(a)¹³⁹ (Information to be provided to person making the missing person report), "A law enforcement agency shall provide a copy of the written informational pamphlet described in IC 10-11-2-34 to a person making a report of a missing child less than eighteen (18) years of age at the time the person makes the report." According to Ind. Code Ann. § 10-11-2-34(b), the written informational pamphlet must contain the following information:

- (1) The twenty-four (24) hour toll free numbers for the following:
 - (A) The National Center for Missing and Exploited Children.
 - (B) The National Runaway Safeline.
- (2) A description of the services that the National Center for Missing and Exploited Children and the National Runaway Safeline provide to families of missing children.

© January 23, 2012 Shared Hope International, American Center for Law and Justice. All rights reserved.

© November 29, 2012 Shared Hope International. All rights reserved.

© November 7, 2013 Shared Hope International. All rights reserved.

© November 6, 2014 Shared Hope International. All rights reserved.

© November 11, 2015 Shared Hope International. All rights reserved.

¹³⁷ A "missing child" is defined as "a person less than eighteen (18) years of age who: (1) is, or is believed to be: (A) a temporary or permanent resident of Indiana; (B) at a location that cannot be determined by the person's parent or legal custodian; and (C) reported missing to a law enforcement agency; or (2) is, or is believed to be: (A) a temporary or permanent resident of Indiana; and (B) a victim of the offense of criminal confinement (IC 35-42-3-3) or interference with custody (IC 35-42-3-4)." Ind. Code Ann. § 10-13-5-4.

¹³⁸ An exception to the 5 hour reporting requirement applies where the law enforcement agency has received a prior, unrelated notification that the child was missing and the "agency has reason to believe that the child is missing because the child has committed a delinquent act." Ind. Code Ann. § 31-36-1-2.

¹³⁹ The text of Ind. Code Ann. § 5-2-17-7 included here and elsewhere in this report includes amendments made by the passage of H.E.A. No. 1216 during the first regular session of 119th Indiana General Assembly (2015) (effective July 1, 2015).