

WISCONSIN

REPORT CARD | 2018







The child sex trafficking statute does not require use of force, fraud, or coercion when the victim is a minor and provides serious penalties for offenders; however, that law fails to prohibit a defense based on a minor's apparent willingness to engage in the commercial sex act. Child sex trafficking victims charged with prostitution may be diverted and avoid a delinquency adjudication, but specialized services are not statutorily provided.

Final Score

87

Final Grade

B

					
7.5	25	15	7.5	18	14
10	25	15	10	27.5	15

Criminalization of Domestic Minor Sex Trafficking

"Trafficking of a child" is a distinct crime in Wisconsin, making the exploitation of a minor in a commercial sex act—defined to include sexually explicit performance—a felony offense regardless of force, fraud, or coercion. Commercial sexual exploitation of children (CSEC) laws include: "soliciting a child for prostitution," "sexual exploitation of a child," "child enticement," and "patronizing a child." The prostitution statute does not refer to the trafficking of a child statute to acknowledge the intersection of prostitution with trafficking victimization. Wisconsin's racketeering law includes trafficking of a child and CSEC offenses as predicate acts, permitting use of the law to prosecute sex trafficking enterprises.

Criminal Provisions for Demand

Following federal precedent, Wisconsin's "trafficking of a child" law applies to buyers who "obtain" or "attempt to obtain" a child for commercial sex. Buyer-applicable CSEC laws include "child enticement," "patronizing a child," and "soliciting a child for prostitution," a distinct offense that differentiates soliciting a minor versus an adult. "Trafficking of a child" is punishable by up to 40 years imprisonment and a fine up to \$100,000, while "soliciting a child for prostitution" and "child enticement" are punishable by up to 25 years imprisonment and a fine up to \$100,000. "Patronizing a child" is punishable by up to 3½ years imprisonment and a fine up to \$10,000. The "use of a computer to facilitate a child sex crime" law may apply to buyers who use the Internet for this purpose when the targeted minor is under 16. A mistake of age defense is generally prohibited within Wisconsin's Criminal Code and is expressly prohibited under "patronizing a child." A convicted buyer is subject to mandatory restitution to the victim and may face asset forfeiture for trafficking and CSEC offenses. Possessing images of child sexual exploitation (ICSE) carries penalties comparable to those for similar federal offenses. Buyers convicted of "trafficking of a child" or any of the buyer-applicable CSEC and ICSE offenses are required to register as sex offenders.

Criminal Provisions for Traffickers

"Trafficking of a child" is punishable by up to 40 years imprisonment and a fine up to \$100,000. Traffickers who commit the CSEC crimes of "soliciting a child for prostitution" and "child enticement" face up to 25 years imprisonment and a fine up to \$100,000. Under "sexual exploitation of a child," traffickers who create or distribute ICSE or recordings face up to 40 years imprisonment and a fine up to \$100,000, penalties comparable to those for similar federal offenses. Criminal asset forfeiture and victim restitution are available for convictions of all of these crimes. Wisconsin law prohibits a trafficker from using the Internet to engage a minor in a sex act. "Trafficking of a child," "sexual exploitation of a child" through ICSE, and all other CSEC offenses are considered "serious sex offenses" for which sex offender registration is required. Parental rights may be terminated if a trafficker has been convicted of sex trafficking any minor.

Criminal Provisions for Facilitators

“Trafficking of a child” includes the crime of assisting, enabling, or financially benefitting from the trafficking, which is punishable by up to 40 years imprisonment and a fine up to \$100,000. Promoting or selling ICSE is punishable by up to 40 years imprisonment and a fine up to \$100,000. Additionally, exhibiting or playing a recording of ICSE is punishable by up to 25 years imprisonment and a fine up to \$100,000 when the offender is over 18, reduced

to 3½ years imprisonment and a fine up to \$10,000 when the offender is under 18. Convicted facilitators are subject to criminal asset forfeiture for trafficking, CSEC, and ICSE offenses and must pay victim restitution. No laws make sex tourism a crime in Wisconsin, leaving the state vulnerable to unscrupulous businesses using commercial sex acts to sell travel.



Protective Provisions for the Child Victims

All commercially sexually exploited children are likely defined as juvenile sex trafficking victims. State law does not prohibit a defendant from raising a defense based on the willingness of the minor to engage in the commercial sex act. The prostitution law applies to minors under 18, meaning juvenile sex trafficking victims may face criminalization for commercial sex acts committed as a result of their victimization. A delinquency adjudication for prostitution may be avoided through a permissive diversionary process; however, Wisconsin law does not provide an avenue to specialized services. For purposes of child welfare intervention, a victim found to be abused or neglected—defined to include being a victim of human trafficking and child sexual exploitation—might receive protection through child protective services. The broad definition of “caregiver” (“any person who exercises or has exercised temporary or permanent control over the child”) does not necessarily present a barrier to child welfare intervention, and law enforcement may refer instances of suspected abuse by a non-caregiver to the county department. Victims of sex trafficking and CSEC offenses are expressly eligible for crime victims’ compensation; however, a requirement to report the incident to law enforcement within five days of when a report could reasonably be made may be difficult to comply with, and a determination that the victim was complicit in the crime or has not cooper-

ated with law enforcement can foreclose any access to an award. Victim-friendly court procedures may be available to child victims of sex trafficking and CSEC. Victims under 16 in any case may be permitted to testify via closed-circuit television if the court determines it necessary. The “rape shield” law, which reduces the trauma of cross-examination for testifying victims, is available in prosecutions under state trafficking and CSEC laws. Trafficking and CSEC victims have the right to a victim advocate throughout any pre-trial and trial procedures, including law enforcement interviews and court proceedings. Child victims of trafficking are eligible to participate in an address confidentiality program. Wisconsin law allows child sex trafficking victims to petition for vacatur and expungement immediately and within a single proceeding, but limits relief to adjudications for prostitution. Victim restitution is a mandatory part of sentencing for CSEC and trafficking convictions, and victims of child sex trafficking may bring a civil cause of action against the offender for damages within three years. Criminal proceedings for “trafficking of a child,” “soliciting a child for prostitution,” “patronizing a child,” and “sexual exploitation of a child” through ICSE must begin before the victim reaches 45 years of age, and criminal actions for “child enticement” must be brought before the victim reaches 26 years of age.



Criminal Justice Tools for Investigation and Prosecution

Wisconsin law does not mandate or authorize training or development of training materials for law enforcement on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping and wiretapping are permitted for investigations of trafficking and CSEC, facilitating the investigation and collection of important evidence for prosecutions. Although the trafficking law does not prohibit a defense based on the use of a law

enforcement decoy posing as a minor during an investigation, the defense is likely unavailable for charges brought under the non-CSEC offense of “use of a computer to facilitate a child sex crime,” which seemingly allows law enforcement to investigate via the Internet. Wisconsin has established a statewide reporting and response system for missing children, but does not require reporting of located missing 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.