

IC 35-42-3.5

Chapter 3.5. Human and Sexual Trafficking

IC 35-42-3.5-1

Promotion of human trafficking; sexual trafficking of a minor; human trafficking

Sec. 1. (a) A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person:

- (1) to engage the other person in:
 - (A) forced labor; or
 - (B) involuntary servitude; or
- (2) to force the other person into:
 - (A) marriage;
 - (B) prostitution; or
 - (C) participating in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking, a Level 4 felony.

(b) A person who knowingly or intentionally recruits, harbors, or transports a child less than:

- (1) eighteen (18) years of age with the intent of:
 - (A) engaging the child in:
 - (i) forced labor; or
 - (ii) involuntary servitude; or
 - (B) inducing or causing the child to:
 - (i) engage in prostitution; or
 - (ii) engage in a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) (child exploitation); or
- (2) sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct (as defined by IC 35-42-4-4);

commits promotion of human trafficking of a minor, a Level 3 felony. Except as provided in subsection (e), it is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.

(c) 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 or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Level 2 felony.

(d) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

- (1) forced labor;
- (2) involuntary servitude; or
- (3) prostitution;

commits human trafficking, a Level 5 felony.

(e) It is a defense to a prosecution under subsection (b)(2) if:

- (1) the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or
- (2) all the following apply:
 - (A) The person is not more than four (4) years older than the victim.
 - (B) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
 - (C) The crime:
 - (i) was not committed by a person who is at least twenty-one (21) years of age;
 - (ii) was not committed by using or threatening the use of deadly force;
 - (iii) was not committed while armed with a deadly weapon;
 - (iv) did not result in serious bodily injury;
 - (v) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and
 - (vi) was not committed by a person having a position of authority or substantial influence over the victim.
 - (D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.

As added by P.L.173-2006, SEC.52. Amended by P.L.1-2012, SEC.4; P.L.72-2012, SEC.3; P.L.55-2013, SEC.1; P.L.158-2013, SEC.436; P.L.168-2014, SEC.66.

IC 35-42-3.5-2

Restitution orders

Sec. 2. In addition to any sentence or fine imposed for a conviction of an offense under section 1 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.

As added by P.L.173-2006, SEC.52.

IC 35-42-3.5-3

Civil cause of action

Sec. 3. (a) If a person is convicted of an offense under section 1 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.

(b) 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 section 1 of this chapter.

As added by P.L.173-2006, SEC.52. Amended by P.L.106-2010, SEC.15.

IC 35-42-3.5-4

Rights of alleged victims

Sec. 4. (a) An alleged victim of an offense under section 1 of this chapter:

- (1) may not be detained in a facility that is inappropriate to the victim's status as a crime victim;
- (2) may not be jailed, fined, or otherwise penalized due to having been the victim of the offense; and
- (3) shall be provided protection if the victim's safety is at risk or if there is danger of additional harm by recapture of the victim by the person who allegedly committed the offense, including:
 - (A) taking measures to protect the alleged victim and the victim's family members from intimidation and threats of reprisals and reprisals from the person who allegedly committed the offense or the person's agent; and
 - (B) ensuring that the names and identifying information of the alleged victim and the victim's family members are not disclosed to the public.

This subsection shall be administered by law enforcement agencies and the Indiana criminal justice institute as appropriate.

(b) Not more than fifteen (15) days after the date a law enforcement agency first encounters an alleged victim of an offense under section 1 of this chapter, the law enforcement agency shall provide the alleged victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form I-914 Supplement B) in accordance with 8 CFR 214.11(f)(1). However, if the law enforcement agency finds that the grant of an LEA Declaration is not appropriate for the alleged victim, the law enforcement agency shall, not more than fifteen (15) days after the date the agency makes the finding, provide the alleged victim with a letter explaining the grounds for the denial of the LEA Declaration. After receiving a denial letter, the alleged victim may submit additional evidence to the law enforcement agency. If the alleged victim submits additional evidence, the law enforcement agency shall reconsider the denial of the LEA Declaration not more than seven (7) days after the date the agency receives the additional evidence.

(c) If a law enforcement agency detains an alleged victim of an offense under section 1 of this chapter 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.

As added by P.L.173-2006, SEC.52. Amended by P.L.130-2009, SEC.27; P.L.23-2015, SEC.3.