

# ISSUE BRIEF

## COMPONENT 2.3

<b>Area of Law</b>	Criminal Provisions Addressing Demand
<b>The Policy Goal</b>	Solicitation laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.
<b>The Reason</b>	Age-neutral solicitation statutes should not apply to a buyer of commercial sex acts with a minor. These laws are intended to address the vice crime of prostitution and typically permit a lenient punitive response to the buyer that is inconsistent with the serious crime of commercial sexual exploitation of a child (CSEC). In some states, a diversion program or “John School,” which is geared toward behavior change rather than punishment, is mandated as punishment for solicitation; these types of responses are inappropriate to the crime of CSEC or child sex trafficking and inadequate to deter demand for commercial sex with minors. Amending solicitation or patronizing prostitution statutes to ensure a buyer of sex with a minor under 18 is properly identified and punished for the crime of child sex trafficking is essential for serious criminal deterrence.

### Examples of Legislative Solutions

The statutes highlighted below are either distinct from prostitution laws or contain provisions specifying the more serious crime of soliciting or patronizing a minor for prostitution and providing heightened penalties.

#### Hawaii

Pursuant to Haw. Rev. Stat. Ann. § 712-1209.1 (Solicitation of a minor for prostitution), “(1) A person eighteen years of age or older commits the offense of solicitation of a minor for prostitution if the person intentionally, knowingly, or recklessly, offers or agrees to pay a fee to a minor or to a member of a police department, a sheriff, or a law enforcement officer who represents that person’s self as a minor to engage in sexual conduct. (2) Solicitation of a minor for prostitution is a class C felony. (3) A person convicted of committing the offense of solicitation of a minor for prostitution shall be imposed a fine of not less than \$5,000; provided that \$5,000 of the imposed fine shall be credited to the general fund . . . (6) For purposes of this section: ‘Minor’ means a person who is less than eighteen years of age. ‘Sexual conduct’ has the same meaning as in section 712-1200(2) [Prostitution].”

#### New Jersey

N.J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses) provides an enhanced penalty provision within the general

prostitution law. The law states, “A person commits an offense if: (1) The actor engages in prostitution as a patron [punishable as a disorderly persons offense]; . . . (7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

#### Rhode Island

R.I. Gen. Laws § 11-37-8.8(a) (Indecent solicitation of a child) is a separate statute from R.I. Gen. Laws § 11-34.1-3(a) (Procurement of sexual conduct for a fee). It provides, “A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in prostitution . . . .”

#### South Carolina

S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) is codified in Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child

prostitution), separate and apart from the prostitution laws, and makes it a crime for any individual “(A) . . . if he is not a minor and he patronizes a minor prostitute . . . (1) soliciting or requesting a minor to participate in prostitution; (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; . . . (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.”

### Tennessee

Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution) states, “Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is punishable as trafficking for commercial sex acts under Section 39-13-309.” Patronizing prostitution” is defined as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.” Tenn. Code Ann. § 39-13-512(3).

### Texas

Under Tex. Penal Code § 43.02 (Prostitution), “(b) A person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another . . . (c-1) An offense under Subsection (b) is a Class B misdemeanor, except that the offense is: . . . (3) a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct is: (A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense; (B) represented to the actor as being younger than 18 years of age; or (C) believed by the actor to be younger than 18 years of age.”

### Utah

Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) states that “(1) A person is guilty of patronizing a prostitute when the person: (a) pays or offers or agrees to pay another person a fee, or the functional equivalent of a fee, for the purpose of engaging in an act of sexual activity; or (b) enters or remains in a place of prostitution for the purpose of engaging in sexual activity. (2) Patronizing a prostitute is a class A misdemeanor, except as provided in Subsection (3), (4), or (5) . . . (5) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other person, a violation of Subsection (1)(a) is a third degree felony . . . .”

### Virginia

Va. Code Ann. § 18.2-346(B) (Prostitution; commercial sexual conduct; commercial sexual exploitation of a minor; penalties) provides that “[a]ny person who offers money or its equivalent to another for the purpose of engaging in sexual acts . . . and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.” “Sexual acts” include “adultery, fornication, or any act in violation of § 18.2-361 [Crimes against nature; penalty] . . . , or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361 [Crimes against nature; penalty].” Va. Code Ann. § 18.2-346(A).