

ISSUE BRIEF

COMPONENT 2.7

Area of Law	Criminal Provisions Addressing Demand
The Policy Goal	Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.
The Reason	A minor is defined almost uniformly as a person under 18 years of age. States have laws that protect minors from a range of vices (alcohol, tobacco), legal obligations (entering into a contract), and dangers (dangerous work places). Protection from commercial sexual exploitation is no different and, given the underlying criminal act of buying prostitution, should rise in protection enforcement priority. The federal Trafficking Victims Protection Act (TVPA) of 2000 makes it a crime when a person “recruits, entices, harbors, transports, provides, or obtains” a person under 18 to engage in a commercial sex act. However, some state laws stagger penalties for buyers according to the age of the minor involved. This results in older minors receiving less than full protection under the law and allows buyers, and the public, to believe that an older minor is less of a victim. This staggered penalty is not the same as an enhanced penalty, which starts from a serious base penalty for all minors and heightens that penalty to reflect the especially egregious crime against a younger child, such as the federal crime of sex trafficking in 18 U.S.C. § 1591, which provides an enhanced penalty of a minimum 15 years to life imprisonment for trafficking a minor under 14. State laws must sufficiently protect all minors who are exploited by buyers of commercial sex acts.

Example of staggered penalties with insufficient base penalties for buying sex with a minor under 18

Ariz. Rev. Stat. Ann. § 13-3212 (Child sex trafficking; classification; increased punishment; definition) provides a lesser penalty (Class 6 felony) for buyers of sex with minors aged 15, 16, and 17 if the state cannot prove the buyer knew or should have known the minor’s age. A person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age” commits a Class 2 felony and is subject to 13–27 years imprisonment (presumptive 20 years). Ariz. Rev. Stat. Ann. §§ 13-3212(B)(1), (F), 13-705(C). A person who “[e]ngag[es] in prostitution with a minor who the person knows or should have known is fifteen, sixteen or seventeen years of age” is also guilty of a Class 2 felony but is subject only to 7–21 years imprisonment (presumptive 10.5 years). Ariz. Rev. Stat. Ann. § 13-3212(B)(2), (I). Finally, a person who otherwise “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” is guilty of a Class 6 felony and is subject to just .33–2 years imprisonment (presumptive 1 year). Ariz. Rev. Stat. Ann. §§ 13-3212(B)(3), (J), 13-702(D).

Examples of Legislative Solutions

The following statutes provide reasonably serious base penalties for the purchase of commercial sex acts with a minor under 18, although they may not be as high as the federal penalty.

Alabama

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) applies to buyers in some cases and provides a heightened penalty when the victim is a minor, without distinguishing between older and younger minor victims. A conviction under Ala. Code § 13A-6-152(a)(2), a Class A felony, carries a prison term of 10-99 years, inclusive of “hard labor” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1).

Colorado

Colorado’s buyer-applicable trafficking law does not stagger penalties based on a minor’s age and provides sufficiently high

penalties. Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) is punishable as a Class 2 felony by imprisonment for 8–24 years. Colo. Rev. Stat. Ann. § 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

Georgia

Ga. Code Ann. § 16-6-12 (Pandering), which has been held to apply to buyers, provides a person is guilty of pandering “when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.” Penalties are staggered based on the victim’s age; however, these penalties are reasonably high for all minors. If the victim is 16 or 17, the buyer is guilty of a felony punishable by 5–20 years imprisonment and/or a fine of \$2,500–\$10,000; whereas, if the victim is under 16, the buyer is guilty of a felony punishable by 10–30 years imprisonment and/or a fine not to exceed \$100,000. Ga. Code Ann. §§ 16-6-13(b)(1), (2).

Louisiana

Buyers convicted of sex trafficking and CSEC offenses in Louisiana face substantial base penalties for offenses involving minors under 18 and an enhanced penalty for offenses involving minors under 14. Under La. Rev. Stat. Ann. § 14:46.3(D)(1)(a)–(b) (Trafficking of children for sexual purposes) and § 14:83(B)(2)–(3) (Soliciting for prostitutes), convictions are punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both unless the victim is under 14, in which case a conviction is punishable by imprisonment for 25–50 years at hard labor and a fine up to \$75,000, with no parole eligibility for the first 25 years. Sufficiently high base penalties are also provided under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under eighteen; additional offenses), which makes it a crime “[f] or any person over the age of seventeen to engage in sexual intercourse with any person under the age of eighteen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment for 15–50 years of hard labor, a fine up to \$50,000, or both. Where the victim is under 14, conviction is punishable by imprisonment for 25–50 years, a fine up to \$75,000, or both, with no parole eligibility for the first 25 years. La. Rev. Stat. Ann. § 14:82.1(D) (1)–(2).

Montana

Montana’s prostitution statute has equally high penalties

for all victims under 18 years old and does not stagger or eliminate penalties for older minors. Mont. Code Ann. § 45-5-601(3) (Prostitution) states, “(a) if 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, the patron offender: (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer the imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole; (ii) may be fined an amount not to exceed \$50,000; and (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided and approved by the department of corrections.”

New Jersey

N.J. Stat. Ann. § 2C:34-1(b)(7) states that, “A person commits an offense if . . . [t]he 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 . . .” A conviction is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine up to \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

Rhode Island

R.I. Gen. Laws § 11-67.1-6(b) (Patronizing a victim of sexual servitude) states, “[e]very person who shall patronize a minor for purposes of sexual servitude of a minor shall be guilty of a felony, subject to not more than twenty (20) years imprisonment, a fine of up to twenty thousand dollars (\$20,000), or both.”