

ISSUE BRIEF

COMPONENT 4.3

Area of Law	Criminal Provisions for Facilitators
The Policy Goal	Promoting and selling child sex tourism is illegal.
The Reason	Sex tourism encourages commercial sexual exploitation of children and creates incentives for traffickers and facilitators to increase profits while furthering the clandestine nature of the trafficking offense by interfering with detection of trafficking crimes that are disguised as travel services. Sex tourism not only exploits children overseas, but also fuels the demand for children in the United States. Federal law criminalizes child sex tourism, defined to include “arrang[ing], induc[ing], procur[ing] or facilitat[ing] the travel” with knowledge that the traveler “is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct” and the arranging was done for “commercial advantage or private financial gain.” “Illicit sexual conduct” is defined to include “any commercial sex act (as defined in section 1591) with a person under 18 years of age.” Some states have made sex tourism a crime when the commercial sexual exploitation involved adult victims; these and all sex tourism criminal statutes should enhance penalties when the victim of the commercial sexual activity is a minor under 18 in recognition of the serious underlying crime of child sexual abuse. To protect children from the demand that is generated through sex tourism, states should enact a law that prohibits selling or offering to sell travel services that include or facilitate travel, either into or out of the state, for the purpose of engaging in commercial sexual exploitation of a minor.

Examples of Legislative Solutions

Arkansas

Pursuant to Ark. Code Ann. § 5-18-103(a)(5) (Trafficking of persons), a person commits human trafficking if he or she knowingly “[s]ells or offers to sell travel services that he or she knows includes an activity prohibited under subdivision (a)(1) – (4) of this section.” Subsection (4) of Ark. Code Ann. § 5-18-103(a) makes it a crime to “[r]ecruit[], entice[], solicit[], isolate[], harbor[], transport[], provide[], maintain[], or obtain[] a minor for commercial sexual activity.”

Colorado

Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(II) (Human trafficking of a minor for sexual servitude) states, “[a] person who knowingly advertises, offers to sell, or sells travel services that facilitate an activity prohibited pursuant to subsection (2)(a)(I) of this section commits human trafficking of a minor for sexual servitude.” Subsection (2)(a)(I) includes “sell[ing], recruit[ing], harbor[ing], transport[ing], transfer[ing],

isolat[ing], entic[ing], provid[ing], receiv[ing], obtain[ing] by any means, maintain[ing], or mak[ing] available a minor for the purpose of commercial sexual activity.”

Hawaii

Haw. Rev. Stat. Ann. § 712-1208(1) (Promoting travel for prostitution) makes it illegal when a facilitator “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the state.” Promoting travel for prostitution is a Class C felony punishable by a sentence of 5 years imprisonment and a possible \$10,000 fine. Haw. Rev. Stat. Ann. § 468L-7.5(10) (Prohibited Acts) criminalizes the “[s]elling, advertising, or otherwise offering to sell travel services or facilitate travel: (A) [f]or the purpose of engaging in a commercial sexual act; (B) [t]hat consists of tourism packages or activities using and offering sexual acts as enticement for tourism; or (C) [t]hat provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services.” Haw. Rev. Stat. Ann. § 468L-8 (Restitution) permits a convicted offender of “any provision of this chapter . . . may

be ordered . . . to make restitution to all persons injured by the act or practice.”

Kansas

Kan. Stat. Ann. § 21-5612 (Promoting travel for child exploitation) states, “[p]romoting travel for child exploitation is knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute a violation of K.S.A. 2016 Supp. 21-5426(b)(4) or (5) [Human trafficking; aggravated human trafficking], 21-5510 [Sexual exploitation of a child], [Enacted Senate Bill 40, § 3 (Internet trading in child pornography and aggravated internet trading in child pornography)], or 21-6422 [Commercial Sexual Exploitation of a child], and amendments thereto, if such conduct occurred in this state.”

Louisiana

La. Rev. Stat. Ann. § 14:46.3(A)(6) (Trafficking of children for sexual purposes) makes it unlawful “for any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.” Additionally, La. Rev. Stat. Ann. § 14:46.3(A)(5) (Trafficking of children for sexual purposes) makes it unlawful “[f]or any person to knowingly advertise any of the activities prohibited by this Section.”

Missouri

Mo. Rev. Stat. § 567.085(1) (Promoting travel for prostitution) states that a “person commits the crime of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in prostitution as defined by section 567.010.” is a Class D felony punishable by a maximum term of imprisonment of 7 years. Mo. Rev. Stat. §§ 567.085(2), 558.011(1)(4).

Mo. Rev. Stat. § 567.087 (Prohibitions on travel agencies or tour operators—rebuttable presumption, advertisements) states, “1. No travel agency or charter tour operator shall: (1) Promote travel for prostitution as described in section 567.085; (2) Sell, advertise, or otherwise offer to sell travel services or facilitate travel: (a) For the purpose of engaging in a commercial sex act as defined in section 566.010 [Definitions], (b) That consists of tourism packages or activities using and offering any sexual contact as defined in section 566.010, as enticement for tourism; or (c) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services. 2. There shall be a rebuttable presumption that any travel agency or charter tour operator using advertisements that include “sex travel” or include depictions of human genitalia is in violation of this

section.”

Mo. Rev. Stat. § 567.089 (Offering travel for purpose of prostitution prohibited—penalties) states, “1. No travel agency or charter tour operator shall engage in selling, advertising, or otherwise offering to sell travel services, tourism packages, or activities that solicit, encourage, or facilitate travel for the purpose of engaging in prostitution. 2. Upon violation of this section by a travel agency or charter tour operator, the secretary of state shall revoke the articles of incorporation of the travel agency or charter tour operator. The secretary of state, as part of a proceeding brought under this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.”

New York

N.Y. Penal Law § 230.25 (Promoting prostitution in the third degree) states that “[a] person is guilty of promoting prostitution in the third degree when he or she knowingly: (1) Advances or profits from prostitution by . . . controlling or owning, either alone or in association with others . . . a prostitution business or enterprise that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person in prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction . . .” A violation of N.Y. Penal Law § 230.25 is a Class D felony. Under N.Y. Penal Law § 70.00 (Sentence of imprisonment for felony), a “Class D felony is punishable by up to 7 years imprisonment and a possible fine not to exceed \$5,000 or double the amount of the profit from the crime, whichever is higher.”

Washington

Wash. Rev. Code § 9.68A.102(1) (Promoting travel for commercial sexual abuse of a minor) makes it a Class C felony punishable by up to 5 years imprisonment if a person “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in [Washington].”