

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Indiana Report Card 2016

The human trafficking law does not require proof of force, fraud, or coercion to cause a minor to engage in the commercial sex act, but buying sex with a domestic minor sex trafficking victim is not criminalized unless the buyer knew the minor was forced into prostitution. This limits the reach of the law and could threaten victims with prosecution for prostitution offenses.

Final Score

76

Final Grade

C



10

10

14.5

25

15

15

4.5

10

17.5

27.5

14.5

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 the sex trafficking statute to provide an affirmative defense to victims of human trafficking. Indiana's racketeering law defines racketeering activity to include sex trafficking and CSEC offenses as predicate acts.

### Criminal Provisions Addressing Demand

Because the state sex trafficking law provision that applies to buyers of commercial sex does not distinguish between trafficking an adult versus a minor, the buyer must have knowledge that a minor victim was forced to engage in the prostitution. No CSEC law prohibits buying sex with a minor, and the offense of patronizing a prostitute does not distinguish between purchasing commercial sex acts with minors versus adults. Statutes on inappropriate communications with a child and soliciting a child under 16 could provide a means of obtaining heightened penalties for buyers who use the Internet to commit illegal sex acts. The sex trafficking law does not expressly prohibit an age mistake defense. Possessing child pornography is criminalized. Buyers convicted under the sex trafficking law face mandatory victim restitution and discretionary civil asset forfeiture. Buyers who violate prostitution and human trafficking laws may also face forfeiture under nuisance laws. Buyers of sex with minors must register as sex offenders if convicted of sex trafficking or possession of child pornography, but not patronizing a prostitute even when a minor is involved.

### Criminal Provisions for Traffickers

Traffickers face prosecution under sex trafficking and CSEC laws. While promotion of human trafficking of a minor and promoting prostitution of a minor are Level 3 and Level 4 felonies punishable by 3–20 years and 2–12 years imprisonment, respectively, sexual trafficking of a minor makes selling a minor under 18 for purposes of prostitution a Level 2 felony punishable by 10–30 years imprisonment. Creating child pornography is a felony punishable by a minimum of 2–8 years imprisonment. Both sex trafficking and CSEC crimes carry a possible fine not to exceed \$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. Victim restitution is mandatory for sex trafficking convictions and discretionary for CSEC convictions. Traffickers face discretionary civil forfeiture of all assets purchased with proceeds of criminal activity and of vehicles used in child exploitation, as well as forfeiture under nuisance laws for prostitution and human trafficking offenses. Traffickers must register as sex offenders if convicted of sex trafficking a minor, human trafficking, or promoting prostitution of a minor. Parental rights may be terminated on the ground that a child is adjudicated as a child in need of services, which is defined in part, as a child victim of sex trafficking.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (possible)	Asset Forfeiture (available penalty)
Human Trafficking (knowing victim forced into prostitution) (§ 35-42-2.5-1(c))	Level 5 felony	1-6 years	Max. \$10,000	<input type="radio"/>
Patronizing a prostitute (§ 35-45-4-3)	Class A misdemeanor	Max. 1 year	Max. \$5,000	<input type="radio"/>
Possessing child pornography (§ 35-42-4-4(c))	Level 6 felony	6 months – 2.5 years	Max. \$10,000	<input checked="" type="radio"/>

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.



## Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law does not protect minors who are exploited by buyers without an identified trafficker and proof of force. 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. While minors may assert a defense to prostitution charges, criminal liability has not been eliminated, and juvenile sex trafficking victims face possible criminalization for commercial sex acts committed as a result of their victimization. Although law enforcement must report a child detained on prostitution charges to child welfare and a child victim of prostitution or pornography is considered by law a child in need of services, specialized services are not mandated to be provided to child sex trafficking victims. 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 later. Victim-friendly criminal justice procedures are available to sex trafficking 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 child pornography and non-CSEC offenses, leaving other CSEC victim-witnesses unprotected from retraumatizing cross-examination at trials of their traffickers. Any person, at any time, can petition to have a minor's criminal record expunged. 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 sexual trafficking of a minor, but a ten year statute of limitations applies to all other prosecutions under the trafficking law, including promotion of human trafficking of a minor, and most other CSEC felonies. For civil claims based on damages from being trafficked, a two year statute of limitations begins to run after the offender's conviction on criminal charges.

## Criminal Justice Tools for Investigation and Prosecution

Training on human trafficking and sex trafficking is mandated for law enforcement officers and police reserve officers. Single party consent to audiotaping is permitted, and wiretapping is allowed in investigations for sex trafficking, but not for child pornography or prostitution-related offenses. No trafficking or CSEC law prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate these crimes, but the defense is prohibited under two non-CSEC offenses, child solicitation and inappropriate communication with a child, which only require that the defendant reasonably believe the individual to be a minor of a certain age. 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.

## Criminal Provisions for Facilitators

The state sex trafficking law does 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. The CSEC crime of promoting prostitution is a felony punishable by 2–8 years imprisonment and a possible fine up to \$10,000. Although not mandatory, a facilitator could be ordered to pay restitution. Facilitators also face discretionary civil forfeiture of any assets purchased with proceeds of criminal activity and forfeiture of personal property, including vehicles used in child exploitation, as well as forfeiture under nuisance laws for prostitution and human trafficking offenses. No laws in Indiana address sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org](http://www.sharedhope.org).