

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

Issue Brief

SECTION 3.4

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Financial penalties for traffickers, including asset forfeiture, are sufficiently high.
The Legislative Solution	The primary reason traffickers exploit children is profit. Children can be sold for sex multiple times over a prolonged period of time, resulting in significant profit for the trafficker. Financial penalties, including fines and asset forfeiture, are critical to increasing criminal deterrence and disrupting criminal trafficking enterprises, as well as offsetting the cost of investigating, prosecuting and providing services to restore victims' lives. Also, asset forfeiture is a critical means of prohibiting a criminal from keeping the proceeds or instrumentalities of the crime.

Select Statute Highlights

The following states have high, preferably mandatory fines of at least \$5,000, and allow asset forfeiture.

California

Traffickers convicted of violating Cal. Penal Code § 236.1 (Human trafficking defined; punishment), where the victim is a minor under 18, are required to pay a fine not to exceed \$100,000. Traffickers prosecuted under Cal. Penal Code § 266j (Procurement of child) are required to pay a fine up to \$15,000. Furthermore, traffickers are subject to forfeit property and proceeds acquired through a "pattern of criminal profiteering activity" under the provisions of the California Control of Profits of Organized Crime Act, Cal. Pen. Code, Part 1 (Of crimes and punishments), Title 7 (Of crimes against public justice), Chapter 9 (Criminal Profiteering).

Connecticut

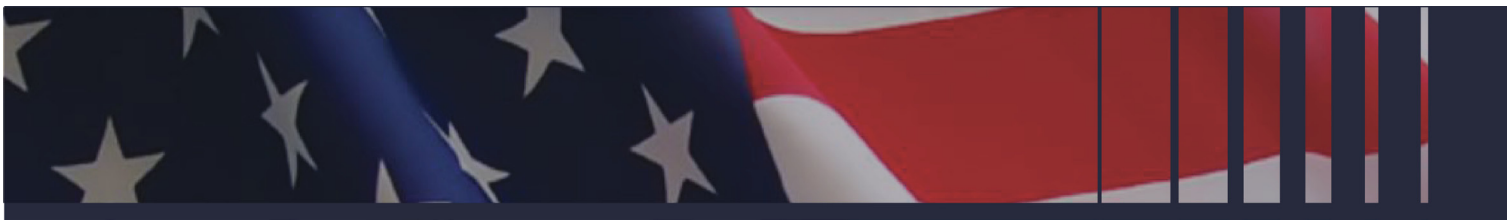
A trafficker convicted of Conn. Gen. Stat. § 53a-192a (Trafficking in Persons) or § 53a-86(a)(2) (Promoting prostitution in the first degree: Class B felony) could be fined up to \$15,000. A trafficker is also subject to asset forfeiture pursuant to Conn. Gen. Stat. § 54-36p (Forfeiture of moneys and property related to sexual exploitation and human trafficking).

D.C.

A conviction under D.C. Code § 22-1834 (Sex trafficking of children) can result in a fine up to \$200,000. Additionally, a trafficker can face asset forfeiture under chapter 18A (Human trafficking), D.C. Code § 22-1838(a), (b) (Forfeiture) which states, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia: (a) . . . (1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation. (b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them: (1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter, (2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter." A trafficker's vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of "[a]ny vehicle used in furtherance of a violation of a prostitution-related offense."

Illinois

A trafficker may be fined up to \$25,000 for each felony offense or the amount specified in the offense, whichever is greater for violations of the following statutes: Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses), Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14.4(d) (Pro-



moting juvenile prostitution), Ill. Comp. Stat. Ann. § 720 ILCS 5/10-5.1(g) (Luring of a minor), Ill. Comp. Stat. Ann. § 720 ILCS 5/11-6(c) (Indecent solicitation of a child), Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14.3(b) (Promoting prostitution) and Ill. Comp. Stat. Ann. § 720 ILCS 5/11-9.1(c) (Sexual exploitation of a child). Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9(j) (Trafficking in persons; involuntary servitude, and related offenses) states, “[a] person who commits the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services . . . is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].” Furthermore, Illinois has enacted specific forfeiture statutes with relation to specific offenses. Ill. Comp. Stat. Ann. § 725 ILCS 5/124B-300 (Persons and property subject to forfeiture), states, “A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons for forced labor or services under Section 10A-10 of the Criminal Code of 1961 [720 ILCS 5/10A-10] shall forfeit to the State of Illinois any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 of the Criminal Code of 1961 [720 ILCS 5/10A-10] . . .”

Indiana

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), § 35-45-9 (Criminal Gang Control), § 35-45-6-2 (Corrupt business influence), or § 35-45-15-5 (Money laundering), all felonies, can be ordered to pay a possible fine up to \$10,000. Indiana’s general forfeiture provision regarding proceeds of a crime, Ind. Code Ann. § 34-24-1-1(a)(3) (Seizure of vehicles and property commonly used as consideration for controlled substances offenses; seizure of tobacco products and personal property owned and used to facilitate violation), would require traffickers convicted of any criminal offense to forfeit “[a]ny portion of real or personal property purchase with money that is traceable as a proceed of a violation of a criminal statute.” Furthermore, under Ind. Code Ann. § 34-24-1-1(a)(4), 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)(10), (c) permit “[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 [production and distribution of child pornography]” may be seized, but only if it is proved “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).”

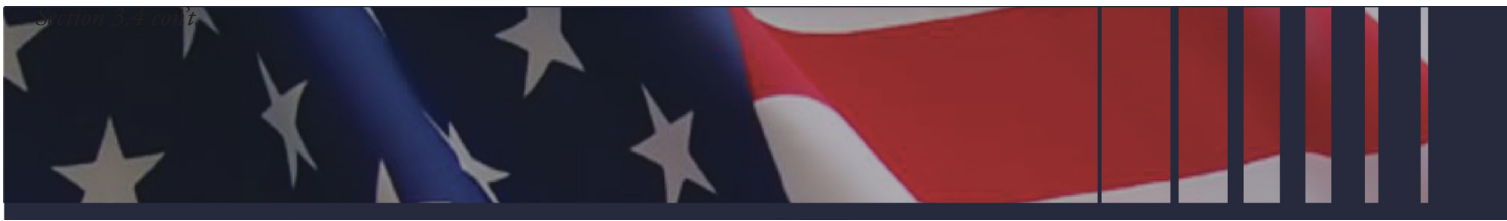
Massachusetts

Pursuant to Mass. Gen. Laws ch. 265 § 556(a), (e) (Human trafficking – Property subject to forfeiture), “(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth: (i) all conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal or otherwise facilitate a violation of section 50 [Human trafficking – sexual servitude] or 51 [Human trafficking – forced services]; (ii) all books, records and research, including microfilm, tapes and data which are used, or intended for use, in violation of section 50 or 51; (iii) all negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all negotiable instruments and securities used or intended to be used to facilitate any violation of section 50 or 51; and (iv) all real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part to commit or to facilitate any violation of section 50 or 51.” Additionally, traffickers convicted under Mass. Gen. Laws ch. 265, § 50 (Human trafficking – Sexual servitude) are subject to a fine not to exceed \$25,000 and “[a] business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.” Mass. Gen. Laws ch. 265, § 50(a), (c).

Issues Briefs are derived from the 41 legal components contained in the Protected Innocence Legislative Framework, an analysis of state laws performed by Shared Hope International, under the Protected Innocence Challenge. This initiative is designed to set a national standard of protection against domestic minor sex trafficking.

To access the Protected Innocence Legislative Framework Methodology, and Report Cards, foundational analysis and recommendations for each state, please visit: www.sharedhope.org.





Washington

Wash. Rev. Code § 9A.88.140(2) (Vehicle impoundment—fees and fine) provides that “[u]pon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.” Subsection (4) sets a \$2,500 fine to the impounding agency prior to redeeming the vehicle. Pursuant to Wash. Rev. Code § 9A.20.021(a) a trafficker faces a fine under human trafficking or promoting commercial sexual abuse of a minor of \$50,000. In addition, Wash. Rev. Code § 9.68A.105 imposes a non-discretionary \$5,000 penalty for any conviction under Wash. Rev. Code § 9.68A.101 (Promoting commercial sexual abuse of a minor).

Wash. Rev. Code § 10.105.010(1) (Seizure and forfeiture) states in part, “[t]he following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.” This provision applies to all felonies, except contraband, narcotics, firearms, gambling devices, money laundering, fish and wildlife offenses, and Wash. Rev. Code § 10.105.900 (Human trafficking); thus, it could be applied in a case of commercial sexual abuse of a minor.

Wash. Rev. Code § 9.68A.120 (Seizure and forfeiture of property) applies specifically to “[a]ll visual or printed matter that depicts a minor engaged in sexually explicit conduct.” It also applies, with

some exceptions to “[a]ll raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060.” It further applies to “[a]ll personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.” Chapter 9.68A includes Wash. Rev. Code § 9.68A.100 (Commercial sexual abuse of a minor) bringing seizure and forfeiture of property to bear on this crime as well.

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