

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## Wisconsin Report Card 2016

*The child sex trafficking statute does not require use of force, fraud, or coercion when the victim is a minor and provides serious penalties for offenders; however, the law fails to prohibit age mistake and willingness defenses. Child sex trafficking victims charged with prostitution may be diverted and avoid a delinquency adjudication, but specialized services are not statutorily provided.*

Final Score

85.5

Final Grade

B



10

10



22.5

25



15

15



7.5

10



18.5

27.5



12

15



### Criminalization of Domestic Minor Sex Trafficking

Trafficking of a child is a distinct crime in Wisconsin, making the exploitation of a minor in a commercial sex act—defined to include sexually explicit performance—a felony offense regardless of force, fraud, or coercion. Commercial sexual exploitation of children (CSEC) laws include soliciting a child for prostitution, sexual exploitation of a child for pornography, and child enticement. The prostitution statute does not refer to the trafficking of a child statute to acknowledge the intersection of prostitution with trafficking victimization. Wisconsin's racketeering law includes trafficking of a child and CSEC offenses as predicate acts, permitting use of the law to prosecute sex trafficking enterprises.



### Criminal Provisions Addressing Demand

Wisconsin's trafficking of a child law applies to buyers who "obtain" or "attempt to obtain" a child for commercial sex acts, following federal precedent. The CSEC laws include the crime of buying sex with a minor, and a separate solicitation law that distinguishes between the crimes of buying commercial sex acts with an adult versus with a minor under 18. The law prohibiting use of a computer to facilitate a child sex crime might apply to buyers who use the Internet for this purpose when the targeted minor is under 16. The sex trafficking and CSEC laws do not prohibit a defense of age mistake, leaving the opportunity for buyers to assert this defense and making prosecutions of buyers more difficult as a result. A convicted buyer is subject to mandatory restitution to the victim and may face asset forfeiture for trafficking, CSEC and pornography offenses. Buyers of sex with minors are required to register as sex offenders if convicted of prostitution-related offenses, possessing child pornography, or sex trafficking of a minor. These offenses are considered "serious sex offenses," which may require lifetime supervision.



### Criminal Provisions for Traffickers

Traffickers convicted of sex trafficking of a child or exploiting a child to create pornography may be sentenced to imprisonment up to 40 years and/or fines up to \$100,000. Racketeering laws with additional penalties might also apply. Traffickers who commit CSEC crimes of soliciting a child for prostitution and child enticement face imprisonment up to 25 years and/or fines not to exceed \$100,000. Traffickers guilty of using a minor in a sexual performance or creating child pornography are subject to imprisonment up to 10 years and/or a fine up to \$10,000. Also, criminal asset forfeiture and victim restitution are available for convictions of all of these crimes. The statute penalizing use of a computer to facilitate a child sex crime provides a means of prosecuting traffickers who use the Internet to recruit minors under 16 for illegal sex acts. Sex trafficking of a minor, sexual exploitation for pornography and all CSEC offenses are considered "serious sex offenses" and conviction for any one of them requires registration and lifetime supervision. Parental rights may be terminated if a trafficker has been convicted of sex trafficking any minor.

#### Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Trafficking of a Child	Class C Felony	Max. 40 years	Max. \$100,000	●
Soliciting a child for prostitution (§ 948.08)	Class D felony	Max. 25 years	Max. \$100,000	●
Child enticement to engage in prostitution (§ 948.07)	Class D felony	Max. 25 years	Max. \$100,000	●
Possession of child pornography (offender over 18) (§ 948.12)	Class D felony	Max. 25 years	Max. \$100,000	●
Possession of child pornography (offender under 18) (§ 948.12)	Class I felony	Max. 3½ years	Max. \$10,000	●

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



## Protective Provisions for the Child Victims

All commercially sexually exploited children are likely defined as juvenile sex trafficking victims. Victims of domestic minor sex trafficking are provided some protective responses through the law. Even though Wisconsin's prostitution law distinguishes between minors and adults and provides a discretionary diversion process for minors, access to services are not mandated. Furthermore, prostitution laws still apply to minors under 18, and juvenile sex trafficking victims may face criminalization for commercial sex acts committed as a result of their victimization. Also, there is no prohibition on a defendant raising consent of the minor to the commercial sex act as a defense to prosecution. For purposes of child welfare intervention, a victim found to be abused or neglected—defined to include being a victim of human trafficking and child sexual exploitation—might receive protection through child protective services. The broad definition of “caregiver” (“any person who exercised or has exercised temporary or permanent control over the child”) does not necessarily present a barrier to child welfare intervention, and law enforcement may refer instances of suspected abuse by a non-caregiver to the county department. Victims of sex trafficking and CSEC offenses are expressly eligible for crime victims’ compensation; however, a requirement to report the incident to law enforcement within five days of when a report could reasonably be made may be difficult to comply with, and a determination that the victim was complicit in the crime or has not cooperated with law enforcement can foreclose any access to an award. Victim-friendly court procedures may be available to child victims of sex trafficking and CSEC. Victims under 16 in any case may be permitted to testify via closed-circuit television if the court determines it necessary. The “rape shield” law which reduces the trauma of cross-examination for testifying victims is available in prosecutions under the trafficking of a child law and all CSEC laws. Trafficking and CSEC victims have the right to a victim advocate throughout any pre-trial and trial procedures, including medical examinations, law enforcement interviews, and court proceedings. Child victims of trafficking are eligible to participate in an address confidentiality program. A minor may petition for expungement of juvenile records at age 17 and child sex trafficking victims can have a delinquency adjudication for prostitution charges vacated and the record expunged any time after the judgment was entered. Victim restitution is a mandatory part of sentencing for CSEC and trafficking convictions and victims of child sex trafficking may bring a civil cause of action against the offender for damages within three years. Criminal proceedings for trafficking of a child, soliciting a child for prostitution and sexual exploitation of a child through pornography must begin before the victim reaches 45 years old and criminal actions for child enticement must be brought before the victim reaches 26.



## Criminal Justice Tools for Investigation and Prosecution

The law in Wisconsin does not mandate or authorize training or development of training materials for law enforcement on human trafficking or domestic minor sex trafficking. Single party consent to audiotaping and wiretapping is permitted for investigations of suspected trafficking and CSEC crimes, facilitating the investigation and collection of important evidence for prosecutions. While the human trafficking statute does not prohibit a defense as to the use of a decoy in the investigation of child sex trafficking, the defense is likely unavailable for charges brought under the non-CSEC offense of computer solicitation of a child to engage in sex acts. Law enforcement may use the Internet to investigate the criminal use of a computer to facilitate a child sex crime, which can include trafficker and buyer communications with a minor under 16 with the intent to have sexual contact with the minor. Wisconsin does not require law enforcement to report missing and recovered children. However, state law allows the Department of Justice to develop an alert network that could include this information and would serve as an important way to identify repeat runaways who are at high risk for exploitation through CSEC and sex trafficking.



## Criminal Provisions for Facilitators

The trafficking of a child law includes the crime of assisting, enabling, or financially benefiting from the trafficking, punishable by a maximum of 40 years imprisonment. If viewed as prostitution rather than trafficking, the crime of keeping a place of prostitution, even if the victim is a minor, may apply and is punishable by imprisonment up to six years and/or a fine not to exceed \$10,000. Facilitators may be convicted of crimes within defined racketeering offenses, which could lead to additional financial penalties. Promoting or selling child pornography is a felony punishable by imprisonment up to 40 years and/or a fine not to exceed \$100,000 when the offender is over 18, reduced to 12½ years and/or up to \$25,000 when the offender is under 18. Additionally, exhibiting or playing a recording of child pornography is a felony punishable by up to 25 years imprisonment and/or a fine up to \$100,000 when the offender is over 18, reduced to 3½ years imprisonment and/or up to \$10,000 when the offender is under 18. Convicted facilitators are subject to criminal asset forfeiture for trafficking, CSEC and child pornography offenses and must pay victim restitution. No laws make sex tourism a crime in Wisconsin, leaving the state vulnerable to unscrupulous businesses using commercial sex acts to sell travel.

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).