

ISSUE BRIEF

COMPONENT 2.6

Area of Law	Criminal Provisions Addressing Demand
The Policy Goal	No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.
The Reason	Purchasing sex acts with a minor is a crime. Permitting a defense to prosecution based on mistake of age subverts the intention of protecting children from exploitation and creates a weakness in the laws needed to deter this crime and to protect our children. State laws prohibiting a defense based on mistake of age in sex trafficking and commercial sexual exploitation of children (CSEC) laws send a clear statement to buyers that this crime will not be tolerated and firmly protects all minors from the danger of commercial sexual exploitation.

Examples of Legislative Solutions

The following state laws contain language that expressly prohibits a defense to prosecution based on a mistake of age.

Colorado

Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(c)(III), (IV) (Human trafficking of a minor for sexual servitude) states that it is not a defense that “[t]he defendant did not know the minor’s age or reasonably believed the minor to be eighteen years of age or older” or “the minor or another person represented the minor to be eighteen years of age or older.” Colo. Rev. Stat. § 18-7-407 (Criminality of conduct) states, “In any criminal prosecution under sections 18-7-402 to 18-7-407 [Soliciting for child prostitution, Pandering of a child, Procurement of a child for, Keeping a place of child prostitution, Pimping of a child, Inducement of child prostitution, Patronizing a prostituted child], it shall be no defense that the defendant did not know the child’s age or that he reasonably believed the child to be eighteen years of age or older.”

Louisiana

La. Stat. Ann. § 14:46.3(C)(3) (Trafficking of children for sexual purposes) states that “[l]ack of knowledge of the victim’s age shall not be a defense” to the purchase of a minor for sex acts. Similarly, La. Stat. Ann. § 14.81.1(D)(1) (Pornography involving juveniles) states, “Lack of knowledge of the juvenile’s age shall not be a defense.” La. Rev. Stat. Ann. § 14:82.1(B)(1) (Prostitution; persons under eighteen; additional offenses) states, “Lack of knowledge of the age of the person practicing prostitution shall not be a defense.” Finally, La. Rev. Stat. Ann. § 14:89.2(D)(2) (Crime against nature by solicitation) provides, “Lack of knowledge of the age of the person being solicited shall not be a defense.”

Montana

Mont. Code Ann. § 45-5-704(2) (Sexual servitude) states in part, “It is not a defense in a prosecution under subsection (1)(b) [Sexual servitude involving a minor victim] . . . that the defendant believed the child was an adult.” Mont. Code Ann. § 45-5-704(2)(b) (Patronizing victim of sexual servitude) imposes a heightened penalty “if the individual patronized was a child . . . whether or not the person believed the child was an adult . . .” Mont. Code Ann. § 45-5-601(3)(a) (Prostitution) is violated “[i]f the person patronized was a child and the patron was 18 years of age or older at the time of the offense, whether or not the patron was aware of the child’s age.”

New Jersey

N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) states, “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.”

South Carolina

S.C. Code Ann. § 16-15-425(B) (Participating in prostitution of a minor defined; defenses; penalties) states, “Mistake of age is not a defense to a prosecution under this section.” Additionally, S.C. Code Ann. § 16-15-405(C) (Second degree sexual exploitation of a minor defined; presumptions; defenses; penalties) precludes the defense, stating, “Mistake of age is not a defense to a prosecution under this section.” Lastly, S.C. Code Ann. § 16-3-2020(K)(5) (Trafficking in persons; penalties; defenses) prohibits a buyer from raising a defense concerning, “mistake as to the victim’s age, even if the mistake is reasonable.”

Tennessee

Tenn. Code Ann. § 39-11-502(c) (Ignorance or mistake of fact) expressly precludes an age mistake defense to CSEC offenses, stating, “It shall not be a defense to prosecution for a violation of § 39-13-514 [Patronizing prostitution] or § 39-13-529 [Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means] that the person charged was ignorant or mistake as to the age of the minor.”

Texas

Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) specifically eliminates a defense of mistake of age by a defendant in a trafficking of persons case, which may reach buyers. Tex. Penal Code Ann. § 20A.02(b) states in part, “[a]n offense under this section is a felony of the first degree if: (1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense.” Tex. Penal Code Ann. § 43.02(c-1)(3) (Prostitution) states that “[a]n offense under this section is . . . 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.” Further Tex. Penal Code Ann. § 21.02(b)(2) (Continuous sexual abuse of young child or children) states, “[a] person commits an offense . . . regardless of whether the actor knows the age of the victim at the time of the offense.”

Washington

Wash. Rev. Code Ann. § 9A.40.100(4)(a) (Trafficking) states, “[i]n any prosecution under this chapter in which the offense or degree of the offense depends on the victim’s age, it is not a defense that the perpetrator did not know the victim’s age, or that the perpetrator believed the victim to be older, as the case may be.” Wash. Rev. Code Ann. § 9.68A.110(3) (Certain defenses barred, permitted) prohibits a mistake of age defense in a prosecution under Wash. Rev. Code Ann. § 9.68A.090 (Communication with minor for immoral purposes) and § 9.68A.100 (Commercial sexual abuse of a minor), stating in part, “[i]n a prosecution under RCW . . . 9.68A.090 [Communication with a minor for immoral purposes], 9.68A.100 [Commercial sexual abuse of a minor] . . . it is not a defense that the defendant did not know the alleged victim’s age.”