

ISSUE BRIEF

COMPONENT 6.4

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Goal	Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.
The Reason	Law enforcement often struggle to investigate the prostitution of children due to their inability to use an actual minor as an undercover investigator and the inevitable defense to a prosecution that the “minor” solicited for prostitution was in fact an adult undercover police officer. State laws that permit law enforcement to pose as a minor decoy 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 acts 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 laws specifically prohibiting child sex trafficking and commercial sexual exploitation of children.

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

Pursuant to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) and § 14:82.2 (Purchase of commercial sexual activity; penalties) state 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(A)(3), 14:82.2(E). 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 (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.” La. Rev. Stat. Ann. § 14:82.1(E).

Maryland

Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) provides, “A person may not, with the intent to commit a violation of . . . § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under . . . § 11-305, or § 11-306 of this article.”

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).”

Washington

Wash. Rev. Code Ann. § 9.68A.090(2) (Communication with a minor of immoral purposes) 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 or sex trafficking, through the sending of an electronic communication.”