

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of Indiana’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



## ISSUE 1: Criminal Provisions

**Policy Goal 1.1** The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

Ind. Code Ann. § 35-42-3.5-1.4 (Human trafficking) expressly applies to buyers of commercial sex; it states,

A person who knowingly or intentionally pays to, offers to pay to, agrees to pay money or other property to, or benefits in some other manner another person for a human trafficking victim or an act performed by a human trafficking victim commits human trafficking, a Level 5 felony.

**Policy Goal 1.2** Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

Indiana’s CSEC laws do not criminalize purchasing or soliciting commercial sex with a minor.

1.2.1 Recommendation: Enact a CSEC law that specifically includes purchasing or soliciting sex with any minor under 18.

**Policy Goal 1.3** Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

Ind. Code Ann. § 35-45-4-4(b) (Promoting prostitution) applies to traffickers who commercially sexually exploit children, stating,

A person who:

- (1) knowingly or intentionally entices or compels another person to become a prostitute or juvenile prostitution victim;<sup>1</sup>
  - (2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution or juvenile prostitution;
  - (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution or juvenile prostitution;
  - (4) receives money or other property from a prostitute or juvenile prostitution victim, without lawful consideration, knowing it was earned in whole or in part from prostitution or juvenile prostitution; or
  - (5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution or juvenile prostitution;
- commits promoting prostitution . . . .

**Policy Goal 1.4** Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

Indiana law does not expressly prohibit a mistake of age defense in prosecutions for child sex trafficking and CSEC.

- 1.4.1 Recommendation: Prohibit a mistake of age defense in all cases involving child sex trafficking and CSEC.

**Policy Goal 1.5** Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Indiana’s child sex trafficking law expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Ind. Code Ann. § 35-42-3.5-1.2(b) (Promotion of child sexual trafficking – Promotion of sexual trafficking of a younger child) states, “It is not a defense to a prosecution under this section that the . . . intended victim of the offense is a law enforcement officer.”

**Policy Goal 1.6** The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

Indiana’s trafficking law does not expressly allow for business entity liability.

- 1.6.1 Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

**Policy Goal 1.7** State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

Indiana law requires convicted trafficking offenders, but not convicted CSEC offenders, to pay a mandatory fee, which is directed toward the Sexual Assault Victims Assistance Fund. In addition, both trafficking and CSEC offenders face asset forfeiture; however, only assets used in connection with a trafficking offense will be directed, in part, into a victim services fund.

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<sup>1</sup> Ind. Code Ann. § 35-45-4-4(a) defines “juvenile prostitution victim” as “a person less than eighteen (18) years of age who engages in juvenile prostitution.”

Regarding mandatory fees, Ind. Code Ann. § 33-37-5-23(b) (Sexual assault victims assistance fee) requires trafficking offenders to pay a sexual assault victims assistance fee, stating,

The court shall assess a sexual assault victims assistance fee of at least five hundred dollars (\$500) and not more than five thousand dollars (\$5,000) against an individual convicted in Indiana of any of the following offenses:

- ....
- (13) Promotion of human child sexual trafficking of a minor (IC 35-42-3.5-1.2(a)).
- (14) Promotion of sexual trafficking of a younger child (IC 35-42-3.5-1.2(c)).
- (15) Child sexual trafficking (IC 35-42-3.5-1.3).
- (16) Human trafficking (IC 35-42-3.5-1.4).

Ind. Code Ann. § 33-37-7-2(e) (Distribution of circuit court fees) governs distribution of the sexual assault victim assistance fee; it states, “The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance fund established by IC 5-2-6-23(d) one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.”

Under Ind. Code Ann. § 5-2-6-23(d) (Sexual assault victims assistance fund), funds deposited into the Sexual Assault Victims Assistance Fund shall be used for the following purposes:

- (1) To establish and maintain rape crisis centers.
- (2) The enhancement of services provided by existing rape crisis centers.
- (3) The development, implementation, and expansion of trauma informed sexual assault services.

Regarding asset forfeiture, Ind. Code Ann. § 34-24-1-1(a) (Property which may be seized) provides for forfeiture in both trafficking and CSEC cases. It states,

The following may be seized:

- ....
- (3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.
- ....
- (17) Real or personal property, including a vehicle, that is used by a person to:
  - (A) commit, attempt to commit, or conspire to commit;
  - (B) facilitate the commission of; or
  - (C) escape from the commission of;a violation of IC 35-42-3.5-1 through IC 35-42-3.5-1.4 (human trafficking) or IC 35-45-4-4 (promoting prostitution).

Pursuant to Ind. Code Ann. § 34-24-1-9 (Transfer to federal authority – Disposition and use of money), “property seized under this chapter must be transferred . . . to the appropriate federal authority for disposition, and any money received by a law enforcement agency “must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations.” Notably, this law does not direct a percentage of a sex trafficking or CSEC offender’s forfeited assets into a victim services fund.

Offenders may also face forfeiture under state nuisance laws. Ind. Code Ann. § 32-30-7-1 (“Indecent nuisance” defined) defines “indecent nuisance” as follows:

As used in this chapter, “indecent nuisance” means a:

- (1) place in or upon which prostitution (as described in IC 35-45-4);
- (2) public place in or upon which other sexual conduct (as defined in IC 35-31.5-2-221.5) or sexual intercourse (as defined in IC 35-31.5-2-302);
- (3) public place in or upon which the fondling of the genitals of a person; or

(4) public place in or upon which human trafficking (as described in IC 35-42-3.5-1 through IC 35-42-3.5-1.4);  
is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

Ind. Code Ann. § 32-30-7-22(a) (Admission of indecent nuisance – Effect of release – Unsold property – Costs) provides for the sale of assets used during the commission of an indecent nuisance, stating,

If the existence of an indecent nuisance is admitted or established as provided in section 21 [IC 32-30-7-21] of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

- (1) direct the removal of all personal property and contents that:
  - (A) are located at the place described in the complaint;
  - (B) are used in conducting the indecent nuisance; and
  - (C) have not already been released under authority of the court as provided in sections 15 and 16 [IC 32-30-7-15 and IC 32-30-7-16] of this chapter;
- (2) direct the sale of personal property that belongs to the defendants who were notified or appeared at the hearing, in the manner provided for the sale of chattels under execution . . . .  
. . . .

If the indecent nuisance involved human trafficking, Ind. Code Ann. § 32-30-7-24.5 (Distribution of money) directs a percentage of the forfeited assets to the Human Trafficking Prevention and Victim Assistance Fund, stating,

Money collected under this chapter concerning a public place in or upon which human trafficking (as described in IC 35-42-3.5-1 through IC 35-42-3.5-1.4) is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose shall be distributed as follows:

- (1) Eighty percent (80%) of the money collected shall be deposited in the human trafficking prevention and victim assistance fund established by IC 5-2-6-25, to be used for the purposes of the fund.
- (2) Twenty percent (20%) of the money collected shall be transferred to the county auditor for deposit in the county general fund. Money deposited in the county general fund under this subdivision may only be appropriated to the prosecuting attorney to defray expenses incurred in the:
  - (A) collection of the funds; and
  - (B) investigation or prosecution of human trafficking.

Under Ind. Code Ann. § 5-2-6-25(a) (Human trafficking prevention and victim assistance fund), funds deposited into the Human Trafficking Prevention and Victim Assistance Fund shall be used for “(1) human trafficking victim services; and (2) human trafficking prevention programs provided by community based organizations. Money in the fund may be used only to carry out the purposes of the fund.”

- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund.



## ISSUE 2: Identification of & Response to Victims

**Policy Goal 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim does not include all commercially sexually exploited children. Ind. Code Ann. § 35-42-3.5-0.5(a)(2) (Definitions) defines “human trafficking victim” as “a person who is the victim of human trafficking.” “Human trafficking” is defined under Ind. Code Ann. § 35-42-3.5-0.5(a)(1) to include “an offense described in sections 1 through 1.4 [IC 35-42-3.5-1 through IC 35-42-3.5-1.4] of this chapter.”

Ind. Code Ann. § 35-42-3.5-1.4 (Human trafficking), Indiana’s buyer-applicable trafficking offense, requires third party control because the buyer must pay, offer to pay, or agree to pay “another person for a human trafficking victim or an act performed by a human trafficking victim.” Further, Indiana’s core sex trafficking offense, Ind. Code Ann. § 35-42-3.5-1.2(a), (c) (Promotion of child sexual trafficking—Promotion of sexual trafficking of a younger child),<sup>2</sup> is inapplicable to buyers. Accordingly, third party control is required to establish the crime of human trafficking, thereby excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of child sex trafficking victim.

2.1.1 Recommendation: Remove third party control requirements that narrow the definition of child sex trafficking victim.<sup>3</sup>

**Policy Goal 2.2** State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

Indiana law does not require the development of policy guidance to facilitate appropriate responses to foreign national child sex trafficking victims.

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<sup>2</sup> Ind. Code Ann. § 35-42-3.5-1.2(a), (c) states,

(a) A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than eighteen (18) years of age with the intent of causing the child to engage in:

(1) prostitution or juvenile prostitution; or

(2) a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) or IC 35-42-4-4(c) (child exploitation);

commits promotion of child sexual trafficking, a Level 3 felony.

....

(c) A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct commits promotion of sexual trafficking of a younger child, a Level 3 felony . . . .

<sup>3</sup> See generally Shared Hope Int’l, *Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims*, JuST Response Policy Paper (August 2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and the corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether the victim is under control of a third party).

- 2.2.1 Recommendation: Enact a law requiring the development of policy guidance to facilitate access to services and assistance for trafficked foreign national children.

**Policy Goal 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

Indiana law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

- 2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

**Policy Goal 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

Indiana law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

- 2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

**Policy Goal 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses.

Indiana law prohibits the prosecution of minors under the prostitution offense; however, this protection expressly contemplates the use of detention in response to minors engaged in commercial sex. Specifically, Ind. Code Ann. § 35-45-4-2(a) (Prostitution) limits the applicability to adults, stating,

A person at least eighteen (18) years of age who knowingly or intentionally:

- (1) performs, or agrees to perform, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5); or
  - (2) fondles, or offers or agrees to fondle, the genitals of another person;
- for money or other property commits prostitution, a Class A misdemeanor . . . .

Yet, Ind. Code Ann. § 35-45-4-7 (Detention of minor – Notice) permits law enforcement to detain commercially sexually exploited minors prior to making a referral to child welfare; it states,

If a law enforcement agency detains an alleged victim of an offense under this chapter who is less than eighteen (18) years of age, the law enforcement agency shall immediately notify the department of children services that the alleged victim:

- (1) has been detained; and
- (2) may be a victim of child abuse or neglect.

This provision is reiterated under Ind. Code Ann. § 35-42-3.5-4(c) (Additional rights of victim), stating,

If a law enforcement agency detains an alleged victim of an offense under sections 1 through 1.4 of this chapter [human and sexual trafficking] who is less than eighteen (18) years of age, the law enforcement agency shall immediately notify the department of child services that the alleged victim: (1) has been detained; and (2) may be a victim of child abuse or neglect.

Consequently, while Indiana law permits the use of detention in response to commercially sexually exploited minors, state law protects minors from facing prosecution for prostitution offenses.

- 2.5.1 Recommendation: Amend state law to clearly prohibit the use of detention in response to minors engaged in commercial sex.

**Policy Goal 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

Indiana law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

Indiana law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

- 2.7.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

**Policy Goal 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Indiana law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

**Policy Goal 2.9** Juvenile court jurisdiction aligns with international human rights standards.

Indiana law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While juvenile court jurisdiction extends to all minors under 18 years of age, Indiana law fails to establish a minimum age for purposes of juvenile court jurisdiction and permits direct file and transfers to adult criminal court in cases involving minors charged with certain offenses or who have been transferred to criminal court in a previous matter.

	Minimum Age for Juvenile Court Jurisdiction	Maximum Age for Charging a Minor in Juvenile Court	Automatic Transfers or Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
<b>Summary</b>	None. “Child” for purposes of determining juvenile court jurisdiction is defined as, “a person who is less than eighteen (18) years of age . . .”	17	Yes. Minors: (1) charged with a felony and who have previously been waived to criminal court; (2) 12+ years of age charged with murder; or (3) 16+ years of age charged with a Level 1, 2, 3, or 4 felony, or a Level 5 felony manslaughter, or Level 5 felony reckless homicide.	Yes. Minors: (1) 14+ years of age charged with a heinous felony; (2) 14+ years of age charged with a felony and who have a history of delinquent conduct; (3) 16+ years of age charged with a controlled substance distribution offense felony adjudication or conviction and committed the offense in furtherance of gang activity; (3) 13+ years of age who are charged with any offense.	No.
<b>Relevant Statute(s)</b>	Ind. Code Ann. § 31-9-2-13(d)(1) (Child)	Ind. Code Ann. § 31-9-2-13(d) (Child)	Ind. Code Ann. § 31-30-1-2(3) (Juvenile law not applicable to certain persons); Ind. Code Ann. § 31-30-3-6 (Child with previous felony or nontraffic misdemeanor conviction); Ind. Code Ann. § 31-30-3-4 (Murder); Ind. Code Ann. § 31-30-3-5 (Class A or B felonies – Involuntary manslaughter – Reckless homicide)	Ind. Code Ann. § 31-30-3-2 (Juvenile law not applicable to certain persons); Ind. Code Ann. § 31-30-3-3 (Felonies)	Ind. Code Ann. § 31-30-3-2(4)–(5) (Juvenile law not applicable to certain persons); Ind. Code Ann. § 31-30-3-3(4) (Felonies)

Consequently, Indiana law fails to provide age-appropriate juvenile court responses to all minors, including child sex trafficking victims, as governing state statute: (1) does not establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; (2) allows minors to be subject to direct file and automatic

transfers; and (3) does not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

**Policy Goal 2.10** State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

Indiana law defines “child in need of services,” which is a child identified as in need of a child welfare response,<sup>4</sup> to include child sex trafficking victims. Ind. Code Ann. § 31-34-1-3.5 (Child in need of services) states,

- (a) A child is a child in need of services if, before the child becomes eighteen (18) years of age:
  - (1) the child is the victim of human or sexual trafficking (as defined in IC 31-9-2-133.1);<sup>5</sup>
  - (2) the child needs care, treatment, or rehabilitation that:
    - (A) the child is not receiving; and
    - (B) is unlikely to be provided or accepted without the coercive intervention of the court.
- (b) A child is considered a victim of human or sexual trafficking regardless of whether the child consented to the conduct described in subsection (a)(1).

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<sup>4</sup> Pursuant to Ind. Code Ann. § 31-9-2-14(a) (Child abuse or neglect),

“Child abuse or neglect”, for purposes of . . . IC 31-33 [Juvenile law: reporting and investigation of child abuse and neglect] . . . refers to a child described in IC 31-34-1-1 through IC 31-34-1-5 and IC 31-34-1-8 through IC 31-34-1-11 [Article 34 Juvenile law: children in need of services, Chapter 1 Circumstances under which a child is a child in need of services], regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.

Ind. Code Ann. § 31-9-1-1 (Applicability of definitions)states, “Except as otherwise provided, the definitions in this article apply throughout this title.”

<sup>5</sup> Ind. Code Ann. § 31-9-2-133.1 (Victim of human or sexual trafficking) defines “victim of human or sexual trafficking” as follows:

- [A] child who is recruited, harbored, transported, or engaged in:
  - (1) forced labor;
  - (2) involuntary servitude;
  - (3) prostitution;
  - (4) juvenile prostitution, as defined in IC 35-31.5-2-178.5;
  - (5) child exploitation, as defined in IC 35-42-4-4(b);
  - (6) marriage, unless authorized by a court under IC 31-11-1-7;
  - (7) trafficking for the purpose of prostitution, juvenile prostitution, or participation in sexual conduct as defined in IC 35-42-4-4(a)(4); or
  - (8) human trafficking as defined in IC 35-42-3.5-0.5.

## EXTRA CREDIT



Child labor trafficking is included in the definition of “child in need of services” under Ind. Code Ann. § 31-34-1-3.5 based on the definition of “victim of human or sexual trafficking.”

### **Policy Goal 2.11** State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

Indiana’s child welfare code does not allow for a child welfare response in non-familial child sex trafficking cases and does not provide for a specialized response to child sex trafficking reports. While the definition of abuse for purposes of reporting child abuse or neglect applies “regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court,”<sup>6</sup> the definition of “child in need of services” under Ind. Code Ann. § 31-34-1-3.5(a)(2)(A)-(B) (Child in need of services), which triggers a child welfare response, requires that “the child needs care, treatment, or rehabilitation that . . . the child is not receiving; and . . . is unlikely to be provided or accepted without the coercive intervention of the court.” Additionally, no alternative response is provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

- 2.11.1 Recommendation: Amend the child welfare code to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.

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<sup>6</sup> Pursuant to Ind. Code Ann. § 31-9-2-14(a) (Child abuse or neglect),

“Child abuse or neglect”, for purposes of . . . IC 31-33 [Juvenile law: reporting and investigation of child abuse and neglect] . . . refers to a child described in IC 31-34-1-1 through IC 31-34-1-5 and IC 31-34-1-8 through IC 31-34-1-11 [Article 34 Juvenile law: children in need of services, Chapter 1 Circumstances under which a child is a child in need of services], regardless of whether the child needs care, treatment, rehabilitation, or the coercive intervention of a court.



## ISSUE 3: Continuum of Care

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**Policy Goal 3.1** State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Indiana law does not provide a process to connect child sex trafficking victims with access to specialized services through a non-punitive system.

3.1.1 Recommendation: Enact legislation requiring access to specialized services through a non-punitive system.

**Policy Goal 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Indiana does not statutorily require a multi-disciplinary team response to child sex trafficking cases.

3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response to child sex trafficking victims.

**Policy Goal 3.3** State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Indiana law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

**Policy Goal 3.4** State law extends foster care services to older foster youth.

Indiana law extends transitional foster care services to youth under 21 years of age through a collaborative care agreement. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>7</sup> Ind. Code Ann. § 31-28-5.8-4 (“Older youth” defined) defines “older youth” as “an individual who is at least eighteen (18) years of age but less than twenty-one (21) years of age,” and Ind. Code Ann. § 31-28-5.8-5 (Eligibility of older youth to receive collaborative care services) further provides,

(a) An older youth who received foster care under a court order on the day the individual attains eighteen (18) years of age is eligible to receive collaborative care services under applicable rules of the department at any time until the individual becomes twenty-one (21) years of age.

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<sup>7</sup> For more information, see Shared Hope Int’l, *Issue Brief 3.4: Continuum of Care*, [https://sharedhope.org/wp-content/uploads/2020/12/SH\\_Issue-Brief-3.4\\_2020.pdf](https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf) (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

- (b) An older youth may request the department to petition a juvenile court for approval of a collaborative care agreement under this chapter.
- (c) A court may grant a petition described in subsection (b) if the court finds, consistent with applicable rules of the department, that the older youth is:
  - (1) employed;
  - (2) attending school or a vocational or educational certification or degree program;
  - (3) participating in a program or activity designed to promote, or remove barriers to, employment; or
  - (4) incapable of performing any of the activities in subdivisions (1) through (3) due to a medical condition documented by regularly updated information in the older youth's current case plan.
- (d) A child who:
  - (1) is at least seventeen (17) years and six (6) months of age;
  - (2) is receiving foster care under a court order; and
  - (3) expects to be eligible for collaborative care under this chapter when the child becomes an older youth;may request the department to start the process of planning for collaborative care under this chapter.

Additionally, Ind. Code Ann. § 31-25-2-21 (Transitional services plan) requires the department to provide a transitional services plan to older youth receiving collaborative care,<sup>8</sup> and transition age youth receiving collaborative care are also entitled to receive “successful adulthood services.”<sup>9</sup>

- 3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

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<sup>8</sup> Ind. Code Ann. § 31-25-2-21 (Transitional services plan) provides,

- (a) As used in this section, “transitional services plan” means a plan that provides information concerning the following to an individual described in subsection (b):
  - (1) Education.
  - (2) Employment.
  - (3) Housing.
  - (4) Health care, including information concerning the individual's eligibility and participation in the Medicaid program.
  - (5) Development of problem solving skills.
  - (6) Available local, state, and federal financial assistance.
- (b) The department shall implement a program that provides a transitional services plan to the following:
  - (1) An individual who has become or will become:
    - (A) eighteen (18) years of age; or
    - (B) emancipated;while receiving foster care.
  - (2) An individual who:
    - (A) is at least eighteen (18) but less than twenty-one (21) years of age; and
    - (B) is receiving collaborative care under IC 31-28-5.8.

<sup>9</sup> Ind. Code Ann. § 31-9-2-123.5 (“Successful adulthood services” defined) provides,

“Successful adulthood services”, for purposes of IC 31-25 and IC 31-28, means services for youth that are designed to assist youth who will age out of foster care with the skills and abilities necessary or desirable to be self-reliant, including housing and educational support, career exploration, vocational training, job placement and support, daily living skills, budgeting and financial management skills, substance abuse prevention, preventative health activities, and counseling.

**Policy Goal 3.5** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The Indiana state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

**Policy Goal 3.6** State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The Indiana state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



## ISSUE 4: Access to Justice for Trafficking Survivors

### **Policy Goal 4.1** State law allows trafficking victims to seek emergency civil orders of protection.

While civil orders of protection exist under Indiana law,<sup>10</sup> this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

### **Policy Goal 4.2** Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

Although Indiana's crime victims' compensation laws define "victim" broadly enough to include victims of child sex trafficking and CSEC, ineligibility factors may prevent a commercially sexually exploited child from accessing an award.

For purposes of accessing crime victims' compensation, Ind. Code Ann. § 5-2-6.1-7 ("Victim" defined) defines "victims" to include "an individual who suffers bodily injury<sup>11</sup> or death as a result of a violent crime." With some exceptions, "violent crime" is defined under Ind. Code Ann. § 5-2-6.1-8(1) ("Violent crime" defined) as "A crime under the Indiana Code that is a felony of any kind or a Class A misdemeanor that results in bodily injury or death to the victim . . . ."

However, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to Ind. Code Ann. § 5-2-6.1-17(a) (Crime report within 72 hours), "the division may not award compensation under this chapter unless the violent crime was reported to a law enforcement officer not more than seventy-two (72) hours after the occurrence of the crime."<sup>12</sup>

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<sup>10</sup> For purposes of protection under Ind. Code Ann. § 34-26-5-2 (Persons against whom petitions may be filed), Ind. Code Ann. § 34-6-2-34.5 (Domestic or family violence) expands the definition of "domestic and family violence" to include "a sex offense under IC 35-42-4 [Sex crimes], whether or not the stalking or sex offense is committed by a family or household member." However, child sex trafficking and CSEC offenses are not codified under that chapter.

<sup>11</sup> Ind. Code Ann. § 5-2-6.1-0.5 ("Bodily injury" defined) defines "bodily injury" as follows:

- (1) an impairment of a physical condition;
- (2) a visible injury;
- (3) physical pain; or
- (4) emotional trauma that stems directly from the impairment of a physical condition, a visible injury, or physical pain.

<sup>12</sup> Ind. Code Ann. § 5-2-6.1-17(a) provides an exception for victims of a child sex crime. However, the definition of "victim of a child sex crime" does not include victims of trafficking and CSEC. Ind. Code Ann. § 5-2-6.1-7.5 ("Victim of a child sex crime" defined) states,

As used in this chapter, "victim of a child sex crime" means an individual who was the victim of:

Further, Ind. Code Ann. § 5-2-6.1-18 (Failure to cooperate) requires a claimant to “fully cooperate with law enforcement personnel in the investigation, apprehension, and prosecution of the offender before the date the award is paid.”

Lastly, Ind. Code Ann. § 5-2-6.1-13(a) (Limitations on award of benefits) states,

Subject to subsection (b) and except as provided in subsection (c),<sup>13</sup> benefits may not be awarded:

- (1) if the victim sustained the injury as a result of participating or assisting in, or attempting to commit or committing a criminal act;
- ....
- (3) if the victim profited or would have profited from the criminal act; or
- (4) if, at the time the injury occurred, the victim was intoxicated and contributed to the commission of an unrelated felony.

Because child sex trafficking and CSEC victims are not expressly exempt from the ineligibility factors noted above, some commercially sexually exploited children may not have access to an award.

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims’ compensation.

**Policy Goal 4.3** Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Indiana law allows sex trafficked children and youth to vacate delinquency adjudications and criminal convictions but only for certain offenses arising from trafficking victimization. Ind. Code. Ann. § 31-37-22-11(b) (Jurisdiction over petitions to expunge records of child alleged to be a delinquent child or child in need of services) applies to delinquency adjudications arising from trafficking victimization. It states,

Upon the written motion of a trafficked child, or any person acting on behalf of a trafficked child, the court that adjudicated the trafficked child a delinquent child shall vacate the adjudication issued with respect to the trafficked child, if the movant proves by a preponderance of the evidence that:

- (1) the child was a trafficked child at the time the child performed the delinquent act that resulted in the adjudication;
- (2) the delinquent act did not result in bodily injury to another person; and
- (3) at the time the child committed the delinquent act, the child was:

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- (1) child molesting (IC 35-42-4-3(a));
  - (2) vicarious sexual gratification (IC 35-42-4-5);
  - (3) child solicitation (IC 35-42-4-6);
  - (4) child seduction (IC 35-42-4-7); or
  - (5) incest (IC 35-46-1-3);
- and was less than eighteen (18) years of age at the time the crime occurred.

<sup>13</sup> Ind. Code Ann. § 5-2-6.1-13(c) states,

Benefits may be awarded to a person described in subsection (a)(4) who is the victim of a sex crime under IC 35-42-4, a crime involving domestic or family violence (as defined in IC 35-31.5-2-76), or a crime of domestic violence (as defined in IC 35-31.5-2-78).

As stated in note 12, however, the definition of “victim of child sex crime” does not include victims of trafficking and CSEC.

- (A) coerced by; or
- (B) under the control of;  
another person.

Similarly, Ind. Code Ann. § 35-38-10-2 (Vacating conviction for offense not resulting in bodily injury to another person) allows sex trafficked youth to vacate criminal convictions, stating,

A person who committed an offense that did not result in bodily injury to another person is entitled to have the person's conviction vacated if the person proves by a preponderance of the evidence that:

- (1) the person was a trafficked person at the time the person committed the offense;
- (2) the offense did not result in bodily injury to another person; and
- (3) at the time the person committed the offense, the person was:
  - (A) coerced; or
  - (B) under the control of;  
another person.

However, by requiring trafficking victims to prove they acted under the coercion or control of a third party, Ind. Code. Ann. § 31-37-22-11 and Ind. Code Ann. § 35-38-10-2 exclude victims who are unable to identify their traffickers. Further, vacatur is limited to offenses that “did not result in bodily injury to another person,” which fails to recognize the array of crimes trafficking victims may be induced to commit and leaves many survivors without any avenue for relief.

- 4.3.1 Recommendation: Strengthen existing law by allowing sex trafficked children and youth to vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

**Policy Goal 4.4** State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Restitution is mandatory in cases involving child sex trafficking but not CSEC. Under Ind. Code Ann. § 35-42-3.5-2 (Restitution to Victim),

In addition to any sentence or fine imposed for a conviction of an offense under sections 1 through 1.4 [IC 35-42-3.5-1 through IC 35-42-3.5-1.4, including Promotion of human labor trafficking; Promotion of human sexual trafficking; Promotion of child sexual trafficking – Promotion of sexual trafficking of a younger child; Child sexual trafficking; and Human trafficking] of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3 [Restitution orders].

Ind. Code Ann. § 35-50-5-3(k) (Restitution Orders) dictates the amount of restitution to be ordered in these cases, stating,

The court shall order a person convicted of an offense under IC 35-42-3.5 [Human and sexual trafficking] to make restitution to the victim of the crime in an amount equal to the greater of the following:

- (1) The gross income or value to the person of the victim's labor or services.
  - (2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of:
    - (A) the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209); or
    - (B) IC 22-2-2 (Minimum Wage);
- whichever is greater.

Restitution is available more generally to victims of other crimes pursuant to Ind. Code Ann. § 35-50-5-3(a); however, restitution under Ind. Code Ann. § 35-50-5-3(a) is discretionary. Ind. Code Ann. § 35-50-5(a) states,

[I]n addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

4.4.1 Recommendation: Statutorily mandate restitution in CSEC cases.

**Policy Goal 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

Indiana law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Ind. Code Ann. § 35-42-3.5-3(a) (Victim has civil cause of action against person convicted of offense – Damages recoverable – Statute of limitations) states,

If a person is convicted of an offense under sections 1 through 1.4 [IC 35-42-3.5-1 through IC 35-42-3.5-1.4, including Promotion of human labor trafficking; Promotion of human sexual trafficking; Promotion of child sexual trafficking – Promotion of sexual trafficking of a younger child; Child sexual trafficking; and Human trafficking] of this chapter, the victim of the offense:

- (1) has a civil cause of action against the person convicted of the offense; and
- (2) may recover the following from the person in the civil action:
  - (A) Actual damages.
  - (B) Court costs (including fees).
  - (C) Punitive damages, when determined to be appropriate by the court.
  - (D) Reasonable attorney's fees.

However, the cost of services provided to the victim by the state may be deducted from any damages recovered; Ind. Code Ann. § 5-2-6-25(g), (h) (Human trafficking prevention and victim assistance fund) provides,

(g) The state is subrogated to the rights of a victim to whom services are provided, to the extent of the services. The subrogation rights are against the perpetrator of the crime or a person otherwise liable for the loss. If the victim brings a civil action against the perpetrator of the crime or against the person otherwise liable for the loss, the victim shall promptly notify the institute of the filing of the civil action.

(h) In addition to the subrogation rights under subsection (g), the state is entitled to a lien in the amount of the services provided on a recovery made by or on behalf of the victim. The state may:

- (1) recover the amount of services in a separate action; or
- (2) intervene in an action brought by or on behalf of the victim.

## EXTRA CREDIT



Indiana law provides sex trafficked youth with a trafficking-specific civil remedy under Ind. Code Ann. § 35-42-3.5-3(a), which allows the victim of any offense under Chapter 3.5 (Human and sexual trafficking) to bring “a civil cause of action against the person convicted of the offense.”



Indiana law provides child labor trafficking victims with a trafficking-specific civil remedy under Ind. Code Ann. § 35-42-3.5-3(a), which allows the victim of any offense under Chapter 3.5 (Human and sexual trafficking) to bring “a civil cause of action against the person convicted of the offense.”

**Policy Goal 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

Prosecutions for “child sexual trafficking” may commence at any time; however, prosecutions for other trafficking conduct are subject to a statute of limitation as are civil actions. Pursuant to Ind. Code Ann. § 35-41-4-2(c) (Periods of limitation), “a prosecution for a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or a Level 2 felony (for a crime committed after June 30, 2014) may be commenced at any time.” Accordingly, violations of Ind. Code Ann. § 35-42-3.5-1.3 (Child sexual trafficking), a Level 2 felony, may be prosecuted at any time.

The statute of limitation for prosecutions of Indiana’s other child sex trafficking and CSEC offenses is lengthened under Ind. Code Ann. § 35-41-4-2(m), which states,

A prosecution for a sex offense listed in IC 11-8-8-4.5 [“Sex offender” defined]<sup>14</sup> that is committed against a child and that is not:

- (1) a Class A felony (for a crime committed before July 1, 2014) or a Level 1 felony or Level 2 felony (for a crime committed after June 30, 2014); or
- (2) listed in subsection (e) [including various sexual offenses];

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<sup>14</sup> Ind. Code Ann. § 11-8-8-4.5(14)–(19) (“Sex offender” defined) includes the following child sex trafficking and CSEC offenses:

- (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014).
- (15) Promotion of human sexual trafficking under IC 35-42-3.5-1.1.
- (16) Promotion of child sexual trafficking under IC 35-42-3.5-1.2(a).
- (17) Promotion of sexual trafficking of a younger child (IC 35-42-3.5-1.2(c)).
- (18) Child sexual trafficking (IC 35-42-3.5-1.3).
- (19) Human trafficking under IC 35-42-3.5-1.4 if the victim is less than eighteen (18) years of age.

is barred unless commenced within ten (10) years after the commission of the offense, or within four (4) years after the person ceases to be a dependent of the person alleged to have committed the offense, whichever occurs later.

Otherwise, Ind. Code Ann. § 35-41-4-2(a)(1) establishes a 5-year statute of limitation “in the case of a Class B, Class C, or Class D felony (for a crime committed before July 1, 2014) or a Level 3, Level 4, Level 5, or Level 6 felony (for a crime committed after June 30, 2014.”

Regarding civil actions, Ind. Code Ann. § 35-42-3.5-3(b) (Victim has civil cause of action against person convicted of offense – Damages recoverable – Statute of limitations) provides, “An action under this section must be brought not more than two (2) years after the date the person is convicted of the offense under sections 1 through 1.4 of this chapter 4 [IC 35-42-3.5-1 through IC 35-42-3.5-1.4, including Promotion of human labor trafficking; Promotion of human sexual trafficking; Promotion of child sexual trafficking – Promotion of sexual trafficking of a younger child; Child sexual trafficking; and Human trafficking].”

- 4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC regardless of the victim’s age.



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

**Policy Goal 5.1** State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

Indiana law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child’s testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

**Policy Goal 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

Indiana law allows a victim who is under 14 years of age to testify by an alternative method during the prosecution of an offender charged with child sex trafficking; however, this protection is offense-specific, meaning victims of a CSEC offense are not equally protected. Ind. Code Ann. § 35-37-4-8(a)–(c) (Taking of child’s testimony – Closed circuit television – Videotape – Conditions) states,

(a) This section applies to a criminal action under the following:

- (1) Sex crimes (IC 35-42-4).
- (2) A battery offense included in IC 35-42-2 upon a child less than fourteen (14) years of age.
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) Human and sexual trafficking crimes (IC 35-42-3.5).

....  
(c) On the motion of the prosecuting attorney, the court may order that the testimony of a protected person<sup>15</sup> be taken in a room other than the courtroom,<sup>16</sup> and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television . . . .

<sup>15</sup> Pursuant to Ind. Code Ann. § 35-37-4-8(b), “‘protected person’ has the meaning set forth in section 6 of this chapter.” In turn, Ind. Code Ann. § 35-37-4-6(c)(1) (Admissibility of statement or videotape of protected person in certain criminal actions) defines “protected person” to include “a child who is less than fourteen (14) years of age.”

<sup>16</sup> Under Ind. Code Ann. § 35-37-4-8(e), the court must make the following findings:

- (1) the testimony to be taken is the testimony of a protected person who:
  - (A) is the alleged victim of an offense listed in subsection (a) for which the defendant is being tried or is a witness in a trial for an offense listed in subsection (a); and
  - (B) is found by the court to be a protected person who should be permitted to testify outside the courtroom because:
    - (i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person’s testifying in the physical presence of the defendant would cause the protected person

Although the defendant is not permitted to be in the room with the child, Ind. Code Ann. § 35-37-4-8(c) states that the closed circuit television (CCTV) arrangement must: “(1) allow[] the protected person to see the accused and the trier of fact; and (2) allow[] the accused and the trier of fact to see and hear the protected person.” Further, Ind. Code Ann. § 35-37-4-8(h) allows a pro se defendant to question the child. Lastly, Ind. Code Ann. § 35-37-4-8 only protects children under 14 years of age, leaving older minors at increased risk of re-traumatization from testifying.

Alternatively, Ind. Code Ann. § 35-37-4-8(d) permits the court to order that the child’s testimony to be videotaped in lieu of testifying live subject to the same requirements noted above, stating, “On the motion of the prosecuting attorney or the defendant, the court may order that the testimony of a protected person be videotaped for use at trial. The videotaping of the testimony of a protected person under this subsection must meet the requirements of subsection (c).”

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

**Policy Goal 5.3** Child sex trafficking victims have access to victim protections in the criminal justice system.

	<b>Child sex trafficking victims have the right to a victim advocate</b>	<b>Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom</b>	<b>Child sex trafficking victims’ identifying information is protected from disclosure in court records</b>
<b>Summary</b>	A victim has the right to speak with a victim advocate during any hospital visit for a sexual assault examination and to speak with a victim advocate during the course of the investigation. Victims also have a right to an advocate in civil cases.	Children under 16 can have a comfort item or comfort animal in the courtroom during testimony.	Names and identifying information of victims and family are protected.
<b>Relevant Statute(s)</b>	Ind. Code Ann. § 35-40.5-3-1 (Right to a victim advocate or victim service provider); Ind.	Ind. Code Ann. § 35-40-5-13 (Comfort item or comfort animal allowed in courtroom)	Ind. Code Ann. § 35-423.5-4(B) (Additional rights of victims)

- to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;
- (ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or
- (iii) evidence has been introduced concerning the effect of the protected person’s testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person’s testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person;
- (2) the prosecuting attorney has informed the defendant and the defendant’s attorney of the intention to have the protected person testify outside the courtroom; and
- (3) the prosecuting attorney informed the defendant and the defendant’s attorney under subdivision (2) at least ten (10) days before the trial of the prosecuting attorney’s intention to have the protected person testify outside the courtroom.

	Code Ann. § 34-60-1-4(a) (Role of victim advocate)	with child during child's testimony)	
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- 5.3.1 Recommendation: Statutorily ensure that child sex trafficking victims have the right to a victim advocate and are provided courtroom supports when testifying against their exploiter.

**Policy Goal 5.4** State law provides for privileged communications between caseworkers and child sex trafficking victims.

Indiana law provides for a child sex trafficking-specific caseworker privilege that protects a child sex trafficking victim's communications with their caseworker from being disclosed. Under Ind. Code Ann. § 35-37-6-9(a) (Testimonial privileges),

The following persons or entities may not be compelled to give testimony, to produce records, or to disclose any information concerning confidential communications<sup>17</sup> and confidential information<sup>18</sup> to anyone or in any judicial, legislative, or administrative proceeding:

- (1) A victim.

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<sup>17</sup> Ind. Code Ann. § 35-37-6-1 ("Confidential communication" defined) defines "confidential communication" as follows:

- (a) As used in this chapter, "confidential communication" means any information:
  - (1) exchanged between a victim and a victim advocate in the course of the relationship between the victim and the victim advocate;
  - (2) exchanged or disclosed in a support group in which a victim is or was a participant; or
  - (3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.
- (b) The term includes communication that is verbal or written and includes:
  - (1) advice;
  - (2) notes;
  - (3) reports;
  - (4) statistical data;
  - (5) memoranda;
  - (6) working papers;
  - (7) records; and
  - (8) personally identifying information; produced in the course of advocating for a victim.

<sup>18</sup> Ind. Code Ann. § 35-37-6-1.5(a) ("Confidential information" defined) defines "confidential information" to include "(1) personally identifying information; (2) descriptions of physical appearance; (3) the case file; and (4) the case history; of a person who seeks, receives, or has received services from a victim advocate."

(2) A victim advocate<sup>19</sup> or victim service provider<sup>20</sup> unless the victim specifically consents to the disclosure in a written authorization that contains the date the consent expires.

For purposes of protection under Ind. Code Ann. § 35-37-6-9, Ind. Code Ann. § 35-37-6-3(1) (“Victim” defined) defines “victim” to include “an individual against whom an act of . . . human trafficking and sexual trafficking (IC 35-42-3.5) . . . is committed” or a non-offending family member.

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<sup>19</sup> Ind. Code Ann. § 35-37-6-3.5 (“Victim advocate defined” defines “victim advocate” to include the following:

- (a) . . . [A]n individual employed or appointed by or who volunteers for:
  - (1) a victim services provider; or
  - (2) the student advocate office of a state educational institution or an approved postsecondary educational institution, if the individual provides services to a victim.

....

- (c) The term includes an employee, an appointee, or a volunteer of a:
  - (1) victim services provider;
  - (2) domestic violence program;
  - (3) sexual assault program;
  - (4) rape crisis center;
  - (5) battered women’s shelter;
  - (6) transitional housing program for victims of domestic violence; or
  - (7) program that has as one (1) of its primary purposes to provide services to an individual:
    - (A) against whom an act of:
      - ....
      - (iv) human and sexual trafficking (IC 35-42-3.5); or
      - ....
      - is committed . . . .

<sup>20</sup> Ind. Code Ann. § 35-37-6-5 (“Victim service provider” defined) defines “victim service provider” to include the following:

- [A] person:
  - (1) that is:
    - (A) a public agency;
    - (B) a unit of a public agency; or
    - (C) an organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code;
  - (2) that is not affiliated with a law enforcement agency;
  - (3) that has, as one (1) of its primary purposes, to provide services for emotional and psychological conditions that occur to an individual:
    - (A) against whom an act of:
      - ....
      - (iv) human and sexual trafficking (IC 35-42-3.5); or
      - ....
      - is committed . . . .

## EXTRA CREDIT



Indiana law prevents disclosure of confidential communications made between a sex trafficking victim and their caseworker under Ind. Code Ann. § 35-37-6-9 regardless of the victim's age.



Indiana law prevents disclosure of confidential communications made between a child labor trafficking victim and their caseworker under Ind. Code Ann. § 35-37-6-9, which applies broadly to all cases codified under Ind. Code Ann. 35-42-3.5, including cases involving labor trafficking and sexual trafficking.



## ISSUE 6: Prevention & Training

**Policy Goal 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

Indiana law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

**Policy Goal 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Indiana law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

**Policy Goal 6.3** State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Indiana law mandates trafficking-specific training for law enforcement as both initial education and as inservice training. Pursuant to Ind. Code Ann. § 5-2-1-9(a)–(g) (Rules – Implementation of chapter – Town marshal basic training program – Police chief executive training program),

(a) The [Law Enforcement Training Board] shall adopt in accordance with IC 4-22-2 all necessary rules to carry out the provisions of this chapter. The rules, which shall be adopted only after necessary and proper investigation and inquiry by the board, shall include the establishment of the following:

.....

(10) Minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for inservice training programs for law enforcement officers. The course must cover the following topics:

(A) Examination of the human and sexual trafficking laws (IC 35-42-3.5).

(B) Identification of human and sexual trafficking.

(C) Communicating with traumatized persons.

(D) Therapeutically appropriate investigative techniques.

(E) Collaboration with federal law enforcement officials.

(F) Rights of and protections afforded to victims.

(G) Providing documentation that satisfies the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B) requirements established under federal law.

(H) The availability of community resources to assist human and sexual trafficking victims.

.....

.....

(d) Except as provided in subsections (e), (m), (t), and (u), a law enforcement officer appointed to a law enforcement department or agency after June 30, 1993, may not:

- (1) make an arrest;
- (2) conduct a search or a seizure of a person or property; or
- (3) carry a firearm;

unless the law enforcement officer successfully completes, at a board certified law enforcement academy or at a law enforcement training center under section 10.5 or 15.2 [IC 5-2-1-10.5 or IC 5-2-1-15.2] of this chapter, the basic training requirements established by the board under this chapter.

.....  
(g) Subject to subsection (h), the board shall adopt rules under IC 4-22-2 to establish a mandatory inservice training program for police officers and police reserve officers (as described in IC 36-8-3-20).<sup>21</sup> After June 30, 1993, a law enforcement officer who has satisfactorily completed basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the officer satisfactorily completes the mandatory inservice training requirements established by rules adopted by the board. Inservice training must include . . . training concerning human and sexual trafficking and high risk missing persons (as defined in IC 5-2-17-1). The board may approve courses offered by other public or private training entities, including postsecondary educational institutions, as necessary in order to ensure the availability of an adequate number of inservice training programs. The board may waive an officer's inservice training requirements if the board determines that the officer's reason for lacking the required amount of inservice training hours is due to either an emergency situation or the unavailability of courses.

**Policy Goal 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Indiana law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

**Policy Goal 6.5** State law mandates child sex trafficking training for school personnel.

Indiana law mandates trafficking-specific training for school personnel. Pursuant to Ind. Code Ann. § 20-28-3-7 (Human trafficking – Identification and reporting – Inservice training),

- (a) Each school corporation and state accredited nonpublic school shall require all school employees likely to have direct, ongoing contact with children within the scope of the employee's employment to attend or participate in inservice training pertaining to the identification and reporting of human trafficking. The training shall be conducted in a manner prescribed by the state board under IC 20-28-5.5-1 [Duties of board and department].
- (b) The inservice training required under this section shall count toward the requirements for professional development required by the governing body or the equivalent authority for a state accredited nonpublic school.

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<sup>21</sup> Ind. Code Ann. § 36-8-3-20(k) (Police reserve officers in counties, cities and towns) states in part, "The inservice training must also concern human and sexual trafficking and high risk missing persons (as defined in IC 5-2-17-1) . . . ."

**Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.

Indiana law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

## State Laws Addressing Child Sex Trafficking

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1. Ind. Code Ann. § 35-42-3.5-1.2(a), (c) (Promotion of child sexual trafficking – Promotion of sexual trafficking of a younger child) states,
  - (a) A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than eighteen (18) years of age with the intent of causing the child to engage in:
    - (1) prostitution or juvenile prostitution; or
    - (2) a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) or IC 35-42-4-4(c) (child exploitation);commits promotion of child sexual trafficking, a Level 3 felony.  
. . . .
  - (c) A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct commits promotion of sexual trafficking of a younger child, a Level 3 felony . . . .

A Level 3 felony is punishable by imprisonment for 3–16 years, “with the advisory sentence being nine (9) years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-5(b) (Class B or level 3 felony).

2. Ind. Code Ann. § 35-42-3.5-1.3 (Child sexual trafficking) states,

A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution, juvenile prostitution, or participating in sexual conduct commits child sexual trafficking, a Level 2 felony.

A Level 2 felony is punishable by imprisonment for 10–30 years, “with the advisory sentence being seventeen and one-half (17 ½) years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-4.5 (Level 2 felony – Term – Fine).

3. Ind. Code Ann. § 35-42-3.5-1.4 (Human trafficking) states,

A person who knowingly or intentionally pays to, offers to pay to, agrees to pay money or other property to, or benefits in some other manner another person for a human trafficking victim or an act performed by a human trafficking victim commits human trafficking, a Level 5 felony.

A Level 5 felony is punishable by imprisonment for 1–6 years, “with the advisory sentence being three (3) years,” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-6(b). (Level 5 or class C felony).

## State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

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1. Ind. Code Ann. § 35-45-4-4(b) (Promoting prostitution) states,

A person who:

- (1) knowingly or intentionally entices or compels another person to become a prostitute or juvenile prostitution victim;<sup>22</sup>
  - (2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution or juvenile prostitution;
  - (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution or juvenile prostitution;
  - (4) receives money or other property from a prostitute or juvenile prostitution victim, without lawful consideration, knowing it was earned in whole or in part from prostitution or juvenile prostitution; or
  - (5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution or juvenile prostitution;
- commits promoting prostitution, a Level 5 felony. However, the offense is a Level 4 felony under subdivision (1) if the person enticed or compelled is less than eighteen (18) years of age.

A Level 4 felony is punishable by imprisonment for 2–12 years, “with the advisory sentence being six (6) years” and a possible fine up to \$10,000. Ind. Code Ann. § 35-50-2-5.5 (Level 4 felony).

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<sup>22</sup> Ind. Code Ann. § 35-45-4-4(a) defines “juvenile prostitution victim” as “a person less than eighteen (18) years of age who engages in juvenile prostitution.”