

# INDIANA

## REPORT CARD | 2018

Indiana's human trafficking law does not require proof of force, fraud, or coercion when the victim is a minor, but third party control is required to establish the crime of sex trafficking. Accordingly, all commercially sexually exploited children may not be identified as sex trafficking victims. However, minors cannot be charged for prostitution offenses, and Indiana law mandates law enforcement training on human trafficking.

Final Score

82

Final Grade

B



10

10



15

25



15

15



4.5

10



22.5

27.5



15

15

## Criminalization of Domestic Minor Sex Trafficking

Indiana's human trafficking laws separately address sex trafficking of a minor without requiring proof of force, fraud, or coercion. Indiana prohibits commercial sexual exploitation of children (CSEC) under the "promoting prostitution" law. The prostitution law refers to Indiana's trafficking laws to provide an affirmative defense to victims of human trafficking, thereby acknowledging the intersection of prostitution with trafficking victimization. Indiana's racketeering law defines racketeering activity to include sex trafficking and CSEC offenses as predicate acts.

### Criminal Provisions for Demand

The buyer-applicable trafficking law prohibits paying for "an act performed by a human trafficking victim;" however, that law does not specifically prohibit paying for commercial sex, nor does it distinguish between, or provide heightened penalties for, purchasing sex with a minor. No CSEC law prohibits buying sex with a minor, and the offense of "making an unlawful proposition" does not distinguish between soliciting commercial sex acts with minors versus adults. Buyers convicted of human trafficking face 1–6 years imprisonment and a fine up to \$10,000. "Inappropriate communications with a child" and "child solicitation" could provide a means of obtaining heightened penalties for buyers who use the Internet to commit illegal sex acts. The human trafficking law does not expressly prohibit an age mistake defense. Buyers convicted under Indiana's child sex trafficking laws face asset forfeiture and mandatory victim restitution. Possessing images of child sexual exploitation (ICSE) is criminalized, but penalties do not reflect the seriousness of the offense. Buyers of sex with minors must register as sex offenders if convicted of trafficking or possession of ICSE, but not if convicted of "making an unlawful proposition" even when a minor is involved.

### Criminal Provisions for Traffickers

"Promotion of child sexual trafficking" and "Promotion of sexual trafficking of a younger child" are Level 3 felonies punishable by 3–20 years imprisonment and a fine up to \$10,000. "Child sexual trafficking" is a Level 2 felony punishable by 10–30 years imprisonment and a fine up to \$10,000. Traffickers also face prosecution under the state CSEC law, "Promoting prostitution." Creating ICSE is generally a felony punishable by a minimum of 1–6 years imprisonment and a fine up to \$10,000. The statutes on solicitation of a child under 16 and inappropriate communication with children provide a sentence enhancement to sexual offenses, which could reach traffickers who use the Internet to recruit minors for illegal sex acts. Traffickers convicted under Indiana's child sex trafficking laws face asset forfeiture and mandatory victim restitution. Traffickers must register as sex offenders if convicted of a trafficking or ICSE offense. Parental rights may be terminated on the ground that a child is adjudicated as a child in need of services, which includes child victims of Indiana's trafficking offenses, "child exploitation," "promoting prostitution," and "making an unlawful proposition."

## Criminal Provisions for Facilitators

Indiana's trafficking laws do not include the crime of assisting, enabling, or financially benefitting from sex trafficking, limiting its impact on trafficking crimes. However, a common "nuisance" law holds facilitators liable for maintaining a property used for human or sex trafficking. The crime of "promoting prostitution" may apply to facilitators, and facilitators face mandatory restitution

under criminal gang activity, money laundering, and racketeering laws. Facilitators also face discretionary civil forfeiture of any assets purchased with proceeds of criminal activity, forfeiture of personal property, including vehicles, and forfeiture under "nuisance" laws for prostitution and trafficking offenses. No laws in Indiana address child sex tourism.



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the trafficking law does not protect minors who are exploited by buyers without an identified trafficker. Some, but not all, of Indiana's sex trafficking offenses prohibit a defense based on the willingness of the minor to engage in the commercial sex act. Further, Indiana's prostitution offense excludes minors from being charged with a violation. A juvenile sex trafficking victim may access services through child welfare or the juvenile justice system, but specialized services are not required. Child sex trafficking is defined as abuse regardless of the victim's relationship to the perpetrator. Victims of violent crimes are eligible for state crime victims' compensation, but eligibility criteria may present barriers, including bars to recovery if the victim participated or assisted in a criminal act or refused to cooperate with law enforcement. Although exceptions exist for victims of a child sex crime, which is defined to include non-CSEC offenses, CSEC and trafficking offenses must be reported within 72 hours, and an application for compensation must be submitted within 180 days, unless good cause is shown, which would extend the application period for up to two years. Victim-friendly criminal justice procedures are available to sex traffick-

ing victims, which prevent the release of identifying information and provide separate waiting rooms during trial. Child victims of trafficking under 14 may testify via closed-circuit television. However, the "rape shield" law is limited to victims of ICSE and non-CSEC offenses, leaving other CSEC victim-witnesses unprotected from re-traumatizing cross-examination at the trials of their traffickers. Indiana law allows child sex trafficking victims to vacate delinquency adjudications for non-violent offenses related to trafficking victimization, but the child must have been coerced or controlled by another person; juvenile records may be expunged without a waiting period under a general expungement statute. Criminal restitution is mandatory for victims of sex trafficking, and restitution may be awarded to other victims. Civil remedies are also provided for sex trafficking victims. No statute of limitation applies to prosecutions of "child sex trafficking," but a ten year statute of limitations applies to all other prosecutions under the trafficking law. For civil claims based on damages from being trafficked, a two year statute of limitations begins to run upon the offender's criminal conviction. The statute of limitations for civil claims based on child sexual abuse is also lengthened.



## Criminal Justice Tools for Investigation and Prosecution

Training on trafficking is mandated for law enforcement and police reserve officers. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations for sex trafficking, but not for ICSE or prostitution-related offenses. "Promotion of child sexual trafficking — Promotion of sexual trafficking of a younger child" expressly prohibits a defense based on

the use of a law enforcement decoy posing as a minor to investigate this crime. Similarly, criminal solicitation laws authorize the use of a decoy or the Internet in sex trafficking investigations. Indiana has established a statewide reporting and response system for missing children and requires the reporting of missing and located children.



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