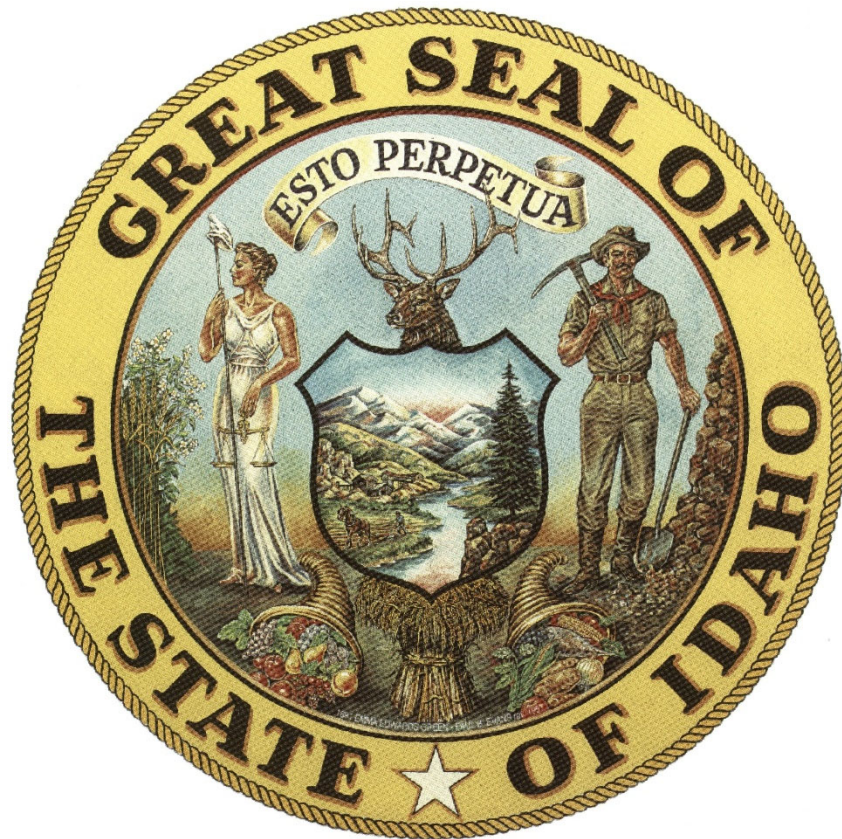


IDAHO STATE LEGISLATURE



REPORT ON HUMAN TRAFFICKING I.C. § 18-8605(1)

Submission by
The Office of the Attorney General
Raúl R. Labrador
December 2023



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

To: The Idaho Legislature and the Citizens of Idaho

Re: Human Trafficking in Idaho

Pursuant to Idaho Code § 18-8605(1), I submit this letter with a report on human trafficking that recommends areas of improvement and modifications in existing state laws. This report is a continuation of what the legislature started in 2023 with the passage of HB 341. The recommendations in this report are intended as the next step; there is and will be much work still to be done.

These recommendations include prevention, mitigation, and enforcement - preventing those vulnerable from being trafficked, working to get currently trafficked persons to safety and connecting them with necessary resources, and a vigorous enforcement of the law against those who traffic and victimize those in our community for commercial sex and labor. These recommendations also include a component of demand reduction that will target those who fuel trafficking crimes by creating a market for such exploitation.

In our efforts to better address human trafficking in Idaho, we must not overlook the many dedicated men and women who have been fighting human trafficking in Idaho for years—from those running victim service programs to law enforcement to prosecutors and others. Their fight must become Idaho's fight as we strive to eliminate this scourge from our state, and offer a higher level of coordination, intelligence capabilities, and cooperation than was previously available.

Thank you for the opportunity to address this growing problem in Idaho. My office stands in partnership with the legislature as you chart a path forward for the benefit of all our citizens to end this terrible problem.

Sincerely,

A handwritten signature in blue ink that reads "Raúl R. Labrador".

RAÚL R. LABRADOR
Attorney General

INTRODUCTION

Human trafficking is occurring in Idaho. The 2022 Idaho Uniform Crime Report indicates that there were 32 reports of human sex trafficking and 4 reports of human labor trafficking over the course of 2022.¹ Those numbers are likely not telling the full story. Recent studies have found significant gaps in the number of human trafficking reports included in uniform crime reports and the actual incidence of trafficking. Uniform crime reports underreport the occurrences of human trafficking due to misidentification of the crime² and victims not reporting the crime to authorities.³

Statistics from outside of uniform crime reports indicate Idaho's human trafficking problem is under reported. Since 2007, the National Human Trafficking Hotline has received 831 contacts from Idaho and has identified 360 trafficking victims. In 2021 alone, the Hotline received 109 signals from Idaho, 54 of which were from victims or survivors of human trafficking, which is more than double the number of signals received from victims or survivors in 2020.⁴

There are also individuals already combatting human trafficking in Idaho who confirm that it is happening here. Just this year, the U.S. Department of Justice's

¹ Idaho State Police, Bureau of Criminal Identification. (2023, July 1). *Crime in Idaho 2022*. <https://nibrs.isp.idaho.gov/CrimeInIdaho/Publication/Active/Crime%20In%20Idaho%202022.pdf>.

² National Institute of Justice. (2020, Aug. 4). Gaps in reporting human trafficking incidents result in significant undercounting. <https://nij.ojp.gov/topics/articles/gaps-reporting-human-trafficking-incidents-result-significant-undercounting>

³ Scurich, N. (2020). Introduction to this special issue: Underreporting of sexual abuse. *Behavioral Sciences & the Law*, 38(6), 537-542.

⁴ National human trafficking hotline. (2023). *Idaho*. <https://humantraffickinghotline.org/en/statistics/idaho>.

Office for Victims of Crime awarded the Nampa Family Justice Center (“NFJC”) and the Idaho State Police a \$1.5 million grant for the development of the Treasure Valley’s Human Trafficking Task Force and for statewide training in Idaho.⁵ The grant application submitted by NFJC and ISP that resulted in the award included statistics collected from several victim service programs in Idaho:⁶

- NFJC provided services to 36 survivors of human trafficking between 2019 and 2021.
- Idaho Community Outreach Behavioral Services (“Idaho COBS”) opened their first safe house in November of 2020. They now operate 3 safe houses that have provided emergency shelter to 61 victims and survivors of human trafficking. Emergency housing assistance has been provided through hotels to another 45 victims of human trafficking.
- Rose Advocates provided services to 12 victims of human trafficking in 2020, 18 in 2021, 25 in 2022, and 6 between January and April of 2023.
- Together, in Idaho, NFJC, Rose Advocates, and Idaho COBS have provided services to 23 victims of human trafficking between October and December of 2022 and 36 victims of human trafficking between January and March of 2023.
- NFJC, Rose Advocates, and Idaho COBS provided services to 34 victims of human trafficking between April and June of 2023 and 54 victims of human trafficking between July and September 2023.
- NFJC reported that 72% of the 36 human trafficking victims served during the first six months of 2023 were experiencing homelessness, and 34.6% of the victims served by NFJC in 2022 identified as Hispanic or Latino.

Human trafficking is a problem here in Idaho, and it needs to be addressed.

Rather than start anew, Idaho should continue to look for opportunities to partner and coordinate with federal and local agencies to combat human trafficking.

⁵ Office for Victims of Crime, Development of the Treasure Valley’s Human Trafficking Task Force & Statewide Training, <https://ovc.ojp.gov/funding/awards/15povc-23-gk-02732-ht> and <https://ovc.ojp.gov/funding/awards/15povc-23-gk-02730-ht>.

⁶ All statistics in the following bullet points were provided by NFJC.

In that vein, the purpose of this report is to assist those already combatting human trafficking in Idaho. The recommendations in this report have three primary goals: (1) make Idaho’s human trafficking laws more victim-centered, (2) provide law enforcement with clearer and more effective laws for investigating and prosecuting human trafficking, and (3) encourage the legislature to take more responsibility at the state level for combatting human trafficking in Idaho.

Recommended Changes to Existing Laws

Pursuant to Idaho Code § 18-8605, the Idaho Office of the Attorney General recommends the following changes to state law on the topic of human trafficking. Notations have been added to help explain the recommendations and outline “how existing state criminal laws protect or fail to protect human trafficking victims.” I.C. § 18-8605(1).

~~18-8602. DEFINITIONS.~~

~~(1)(a) "Human trafficking" means:~~

~~(i) Sex trafficking in which commercial sexual activity is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or~~

~~(ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.~~

~~(b) Human trafficking may include, but is not limited to, the use of the following types of force, fraud, or coercion:~~

~~(i) Threatening serious harm to, or physical restraint against, that person or a third person;~~

~~(ii) Destroying, concealing, removing, or confiscating any passport, immigration document, or other government-issued identification document;~~

~~(iii) Abusing or threatening abuse of the law or legal process against the person or a third person;~~

~~(iv) Using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or~~

~~(v) Using a condition of servitude by means of any scheme, plan, or pattern intended to cause a reasonable person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint or would be threatened with abuse of legal process.~~

~~(c) "Sex trafficking" includes all forms of commercial sexual activity, which may include the following conduct:~~

~~(i) Sexual conduct, as defined in section 18-5610(2)(a), Idaho Code;~~

~~(ii) Sexual contact, as defined in section 18-5610(2)(b), Idaho Code;~~

~~(iii) Sexually explicit performance;~~

~~(iv) Prostitution; or~~

~~(v) Participation in the production of pornography.~~

~~(2) "Commercial sexual activity" means sexual conduct or sexual contact in exchange for anything of value, as defined in section 18-5610(2)(c), Idaho Code, illicit or legal, given to, received by, or promised to any person.~~

18-8602. DEFINITIONS.

- (1) “Coercion” means compulsion or a threat, including but not limited to:
 - a) abusing or threatening abuse of the law or legal process against a person or a third party;
 - b) causing a person, without the person’s consent, to become intoxicated to a degree that impairs the person’s ability to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services;
 - c) destroying, concealing confiscating, or withholding, or threatening to destroy, conceal, confiscate, or withhold, a person’s or a third party’s actual or purported government record or identifying information or identifying document;
 - d) threatening physical harm, financial harm, unwanted physical restraint, or any conduct that would be criminal under Idaho state law;
 - e) withholding alcohol or a controlled substance to a degree that impairs the ability of a person with a chemical dependency to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services.
- (2) “Child” means a person under eighteen (18) years of age.
- (3) “Commercial sexual activity” means the exchange, or the attempted exchange, of sexual contact for a fee.
- (4) “Fee” means any money, service, item of real or personal property, contraband, or thing of value.
- (5) “Force” means the use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or inflicting physical harm sufficient to compel submission by the victim.
- (6) “Forced labor or services” means labor or services, other than labor or services that constitute sexual contact, that are performed or provided by another person and obtained through an actor’s use of force, fraud, or coercion.
- (7) “Fraud” means the intentional use of any deceit, trick, misrepresentation, false statement, or some dishonest means to achieve a desired result.
- (8) “Intimate body parts” includes human genitals, pubic area, buttocks, or breasts.
- (9) “Sexual contact” means any touching of the intimate body parts of another person for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual-genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.
- (10) “Sexually explicit performance” means an act, show, production, recording, or any form of pornography made for the purpose of arousing or gratifying the sexual desire of any person.
- (11) “Traffic” means to transport, entice, recruit, harbor, detain, hold, provide, or otherwise obtain another person by any means.



This revised section defines the words “force,” “fraud,” and “coercion,” any one of which is a key element of human trafficking. It also removes the problem that exists in the current statute of assigning multiple definitions to the phrase “commercial sexual activity.” Finally, the definitions in this chapter on human trafficking match the definitions in the chapter on commercial sexual activity.

~~18-8603. PENALTIES. Notwithstanding any other law to the contrary, on and after July 1, 2019, any person who commits the crime of human trafficking, as defined in section 18-8602, Idaho Code, shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law.~~

18-8603. PENALTIES.

- (1) A person who commits the felony of human sex trafficking as described in section 18-8607 is punishable by imprisonment for a period of not less than five (5) years nor more than twenty-five (25) years, or by a fine of not less than fifteen thousand dollars (\$15,000) nor more than eighty thousand dollars (\$80,000), or by both such fine and imprisonment.
- (2) A person who commits the felony of human sex trafficking of a child as described in section 18-8608 is punishable by imprisonment for a period of not less than ten (10) years nor more than thirty (30) years, or by a fine of not less than twenty thousand dollars (\$20,000) nor more than one hundred thousand dollars (\$100,000), or by both such fine and imprisonment.
- (3) A person who commits the felony of human labor trafficking as described in section 18-8609 is punishable by imprisonment for a period of not less than three (3) years nor more than twenty-five (25) years, or by a fine of not less than ten thousand dollars (\$10,000) nor more than eighty thousand dollars (\$80,000), or by both such fine and imprisonment.
- (4) A person who commits the felony of human labor trafficking of a child as described in section 18-8610 is punishable by imprisonment for a period of not less than five (5) years nor more than twenty-five (25) years, or by a fine of not less than fifteen thousand dollars (\$15,000) nor more than eighty thousand dollars (\$80,000), or by both such fine and imprisonment.



The new penalty section moves away from a one-size-fits-all approach and allows the legislature to set different penalties depending on whether the victim was an adult or child and whether the criminal conduct involved labor trafficking or sex trafficking.

18-8604. RESTITUTION — REHABILITATION. (1) In addition to any other amount of loss resulting from a ~~human trafficking~~ violation of section 18-8607, 18-8608, 18-8609, or 18-8610 Idaho Code, the court shall order restitution, as applicable, including the greater of:

- (a) The gross income or value to the defendant of the victim's labor or services; or
- (b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.

(2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

~~18-8605. HUMAN TRAFFICKING VICTIM PROTECTION. (1) The attorney general shall, not later than January 1, 2024, issue a report outlining how existing state criminal laws protect or fail to protect human trafficking victims and recommending areas of improvement and modifications in existing laws and rules.~~

~~(2) The Idaho criminal justice commission, in consultation with the attorney general, shall, not later than January 1, 2024, issue and deliver a report to the germane committees of the Idaho legislature outlining how existing social service programs respond or fail to respond to the needs of human trafficking victims and the interplay of such existing programs with federally funded victim service programs and suggesting areas of improvement or modification. Such inquiry shall include but not be limited to the ability of state programs and licensing bodies to recognize federal nonimmigrant status for the purpose of benefits, programs, and licenses.~~



The purpose of this new section is to designate an entity at the state level to help coordinate the state's efforts to combat human trafficking. Two options are offered: Option 1 would impose on the Attorney General certain responsibilities related to human trafficking. Option 2 would impose on the Attorney General the same responsibilities *and* grant the Attorney General concurrent jurisdiction to investigate and prosecute human trafficking. Either option would require the allocation of additional resources to the Attorney General's Office.

Option 1

18-8605. AUTHORITY OF THE ATTORNEY GENERAL.

- (1) The attorney general shall employ such attorneys, investigators, and other personnel as necessary to carry out the responsibilities set forth in this subsection using funds allocated to the office of the attorney general for this purpose.
 - a. To issue, by January 1 of each even-numbered year, a report outlining the status of the state's efforts to combat human trafficking and recommending next steps one or more bodies of state government should take to eradicate human trafficking in Idaho.
 - b. To compile and maintain curriculum for the training of prosecutors, law enforcement, victim advocates, and the public on identifying, investigating, and prosecuting human trafficking.
 - c. To assist, upon request, county prosecuting attorneys and other law enforcement agencies in the investigation and prosecution of human trafficking.

Option 2

18-8605. AUTHORITY OF THE ATTORNEY GENERAL.

- (1) The attorney general shall employ such attorneys, investigators, and other personnel as necessary to carry out the responsibilities set forth in this subsection using funds allocated to the office of the attorney general for this purpose.
 - a. To issue, by January 1 of each even-numbered year, a report outlining the status of the state's efforts to combat human trafficking and recommending next steps one or more bodies of state government should take to eradicate human trafficking in Idaho.
 - b. To compile and maintain curriculum for the training of prosecutors, law enforcement, victim advocates, and the public on identifying, investigating, and prosecuting human trafficking.
 - c. To assist, upon request, county prosecuting attorneys and other law enforcement agencies in the investigation and prosecution of human trafficking.
- (2) The attorney general may exercise concurrent investigative and prosecutorial authority with county prosecutors to prosecute persons for violations of this chapter.
 - a. Commissioned law enforcement officers employed by the attorney general shall have general peace officer powers and the authority to arrest individuals throughout the state for the purpose of investigating violations of this chapter.

18-8606. SAFE HARBOR PROVISIONS.

(1) Diversion of minor victim.

(a) When a minor is alleged to have committed any offense not listed in section 18-310(2), Idaho Code, a prosecutor shall divert the offense if the minor committed the offense as a direct and immediate result of being a victim of human trafficking conduct prohibited by sections 18-8607, 18-8608, 18-8609, or 18-8610 Idaho Code.

(b) If a minor has an offense diverted pursuant to paragraph (a) of this subsection, the minor shall be placed in a state-licensed residential facility, as defined in section 39-1202, Idaho Code, that provides a comprehensive rehabilitative program with access to:

- (i) Comprehensive case management;
- (ii) Integrated mental health and chemical dependency services, including specialized trauma recovery services;
- (iii) Education and employment training services; and
- (iv) Off-site specialized services, as appropriate.

(c) A diversion agreement under this subsection may extend for up to twelve (12) months.

(d) Diversion shall only be available pursuant to this section if the minor expresses a willingness to cooperate and receive specialized services. If the minor is unwilling to cooperate with specialized services, continuation of the diversion shall be at the discretion of the court.

(2) A person charged with any offense not identified in section 18-310(2), Idaho Code, committed as a direct and immediate result of being a victim of human trafficking conduct prohibited by section 18-8607, 18-8608, 18-8609, or 18-8610, Idaho Code, may assert an affirmative defense that the person is a victim of human trafficking.

18-8607. HUMAN SEX TRAFFICKING.

A person commits the felony of human sex trafficking if the person knowingly:

(1) traffics another person and causes or attempts to cause, through force, fraud, or coercion, the trafficked person to engage in, or become the victim of:

- a) Commercial sexual activity;
- b) Sexually explicit performance; or
- c) Conduct prohibited by:
 - i. Section 18-5602 (Procurement);
 - ii. Section 18-5603 (Receiving Pay for Procurement);
 - iii. Section 18-5604 (Paying for Procurement);
 - iv. Section 18-5605 (Detention for Commercial Sexual Activity);
 - v. Section 18-5606 (Receiving Proceeds of Illegal Sexual Activity);
 - vi. Section 18-5608 (House of Commercial Sexual Activity);
 - vii. Section 18-5609 (Inducing a Child Into Commercial Sexual Activity);
 - viii. Section 18-5610 (Utilizing a Child for Commercial Sexual Activity);
 - ix. Section 18-5611 (Inducing a Child to Engage in Commercial Sexual Activity);
 - x. Section 18-5613 (Providing Commercial Sexual Activity); or
 - xi. Section 18-5614 (Soliciting Commercial Sexual Activity);

(2) engages in sexual contact with a person being trafficked in the manner described in subsection (1);
or

(3) receives any benefit from participating in a venture that involves an activity described by subsection (1).



This statute is structured to explicitly demonstrate the relationship between human sex trafficking and other crimes involving commercial sexual activity. The hope is that law enforcement and prosecutors will, when considering charging one of the listed crimes, consider whether they can also prove the elements of trafficking and force, fraud, or coercion. It also reflects that human trafficking investigations may result in being able to charge one of the listed crimes even when the additional elements for human trafficking are not satisfied.

Subsection (2) allows any individual who knowingly engages in sexual contact with a human trafficking victim to be charged with human trafficking.

Subsection (3) allows any person who knowingly receives a benefit from a venture involving human trafficking to be charged with human trafficking.

18-8608. HUMAN SEX TRAFFICKING OF A CHILD.

A person who is eighteen (18) years old or older commits the felony of human sex trafficking of a child if the person:

(1) traffics a child and knowingly, by any means, causes or attempts to cause the trafficked person to engage in, or become the victim of:

- a) Commercial sexual activity;
- b) Sexually explicit performance; or
- c) Conduct prohibited by:
 - i. Section 18-924 (Sexual Battery);
 - ii. Section 18-925 (Aggravated Sexual Battery);
 - iii. Section 18-1601 (Rape);
 - iv. Section 18-1506 (Sexual Abuse of a Child Under Sixteen Years);
 - v. Section 18-1507 (Sexual Exploitation of a Child);
 - vi. Section 18-1507A (Sexual Exploitation of a Child by Electronic Means);
 - vii. Section 18-1508 (Lewd Conduct with a Minor Child Under Sixteen);
 - viii. Section 18-1508A (Sexual Battery of a Minor Child Sixteen or Seventeen Years of Age);
 - ix. Section 18-5602 (Procurement);
 - x. Section 18-5603 (Receiving Pay for Procurement);
 - xi. Section 18-5604 (Paying for Procurement);
 - xii. Section 18-5605 (Detention for Commercial Sexual Activity);
 - xiii. Section 18-5606 (Receiving Proceeds of Illegal Sexual Activity);
 - xiv. Section 18-5608 (House of Commercial Sexual Activity);
 - xv. Section 18-5609 (Inducing a Child Into Commercial Sexual Activity);
 - xvi. Section 18-5610 (Utilizing a Child for Commercial Sexual Activity);
 - xvii. Section 18-5611 (Inducing a Child to Engage in Commercial Sexual Activity);
 - xviii. Section 18-5613 (Providing Commercial Sexual Activity);
 - xix. Section 18-5614 (Soliciting Commercial Sexual Activity);
 - xx. Section 18-6601 (Incest);
 - xxi. Section 18-6602 (Sexual Abuse of an Animal);
 - xxii. Section 18-6603 (Sexual Abuse of Human Remains); or
 - xxiii. Section 18-6604 (Forcible Penetration by Use of a Foreign Object);

(2) engages in sexual contact with a child being trafficked in the manner described in subsection (1); or

(3) receives any benefit from participating in a venture knowing that the venture involves an activity described by subsection (1).



Generally, the element of force, fraud, or coercion in human sex trafficking is necessary to show the victim did not consent to participating in the commercial sexual activity. However, a child cannot consent to commercial sexual activity and thus the element of force, fraud, or coercion is not necessary for this crime.

18-8609. HUMAN LABOR TRAFFICKING.

A person commits the felony of human labor trafficking if the person knowingly:

- (1) traffics another person with the intent that the trafficked person engage in forced labor or services;
or
(2) receives any benefit from participating in a venture that involves an activity described by subsection (1), including by receiving labor or services the person knows are forced labor or services.



The crime of human labor trafficking includes the element of force, fraud, or coercion. It can be found in the definition of “forced labor or services” in § 18-8602(6).

A person who benefits from forced labor or services only commits the crime of human labor trafficking if he or she **knows** the labor or services are forced labor or services.

18-8610. HUMAN LABOR TRAFFICKING OF A CHILD.

A person commits the felony of human labor trafficking of a child if the person knowingly:

- (1) traffics a child with the intent that the trafficked child engage in forced labor or services; or
- (2) receives any benefit from participating in a venture that involves an activity described by subsection (1), including by receiving labor or services the person knows are forced labor or services.



The crime of human labor trafficking of a child also includes the element of force, fraud, or coercion because minors can consent to providing labor. Human labor trafficking of a child is designated as a separate crime so the legislature can prescribe a different penalty for trafficking a child than an adult.



The addition of forfeiture in the chapter on human trafficking brings it in line with the chapter on commercial sexual activity (Chapter 56) and better allows for the protection and restoration of victims and others harmed by human trafficking. The language in the following sections related to forfeiture come from Idaho Code §§ 18-5612 and 18-5618 through 18-5630.

18-8611. PROPERTY SUBJECT TO CRIMINAL FORFEITURE.

- (1) Any person who is found guilty of, who enters a plea of guilty, or who is convicted of a violation of section 18-8607, 18-8608, 18-8609, or 18-8610 Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:
 - a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and
 - b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.
- (2) The court, in imposing sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304, Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.
- (3) With respect to property ordered forfeited under the provisions of this chapter, the attorney general or appropriate prosecuting attorney is authorized to:
 - a) Restore forfeited property to victims of a violation of relevant provisions of this chapter, or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this chapter;
 - b) Compromise claims arising under this chapter;
 - c) Award compensation to persons providing information resulting in a forfeiture under this chapter; and
 - d) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

18-8612. PROPERTY SUBJECT TO FORFEITURE. Property subject to criminal forfeiture under this chapter includes:

- (1) "Real property" including things growing on, affixed to or found on the land; and
- (2) "Tangible and intangible personal property" including rights, privileges, interests, claims and securities.

18-8613. INVENTORY. Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and shall maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the Idaho state police. Upon completion of the forfeiture action, pursuant to this chapter, a final inventory shall be made that indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the Idaho state police.

18-8614. FORFEITURE REQUEST — REBUTTABLE PRESUMPTION. Property subject to criminal forfeiture under the provisions of this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 18-8611, Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

There is a rebuttable presumption that any property of a person subject to the provisions of section 18-8611, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

(1) The property was acquired by a person during the period of the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611, Idaho Code, or within a reasonable time after such violation; and

(2) There was no likely source for such property other than the violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611, Idaho Code.

18-8615. PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS. (1)

Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 18-8611, Idaho Code, for forfeiture under the provisions of this chapter upon the filing of an indictment or information charging a violation of any section of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-8611, Idaho Code, and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property that are required by law, or that are necessary to protect the interests of the state of Idaho or third parties.

18-8616. INSTITUTION OF PROCEEDINGS — THIRD PARTIES. Upon the filing of a part II forfeiture request pursuant to section 18-8614, Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section 18-8611, Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to section 18-8617 or 18-8618, Idaho Code, or both, within five (5) days of such event.

18-8617. PERSONAL PROPERTY — RIGHTS OF THIRD PARTIES. (1) Within five (5) days of any of the events specified in section 18-8616, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any such personal property according to one (1) of the following methods:

(a) Upon each co-owner or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained;

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement; or

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 18-8611, Idaho Code.

(b) A co-owner or claimant of any right, title or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged.

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general or appropriate prosecuting attorney shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property;

2. The balance, if any, in the following order:

(A) To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for

witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state that seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under the provisions of this chapter.

(C) The remainder, if any, to the crime victims compensation account as established in section 72-1009, Idaho Code.

(4) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(5) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.#

18-8618. REAL PROPERTY — RIGHTS OF THIRD PARTIES. (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 18-8614, Idaho Code. The request shall be served in the same manner as complaints subject to Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used or had been used in any manner in violation of the provisions of section 18-8611, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property;

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the crime victims compensation account as established in section 72-1009, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

18-8619. PROPORTIONALITY. In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the relevant provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

18-8620. BAR ON INTERVENTION. Except as provided in sections 18-8617 and 18-8618, Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under the provisions of this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

18-8621. JURISDICTION — DEPOSITIONS. The district courts of the state of Idaho shall have jurisdiction over:

(1) Property for which forfeiture is sought that is within the state at the time the action is filed; or

(2) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state.

In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 27 of the Idaho rules of civil procedure.

18-8622. DISPOSITION OF PROPERTY. On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(1) Payment of reasonable expenses incurred in connection with the sale.

(2) Satisfaction of exempt interests in the order of their priority.

(3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under the provisions of this chapter. When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney may:

(a) Retain it for official use; and/or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public, pursuant to section 18-8617 or 18-8618, Idaho Code.

18-8623. FORFEITURE OF SUBSTITUTE PROPERTY. If any of the property described in section 18-8611, Idaho Code, as a result of any act or omission of the defendant:

(1) Cannot be located upon the exercise of due diligence;

(2) Has been transferred or sold to, or deposited with, a third party;

(3) Has been placed beyond the jurisdiction of the court;

(4) Has been substantially diminished in value; or

(5) Has been commingled with other property that cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 18-8611, Idaho Code.

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CHAPTER 56 ~~PROSTITUTION~~ COMMERCIAL SEXUAL ACTIVITY



Consistent with the pattern started last session with HB 341, the phrase “commercial sexual activity” is substituted throughout for any form of the word “prostitute.” This will avoid unnecessarily labeling those who may be victims of human sex trafficking and shifts the focus to the individual’s conduct. This change does not legalize the concept of exchanging sexual contact for a fee, which is encompassed in the definition for commercial sexual activity.

~~18-5601. INTERSTATE TRAFFICKING IN PROSTITUTION. Any person who imports a person or persons into this state, or who exports a person or persons from this state, for the purpose of prostitution, or any person who induces, entices, or procures such activity, shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years and not more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000), nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.~~



This section is moved to § 18-5607 to make room for a definitions section.

18-5601. DEFINITIONS.

- (1) “Benefits of such proceeds” includes but is not limited to any real or personal property obtained with or by use of proceeds as defined in this chapter; any debt, rent, or other financial obligation paid with proceeds as defined in this chapter; and any service obtained in exchange for proceeds as defined in this chapter.
- (2) “Child” means a person under eighteen (18) years of age.
- (3) “Commercial sexual activity” means the exchange, or the attempted exchange, of sexual contact for a fee.
- (4) “Fee” means any money, service, item of real or personal property, contraband, or thing of value.
- (5) “Intimate body parts” includes human genitals, pubic area, buttocks, or breasts.
- (6) “Proceeds” means any money, services, item of real or personal property, contraband, or thing of value paid or exchanged for sexual contact.
- (7) “Sexual contact” means any touching of the intimate body parts of another person for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual-genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.



Using a definitions section helps clarify the meaning of the words throughout the chapter. For consistency, the definitions in this section mirror the relevant definitions in the new definitions section for human trafficking (§ 18-8602).

18-5602. PROCUREMENT — DEFINITION AND PENALTY. Any person who induces, compels, entices, or procures another person to engage in ~~acts as a prostitute~~ commercial sexual activity shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5603. RECEIVING PAY FOR PROCUREMENT. Any person who knowingly receives ~~money or any object of value~~ fee to procure ~~a prostitute~~ third person to engage in commercial sexual activity shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5604. PAYING FOR PROCUREMENT. Any person who pays another ~~money or any object of value~~ fee to procure a third person to engage in ~~prostitution~~ commercial sexual activity shall be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5605. DETENTION FOR ~~PROSTITUTION~~COMMERCIAL SEXUAL ACTIVITY. Anyone who holds, detains, or restrains, or who attempts to hold, detain or restrain another person for the purpose of compelling such person to engage in ~~prostitution~~commercial sexual activity shall be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5606. RECEIVING PROCEEDS OF ILLEGAL SEXUAL ACTIVITY. (1) Any person who knowingly receives or accepts any proceeds, or the benefits of such proceeds, derived from another person engaging in sexual contact shall be guilty of a felony punishable by imprisonment for a period of not more than twenty (20) years, or by a fine of not more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

~~(2) As used in this section:~~

~~(a) "Benefits of such proceeds" includes but is not limited to any real or personal property obtained with or by use of proceeds as defined in this subsection; any debt, rent, or other contractual obligation paid with proceeds as defined in this subsection; and any service obtained in exchange for proceeds as defined in this subsection.~~

~~(b) "Proceeds" means any money, services, item of real or personal property, contraband, or thing of value paid or exchanged for sexual contact.~~

~~(c) "Sexual contact" means any touching of the sexual organs or other intimate body parts of another person for the purpose of arousing or gratifying the sexual desire of either party, including but not limited to sexual intercourse, oral-genital contact, manual genital contact, genital-anal contact, oral-anal contact, and other physical-genital contact.~~

~~(3)~~(2) The person who provides sexual contact in exchange for proceeds, as set forth in subsection (1) of this section, and such person's minor children or legal dependents incapable of self-support shall not be criminally liable pursuant to this section.



The definitions in this section were removed because they are now included in the general definitions section (§ 18-5601) and apply to the entire chapter.

18-5607. INTERSTATE TRAFFICKING IN COMMERCIAL SEXUAL ACTIVITY. Any person who imports a person or persons into this state, or who exports a person or persons from this state, for the purpose of commercial sexual activity, or any person who induces, entices, or procures such activity, shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years and not more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000), nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.



This section was moved from § 18-5601.

18-5608. ~~HARBORING PROSTITUTES~~ HOUSE OF COMMERCIAL SEXUAL ACTIVITY. Any person maintaining, controlling or supporting a ~~house of prostitution as defined in this chapter~~ place where commercial sexual activity is regularly carried on by one (1) or more persons under the control, management or supervision of another, shall be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5609. INDUCING ~~PERSON UNDER EIGHTEEN YEARS OF AGE~~ CHILD INTO ~~PROSTITUTION-COMMERCIAL SEXUAL ACTIVITY~~ — PENALTIES. Every person who induces or attempts to induce a ~~person under the age of eighteen (18) years~~ child to engage in ~~prostitution-commercial sexual activity~~ shall be guilty of a felony punishable by imprisonment in the state penitentiary for a period of not less than two (2) years, which may be extended to life imprisonment, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

18-5610. UTILIZING A ~~CHILD PERSON UNDER EIGHTEEN YEARS OF AGE FOR PROSTITUTION COMMERCIAL SEXUAL ACTIVITY~~ — PENALTIES. ~~(1)~~ Every person who ~~exchanges or offers to exchange anything of value for sexual conduct or sexual contact~~ engages in commercial sexual activity with a ~~person under the age of eighteen (18) years~~ child shall be guilty of a felony punishable by imprisonment in the state penitentiary for a period of not less than two (2) years, which may be extended to life imprisonment, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both such imprisonment and fine.

~~(2) As used in this section:~~

~~(a) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.~~

~~(b) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.~~

~~(c) "Anything of value" includes, but is not limited to, a fee, food, shelter, clothing, medical care or membership in a criminal gang as defined in section 18-8502, Idaho Code.~~



The language in this statute was changed and the definitions removed for consistency with the new definitions in § 18-5601.

18-5611. INDUCING ~~PERSON UNDER EIGHTEEN YEARS OF AGE~~ CHILD TO ~~PATRONIZE A PROSTITUTE~~ENGAGE IN COMMERCIAL SEXUAL ACTIVITY — PENALTIES. Any person who induces or attempts to induce a ~~person under the age of eighteen (18) years~~child to ~~patronize a prostitute~~engage a third person in commercial sexual activity shall be guilty of a felony.

18-5612. PROPERTY SUBJECT TO CRIMINAL FORFEITURE. (1) Any person who is found guilty of, who enters a plea of guilty or who is convicted of a violation of section 18-5602, 18-5603, 18-5604, 18-5605, 18-5606, 18-5608, or 18-5609, 18-5610, 18-5611, 18-5613, or 18-5614, Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and

(b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

(2) The court, in imposing sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304, Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

18-5613. ~~PROSTITUTION~~PROVIDING COMMERCIAL SEXUAL ACTIVITY. (1) A person is guilty of ~~prostitution~~providing commercial sexual activity when he or she: (a) engages in, ~~or offers to engage in,~~ or agrees to engage in ~~sexual conduct, or~~ sexual contact ~~with another person~~ in return for a fee; or (b) ~~is an inmate of a house of prostitution; or (c)~~ loiters in or within view of any public place for the purpose of being hired to engage in ~~sexual conduct or~~ sexual contact.

(2) ~~Prostitution~~Providing commercial sexual activity is a misdemeanor, provided, however, that on a third or subsequent conviction for ~~prostitution~~commercial sexual activity, it shall be a felony.

(a) For purposes of this subsection, a prior conviction for prostitution counts as a conviction for providing commercial sexual activity.

~~(3) Definitions:~~

~~(a) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.~~

~~(b) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.~~

~~(c) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one (1) or more persons under the control, management or supervision of another.~~

~~(d) "Inmate" means a person who engages in prostitution in or through an agency of a house of prostitution.~~

~~(e) "Public place" means any place to which the public or any substantial group thereof has access.~~

(3) It is an affirmative defense to providing commercial sexual activity that the defendant was at the time of the alleged crime the victim of conduct prohibited by section 18-8607.

(4) Notwithstanding subsections (1) and (2), this statute does not apply to a child who is alleged to have engaged in conduct that would, if committed by an adult, violate this statute. A commercially exploited child under this paragraph may be taken into shelter care by a peace officer pursuant to section 16-1608, if the conditions allowing emergency removal are met.



Subsection (3) allows a defendant to raise at trial the affirmative defense that he or she was the victim of human sex trafficking at the time of the alleged crime.

Subsection (4) means a child cannot be charged with providing commercial sexual activity. The inclusion of a reference to the shelter care statute is to highlight for law enforcement that they have a tool to remove a child who is being used for commercial sexual activity from the situation without arresting the child.

18-5614. ~~PATRONIZING A PROSTITUTE~~SOLICITING COMMERCIAL SEXUAL ACTIVITY. (1) A person is guilty of ~~patronizing a prostitute~~soliciting commercial sexual activity when he or she:

(a) Pays, ~~or~~ offers, or agrees to pay another person a fee for the purpose of engaging in ~~an act of sexual conduct or~~ sexual contact; or

~~(b) Enters or remains in a house of prostitution for the purpose of engaging in sexual conduct or sexual contact.~~

~~(b) offers a third person to engage in, or agrees to provide a third person to engage in, sexual contact in return for a fee.~~

~~(2) Patronizing a prostitute is a misdemeanor, provided that a third or subsequent conviction therefor shall be a felony.~~

(2) Soliciting commercial sexual activity is a felony punishable by imprisonment for not more than ten (10) years, or by a fine of not more than twenty thousand dollars (\$20,000), or by both such fine and imprisonment.



The revisions to subsection (2) would make the purchase of commercial sexual activity a felony on the first offense. This is an effort to better address the demand side of the market for commercial sexual activity.

18-5620. FORFEITURE REQUEST — REBUTTABLE PRESUMPTION. Property subject to criminal forfeiture under the provisions of this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 18-5612, Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

There is a rebuttable presumption that any property of a person subject to the provisions of section 18-5612, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

- (1) The property was acquired by a person during the period of the violation of ~~either any section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement), Idaho Code, of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-5612, Idaho Code,~~ or within a reasonable time after such violation; and
- (2) There was no likely source for such property other than the violation of ~~either any section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement) of this chapter for which criminal forfeiture may be ordered, pursuant to section 18-5612,~~ Idaho Code.

18-5621. PRESERVATION OF PROPERTY — WARRANT OF SEIZURE — PROTECTIVE ORDERS. (1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 18-5612, Idaho Code, for forfeiture under the provisions of this chapter upon the filing of an indictment or information charging a violation of ~~either any section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement) of this chapter~~ for which criminal forfeiture may be ordered, pursuant to section 18-5612, Idaho Code, and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property that are required by law, or that are necessary to protect the interests of the state of Idaho or third parties.

18-5626. AUTHORITY OF THE ATTORNEY GENERAL. (1) The attorney general may exercise concurrent investigative and prosecutorial authority with county prosecutors to prosecute persons for violations of this chapter.

(a) Commissioned law enforcement officers employed by the attorney general shall have general peace officer powers and the authority to arrest individuals throughout the state for the purpose of investigating violations of this chapter.

(2) With respect to property ordered forfeited under the provisions of this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

~~(1)~~(a) Restore forfeited property to victims of a violation of relevant provisions of this chapter, or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this chapter;

~~(2)~~(b) Compromise claims arising under this chapter;

~~(3)~~(c) Award compensation to persons providing information resulting in a forfeiture under this chapter; and

~~(4)~~(d) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.



The revision to subsection (1) grants the Attorney General concurrent jurisdiction for all crimes in the chapter on commercial sexual activity (Chapter 56). The rationale is that the investigation and prosecution of human sex trafficking necessarily includes the investigation and prosecution of commercial sexual activity. However, this grant of concurrent jurisdiction should not be included unless the legislature chooses to also grant the Attorney General concurrent jurisdiction over the chapter on human trafficking (Chapter 86).