

INDIANA

REPORT CARD | 2017

Indiana's human trafficking law does not require proof of force, fraud, or coercion when the victim is a minor, but buying sex with a child sex trafficking victim is not criminalized unless the buyer knew the minor was forced into "juvenile prostitution." Accordingly, not all commercially sexually exploited children will be identified as sex trafficking victims. However, minors cannot be prosecuted for prostitution offenses, and Indiana law mandates law enforcement training on human trafficking.

Final Score

81

Final Grade

B



10
10



15
25



15
15



4.5
10



22
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 human trafficking statute 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 provision of Indiana's human trafficking law does not distinguish between trafficking an adult versus a minor; therefore, a buyer must have knowledge that a minor victim was forced to engage in "juvenile prostitution." No CSEC law prohibits buying sex with a minor, and the offense of "making an unlawful proposition" does not distinguish between purchasing commercial sex acts with minors versus adults. Buyers convicted of child sex trafficking face 1–6 years imprisonment and a fine up to \$10,000. 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 images of child sexual exploitation (ICSE) is criminalized, but penalties do not reflect the seriousness of the offense. Buyers convicted under the sex trafficking law face mandatory victim restitution and discretionary civil asset forfeiture, while convictions under other sex offense laws permit forfeiture. Buyers of sex with minors must register as sex offenders if convicted of sex trafficking or possession of ICSE, but not if convicted of "making an unlawful proposition" even when a minor is involved.

Criminal Provisions for Traffickers

Traffickers may be prosecuted under Indiana's 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, sex trafficking of a minor makes selling a minor under 18 for purposes of juvenile prostitution a Level 2 felony punishable by 10–30 years imprisonment. Creating ICSE is a felony punishable by a minimum of 1–6 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 includes child victims of sex trafficking, "child exploitation," "promoting prostitution," and "making and unlawful proposition."

Criminal Provisions for Facilitators

Indiana's 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 prosti-

tution" is a felony punishable by 1–6 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.



Protective Provisions for the Child Victims

Not all commercially sexually exploited children are defined as juvenile sex trafficking victims because the sex trafficking law requires proof of force and 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 specifically excludes minors from prosecution for prostitution offenses. 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 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 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 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 upon the offender's criminal conviction.



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 ICSE 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 sollicita-

tion" 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.



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.