

Policy Goal

Using a law enforcement decoy to investigate buying or selling commercial sex is not a defense to soliciting, purchasing, or selling sex with a minor.

Law enforcement struggle to investigate the prostitution of children due to their inability to use an actual minor as an undercover investigator; having an adult undercover police officer pose as a minor allows for the defense to prosecution that the “minor” solicited for prostitution was, in fact, an adult. State laws that permit law enforcement to pose as a minor in investigations of domestic minor sex trafficking cases by explicitly prohibiting a defense based on the decoy not in fact being a minor are essential to impact this crime. Use of a decoy by law enforcement to investigate commercial sexual exploitation of children, especially through prostitution, is an effective and child protective approach to proactively locate and investigate buyers of sex with children, as well as traffickers. Prohibitions on this defense may appear in statutes prohibiting the use of electronic communications to lure a child for sexual exploitation, but specific prohibition of this defense is also needed under state child sex trafficking and commercial sexual exploitation of children laws.

EXAMPLES OF LEGISLATIVE SOLUTIONS

ARIZONA

Ariz. Rev. Stat. Ann. § 13-3212(C) (Child sex trafficking; classification; increased punishment; definition) states, “It is not a defense to a prosecution under subsection A and subsection B, paragraphs 1 and 2 of this section that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.”

FLORIDA

Under Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet a minor; penalties) states, “The fact that an undercover operative or law enforcement officer is involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.” In addition, and in relation to the buying of sex with a child, Fla. Stat. Ann. § 796.07(3)(b) (Prohibiting prostitution and related acts) states, “Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed under this section.”

GEORGIA

Ga. Code Ann. § 16-5-46(k) (Trafficking in persons for labor or sexual servitude) expressly prohibits the defense, stating, “The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section, provided, however, that Code Section 16-3-25 [Entrapment] may still provide an absolute defense.”

LOUISIANA

La. Rev. Stat. Ann. § 14:82.2(F) (Purchase of commercial sexual activity; penalties) states that “it shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, sold, purchased, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.” La. Rev. Stat. Ann. § 14:46.3(B)(3) (Trafficking of children for sexual purposes) and § 14:46.2(D) (Human trafficking) contain similar language. Additionally, pursuant to La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution) “it shall not be a defense to prosecution . . . that the person being enticed is actually a law enforcement officer or peace officer acting in his official capacity,” and similarly under La. Rev. Stat. Ann. § 14:89.2 (Crime against nature by solicitation) it shall not be a defense “that

the person being solicited is actually a law enforcement officer or peace officer acting within the official scope of his duties.” La. Rev. Stat. Ann. §§ 14:86(C), 14:89.2(D)(4). Finally, under La. Rev. Stat. Ann. § 14:82.1(E) (Prostitution; persons under eighteen; additional offenses), “it shall not be a defense . . . that the person practicing prostitution who is believed to be under the age of eighteen is actually a law enforcement officer or peace officer acting within the official scope of his duties.”

PENNSYLVANIA

18 Pa. Cons. Stat. § 6318(a) (Unlawful contact with a minor) states, “A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth: . . . (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses). (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances) . . . (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).”

TENNESSEE

Pursuant to Tenn. Code Ann. § 39-13-309(a)(3) (Trafficking for commercial sex act), “A person commits the offense of trafficking a person for a commercial sex act who: . . . [c]ommits the acts in this subsection (a) when the intended victim of the offense is a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor.” Tenn. Code Ann. § 39-13-309(d) further states, “It is not a defense to a violation of this section that . . . (1) The intended victim of the offense is a law enforcement officer; . . . (3) . . . or the law enforcement officer could not engage in the solicited offense.”

Under Tenn. Code Ann. § 39-13-515(d) and § 39-13-514(d) (Patronizing prostitution), “It is not a defense to a violation of this section that . . . (1) [t]he subject of the offense is a law enforcement officer; . . . (3) . . . or a law enforcement officer could not engage in the solicited offense.”

Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor) states, “It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed,

would constitute a violation by the soliciting adult of one (1) or more of the following offenses: (1) Rape of a child, pursuant to § 39-13-522; (2) Aggravated rape, pursuant to § 39-13-502; (3) Rape, pursuant to § 39-13-503; (4) Aggravated sexual battery, pursuant to § 39-13-504; (5) Sexual battery by an authority figure, pursuant to § 39-13-527; (6) Sexual battery, pursuant to § 39-13-505; (7) Statutory rape, pursuant to § 39-13-506; (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; (9) Sexual activity involving a minor, pursuant to § 39-13-529; (10) Trafficking for commercial sex acts, pursuant to § 39-13-309; (11) Patronizing prostitution, pursuant to § 39-13-514; (12) Promoting prostitution, pursuant to § 39-13-515; (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.” Subsection (b) explains that “[i]t is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense.” Subsection (d) expands the reach of this statute by providing, “A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.”

WASHINGTON

Wash. Rev. Code Ann. § 9.68A.090(1) (Communication with a minor of immoral purposes) states, “Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.” Wash. Rev. Code Ann. § 9.68A.090(2) states, “A person who communicates with a minor for immoral purposes is guilty of a class C felony . . . if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.”