

## Policy Goal

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.

*Every state has a human trafficking law; however, within these statutes, there are variations in coverage. States must enact human trafficking laws that are consistent with each other and federal law in scope and penalty so as to prevent migration of trafficking crimes to more lenient states or onto tribal lands. First, human trafficking laws must clearly address the crime of sex trafficking for purposes of prosecution and victim identification. To ensure identification of sexually exploited children as victims and to prevent traffickers from escaping criminal liability through manufactured evidence of consent, all minors under the age of 18 should be deemed unable to consent to involvement in commercial sex acts, thus rendering the element of force, fraud, or coercion irrelevant in domestic minor sex trafficking cases. Many state statutes accomplish this goal through use of the words “any means” when addressing sex trafficking of minors under 18. Enacting laws that specifically criminalize trafficking of minors for commercial sexual exploitation without requiring proof of force, fraud, or coercion is necessary to facilitate the prosecution of buyers, traffickers, and facilitators of commercial sex with children.*

## EXAMPLES OF LEGISLATIVE SOLUTIONS

*The following are excerpts from statutes with the following: (1) language specifically criminalizing the commercial sexual exploitation of children or prostitution of children; (2) definition of a “minor” includes any child under the age of 18; and (3) absence of any required elements of force, fraud, or coercion to accomplish the trafficking of a minor.*

### ALABAMA

Ala. Code § 13A-6-152(a) (Human trafficking in the first degree) states, “A person commits the crime of human trafficking in the first degree if: . . . (2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude. (3) He or she knowingly gives monetary consideration or any other thing of value to engage in any sexual conduct with a minor or an individual he or she believes to be a minor.” Ala. Code § 13A-6-151(5) (Definitions) defines a “minor” as a “person under the age of 19.”

### HAWAII

Hawaii specifically criminalizes the sex trafficking of a minor under Haw. Rev. Stat. Ann. § 712-1202(1) (Sex trafficking), which states, “A person commits the offense of sex trafficking if the person knowingly: (a) Advances prostitution by compelling or inducing a person by force, threat, fraud or intimidation to engage in prostitution, or profits from such conduct by another; or (b) advances or profits from prostitution of a minor; provided that with respect to the victim’s age, the prosecution shall be required to prove only that the person committing the offense acted negligently.”

### LOUISIANA

A separate statute makes sex trafficking of children a crime without regard to use of force, fraud, or coercion when a minor under 18 is used in a commercial sex act. La. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) states, “A. It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. (3) For any parent, legal guardian, or person having custody of a person under

the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section. (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person. (5) For any person to knowingly advertise any of the activities prohibited by this Section. (6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section. B. For purposes of this Section, (1) “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

## MASSACHUSETTS

Mass. Gen. Laws ch. 265, § 50(a) (Human trafficking – Sexual servitude) provides that “[w]hoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000.” Pursuant to Mass. Gen. Laws ch. 265, § 50(b) “Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years.”

## MONTANA

Mont. Code Ann. § 45-5-702(1) (Trafficking of persons) states that “[a] person commits the offense of trafficking of persons if the person purposely or knowingly: (a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or (b) benefits, financially or by receiving anything of value, from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.” Mont. Code Ann. § 45-5-704(1) (Sexual servitude) states, “A person commits the offense of sexual servitude if the person purposely or knowingly: (a) uses coercion or deception to compel an adult to engage in commercial sexual activity; or (b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.”

## SOUTH DAKOTA

S.D. Codified Laws § 22-49-1 (Human trafficking prohibited) states, “No person may recruit, harbor, transport, provide, receive, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. No person may benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion.”

## TENNESSEE

Tennessee directly addresses human trafficking through Tenn. Code Ann. § 39-13-309 (Trafficking a person for a commercial sex act), which states, “(a) A person commits the offense of trafficking a person for a commercial sex act who: (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person’s provision of a commercial sex act; or (2) Recruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.” Tenn. Code Ann. § 39-13-301(15) defines “commercial sex act” as “(A) Any sexually explicit conduct for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or (B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.”

## WISCONSIN

Wis. Stat. § 948.051 (Trafficking of a child) states, “(1) Whoever knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a) is guilty of a Class C felony; (2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1); (3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.” For the purpose of this law, “child” is defined as “a person who has not attained the age of 18 years.” Wis. Stat. § 948.01(1). “Commercial sex act” means sexual conduct “for which anything of value is given to, promised, or received, directly or indirectly by any person.” Wis. Stat. § 940.302(1)(a).

## Policy Goal

Buying and possessing images of child sexual exploitation carries penalties as high as similar federal offenses.

*Images of child sexual exploitation (ICSE), commonly referred to as “child pornography,” are the actual images of sexual abuse as it is being perpetrated on a child. Minor victims depicted in ICSE suffer irreparable physical, emotional, and psychological harm. The most common forum for ICSE today is the Internet; once on the Internet, images cannot be removed completely and may continue to circulate, re-victimizing the child each time the images are viewed. A federal conviction for possession of ICSE is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000. Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000. To decrease demand for these images, those who purchase and possess ICSE must be subject to serious prison sentences, fines, and asset forfeiture; further, they should be required to pay restitution to the victims.*

## EXAMPLES OF LEGISLATIVE SOLUTIONS

*The following statutes demonstrate substantial sentences and asset forfeiture for the possession or purchase of images of child sexual exploitation.*

### DELAWARE

Del. Code Ann. tit. 11, § 1109(4) (Dealing in child pornography) prohibits the conduct of a person who “intentionally . . . accesses . . . receives, exchanges . . . stores . . . prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.” A conviction under Del. Code Ann. tit. 11, § 1109 is punishable as a Class B felony by imprisonment for 2–25 years. If the victim is under the age of 14 and the offender is either 18 years of age or older or tried as an adult, however, a conviction is designated a “dangerous crime against a child” under Del. Code Ann. tit. 11, § 777(a) (Dangerous crime against a child, definitions, sentences). A first conviction for a “dangerous crime against a child” is punishable as a Class B felony by imprisonment for 2–25 years, while subsequent convictions are punishable by mandatory imprisonment for life. Del. Code Ann. tit. 11, § 777(b).

### GEORGIA

Under Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties), “It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Additionally, Ga. Code Ann. § 16-12-100(b)(6) prohibits “any person knowingly to . . . purchase . . . any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” A person who violates this statute is guilty of a felony punishable by 5–20 years imprisonment and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f)(1). In addition, pursuant to Ga. Code Ann. § 16-12-100(e)(2), “Any property which is, directly or indirectly, used or intended to be used in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.”

### MISSISSIPPI

Miss. Code Ann. § 97-5-33(3) (Exploitation of children; prohibitions) states, “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (5), a person may not “by any means including computer, possess