

**Enticement of Another
for Sexual Activity
and
Travel to Engage in Illicit Sexual
Conduct with a Minor**

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Two Federal Statutory Tools

18 USC 2422(a) (Enticement) makes it a crime to knowingly entice, or to attempt to entice, a person to travel in interstate commerce for sexual activity for which any person can be charged with a crime

18 USC 2423(b) (Travel) makes it a crime to travel in interstate commerce for the purpose of engaging in illicit sexual conduct with another person

**18 USC 2422(a)
Coercion and Enticement**

Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

**Elements of Coercion
and Enticement (2422(a))**

- (1) To travel in [*interstate, foreign commerce*]
- (2) To engage in [*prostitution, any sexual activity for which any person can be charged with a criminal offense*]
- (3) The defendant [*knowingly, knowingly attempted to*] [*persuade(s), induce(s), entice(s), coerce(s)*] any individual

**18 USC 2423(b)
Travel**

Travel with intent to engage in illicit sexual conduct.--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

**18:2423(e)
Travel**

Attempt and conspiracy.--Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

Elements of Travel (2423(b))

- (1) The defendant, or another, knowingly
- (2) Travels [*in interstate commerce, into the United States*]
- (3) The travel is for the purpose of engaging in any “illicit sexual conduct” with another person

“Illicit Sexual Conduct”

(f) Definition.--As used in this section, the term “illicit sexual conduct” means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation [18 USC 2241-2244] if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

“Illicit Sexual Conduct”

Three components—

- (1) With person under 18 years old
- (2) “Sexual Act” as defined by 2246
- (3) Conduct would violate 2241-2244 if it had been done in jurisdiction of the United States

Enticement v. Travel

An Attempted Enticement case is premised on an attempt to entice, thus, the relevant intent is intent to persuade, induce, entice or coerce a person to engage in illegal sexual activity, and not the intent to engage in illegal sexual activity

An Actual Enticement case involves intent to persuade, induce, entice or coerce a person to engage in illegal sexual activity plus actual travel in interstate commerce by the person being enticed

Punishment is up to 20 years imprisonment

Enticement v. Travel

An Attempted Travel case involves intent to engage in a proscribed sexual act, and an attempt to travel in interstate commerce

An Actual Travel case involves intent to engage in a proscribed sexual act, and travel in interstate commerce by the defendant

Punishment is up to 30 years imprisonment

Enticement v. Travel

Enticement and Travel are different offenses and can be pursued in same case

Both typically involve internet chats of an explicit sexual nature, and travel

Most cases involve an "attempt" to commit an enticement offense, and actual commission of the travel offense

Age of Victim

The Enticement provision has no specific reference to the age of the person enticed. Age becomes pertinent through the phrase “sexual activity for which any person can be charged with a crime”

- Applicable underlying federal law (18 USC 2241-2244)
- Applicable state statute

Age of Victim

The Travel provision has three references to the age of the victim which are encompassed in the definition of “illicit sexual conduct”

-- Direct reference that “illicit sexual conduct” involves sexual activity with a person under 18. 18 USC 2423(f)(1)

--“Illicit sexual conduct” refers to the definition of “sexual act” as defined in 18 USC 2246, which imposes liability in one circumstance only if the victim is under 16

-- Through the references to violations of 18 USC 2241-2244, several of which impose harsher penalties for conduct with a child under 12 and, impose harsher penalties and create some defenses for conduct with a child between 12 and 16.

Age of Victim

Conversation/chat does not have to be with an actual minor

Conversation/chat does not have to be with a person posing as a minor, but can be with a person who is, or who is posing as, the parent or custodian of a minor

“Substantial Step”

For an attempt case, it is necessary to prove intent and that the defendant took a “substantial step” to effectuate the crime. What is a “substantial step” in an attempted enticement case?

- Actual travel
- Attempt to actually engage in illegal sexual act
- Content of conversation alone?

Grooming

"Grooming" is a term utilized by the Internet Crimes Against Children Task Force which refers to "a way that . . . adult subjects [converse] with persons on the Internet that are under the age of 18. For example, . . . the subject might talk about things that the . . . person under age 18 would be interested in such as what they like to do with their friends, where they like to eat, what they like to do for fun The purpose of the grooming is to build a trusting relationship between the two parties." (Trial Tr. vol. II, 132.)

Impossibility

Raised in cases which arise from sting operations where undercover officer posed as a child on the internet

“Since the purported victim was not actually an underage person, it was not possible to complete the crime.”

“Factual impossibility” claim is generally rejected under criminal law, not just as it relates to ICAC cases

Impossibility

Even in sentencing context, a “virtual” victim is the basis for liability and an enhanced sentence

Denial of Intent

Denial of intent based on belief that “child” was of legal age

Derives from the requirement that the only age relevant for an attempt case is the defendant’s belief as to the victim’s age

Fantasy

“It was just cyber-sex. I was role playing and believed the person with whom I was communicating was also role playing.”

More common among wealthier, more educated defendants

The Good Samaritan

“I was engaging in internet chat about sex with a minor to help him/her understand the dangers associated with that conduct, and to discourage him/her from continuing to do so.”

Entrapment

Two aspects of entrapment defense

1. The defendant lacked pre-disposition to commit offense
2. The defendant was enticed, and induced by law enforcement to commit the offense

Burden remains on the government to show that there was no entrapment once a sufficient basis has been established to warrant instruction on the defense

Entrapment

Inducement

- Factually dependent determination
- Content of conversations critical
- Defendant rarely succeeds

Pre-disposition

- Only necessary to address predisposition if some degree of inducement has been demonstrated

Manufacturing of Federal Jurisdiction

United States v. Brockdorff, 992 F.Supp 22 (D.C. 1997)

Defendant traveled from Maryland into Washington DC to meet with whom he thought was a 13 year old girl for sex. Defendant challenged jurisdiction on the basis that the government had intentionally chosen a location inside the District in order to create the interstate travel necessary for jurisdiction, and, therefore, the case should be dismissed. The Court rejected the claim.

Evidentiary Issues

Search and Seizure

- Vehicle search
- Personnel search
- Search of residence
- Search of computer

Evidentiary Issues

Items that traveler's bring

- Condoms
- Lubricants
- Items that connect to the on-line chats such as
 - Photos
 - Directions
- "Grooming" items like bubble bath, bath oils etc.
- Alcohol

Evidence of Other Crimes

United States v. Zahursky, 580 F.3d 515 (7th Cir. 2009)

Defendant had solicited agent purporting to be a 14 year old girl for sex, including sex with another minor in a threesome. During the course of the conversations, defendant claimed that he had previously had sex with a person of the age of the victim.

At trial, the defendant denied that he intended to have sex with the purported 14 year old. Rather, he contended, that he engaged in the on-line chats as "reverse psychology" to dissuade the minor from participating in chat rooms and that he traveled to meet "her" because he had become persuaded that she was a cop.

Evidence of Other Crimes

Three forms of other crime evidence admitted:

1. Testimony of underage victim with whom defendant had sex 5 years earlier when she was 14
2. E-mails with "holly1989cutie" who was identified to victim as another 14 year old with whom the defendant was conversing and who was willing to engage in a threesome with the defendant and the victim.
3. E-mails with "Xanthery" in which the defendant proclaimed that he previously had sex with a 14 year old.

Expert Witnesses

Host of experts are offered both by the government and by the defense. Primary issues concern whether the expert testimony is helpful to a pertinent trial issue, and whether the opinion offered violates the prohibition against offering an opinion on the defendant's intent in the instant case.

- Profile of child molester
- Fantasy defense
- Linguistics expert re: age of child

Constitutional Challenges

First Amendment

Due Process

Right to Travel
