

Sex Trafficking: An Abbreviated Overview of Federal Criminal Law

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Summary

Sex trafficking is a state crime. Federal law, however, makes it a federal crime to conduct the activities of a sex trafficking enterprise in a way that affects interstate or foreign commerce or that involves travel in interstate or foreign commerce. Section 1591 of Title 18 of the *United States Code* outlaws sex trafficking activities that affect interstate or foreign commerce. The Mann Act outlaws sex trafficking activities that involve travel in interstate or foreign commerce. The Justice for Victims of Trafficking Act of 2015 (Victims Justice Act; P.L. 114-22/S. 178) amended both §1591 and the Mann Act.

Section 1591 now provides in part the following: “Whoever knowingly in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion ... , or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act,” shall be imprisoned not less than 15 years (not less than 10 years, if the victim is 14 years of age or older and the offender is less than 18 years of age).

The Mann Act outlaws prostitution and unlawful sexual activities that involve interstate or foreign travel. It consists of three principal substantive sections. Section 2421 proscribes the interstate or foreign transportation of someone for purposes of prostitution or unlawful sexual activity; misconduct which is punishable by imprisonment for not more than 10 years. Section 2422 condemns coercing or enticing another person to travel in interstate or foreign commerce to engage in prostitution or unlawful sexual activity, or using interstate communications to coerce or entice a child to engage in such conduct. The communications offense is punishable by imprisonment for not less than 10 years; the travel offense by imprisonment for not more than 20 years. Section 2423 outlaws four distinct offenses: (1) §2423(a)—transportation of a child in interstate or foreign commerce for purposes of prostitution or unlawful sexual purposes; (2) §2423(b)—interstate or foreign travel for purposes of unlawful sexual abuse of a child; (3) §2423(c)—foreign travel and subsequent unlawful sexual abuse of a child; and (4) §2423(d)—arranging, for profit, the travel outlawed in any of these offenses. The first is punishable by imprisonment for not less than 10 years, each of the others by imprisonment for not more than 30 years.

An offender also faces the prospect of a fine of not more than \$250,000 (not more than \$500,000 for an organization); unless indigent, to a special assessment of \$5,000; a term of supervised release of not less than five years; an order to pay the victim restitution; and the confiscation of any property derived from, or used to facilitate commission of, any of the offenses.

This report is available in an abridged version without the footnotes and most of the citations to authority found here under the title CRS Report R43598, *Sex Trafficking: An Abbreviated Overview of Federal Criminal Law*.

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Introduction

Sex trafficking is a state crime. Nevertheless, it is also a federal crime when it involves conducting the activities of a sex trafficking enterprise in a way that affects interstate or foreign commerce or that involves travel in interstate or foreign commerce. Section 1591 of Title 18 of the *United States Code* outlaws the activities of sex trafficking enterprise that affects interstate or foreign commerce, including patronizing such an enterprise. The Mann Act outlaws sex trafficking activities that involve travel in interstate or foreign commerce.

Section 1591

Section 1591 makes criminal several of the activities associated with the creation or operation of a commercial sex trafficking enterprise which uses children or coerced or deceived adults. It also proscribes profiting from such an enterprise or obstructing investigation of its activities. A subsequent section prohibits attempting or conspiring to violate §1591.

Section 1591(a)(1): Divided into elements, §1591(a)(1) declares that (1) Whoever (2) knowingly (3)(a) in or affecting interstate or foreign commerce, or (b) within the special maritime and territorial jurisdiction of the United States, (4)(a) recruits, (b) entices, (c) harbors, (d) transports, (e) provides, (f) obtains, (g) advertises, (h) maintains, (i) patronizes, or (j) solicits by any means (5) a person; (6)(a) knowing, or (b) in reckless disregard of the fact, (7)(a) that (A)(i) means of force, (ii) threats of force, (iii) fraud, (iv) coercion ... , or (v) any combination of such means (B) will be used to cause the person to (C) engage in a commercial sex act, or (b) that (A) the person has not attained the age of 18 years and (B) will be caused to engage in a commercial sex act, (8) shall be punished as provided in subsection (b).

Subsection 1591(b) makes violations punishable by imprisonment for any term of years not less than 15 years or for life (not less than 10 years imprisonment, if the victim is 14 years of age or older and the offender is less than 18 years of age, provided neither force nor deception was used). Offenders also face a fine of not more than \$250,000 (not more than \$500,000 when the offender is an organization); and unless indigent, to a special assessment of \$5,000. In addition, offenders are subject to a term of supervised release of not less than five years. An offender may also be subject to a restitution order. Moreover, property derived from a violation or used to facilitate a violation may be forfeited. Finally, unless they are indigent, offenders are subject to a \$5,000 special assessment upon conviction.

When used in an act of Congress and unless the context demands another interpretation, the word “‘whoever’ include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” Thus, corporations and other legal entities may be held criminally liable for the misconduct of their employees, officers, or agents within the scope of their authority and committed at least in part for the benefit of the entity. Knowingly ordinarily means that the individual was aware of the fact that he was engaging in the conduct proscribed. In this case, it means that he knew he was recruiting, enticing, harboring, transporting, providing, obtaining, or maintaining a person. The prosecution, however, need not prove that he knew his conduct occurred in United States territory or that it occurred in, or affected, interstate or foreign commerce.

Congress enjoys only those legislative powers that may be traced to the Constitution. One such power is the power “to regulate Commerce with foreign Nations, and among the several States.” The Supreme Court has explained that Congress’s authority under the Commerce Clause embodies “the power to regulate activities that substantially affect interstate commerce,” including “purely local activities that have a substantial effect on interstate commerce.” Various appellate courts have explained that the “substantial effect” test applies the category of regulated activity, for example, sex trafficking. Individual instances need have not more than a de minimis impact on interstate commerce. The government has shown that the defendant’s commercial sex trafficking had such an effect on interstate commerce when the defendant used the facilities of an interstate hotel chain, or when he used advertising that reached across state lines, or when he used products that had traveled in interstate commerce or the instrumentalities of interstate communications, for example, cell phones. The Constitution also vests Congress with the power to “define and punish ... Felonies committed on the high Seas,” and to exercise legislative jurisdiction retained or acquired over federal territories and enclaves. Congress has exercised this authority to claim federal criminal jurisdiction over sex trafficking and other crimes when committed on American vessels, within national parks or national forests, and other places “within the special maritime and territorial jurisdiction of the United States.”

Prior to the 2015 enactment of the Victims Justice Act, each of the verbs in §1591(a)(1)’s action element—recruits, entices, harbors, transports, supplies, obtains, maintains—seemed to refer to activities on the supply side of a prostitution operation. At least one federal appellate court held, however, that the verbs applied to the demand side as well. That is, the section applied to the customers, the Johns, of a prostitution operation. The Victims Justice Act confirmed the court’s understanding by adding “patroniz[ing]” and “solicit[ing]” as alternative action elements. At the same time, it inserted “advertis[ing]” as another potential action element.

Section 1591’s sweeping terms notwithstanding, it appears unlikely that the courts will always read §1591 literally. For example, on its face, the section appears to criminalize minors who engage in “survival sex.” Runaway juveniles who use sex to secure food, shelter, or the other necessities of life could be said to have “maintained ... a person,” themselves, knowing they have “not attained the age of 18 years and will be caused to engage in a commercial sex act.” No prosecutor is likely to bring, no jury is likely to convict, and no judge is likely to sustain, such a case.

The mens rea element of the offense requires proof that the defendant knew, or recklessly disregarded, either (A) the fact that an (i) underage child (ii) would be caused to engage in a commercial sex act or (B) the fact that an adult victim (i) had been threatened, deceived, or coerced (ii) in order to cause the victim to engage in a commercial sex act. Subsection 1591(c), however, mitigates the government’s burden with respect to knowledge of the age of a child victim: “In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.” Otherwise, the prosecution must prove that the defendant knew, or recklessly disregarded, the fact that the victim would be caused to engage in a commercial sex act, and in the case of an adult victim, that “force, threats of force, fraud, or coercion” had been used to cause the victim to engage in such an act. As a practical matter, the distinction between knowledge and reckless disregard of the facts may be more technical than real. One speaks of efforts to avoid discovery of a fact and the other to indifference as to the existence of a fact. In most instances, evidence of one will implicate the other.

More specifically, in a criminal context, a defendant who claims a lack of guilty knowledge may be convicted when the evidence presented to the jury supports an inference that his ignorance was deliberate, a matter of conscious avoidance or willful blindness. In a civil context, “[r]eckless disregard ... is an extreme version of ordinary negligence;” it encompasses those instances of gross negligence where the defendant fails to seek out the facts that would be reasonable and prudent under the circumstances. Similarly, in a criminal context, “[t]o act with ‘regardless disregard’ means to be aware of, but consciously and carelessly ignore, [clearly guilty] facts and circumstances.” Section 1591 expands the reach that the words “force, threats of force, fraud, or coercion” might ordinarily convey, with a definition of “coercion” that envelops threats of physical harm, abuse of legal process, as well as “psychological, financial, or reputational harm.” The courts have concluded that the “will be caused” element of the offense indicates that the Congress intended the section to apply regardless of whether any commercial sex act ever occurs and regardless of whether the victim previously engaged in commercial sex acts unrelated to the defendant’s involvement. Section 1591(e)(3) defines the “commercial” component of the commercial sex act element as “any sex act on account of which anything of value is given to or received by any person.” The terms “thing of value” or “anything of value” appear with some regularity in federal criminal law, and are often understood to include both tangible and intangible remuneration. Section 1591, however, supplies no corresponding definition of “sex act.” The phrase is not a term of art. The provisions that outlaw other sex offenses in the special maritime and territorial jurisdiction of the United States define the term “sexual act” and the less severely punished “sexual contact.” Given the breadth of §1591 in other areas, it may be that Congress anticipated the section would apply to both commercial sexual acts and commercial sexual contact as understood in those provisions.

Section 1591(a)(2): Profiteering: Section 1591(a)(2) outlaws profiting from sex trafficking using many of the same elements as the underlying offense: (1) Whoever (2) knowingly (3) benefits (4)(a) financially or (b) by receiving anything of value, (5) from participation in a venture (6) which has engaged in an act described in paragraph [1591(a)](1), (7)(a) knowing, or (b) any case other than one triggered by advertising, in reckless disregard of the fact, (8)(a) that (A)(i) means of force, (ii) threats of force, (iii) fraud, (iv) coercion ... , or (v) any combination of such means (B) will be used to cause the person to (C) engage in a commercial sex act, or (b) that (A) the person has not attained the age of 18 years and (B) will be caused to engage in a commercial sex act, (9) shall be punished as provided in subsection (b). Section 1591(a)(2) covers the customers of a sex trafficking enterprise who, at least one court has concluded, receive a “thing of value” by virtue of their patronage.

The penalties for profiting from a sex trafficking venture are the same as those for the underlying offense: imprisonment for any term of years not less than 15 years or for life (not less than 10 years’ imprisonment, if the victim is 14 years of age or older and the offender is less than 18 years of age, provided neither force nor deception was used). In addition, conviction carries a term of supervised release of not less than five years. Offenders also face a fine of not more than \$250,000 (not more than \$500,000 when the offender is an organization), and unless indigent, to a special assessment of \$5,000.

Obstruction: Section 1591(d) condemns obstruction and attempted obstruction of the investigation of a §1591 violation and makes the offense punishable by imprisonment for not more than 20 years; a fine of not more than \$250,000 (not more than \$500,000 for organizations); and unless indigent, to a special assessment of \$5,000. Even absent a prosecution under §1591(d), obstruction may lead to a sentencing enhancement if the offender is convicted of trafficking. It may also be prosecuted as a violation of the general obstruction of justice statutes.

Attempt and Conspiracy: Section 1594 declares that “[w]hoever attempts to violate section ... 1591 shall be punished in the same manner as a completed violation of the section, [and] [w]hoever conspires with another to violate §1591 shall be fined under title, imprisoned for any term years or for life, or both.” The general conspiracy statute also outlaws conspiracy to violate §1591.

Attempt: The crime of attempting to commit another federal offense consists of intent to commit the underlying offense and a substantial step toward the accomplishment of that objective. The requisite substantial step must be some act which strongly corroborates the defendant’s intent to commit the intended offense. It is no defense that it was factually impossible for the defendant to commit the underlying offense, as for example, a defendant who believes he is enticing a 14-year-old to engage in sexual activity when in fact he is communicating by phone or email with an adult undercover officer.

Conspiracy: In essence, “[c]onspiracy is an agreement to commit an unlawful act.” When prosecuted under the general conspiracy statute, the government must show that one of the conspirators committed an overt act in furtherance of the conspiracy. The government ordinarily bears no such burden when prosecuting under statutes, like §1594, which have no explicit overt act element. Moreover, the general conspiracy statute carries a maximum five-year term of imprisonment rather than the “any term of years or for life” alternative that §1594 favors. Conspirators are liable for any criminal offenses committed in the foreseeable furtherance of the plot.

Aiding and Abetting: Aiding and abetting is somewhat akin to conspiracy. A person who “aids, abets, counsels, commands, induces or procures” a crime committed by someone else is treated as if he committed the crime himself. “To aid and abet another to commit a crime it is necessary that a defendant in some sort associate himself with the venture that he participate in it as in something that he wishes to bring about, and that he seek by his action to make it succeed.” Deciding whether someone has in some way associated himself with a criminal venture is easier said than done. In some instances, the courts have used a modest standard: “All that is necessary is to show some affirmative participation which at least encourages the principal offender to commit the offense.” Occasionally, they assert a more exacting standard: “[T]he elements necessary for an aiding and abetting conviction are: (1) that the accused had the specific intent to facilitate the commission of a crime by another, (2) that the accused had the requisite intent of the underlying substantive offense, (3) that the accused assisted or participated in the commission of the underlying substantive offense, and (4) that someone committed the underlying substantive offense.” Courts agree, however, that unlike conspiracy, there can be no liability as an aider and abettor until after someone else has committed the underlying crime.

Extraterritorial Application: Federal law is presumed to apply only within this country. Congress may expressly negate the presumption and has done so for §1591 and the other human trafficking offenses when the offender is a U.S. national or permanent resident alien or when the offender is present in the United States. When Congress uses the phrase “found in the United States” in an extraterritorial provision, the courts understand the term to include both those whom authorities have brought to this country for prosecution and those who are here voluntarily. There is some indication that the terms are considered interchangeable.

Forfeiture: Property derived from, involved in, traceable to, or used to facilitate, a violation of §1591 is subject to confiscation under one of two forfeiture procedures. Federal law recognizes two kinds of forfeiture, classified according the nature of the procedures to which confiscation is

accomplished. Civil forfeiture ordinarily employs a procedure under which the offending property is treated as the defendant. If the government establishes the statutorily required nexus between the property and triggering offense, the court will order the property forfeited to the United States. The property owner need not have been convicted. In fact, the owner's innocence may be irrelevant. In the case of sex trafficking, any property derived from or used to facilitate a trafficking offense is subject to civil forfeiture. Criminal forfeiture is forfeiture that occurs as a consequence of the property owner's conviction and the role of the property in the offense. Here too, property derived from or used to facilitate a sex trafficking offense is subject to confiscation.

Restitution: Federal courts enjoy the authority to order convicted defendants to pay restitution to the victims of their crimes under a number of statutes. Section 1593 applies to the victims of §1591 offenses, both children and adults, as well as to the victims of other trafficking offenses. Victims are entitled to restitution to the extent of the "full amount" of their losses. Section 1593 mentions two categories of losses included within the term "full amount." First, it includes the greater of the income from their services as prostitutes or of minimum wage and overtime compensation due under federal labor laws. Second, it includes the costs mentioned in child pornography restitution section, that is, any costs incurred by the victim for—(A) medical services relating to physical, psychiatric, or psychological care; (B) physical and occupational therapy or rehabilitation; (C) necessary transportation, temporary housing, and child care expenses; (D) lost income; (E) attorneys' fees, as well as other costs incurred; and (F) any other losses suffered by the victim as a proximate result of the offense. Finally, in the case of most other offenses, the Attorney General may use forfeited proceeds for victim restitution. In the case of §1591 and other trafficking offenses, he is obligated to do so.

Civil Cause of Action: Victims of sex trafficking may bring a civil suit to recover damages and reasonable attorneys' fees. Successful plaintiffs may also be able to recover punitive damages under some circumstances. The cause of action comes with a 10-year statute of limitations. Civil liability under §1595, however, does not extend to those guilty of aiding or abetting a sex trafficking offense. Moreover, §230 of the Communications Decency Act affords interactive computer service providers with immunity from civil suit for material created by third parties. This apparently extends to immunity from suit under §1591.

Mann Act

Section 1591 and the various sections of the Mann Act overlap. Where §1595 outlaws commercial sexual enterprises operated in or affecting interstate or foreign commerce that use underage or coerced victims, the Mann Act outlaws prostitution and unlawful sexual activities that involve interstate or foreign travel. The Mann Act consists of three principal substantive sections. Section 2421 proscribes interstate or foreign transporting someone for purposes of prostitution or unlawful sexual activity. Section 2422 condemns coercing or enticing another person to travel in interstate or foreign commerce for purposes of prostitution or unlawful sexual activity, using a means of interstate communication to coerce or entice a child to engage in such conduct. Section 2423 criminalizes interstate or foreign travel associated with prostitution, "illicit sexual activity," or unlawful sexual purposes. Under some circumstances, an accused may be prosecuted for violation of both §1591 and one or more of the Mann Act offenses.

Section 2421 (Transportation in General): Section 2421 outlaws knowingly transporting an individual in interstate or foreign transportation for purposes of prostitution or other unlawful sexual activity. The government must prove that the defendant was aware that he is transporting

an individual but also that he was aware of the interstate or foreign nature of the transportation. The transportation element does not require the defendant to have personally transported a victim. What he must have done to satisfy the element is less clear. “A defendant will be deemed to have transported an individual under Section 2421 where evidence shows that the defendant personally or through an agent performed the proscribed act of transportation.” For some courts, no more is required than defendant-induced interstate travel and defendant-provided in-state transportation—at least when aiding and abetting is taken into account. On the other hand, at least one court has held supplying prostitutes with marketing opportunities (“dates”) that require interstate travel is not enough. Violation of §2421 is punishable by imprisonment for not more than 10 years, for not more than 20 years if the defendant is a repeat offender, and by a fine of not more than \$250,000. Offenders are also subject to a post-imprisonment term of supervised release of not less than five years. The offender may be ordered to pay the victim restitution. Property generated by the offense or used to facilitate the offense may be confiscated under either civil or criminal forfeiture procedures. Section 2421 specifically proscribes attempts to transport. Attempted violations carry the same penalties. It has no individual conspiracy component, but §371, the general conspiracy statute, makes it a federal crime to conspire to violate any federal law, §2421 included. As with any other federal crime, aiding and abetting a violation of §2421 exposes the offender to the same penalties that the transporter faces. Section 2421(b) directs the Attorney General to use cross designated state attorneys to prosecute §2421 or to explain why she has not done so. Cross designate state prosecutors presumably operate under the direction of United States Attorney.

Section 2422 (Coercion and Enticement): Section 2422 consists of two offenses. One, §2422(b), is general. It condemns efforts to coerce or entice an individual to engage in prostitution or unlawful sexual activity. The other, §2422(a), focuses on child sex abuse. It condemns and punishes more severely efforts to coerce or entice a child to engage in prostitution or unlawful sexual activity.

Section 2422(a)(Interstate Travel): Section 2422(a), parsed into its constituent elements, states: (1) Whoever, (2) knowingly (3) (a) persuades, (b) induces, (c) entices, or (d) coerces (4) an individual (5) (a) to travel in interstate or foreign commerce, or (b) in any Territory or Possession of the United States (6) to engage in (a) prostitution, or (b) in any sexual activities for which any person can be charged with a criminal offenses, or (7) attempts to do so shall be fined [not more than \$250,000] under this title or imprisoned not more than 20 years, or both.

The courts have construed the offenses elements as follows. The term “whoever” encompasses both individuals and legal entities. Corporations and other legal entities are criminally liable for crimes committed for their benefit by their agents or employees within the scope of their authority. The government must show that the defendant was aware that he was engaged in the conduct that constitutes coercion or enticement but need not know that the sexual activity involved was unlawful. Speaking of the prostitution or unlawful activity element of §2422(b), the courts have said that the concept of unlawful activity describes activity contrary to applicable state or federal law, misdemeanor or felony. The courts disagree over the question of whether the activity proscribed under §2422(b) must consist of contact between two people. Section 2422(a) specifically outlaws attempts to persuade or coerce another to travel interstate in order to engage in prostitution or illegal sexual conduct. Attempt consists of the intent to commit the contemplated offense and a substantial step toward final commission. Attempt by its nature lends itself to law enforcement “sting” operations, which in turn implicate a possible defense of entrapment. The defense requires the accused to establish that the government induced him to commit to crime he was not otherwise predisposed to commit. Section 371 makes it a crime to

conspire to commit any federal offense as long as one of the conspirators does something in furtherance of the conspiracy. The conspirators share in the liability for any crime committed by one of their number in furtherance of the scheme. The aiding and abetting provisions apply with equal force to violations of §2422(a). Anyone who knowingly assists in a violation of §2422(a) faces the same penalties he would have had he committed the crime himself. The penalty for §2422(a) offense is imprisonment for not more than 20 years (not more than 40 years for a repeat offender); a fine of more than \$250,000 (not more than \$500,000 for an organization); and unless indigent, to a special assessment of \$5,000. The sentence must include a term of supervised release of not less than five years, and may include an order for victim restitution. Moreover, any property attributable to the offense or used to commit the offense may be forfeited.

Section 2422(b), parsed into its constituent elements, states, using many of same elements found in §2422(b). (1) Whoever, (2)(a) using the mail or (b) [using] any facility or means of interstate or foreign commerce, or (c) within the special maritime and territorial jurisdiction of the United States (3) knowingly (4)(a) persuades, (b) induces, (c) entices, or (d) coerces (5) an individual who has not attained the age of 18 years, (6) to engage in (a) prostitution or (b) any sexual activity for which any person can be charged with a criminal offense, or (7) attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

The term “whoever” encompasses both individuals and legal entities. Corporations and other legal entities are criminally liable for crimes committed for their benefit by their agents or employees with the scope of their authority. The cases make it clear that the “mail, or any facility or means of interstate or foreign commerce” element of the offense can be satisfied by use of the phone, email, or Internet chat rooms. The government must show that the defendant was aware that he was engaged in the conduct that constitutes coercion or enticement but need not know that the sexual activity involved was unlawful. Nor need the government prove that the defendant knew the victim was underage. The action element of §2422(b) does not require that either prostitution or unlawful sexual activity actually occur. It is enough that the defendant enticed or coerced, or attempted to entice or coerce, its occurrence. The words in the element—persuade, induce, entice, and coerce—describe efforts “to transform or overcome the will of a minor; and except for coercion, “are effectively synonymous.” It is the defendant’s intent to encourage or coerce that constitutes an element of the offense. It is no defense that the individual enticed was predisposed to travel in order to engage in prostitution upon arrival.

A defendant’s communication need not be addressed directly to a child. The element may be satisfied with evidence that the defendant used an intermediary to persuade a child to engage in prostitution or unlawful sexual conduct. Moreover, since the section proscribes attempts as well as the completed offense, it does not matter that the “child” the defendant sought to entice was, unbeknownst to him, an adult. The unlawful sexual activity element demands conduct that is unlawful under applicable state or federal law, including offenses that are misdemeanors. The lower federal appellate courts are divided over the question of whether the activity must consist of contact between two people. Attempted violation of §2422(b) consists of an intent to entice or coerce a child to engage in prostitution or unlawful sexual activity and a substantial step toward the commission of the crime. Once a defendant has crossed “the substantial step with intent” threshold the crime of attempt has been completed; the fact that he then abandons further efforts, temporally or permanently is of no consequence. Entrapment defense implications arise when a defendant has become ensnared in a law enforcement sting operation. A defendant is entitled to jury instructions on entrapment if there is evidence that “(i) government actors induced him to commit the charged crime and (ii) he was not predisposed to commit that crime.” Conviction for a violation or attempted violation of §2422(b) is punishable by imprisonment for not less than 10

years or for life; a fine of not more than \$250,000 (not more than \$500,000 for an organization); and unless indigent, to a special assessment of \$5,000. Individuals are also subject to a term of supervised release of not less than five years. They may be compelled to pay restitution. Property generated by the offense or used to facilitate its commission may be subject to confiscation.

Section 2423 (Transportation Involving Children): Section 2423 outlaws four distinct offenses: (1) §2423(a)—transportation of a child in interstate or foreign commerce for purposes of prostitution or unlawful sexual purposes; (2) §2423(b)—interstate or foreign travel for purposes of unlawful sexual abuse of a child; (3) §2423(c)—foreign travel and subsequent unlawful sexual abuse of a child; and (4) §2423(d)—arranging, for profit, the travel outlawed in any of these offenses.

Section 2423(a)(Transporting in General): “To secure a conviction under §2423(a), the government thus must prove beyond a reasonable doubt that the defendant: (1) knowingly transported a minor across state lines and (2) with the intent that the minor engage in sexual activity for which some person could be criminally charged.” Guilty knowledge consists of an awareness that an individual is transported; “the knowledge requirement does not apply to the victim’s age,” nor to the fact that a state line has been crossed. The transportation element, that is causing another to be transported, can be met without evidence that the defendant accompanied the victim during the journey. Prostitution or unlawful sexual activity must be a dominant purpose for the transportation, but it need not be the sole purpose. Conviction does not require proof that an underlying act of prostitution or unlawful sexual activity with a child actually occurred. Section 2423(e) outlaws attempt and conspiracy to violate §2423(a). Conspiracy charges may also be prosecuted under the general conspiracy statute, 18 U.S.C. 371. Here, as elsewhere, conspirators are liable for foreseeable crimes committed by their fellows in furtherance of the scheme. The conviction on a conspiracy charge becomes complicated when one of the necessary parties is the individual transported. Aiding and abetting in this context, as in others, demands proof that the defendant “participated in the illegal venture and sought by his actions to make it succeed. Conviction carries a mandatory minimum term of imprisonment of not less than 10 years (not less than 20 years for repeat offenders); a mandatory term of supervised release of not less than 5 years; a fine of not more than \$250,000 (not more than \$500,000 for an organization); and unless indigent, to a special assessment of \$5,000. The offender may be ordered to pay restitution as well. Property generated by the offense or used to facilitate its commission may be forfeited to the United States.

Section 2423(b)(Travel With Intent): A violation of §2423(b) occurs when someone travels in interstate commerce, comes to this country, or when a U.S. citizen or permanent resident alien travels in foreign commerce—for the purpose of engaging in illicit sexual activity with a child. Section 2423(f) supplies a statutory definition of “illicit sexual activity” that applies to both §2423(b), §2423(c), and §2423(d). The term covers commercial sex activity with an individual who is under 18 years of age; aggravated sexual assault of a child; and production of child pornography. Section 2423(g) provides a limited affirmative defense to prosecution of child prostitution cases under both §2423(b) and §2423(c), where the defendant can prove by clear and convincing evidence that he reasonably believed the victim, with whom he engaged in commercial sex, was an adult. Section 2423(e) outlaws attempt or conspiracy to violate §2423(b) under the same penalties as apply to the underlying offense, noted below. Violation of §2423(b) is punishable by imprisonment for more than 30 years (not more than 60 years for repeat offenders); a mandatory term of supervised release of not less than 5 years; a fine of not more than \$250,000 (not more than \$500,000 for an organization); and unless indigent, to a special

assessment of \$5,000. The offender may be ordered to pay restitution as well. Property derived from the offense or used to facilitate its commission may be forfeited to the United States.

Section 2423(c)(Travel Followed by Illicit Sex): Section 2423(c) “comprises three elements: (1) being a United States citizen or permanent resident; (2) traveling in foreign commerce; and (3) engaging in illicit sexual conduct.” As noted above, §2423(f) supplies a statutory definition of “illicit sexual activity” that governs both §2423(b), §2423(c), and §2423(d). It encompasses commercial sexual activity as understood in the case of commercial sex trafficking under 18 U.S.C. 1591, aggravated assault against children provisions found in 18 U.S.C. ch. 109A, and the production of child pornography. Unlike the “travel with a purpose” prohibition, the violation of §2423(c) is not complete until illicit sexual activity occurs. A U.S. citizen who resides overseas and engages in illicit sexual activity violates §2423(c) regardless of when he travelled abroad. There may be some doubt whether §2423(c) covers overseas illicit sexual activity other than child prostitution. Section 2423(g) provides a limited affirmative defense to prosecution under §2423(c), where the defendant can prove by clear and convincing evidence that he reasonably believed that he was engaging in commercial sex with an adult. The consequences under §2423(c) are the same as those under §2423(b).

Section 2423(d)(Travel Agents): Section 2423(d) creates a separate offense for a profiteer who arranges the travel outlawed in §2423(b) or §2423(c): “Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.” Conspiring or attempting to commit any of the transportation crimes described in §2423 is also a federal crime and subject to the same penalty as the underlying offense. Aiding and abetting a §2423(d) offense warrants the same treatment. The offense thus carries the same penalties as the underlying crimes. Defendants are subject to imprisonment for not more than 30 years (for not more than 60 years for repeat offenders); a mandatory term of supervised release of not less than 5 years; a fine of not more than \$250,000 (not more than \$500,000 for an organization); and unless indigent, to a special assessment of \$5,000. The court may order the defendant to pay restitution. Property realized through the offense or used to facilitate its commission may be forfeited to the United States.

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