

Area of Law

Criminal Provisions Addressing Demand

The Policy Point

Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.

The Legislative Solution

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 of 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 prostitution) provides a lesser penalty (Class 6 felony) for buyers of sex with minors aged 15, 16, and 17 when the state cannot prove the buyer had knowledge of the minor’s age. A person who “[e]ngag[es] in prostitution with a minor under fifteen years of age” commits a Class 2 felony and is subject to 13–27 years imprisonment (presumptive 20 years) under Ariz. Rev. Stat. Ann. § 13-705 dangerous crimes against children penalty enhancement. Also, a person who “[e]ngag[es] in prostitution with a minor who the person knows is fifteen, sixteen or seventeen years of age” is guilty of a Class 2 felony but subject only to 7–21 years (presumptive 10.5). Finally, a person who “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” is guilty of a Class 6 felony, punishable by just .33–2 years (presumptive 1 year) but under subsection H, if the offender is sentenced to probation, “the court shall order that as an initial term of probation” 180 days imprisonment in county jail and if the offender meets certain requirements, the court has discretion to suspend 90 days of the sentence.

Select Statute Highlights

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.

Colorado

Colo. Rev. Stat. § 18-7-401 (Definitions) defines a child, as used in Colo. Rev. Stat. § 18-7-406(1) (Patronizing a prostituted child), as “a person under the age of eighteen years.” Under this definition, buyers prosecuted under Colo. Rev. Stat. § 18-7-406(1), a Class 3 felony, are subject to a sentence of 4–12 years imprisonment and/or a fine of \$3,000–\$750,000 regardless of the age of the victim.

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).

sex acts; . . .” and “(c) Every person who shall commit sex trafficking of a minor, shall be guilty of a felony and subject to not more than forty (40) years imprisonment or a fine of up to forty thousand dollars (\$ 40,000), or both.”

#### 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) (Trafficking of children for sexual purposes), § 14:83(B)(2) (Soliciting for prostitutes) and § 14:89.2(A) (Crime against nature by solicitation), 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) 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.

#### Montana

Mont. Code. Ann §45-5-601(3)(a) (Prostitution) provides, “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 . . . ; (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 or approved by the department of corrections.”

#### Rhode Island

R.I. Gen. Laws § 11-67-6(b)(2) (Sex trafficking of a minor) makes it a crime for “(b) Any person who: . . . (2) Sells or purchases a minor [under 18] for the purposes of commercial