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Sex Trafficking: An 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.[1] 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.[2] 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.[3]

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.[4] It also proscribes profiting from such an enterprise or obstructing investigation of its activities.[5] A subsequent section prohibits attempting or conspiring to violate §1591.[6]

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,

[1] E.g., ALA. CODE §§13A-6-151 to 13A-6-160; ALASKA STAT. §§11.66.100 to 11.66.150; ARIZ. REV. STAT. ANN. §13-1307; ARK. CODE ANN. §§5-18-101 to 5-18-105; CAL. PENAL CODE §§236.1 to 237; CONN. GEN. STAT. ANN. §53a-192a; Del. Code Ann. tit.11 §787; FLA. STAT. ANN. §787.06; GA. CODE §16-5-46; HAWAII REV. STAT. §§712-1201 to 712-1209.6; IDAHO CODE §§18-8601to 19-8605; 720 ILL. COMP. STAT. ANN. §5/10-9; IND. CODE ANN. §§35-42-3.5-1 to 35.-42-3.5-2; IOWA CODE ANN. §§710A.1 to 710A.5; KAN. STAT. ANN. §21-5426; KY. REV. STAT. ANN. §§529.010 to 529.150; LA. REV. STAT. ANN. §§14:46.2, 14:46.3; ME. REV. STAT. ANN. tit.17-A §§851 to 855; MD. CODE ANN. Crim. Law §§11-301 to 11-306; MASS. GEN. LAWS ANN. ch. 265 §§49-57; Mich. Comp. Laws Ann. §§750.462a to 750.462j; MINN. STAT. ANN. §§609.321 to 609.3241; MISS. CODE ANN. §§97-3-54.1 to 97-3-54.9; MO. ANN. STAT. §§566.200 to 566.223; MONT. CODE ANN. §§45-5-305 to 45-5-311; NEB. REV. STAT. §§28-803 to 28-833; NEV. REV. STAT. §§201.295 to 201.352; N.H. REV. STAT. ANN. §§633.6 to 633.10; N.J. STAT. ANN. §§2C:13-8 to 2C:13-12; N.MEX. STAT. ANN. §§30-52-1 to 30-52-3; N.Y. PENAL LAW §§230.00 to 230.40; N.C. GEN. STAT. §§14-43.10 to 14-43.20; N.D. CENT. CODE §§12.1-40-01 to 12.1-40-02; OHIO REV. CODE ANN. §§2905.31, 2905.32; OKLA. STAT. ANN. tit.21 §§748 to 748.2; ORE. REV. STAT. §167.017; R.I. GEN. LAWS §§11-67-1 to 11-67-8; S.C. CODE ANN. §§16-3-2010 to 16-3-2090; S.D. COD. LAWS §§22-49-1 to 22-49-3; TENN. CODE ANN. §§39-13-309 to 39-13-315; TEX. PENAL CODE ANN. §§20A.01 to 20A.03; UTAH CODE ANN. §§76-5-307 to 76-5-310; VT. STAT. ANN. tit.13 §§2651 to 2658; VA. CODE §§18.2-346 to 18.2-357; WASH. REV. CODE ANN. §§9A.40.090 to 9A.40.100; W.VA. CODE ANN. §61-2-17; WIS. STAT. ANN. §940.302; WYO. STAT. §§6-2-701 - 6-2-710. Analysis of state law is beyond the scope of this report.

[2] For a discussion of related policy issues and the proposals addressing those issues, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*, by Alison Siskin and Liana W. Rosen; CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin; and CRS Report R43555, *Domestic Human Trafficking Legislation in the 113th Congress*, coordinated by Alison Siskin.

[3] 18 U.S.C. 2421 to 2428.

[4] 18 U.S.C. 1591(a)(1).

[5] 18 U.S.C. 1591(a)(2), (d).

[6] 18 U.S.C. 1594(a), (c).

(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).[7]

Subsection (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 were used).[8] Offenders also face a fine of not more than $250,000 (not more than $500,000 when the offender is an organization);[9] and unless indigent, to a special assessment of $5,000.[10] In addition, offenders are subject to a term of supervised release of not less than five years.[11] An offender may also be subject to a restitution order.[12] Moreover, property derived from a violation or used to

[7] 18 U.S.C. 1591(a)(language which the Victims Justice Act added in italics). A summary of the criminal law provisions of the Victims Justice Act appears in CRS Report R 44064, *Justice for Victims of Trafficking Act: A Legal Analysis of the Criminal Provisions of P.L. 114-22* by Charles Doyle.

[8] 18 U.S.C. 1591(b)("The punishment for an offense under subsection (a) is- (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life").

[9] *Id*. and 18 U.S.C. 3571, 3581.

[10] 18 U.S.C. 3014.

[11] 18 U.S.C. 3583(k). For a discussion of federal law relating to supervised release, see CRS Report RL31653, *Supervised Release (Parole): An Overview of Federal Law*, by Charles Doyle.

[12] 18 U.S.C. 3663. For a discussion of federal law in the area of restitution generally, see CRS Report RL34138, *Restitution in Federal Criminal Cases*, by Charles Doyle.

facilitate a violation may be forfeited.[13] Finally, unless they are indigent, offenders are subject to a $5,000 special assessment upon conviction.[14]

The courts have construed the offense's elements as follows:

Whoever: 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."[15] 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.[16]

Knowingly: Knowingly ordinarily means that the individual was aware of the fact that he was engaging in the conduct proscribed.[17] 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.[18]

In or affecting interstate or foreign commerce: Congress enjoys only those legislative powers that may be traced to the Constitution.[19] One such power is the power "to regulate Commerce with foreign Nations, and among the several States."[20] 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."[21] Various appellate courts have explained that the "substantial

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[13] 18 U.S.C. 1593(b)(4), 1594(d), (e). For a discussion of federal law in the area of forfeiture generally, see CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle. Violations of §1591 or of the Mann Act may serve as predicate offenses for racketeering prosecution, 18 U.S.C. 1961(1), or for a money laundering prosecution, 18 U.S.C. 1956(c)(7)(1), 1957(f)(3); see generally CRS Report 96-950, *RICO: A Brief Sketch*, by Charles Doyle; CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle. Federal courts may issue electronic surveillance orders in connection with the investigation of either §1591 or Mann Act violations, 18 U.S.C. 2516(c); see generally CRS Report 98-326, *Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping*, by Gina Stevens and Charles Doyle.

[14] 18 U.S.C. 3014.

[15] 1 U.S.C. 1.

[16] *United States v. Singh*, 518 F.3d 236, 249-52 (4th Cir. 2008)(holding corporate entity criminally liable for the Mann Act violations of its employees); see generally CRS Report R43293, *Corporate Criminal Liability: An Overview of Federal Law*, by Charles Doyle.

[17] *United States v. Dixon*, 548 U.S. 1, 5 (2006); *United States v. O'Malley*, 739 F.3d 1001, 1006-1007 (7th Cir. 2014); *United States v. Tobin*, 676 F.3d 1264, 1280 n.6 (11th Cir. 2013), citing inter alia, *Bryant v. United States*, 524 U.S. 186, 193 (1998)("[T]he term 'knowingly' means that the act was performed voluntarily and intentionally, and not because of a mistake or accident. This state of mind merely requires proof of knowledge of that the facts that constitute the offense, not knowledge of the lawfulness of the action").

[18] *United States v. Sawyer*, 733 F.3d 228, 230 (7th Cir. 2013)("'[K]nowingly' appears in the introductory portion of section 1591(a) simply to supply the *mens rea* for both paragraphs (a)(1) and (a)(2). The requirements does not apply to the interstate commerce element"); *United States v. Anderson*, 560 F.3d 275, 279 (5th Cir. 2009)("It is not necessary for the Government to show that the defendant actually intended or anticipated ... that commerce was actually affected"); *United States v. Evans*, 476 f.3d 1176, 1180 n.2 (11th Cir. 2007)("[W]e reject Evans's request to construe §1591(a) as requiring knowledge by a defendant that his actions are in or affecting interstate commerce").

[19] U.S. CONST. Amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"); *United States v. Lopez*, 514 U.S. 549, 552 (1995).

[20] U.S. CONST. Art. I, §8, cl.3; see also, U.S. CONST. Art. I, §8, cl. 18 ("The Congress shall have Power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers ...") .

[21] *Gonzales v. Raich*, 545 U.S. 1, 17 (2005).

effect" test judges the impact of a category of regulated activity, for example, sex trafficking.[22] Individual instances need have no more than a *de minimis* impact on interstate commerce.[23] 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.[24]

Within the special maritime or territorial jurisdiction of the United States: The Constitution also vests Congress with the power to "define and punish ... Felonies committed on the high Seas,"

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[22] *United States v. Walls*, 784 F.3d 543, 547-48 (9th Cir. 2015); *United States v. Evans*, 476 F.3d 1176, 1179 (11th Cir. 2007)(internal citations omitted)("We have no difficulty concluding that *Raich* ... foreclose[s] Evans's challenge to the constitutionality of §1591(a) as applied to his activities occurring solely within Florida. Section 1591 was enacted as part of the Trafficking Victims Protection Act of 2000 (TVPA).... [T]he TVPA is part of a comprehensive regulatory scheme. The TVPA criminalizes and attempts to prevent slavery, involuntary servitude, and human trafficking for commercial gain. Congress recognized that human trafficking, particularly of women and children in the sex industry, is a modern form of slavery, and it is the largest manifestation of slavery today. Congress found that trafficking of persons has an aggregate economic impact on interstate and foreign commerce and we cannot say that his finding irrational").

[23] *United States v. Walls*, 784 F.3d at 548 (emphasis in the original)("Walls reads *Lopez/Morrison*'s third category to mean that Congress cannot regulate, pursuant to its Commerce Clause powers, acts that have only a *de minimis* effect on interstate commerce; rather, Walls contends that effect must be 'substantial.' But the third category of regulation outlined in *Lopez* and *Morrison* concerns the economic nature of the class of activity to be regulated, not the effect on interstate commerce of *any individual instance* of conduct. The Supreme Court clarified this distinction in *Gonzales v. Raich*, 545 U.S. 1 (2005). In *Raich*, the Court held that Congress has the power to regulate the purely intrastate cultivation and possession of marijuana for personal use because the Commerce Clause power extends to 'purely local activities that are part of an economic "class of activities" that have a substantial effect on interstate commerce.' 545 U.S. at 18. That is, Congress's power to regulate within *Lopez/Morrison*'s third category—activities that substantially affect interstate commerce—extends to individual instances of conduct with only a *de minimis* effect on interstate commerce so long as the class of activity regulated is economic or commercial in nature. See id. at 17 ('[W]hen a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence')").

[24] *United States v. Evans*, 476 F.3d at 1179 ("Evans's use of hotels that served interstate travelers and distribution of condoms that traveled in interstate commerce are further evidence that Evans's conduct substantially affected interstate commerce. See also, *United States v. Pipkins*, 378 F.3d 1281, 1295 (11th Cir. 2004)(holding that evidence that pimps furnished their prostitutes with condoms manufactured out of state ... supports a finding that the activities of the enterprise affected interstate commerce"); *United States v. Anderson*, 560 F.3d 275, 280 (5th Cir 2009)("[T]he Government emphasized to the jury the evidence that it had presented—hotel bills, cell phone bills, and clothing purchases—to prove an actual affect on interstate commerce.... We are persuaded that the charge as a whole and as framed by the jury arguments correctly conveyed the law—the Government had to prove Anderson's illegal activities had some degree of affect on interstate commerce"); *United States v. Todd*, 627 F.3d 329, 333 (9th Cir. 2010)("Congress concluded that prostitution ibn American cities encouraged and enlarged the market for this traffic from abroad. Sex traffic is a global matter. In addition to effect on foreign commerce, sex traffic in this case was conducted by advertising across state lines and so affected interstate commerce"); *United States v. Willoughby*, 742 F.3d 229, 240 (6th Cir. 2014)(internal citations omitted)("The phrase 'affecting commerce' indicates Congress' intent to regulate to the outer limits of its authority under the Commerce Clause. Here, the government's proofs included that Willoughby purchased condoms and clothes specifically for SW to use while prostituting, and that all of these items were manufactured out-of-state. The proofs also included that Willoughby used a Chinese-made cellphone in furtherance of his sex-trafficking activities. Moreover, Congress has specifically found that, in the aggregate, sex-trafficking activities 'substantially affect' interstate and foreign commerce. Thus, considering the record as a whole, the government proved that Willoughby's activities were 'in or affecting' interstate commerce. (We also note that Congress's authority to regulate interstate commerce includes the authority to regulate the instrumentalities thereof. Willoughby's cell phone is such an instrumentality and he used it in furtherance of his sex trafficking)"); *United States v. Campbell*, 770 F.3d 556, 574 (7th Cir. 2014)(The defendant "advertised online, purchased supplies and promotional materials from out-of-state companies, and employed workers from out-of-state").

and to exercise legislative jurisdiction retained or acquired over federal territories and enclaves.[25] 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."[26]

Recruits, ... obtains, advertises, maintains, patronizes, or solicits: Prior to enactment of the Victims Justice Act in 2015, 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.[27] The Victims Justice Act confirmed the court's understanding by adding "patroniz[ing]" and "solicit[ing]" as alternatives in the section's action element. At the same time, it inserted "advertis[ing]" as another potential action element.

A person: Its 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."[28] 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.[29]

Knowing or in reckless disregard of the fact: This 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,

[25] U.S. CONST. Art. I, §8, cls.10, 17; U.S. CONST. Art. IV, §3. c.2.

[26] E.g., 18 U.S.C. 1111 (murder); 18 U.S.C. 81 (arson); 18 U.S.C. 2241 (aggravated sexual assault). The term "special maritime and territorial jurisdiction" is defined in 18 U.S.C. 7.

[27] *United States v. Jungers*, 702 F.3d 1066, 1075 (8th Cir. 2013)(emphasize added)("The unambiguous text of §1591 makes no distinction between suppliers and purchasers of commercial sex act with children, and the defendants have failed to persuade us Congress intended a supplier-only limitation or a purchaser exception in §1591 that Congress never stated. We hold §1591 applies to a purchaser of commercial sex acts who violates the statute's terms.... The uncontested evidence adduced at Jungers's trial ... showed Jungers attempted to *obtain* an eleven-year old girl for an hour so she could perform oral sex on him").

[28] "'Survival sex' refers to the exchange of sex for food, money, shelter, drugs, and other needs and wants by homeless youth," K. Elysse Stolpe, *MS-13 and Domestic Juvenile Sex Trafficking: Causes, Correlates, and Solutions*, 21 VIRGINIA JOURNAL OF SOCIAL POLICY AND THE LAW 341, 350 n.60 (2014); Cynthia Godsoe, *Contempt, Status, and the Criminalization of Non-Conforming Girls*, 35 CARDOZO LAW REVIEW 1091, 1113 (2014)("Similarly, a recent New York State study reported that 61% of runaway girls had engaged in survival sex").

[29] This does not mean that uncooperative juvenile victims would not be threatened with, or would not claimed to have been threatened with, such a prosecution, consider e.g., *United States v. Tavares*, 705 F.3d 4, 21 (1st Cir.2013)("K.S. was a Government witness. She testified that she met Mr. Jones when she was sixteen and began working for him as a prostitute.... K.S. admitted that she did not want to testify.... [S]he agreed with defense counsel that she had been arrested for failing to appear as required by a [grand jury] subpoena and with losing custody of her daughter if she did not do what they wanted her to do. She also agreed she was just going to tell the prosecution what they wanted to hear so she could move on with her life. On direct, K.S. stated that she had been threatened by the FBI and federal prosecutors when she had been required to appear before the grand jury four years earlier and admitted that she had not told the district court that she had been threatened").

provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years."[30]

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.[31] In a civil context, "[r]eckless disregard ... is an extreme version of ordinary negligence;"[32] 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.[33] 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."[34]

Means of force ... coercion: 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

[30] 18 U.S.C. 1591(c); *United States v. Robinson*, 702 F.3d 22, 32 (2d Cir. 2012)("Accordingly, just as the District Court instructed, §1591(a) and §1591(c) provide the government with three distinct options—prove beyond a reasonable doubt that (1) the defendant had knowledge of the victim's underage status; (2) that the defendant recklessly disregarded that fact; or (3) that the defendant had an reasonable opportunity to observe the victim"); *United States v. Mozie*, 752 F.3d 1271, 1282 (11th Cir. 2014)("The government must prove beyond a reasonable doubt all elements of the §1591 crime, including the mens rea. If the government proves by that standard that the defendant had a reasonable opportunity to observe the victim, it need prove only that he recklessly disregarded the fact that she was under the age of eighteen, not that the defendant knew she was").

[31] *United States v. Zayyad*, 741 F.3d 452, 463 (4th Cir. 2014); *United States v. St. Junius*, 739 F.3d 193, 205 (5th Cir. 2013)("The deliberate ignorance instruction should be given when a defendant claims a lack of guilty knowledge and the proof at trial supports a reasonable inference of deliberate ignorance. Submission of a deliberate ignorance instruction is proper where the evidence shows (1) subjective awareness of a high probability of the existence of illegal conduct, and (2) purposeful contrivance to avoid learning of the illegal conduct"); *United States v. Goffer*, 721 F.3d 113, 126-27 (2d Cir. 2013)("A conscious avoidance [jury] instruction may be given if (1) the defendant asserts the lack of some specific aspect of knowledge required for conviction and (2) the appropriate factual predicate for the charge exists, i.e., the evidence is such that a rational juror may reach the conclusion beyond a reasonable doubt that the defendant was aware of a high probability of the fact in dispute and consciously avoided confirming that fact"); *United States v. Yi*, 704 F.3d 800, 804 (9th Cir. 2013)("Willful blindness is inconsistent with actual knowledge, and thus a deliberate ignorance instruction is appropriate only where the jury could rationally find willful blindness even though it has rejected the government's evidence of actual knowledge. Deliberate ignorance contains two prongs: (1) a subjective belief that there is a high probability a fact exists; and (2) deliberate actions take to avoid learning the truth").

[32] *United States ex rel. K & R Limited Partnership v. Massachusetts Housing Finance Agency*, 530 F.3d 980, 983 (D.C.Cir. 2008); see also, RESTATEMENT (SECOND) OF THE LAW OF TORTS §500 (1965).

[33] *United States v. King-Vassel*, 728 F.3d 707, 712-13 (7th Cir. 2013)(some internal citations omitted)("Congress added 'reckless disregard' to the FCA [False Claims Act] in 1986. The Senate Report that accompanied that change evinced an intent to hold liable '[o]nly those who act in gross negligence,' that is, those who failed 'to make such inquiry as would be reasonably prudent to conduct under the circumstances.' S. Rep. No. 99-345, at 20").

[34] *United States v. Kendrick*, 682 F.3d 974, 984 (11th Cir. 2012); see also, *United States v. Gifford*, 727 F.3d 92, 98 (1st Cir. 2014)("An allegation [in the application for a search warrant] is made with 'reckless disregard for the truth' ... where circumstances evinced obvious reasons to doubt the veracity of the allegations in the application").

threats of physical harm, abuse of legal process, as well as "psychological, financial, or reputational harm."[35]

Will be caused: 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[36] and regardless of whether the victim previously engaged in commercial sex acts unrelated to the defendant's involvement.[37]

Commercial sex act: 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,[38] and are often understood to include both tangible and intangible remuneration.[39]

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"[40] and the less severely punished "sexual contact."[41] Given the breadth of §1591 in other areas, it may be that Congress anticipated

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[35] 18 U.S.C. 1591(2)(A), (B), (4)(emphasis added)("(2) The term 'coercion' means—(A) threats of *serious harm* to or physical restraint against any person; [or] (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in *serious harm* to or physical restraint against any person ... (4) The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm or to continue performing commercial sexual activity in order to avoid incurring that harm"); 18 U.S.C. 1591(2)(C), (1)("(2) The term 'coercion' means ... (C) the abuse or threatened abuse of law or the legal process.... (1) The term 'abuse or threatened abuse of law or legal process' means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action").

[36] *United States v. Hornbuckle*, 784 F.3d 549, 553-54 (9th Cir. 2015), citing in accord, *United States v. Willoughby*, 742 F.3d 229, 241 (6th Cir. 2014); *United States v. Jungers*, 702 F.3d 1066, 1073-74 (8th Cir. 2013); see also, *United States v. Garcia-Gonzalez*, 714 F.3d 306, 312 & n.3 (5th Cir. 2013).

[37] *United States v. Elbert*, 561 F.3d 771, 777 (8th Cir. 2009).

[38] E.g., 18 U.S.C. 201(b)(1)(bribery of federal officials and witnesses); 18 U.S.C. 641 (theft of federal property); 18 U.S.C. 666(a)(1)(B)(bribery in relation to federally funded programs).

[39] E.g., *United States v. Townsend*, 630 F.3d 1003, 1010 (11th Cir. 2011)("The four other courts of appeals that have addressed this issue have all held that intangibles can be things of value for this purpose [i.e., 18 U.S.C. 666(a)(1)(B)]. *See United States v. Hines*, 541 F.3d 833, 836-37 (8th Cir. 2008)(deputy sheriff's prompt assistance in offering his services for evictions was a thing of value); *United States v. Zimmermann*, 509 F.3d 920, 926-27 (8th Cir. 2007)(city councilman's favorable recommendation to zoning committee was a thing of value); *United States v. Fernandez*, 272 F.3d 938, 944 (7th Cir. 2010)(prosecutor's expungement of convictions constituted a thing of value; *United States v. Zwich*, 199 F.3d 672, 690 (3d Cir. 1999)(township commissioner's vote to approve permits was a thing of value); ... *United States v. Marmolejo*, 89 F.3d 1185, 1191-93 (5th Cir. 1996)(holding that the plain meaning of 18 U.S.C. 666(a)(1)(B) includes transactions involving intangibles within the term 'anything of value' and collecting cases construing 'anything of value' in other criminal statutes to include intangibles").

[40] 18 U.S.C. 2246(2)("the term 'sexual act' means- (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person").

[41] 18 U.S.C. 2246(3)("the term 'sexual contact' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass,

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.[42]

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 were used).[43] In addition, conviction carries a term of supervised release of not less than five years.[44] Offenders also face a fine of not more than

degrade, or arouse or gratify the sexual desire of any person"). While sexual abuse and aggravated sexual abuse are punishable by imprisonment for any term of years or for life, 18 U.S.C. 2242, 2241(a), aggravated sexual contact is punishable by imprisonment for not more than 10 years, 18 U.S.C. 2244.

[42] *United States v. Cook*, 782 F.3d 983, 987-89 (8th Cir. 2015).

[43] 18 U.S.C. 1591(b)("The punishment for an offense under subsection (a) is- (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life").

[44] 18 U.S.C. 3583(k).

$250,000 (not more than $500,000 when the offender is an organization);[45] and unless indigent, to a special assessment of $5,000.[46]

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, and fine of not more than $250,000 (not more than $500,000 for organizations).[47] Even absent a prosecution under §1591(d), obstruction may lead to a sentencing enhancement if the offender is convicted of trafficking.[48] It may also be prosecuted as a violation of the general obstruction of justice statutes.[49]

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

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[45] *Id*. and 18 U.S.C. 3571, 3581.

[46] 18 U.S.C. 3014.

[47] 18 U.S.C. 1591(d)("Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both"); see also 18 U.S.C. 3571, 3581; *United States v. Farah*, 766 F.3d 599, (6th Cir. 2014)(affirming a recalcitrant witness's attempting to obstruct conviction based on the witness's refusal to testify).

[48] U.S.S.G. §3C1.1("If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels"); e.g., *United States v. Anderson*, 560 F.3d 275, 283 (5th Cir. 2009).

[49] E.g., 18 U.S.C. 1512: "(a)(1) Whoever kills or attempts to kill another person, with intent to ... (C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense ... ; shall be punished as provided in paragraph (3). (2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to ... (C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense ... ; shall be punished as provided in paragraph (3). (3) The punishment for an offense under this subsection is ... (A) in the case of a killing, the punishment provided in sections 1111 and 1112; (B) in the case of- (i) an attempt to murder; or (ii) the use or attempted use of physical force against any person; imprisonment for not more than 30 years; and (C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

"(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to- (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to- (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned by legal process; or (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense ... shall be fined under this title or imprisoned not more than 20 years, or both.

"(c) Whoever corruptly- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both."

18 U.S.C. 1513 imposes similar penalties for retaliatory witness tampering. 18 U.S.C. 1503 outlaws obstructing the due administration of justice with respect to federal judicial proceedings, and 18 U.S.C. 1505 provides coverage for obstructing the due administration of agency proceedings.

violate §1591 shall be fined under title, imprisoned for any term years or for life, or both."[50] The general conspiracy statute also outlaws conspiracy to violate §1591.[51]

Attempt

The crime of attempting to commit another federal offense consists of intent to commit the underlying offense and a substantial step towards the accomplishment of that objective.[52] The requisite substantial step must be some act which strongly corroborates the defendant's intent to commit the intended offense.[53] 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.[54]

Conspiracy

In essence, "[c]onspiracy is an agreement to commit an unlawful act."[55] 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.[56] The government ordinarily bears no such burden when prosecuting under statutes, like §1594, which have no explicit overt act element.[57] 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.[58] Conspirators are liable for any criminal offenses committed in the foreseeable furtherance of the plot.[59]

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[50] 18 U.S.C. 1594(a), (c).

[51] 18 U.S.C. 371.

[52] *United States v. Brinson*, 772 F.3d 1314, 1326 (10th Cir. 2014)("For this offense, a person must 'attempt' to commit the crime of sex trafficking.... Thus, the prosecution had to prove that Mr. Brinson intended to commit the substantive offense, and took a 'substantial step' toward the commission of that offense"); see generally, *United States v. Aldawsari*, 740 F.3d 1015, 1019-20 (5th Cir. 2014); *United States v. Muratovic*, 719 F.3d 809, 815 (7th Cir. 2013); *United States v. Villarreal*, 707 F.3d 942, 960 (8th Cir. 2013); *United States v. Desposito*, 704 F.3d 221, 230 (2d Cir. 2013).

[53] *United States v. Aldawsari*, 740 F.3d at 1019-20; *United States v. Villarreal*, 707 F.3d at 960; *United States v. Desposito*, 704 F.3d at 231. For a general discussion of federal law in the area, see CRS Report R42001, *Attempt: An Overview of Federal Criminal Law*, by Charles Doyle.

[54] *United States v. Bauer*, 626 F.3d 1004, 1007 (8th Cir. 2010); see also, *United States v. Williams*, 553 U.S. 285, 300 (2008); *United States v. Mehanna*, 735 F.3d 32, 53 (1st Cir. 2013); *United States v. Engle*, 676 F.3d 405, 420 (4th Cir. 2012).

[55] *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003). *United States v. Mozie*, 752 F.3d 1271, 1287 (11th Cir. 2014)("To convict Mozie on the conspiracy charge, ... the government had to prove that (1) two or more persons agreed to violation §1591, (2) Mozie knew of that conspiratorial goal, and (3) he voluntarily assisted in accomplishing that goal"). For a general discussion of federal conspiracy law, see CRS Report R41223, *Federal Conspiracy Law: A Brief Overview*, by Charles Doyle.

[56] 18 U.S.C. 371(emphasis added) ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and *one or more of such persons do any act to effect the object of the conspiracy*, each shall be fined under this title or imprisoned not more than five years, or both ...").

[57] *Whitfield v. United States*, 543 U.S. 209, 214 (2004); *Salinas v. United States*, 522 U.S. 52, 64 (1997); *United States v. Shabani*, 513 U.S. 10, 13-4 (1994).

[58] See 18 U.S.C. 371(quoted above).

[59] *Pinkerton v. United States*, 328 U.S. 640, 646-47 (1946); *United States v. Blackman*, 746 F.3d 137, 141 (4th Cir. 2014); *United States v. Grasso*, 724 F.3d 1077, 1089 (9th Cir. 2013).

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.[60] "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."[61] Deciding whether someone has in some way associated himself with a criminal venture is easier said than done.[62] 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."[63] 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."[64]

Courts agree, however, that unlike conspiracy, there can be no liability as an aider and abettor until after someone else has the commit the underlying crime.[65]

Extraterritorial Application

Federal law is presumed to apply only within this country.[66] 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.[67] When Congress uses the phrase "found in the United States" in an extraterritorial

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[60] 18 U.S.C. 2(a)(" (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal").

[61] *United States v. Rufal*, 732 F.3d 1174, 1190 (10th Cir. 2013), quoting, *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949).

[62] To paraphrase *United States v. Brown*, 726 F.3d 993, 998 (7th Cir. 2013).

[63] *United States v. Ali*, 718 F.3d 929, 936 (D.C. Cir. 2013); see also, *United States v. Rufal*, 732 F.3d 1175, 1190 (10th Cir. 2013)("[T]he Government must prove that the defendant (1) willfully associated with the charged criminal venture and (2) aided the venture through affirmative action"); *United States v. Lyons*, 740 F.3d 702, 715 (1st Cir. 2014)("An aider and abettor is punishable as a principal if, first, someone else actually committed the offense, and second, the aider and abettor became associated with the endeavor and took part in it, intending to ensure its success"); *United States v. Pringler*, 765 F.3d 445, 449 (5th Cir. 2014)("To hold a defendant liable for aiding and abetting an offense, the government must show that elements of the substantive offense occurred and that the defendant associated with the criminal activity, participated in it, and act ed to help it succeed").

[64] *United States v. Shorty*, 741 F.3d 961, 970 (9th Cir. 2013).

[65] *Id.*; *United States v. Lyons*, 740 F.3d 702, 715 (1st Cir. 2014); *United States v. Rufal*, 732 F.3d 1197, 1190 (10th Cir. 2013); *United States v. Capers*, 708 F.3d 1286, 1306 (11th Cir. 2013); *United States v. Litwok*, 678 F.3d 208, 213 (2d Cir. 2012).

[66] *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 257 (2010)("It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only with the territorial jurisdiction of the United States"), citing inter alia, *EEOC v. Arabian American Oil Co*., 499 U.S. 244, 248 (1991).

[67] 18 U.S.C. 1596("(a) In General.-In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if- (1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender. (b) Limitation on Prosecutions of Offenses Prosecuted in Other

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.[68] There is some indication that the terms are considered interchangeable.[69]

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.[70] Federal law recognizes two kinds of forfeiture, classified according the nature of the procedures to which confiscation is accomplished.[71] Civil forfeiture ordinarily employs a procedure under which the offending property is treated as the defendant.[72] 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.[73] The property owner need not have been convicted.[74] In fact, the owner's innocence may be irrelevant.[75] In the case of sex trafficking, any property derived from or used to facilitate a trafficking offense is subject to civil forfeiture.[76]

Countries.-No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated").

[68] *United States v. Shi*, 525 F.3d 709, 724-25 (9th Cir. 2008); *United States v. Yousef*, 327 F.3d 56, 88-89 (2d Cir. 2003); *United States v. Rezaq*, 134 F.3d 1121, 1132 (D.C. Cir. 1998).

[69] E.g., *United States v. Yousef*, 927 F.Supp. 673, 680-81, aff'd, 327 F.3d 56 (2d Cir. 2003)(emphasis added)("Yousef argues that he was not properly *'found' within the United States* as that term is used in section 32(b). Yousef argues that the sole reason he was *present in the United States* was because the government brought him to the United States to stand trial for the other charges in the indictment related to the bombing of the World Trade Center. Yousef argues that the government knowingly delayed indicting him on the airliner bombing plot until he was brought to the United States, in order to establish his *presence in the United States* for purposes of this count of the indictment. Therefore, according to Yousef, he was not *present within the United States* voluntarily, and jurisdiction cannot be asserted over him pursuant to Section 32(b).... The circumstances by which Yousef was *'found' within the United States* satisfy the statutory jurisdictional requirements").

[70] 18 U.S.C. 1593(b)(4); 18 U.S.C. 1594(d), (e).

[71] See generally CRS Report 97-139, *Crime and Forfeiture*, by Charles Doyle.

[72] *United States v. Ursery*, 518 U.S. 267, 275 (1996), quoting, *Various Items of Personal Property v. United States*, 2782 U.S. 577, 584 (1931)("This 'forfeiture proceeding ... is in rem. It is the property which is proceeded against, and by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient); see also, *United States v. Funds in the Amount of $574,850*, 719 F.3d 648, 652 (7th Cir. 2013); *United States v. $8,440190 in U.S. Currency*, 719 F.3d 49, 57 (1st Cir. 2013).

[73] 18 U.S.C. 983(c).

[74] *Bennis v. Michigan*, 516 U.S. 442, 453 (1996); *United States v. Liquidators of European Federal Credit Bank*, 630 F.3d 1139, 1150 (9th Cir. 2011).

[75] Federal law generally recognizes an innocent owner defense in civil forfeiture cases, but only if the owner was unaware of the criminal use of the property or did everything he could to prevent its illegal use, 18 U.S.C. 983(d).

[76] 18 U.S.C. 1594(e)(1)("The following shall be subject to forfeiture to the United States and no property right shall exist in them: (A) Any property, real or personal, involved in, used, or intended to be used to commit or to facilitate the commission of any violation of this chapter, and any property traceable to such property; and (B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter").

Criminal forfeiture is forfeiture that occurs as a consequence of the property owner's conviction and the role of the property in the offense.[77] Here too, property derived from or used to facilitate a sex trafficking offense is subject to confiscation.[78]

Restitution

Federal courts enjoy the authority to order convicted defendants to pay restitution to the victims of their crimes under a number of statutes. There are general statutes and those that supplement them. Sections 3663A and 3664 establish the general boundaries for mandatory restitution and its implementing procedures.[79] The courts acquire additional restitution authority when they approve a plea bargain or set conditions for supervised release.[80] The sex trafficking mandatory restitution section, 18 U.S.C. 1593, supplements these generally applicable statutes.[81]

Section 1593 applies to the victims of §1591 offenses, both children and adults, as well as to the victims of other trafficking offenses.[82] Victims are entitled to restitution to the extent of the "full amount" of their losses.[83] 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.[84] Second, it includes the costs mentioned in child pornography restitution section,[85] 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

[77] E.g., 18 U.S.C. 982.

[78] 18 U.S.C. 1594(d)("The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—(1) such person's interest in any property, real or personal, that was involved in, used, or intended to be used to commit or to facilitate the commission of such violation, and any property traceable to such property; and (2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation, or any property traceable to such property").

[79] 18 U.S.C. 3663A; 18 U.S.C. 3664.

[80] 18 U.S.C. 3663A(a)(3); 18 U.S.C. 3583(d).

[81] 18 U.S.C. 1593(a), (b)(2)("(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter. (b) ... (2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A").

[82] 18 U.S.C. 1593(a).

[83] 18 U.S.C. 1593(b)(1)("The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection").

[84] 18 U.S.C. 1593(b)(3)("As used in this subsection, the term 'full amount of the victim's losses' ... shall ... include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards

Act (29 U.S.C. 201 et seq.)").

[85] 18 U.S.C. 1593(b)(3) As used in this subsection, the term "full amount of the victim's losses" has the same meaning as provided in section 2259(b)(3) ...").

(F) any other losses suffered by the victim as a proximate result of the offense.[86]

The Supreme Court recently held that individuals guilty of possession of child pornography may be ordered to pay restitution, under §2259, for their relative contribution to the harm caused the child.[87] In light of §1593's adoption of the §2259's restitution formula, it may be that courts will apply the same logic to the customers of the sex trafficking victims.

Finally, in the case of most other offenses, the Attorney General may use forfeited proceeds for victim restitution.[88] In the case of §1591 and other trafficking offenses, he is obligated to do so.[89]

Civil Cause of Action

Victims of sex trafficking may bring a civil suit to recover damages and reasonable attorneys' fees.[90] Successful plaintiffs may also be able to recover punitive damages under some circumstances.[91] The cause of action comes with a 10-year statute of limitations.[92] Civil liability under §1595, however, does not extend to those guilty of aiding or abetting a sex trafficking offense.[93] Moreover, §230 of the Communications Decency Act affords interactive computer service providers with immunity from civil suit for material created by third parties.[94] This apparently extends to immunity from suit under §1591.[95]

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[86] 18 U.S.C. 2259(b)(3).

[87] *Paroline v. United States*, 134 S.Ct. 1710, 1727 (2014)("The required restitution would be a reasonable and circumscribed award imposed in recognition of the indisputable role of the offender in the causal process underlying the victim's losses and suited to the relative size of that causal role").

[88] 18 U.S.C. 981(e)(6), 982(b)(1).

[89] 18 U.S.C. 1594(f)(captions omitted)("(1) Notwithstanding any other provision of law, the Attorney General shall transfer assets forfeited pursuant to this section, or the proceeds derived from the sale thereof, to satisfy victim restitution orders arising from violations of this chapter. (2) Transfers pursuant to paragraph (1) shall have priority over any other claims to the assets or their proceeds. (3) Transfers pursuant to paragraph (1) shall not reduce or otherwise mitigate the obligation of a person convicted of a violation of this chapter to satisfy the full amount of a restitution order through the use of non-forfeited assets or to reimburse the Attorney General for the value of assets or proceeds transferred under this subsection through the use of nonforfeited assets").

[90] 18 U.S.C. 1595(a)("An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees").

[91] *Ditullio v. Boehm*, 662 F.3d 1091, 1098 (9th Cir. 2011)("Punitive damages are generally appropriate under the TVPA civil remedy provision because it creates a cause of action for tortious conduct that is ordinarily intentional and outrageous").

[92] 18 U.S.C. 1595(c)(" No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose").

[93] *Jean-Charles v. Perlitz*, 937 F.Supp.2d 276, 287 (D.Conn. 2013)("Plaintiffs claim that Father Carrier and Ms. Carter can be held liable under §1595 because they aided and abetted Perlitz in violating §1591. Plaintiffs urge that §1595 incorporates secondary liability under 18 U.S.C. §§2 and 3. However, the text of the statute does not support such a reading and thus the argument fails under *Central Bank [of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994)]"); see also, *Boim v. Holy Land Foundation for Relief & Development*, 549 F.3d 685 F.3d 685, 689 (7th Cir. 2008)("Statutory silence on the subject of secondary liability means there is none").

[94] 47 U.S.C. 230(c)("(1)No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. (2) No provider or user of an interactive computer service shall be held liable on account of ... (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1)").

[95] *M.A. v. Village Voice Media Holdings, LLC*, 809 F.Supp.2d 1041, 1055-56 (E.D.Mo. 2011)("M.A. next argues that she has a cause of action under §1595 against Backpage.... Assuming, without deciding, that M.A.'s characterization of

Finally, §1595 calls for a stay of any civil action pending a corresponding criminal investigation and prosecution.[96]

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.[97] 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.[98]

Section 2421 (Transportation in General)

Section 2421outlaws knowingly transporting an individual in interstate or foreign transportation for purposes of prostitution or other unlawful sexual activity.[99] The courts have construed the offense's elements as follows:

Knowingly: 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.[100]

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the statute is correct, ... Backpage remains immune under §230 for her claims").

[96] 18 U.S.C. 1595(b)("(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. (2) In this subsection, a 'criminal action' includes investigation and prosecution and is pending until final adjudication in the trial court").

The Eleventh Circuit has declined to immediately review a district court's lifting of a §1595(b) stay at the behest of a defendant who argued that failure to continue the stay exposed him to unfair inferences if he assert his Fifth Amendment privilege in the civil proceedings while criminal proceedings were pending, *Plaintiff A v. Schair*, 744 F.3d 1247, 1254-255 (11th Cir. 2014).

[97] Other Mann Act prohibitions address false statements in connection with the immigration of foreign prostitutes, 18 U.S.C. 2424, and the use of the facilities of interstate commerce to disclose information concerning a child for illicit sexual purposes, 18 U.S.C. 2425.

[98] E.g. *United States v. Tavares*, 705 F.3d 4, 11 (1st Cir. 2013)(affirming a conviction for violations of 18 U.S.C. 1591, 2421 and 2423); *United States v. Dean*, 705 F.3d 745, 750 n.4 (7th Cir. 2013)(affirming a conviction for violation of 18 U.S.C. 1591 and 2422); *United States v. Cephus*, 684 F.3d 703, 705 (7th Cir. 2012)(affirming convictions for violation of 18 U.S.C. 1591, 2421 and 2423); *United States v. O'Connor*, 650 F.3d 839, 843-44 (2d Cir. 2011)(affirming convictions for violation of 18 U.S.C. 1591 and 2423); *United States v. Brooks*, 610 F.3d 1186, 1196-198 (9th Cir. 2010)(same).

[99] 18 U.S.C. 2421("Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual 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 10 years, or both").

[100] *United States v. Kim*, 584 F.3d 394, 395-96 (2d Cir. 2009)(emphasis in the original)("[I]f we were to say that a person knowingly transported women in interstate commerce, one would normally assume she knew both that she was transporting the women *and* that she was transporting them in interstate commerce. Accordingly, we hold that 'knowingly' qualifies 'interstate commerce'; the Government was obligated to prove that element beyond a reasonable doubt, and the court was obligated to charge the jury to that effect").

Transport: 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."[101] 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.[102] On the other hand, at least one court has held supplying prostitutes with marketing opportunities ("dates") that require interstate travel is not enough.[103]

Purpose: A violation occurs when an individual is transported for purposes of prostitution or other illicit sexual purposes. Prostitution or other unlawful sex need not be the only purpose for the travel, but it must be a principal or dominant purpose.[104] Section 2421 bans transportation for purpose of prostitution or other unlawful sexual activity. This includes transportation to a location where prostitution is lawful;[105] as well as unlawful sexual activity that does not constitute prostitution.[106]

Consequences of Conviction: 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;[107]by a fine of not more than $250,000;[108] and unless indigent, to a special assessment of $5,000.[109] Offenders are also subject to a post-imprisonment term of supervised release of not less than five years.[110] The

[101] *United States v. Cho*, 713 F.3d 716, 720 (2d Cir. 2013).

[102] *Id.* at 720-21 ("[T]he district court instructed the jury that Cho could be found guilty under 18 U.S.C. §2(b) even if she acted through someone who was entirely innocent of the crimes charged in the indictment, even if she acted through a government agent ... Viewed in the light most favorable to the government, the evidence at trial established that Jin called Cho from Atlantic City, seeking a job as a prostitute. Cho put Jin in contact with CI [the government agent] who spoke with her about traveling to New York to engage in prosecution. Jin traveled from Atlantic City to New York where Cho and the CI picked her up. Cho then had the CI drive Jin to Manhattan so that Jin could work in a brothel. Cho ... contends, however, that she did not arrange Jin's interstate travel because she did not pay for Jin's ticket or book her passage. We disagree. By agreeing ... to provide a prostitution job for Jin, and by coordinating and prearranging the date and time on which she would travel, Cho arranged for Jin to travel from New Jersey to New York to engage in prostitution. Moreover, by providing the CI to drive Jin on the last intrastate leg of her interstate trip, Cho directly organized Jin's transportation in interstate commerce. Like the Firth Circuit ... we conclude that this is sufficient.... See, e.g., *United States v. Clemones*, 577 F.2d 1247, 1253 (5th Cir. 1978)(holding that defendant transported prostitute under 18 U.S.C. §2421, where defendant arranged via telephone for prostitute to cross state line, then drove prostitute to defendant's brothel upon her arrival in defendant's state)").

[103] *United States v. Jones*, 909 F.2d 533, 536 (D.C.Cir. 1990)("With regard to the element of interstate transportation required under the Mann Act, the Government attempted to show that the [escort] business, with the male appellant's aid, caused the transportation of the escorts, by providing the names and addresses of customers and the financial incentive to travel interstate.... [T]he male appellant's principal argument is that the evidence failed to show that he 'transported' the female escorts interstate as required by the statute; he contends that the escorts physically transported themselves and that his mere provision of the inducement for such auto-motion is legally insufficient. We reverse all of the convictions upon these grounds ...").

[104] *United States v. Julian*, 427 F.3d 471, 485 (7th Cir. 2005)(principal); *United States v. Campbell*, 49 F.3d 1079, 1083-84 (5th Cir. 1995)(one of the dominant purposes).

[105] *United States v. Pelton*, 578 F.2d 701, 712 (8th Cir. 1978).

[106] *United States v. Lowe*, 145 F.3d 45, 52 (1st Cir. 1998)(kidnapping and rape); *United States v. Mitchell*, 778 F.2d 1271, 1275 (7th Cir. 1985)(same).

[107] 18 U.S.C. 2421, 2426.

[108] 18 U.S.C. 2421, 3571, 3781.

[109] 18 U.S.C. 3014.

[110] 18 U.S.C. 3583(k).

offender may be ordered to pay the victim restitution.[111] Property generated by the offense or used to facilitate the offense may be confiscated under either civil or criminal forfeiture procedures.[112]

Attempt, Conspiracy, and Aiding and Abetting: Section 2421 specifically proscribes attempts to transport. Attempted violations carry the same penalties.[113] 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.[114] As with any other federal crime, aiding and abetting a violation of §2421 exposes the offender to the same penalties that the transporter faces.[115]

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.[116] Cross designate state prosecutors presumably operate under the direction of United States Attorney.[117]

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(b), 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 the following:

(1) Whoever,
(2) knowingly
(3) (a) persuades,
(b) induces,
(c) entices, or
(d) coerces

[111] 18 U.S.C. 3663A(c)(mandatory restitution for crimes of violence), 3663(discretionary restitution), 3583(d) (discretionary restitution as a condition of supervised release).

[112] 18 U.S.C. 2428.

[113] 18 U.S.C. 2421("... or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both").

[114] 18 U.S.C. 371("If two or more persons conspire ... to commit any offense against the United States ... and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both ..."); conspiracy to transport cases include, *United States v. Cho*, 713 F.3d 716, 718 (2d Cir. 2013); *United States v. Liu*, 538 F.3d 1078, 1081 (9th Cir. 2008); *United States v. Footman*, 215 F.3d 145, 148 (1st Cir. 2000).

[115] 18 U.S.C. 2 ("(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal"); cases involving aiding and abetting a violation of §2421 include, *United States v. Cho*, 713 F.3d 716, 718 (2d Cir. 2013); *United States v. Julian*, 427 F.3d 471, 475 (7th Cir. 2005); *United States v. Footman*, 215 F.3d 145, 148 (1st Cir. 2000).

[116] 18 U.S.C. 2421(b)(caption omitted)("(1) The Attorney General shall grant a request by a State attorney general that a State or local attorney be cross designated to prosecute a violation of this section unless the Attorney General determines that granting the request would undermine the administration of justice. (2) If the Attorney General denies a request under paragraph (1), the Attorney General shall submit to the State attorney general a detailed reason for the denial not later than 60 days after the date on which a request is received").

[117] See U.S. Const. Art. II, §3; *Morrison v. Olson*, 487 U.S. 654 (1988); 28 U.S.C. 547.

(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:

Whoever: The term "whoever" encompasses both individuals and legal entities.[118] 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.[119]

Knowingly: 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.[120]

Coerces or Entices: 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 pre-disposed to travel in order to engage in prostitution upon arrival.[121]

Travel: Elsewhere in the Mann Act, the term "travel in foreign commerce," does not refer to "travel occurring wholly between two foreign countries and without any nexus to the United States."[122] Presumably, the same can be said with regard to §2422(a).

Prostitution or Unlawful Activity: By the same token, Congress should probably be thought to have used common terms to have common meaning. 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.[123] The courts disagree over the question of whether the activity proscribed under §2422(b) must consist of contact between two people.[124]

Attempt, Conspiracy, Aiding and Abetting: Section 2422(a) specifically outlaws attempts to persuade or coerce another to travel interstate in order to engage in prostitution or illegal sexual

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[118] 1 U.S.C. 1.

[119] E.g., *United States v. Singh*, 518 F.3d 236, 250 (4th Cir. 2008)("[T]he district court apparently perceived that the evidence failed to establish Jalaram's corporate criminal liability based on the conduct of Patel.... [T]he court erred in failing to recognize that Patel, as manager of the Scottish Inn, was an agent of Jalaram, and was acting within the scope of that relationship when he rented rooms to the Gold Club's prostitutes").

[120] *United States v. Evans*, 272 F.3d 1069, 1086 (8th Cir. 2001).

[121] *United States v. Rashkovski*, 301 F.3d 1133, 1136-137 (9th Cir. 2002).

[122] *United States v. Weingarten*, 632 F.3d 60, 71 (2d Cir. 2011)(construing the term as used in 18 U.S.C. 2423(b)).

[123] *United States v. Shill*, 740 F.3d 1347, 1354 (9th Cir. 2014)(state misdemeanor); *United States v. Davila-Nieves*, 670 F.3d 1, 7 (1st Cir. 2012)(state law).

[124] Compare, *United States v. Taylor*, 640 F.3d 255, 259 (7th Cir. 2011)("If 'sexual activity' and 'sexual act' are synonymous in Title 18, as they appear to be, then 'sexual activity' requires contact [between two people] because 'sexual act,' we know does"), with, *United States v. Fugit*, 703 F.3d 248, 254-55 (4th Cir. 2012)("[W]e hold that interpersonal physical contact is not a requirement of §2422(b)'s 'sexual activity' element.... [W]e believe that the Seventh Circuit's decision in *United States v. Taylor* ... was mistaken").

conduct.[125] Attempt consists of the intent to commit the contemplated offense and a substantial step towards 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.[126] 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.[127] The conspirators share in the liability for any crime committed by one of their number in furtherance of the scheme.[128] The aiding and abetting provisions apply with equal force to violations of §2422(a).[129] Anyone who knowingly assists in a violation of §2422(a) faces the same penalties he would had he committed the crime himself.[130]

Consequences of Conviction: The penalty for §2422(a) offense is imprisonment for not more than 20 years (not more than 40 years for a repeat offender);[131] a fine of more than $250,000 (not more than $500,000 for an organization);[132] and unless indigent, to a special assessment of $5,000.[133] The sentence must include a term of supervised release of not less than five years,[134] and may include an order for victim restitution.[135] Moreover, any property attributable to the offense or used to commit the offense may be forfeited.[136]

Section 2422(b)(Facilities of Interstate Commerce)

Section 2422(b), parsed into its constituent elements, states, using many of same elements found in §2422(b), the following:

(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

[125] 18 U.S.C. 2422(a); e.g., *United States v. Strieper*, 666 F.3d 288, 292 (4th Cir. 2012).

[126] *United States v. Orr*, 622 F.3d 864, 868 (7th Cir. 2010).

[127] 18 U.S.C. 371; e.g., *United States v. Evans*, 314 F.3d 329, 330 (8th Cir. 2002).

[128] *United States v. Singh*, 518 F.3d 236, 252 (4th Cir. 2008).

[129] 18 U.S.C. 2.

[130] 18 U.S.C. 2. Courts have said in the case of aiding and abetting other Mann Act offenses, that "the Government must prove that the defendant (1) willfully associated with the charged criminal venture and (2) aided the venture through affirmative action," *United States v. Rufal*, 732 F.3d 1175, 1190 (10th Cir. 2013), and in the same vein that, "an aider and abettor is punishable as a principal if, first, someone else actually committed the offense, and second, the aider and abettor became associated with the endeavor and took part in it, intending to ensure its success," *United States v. Lyons*, 740 F.3d 702, 715 (1st Cir. 2014).

[131] 18 U.S.C. 2422(a), 2426.

[132] 18 U.S.C. 2422(a), 3571, 3581.

[133] 18 U.S.C. 3014.

[134] 18 U.S.C. 3583(k).

[135] 18 U.S.C. 3663.

[136] 18 U.S.C. 2428.

(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.[137] Again, the case law arising under the elements of the offense suggests the following:

Whoever: 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.[138]

Communication: 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,[139] email,[140] or Internet chat rooms.[141]

Knowingly: 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.[142] Nor need the government prove that the defendant knew the victim was underage.[143]

Coerces or Entices: The action element of §2422(b) does not require that either prostitution or unlawful sexual activity actually occur.[144] It is enough that the defendant enticed or coerced, or attempted to entice or coerce, its occurrence.[145] Except for coercion, the words in the element—persuade, induce, and entice—"are effectively synonymous."[146] 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.[147]

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[137] 18 U.S.C. 2422(b); see also, *United States v. Fugit*, 703 F.3d 248, 254 (4th Cir. 2012)("[Section] 2422(b) comprises four elements: (1) use of a facility of interstate commerce; (2) to knowing persuade, induce, entice, or coerce; (3) a person who is younger than eighteen; (4) to engage in an illegal sexual activity").

[138] E.g., *United States v. Singh*, 518 F.3d 236, 250 (4th Cir. 2008)("[T]he district court apparently perceived that the evidence failed to establish Jalaram's corporate criminal liability based on the conduct of Patel.... [T]he court erred in failing to recognize that Patel, as manager of the Scottish Inn, was an agent of Jalaram, and was acting within the scope of that relationship when he rented rooms to the Gold Club's prostitutes").

[139] *United States v. Pawlowski*, 682 F.3d 205, 207-208 (3d Cir. 2012)(phone, chat room, and e-mail).

[140] *United States v. McMillan*, 744 F.3d 1033, 1034 (7th Cir. 2014); *United States v. Shill*, 740 F.3d 1347, 1350 (9th Cir. 2014); *United States v. Olvera*, 687 F.3d 645, 646 (5th Cir. 2012)

[141] *United States v. Fugit*, 703 F.3d 248, 251 (4th Cir. 2012); *United States v. Zobel*, 696 F.3d 558, 564 (6th Cir. 2012); *United States v. Lebowitz*, 676 F.3d 1000, 1006 (11th Cir. 2012).

[142] *United States v. Evans*, 272 F.3d 1069, 1086 (8th Cir. 2001).

[143] *United States v. Daniels*, 685 F.3d 1237, 1248 & n.14 (11th Cir. 2012), citing in accord, *United States v. Daniels*, 653 F.3d 399, 410 (6th Cir. 2011); *United States v. Cox*, 577 F.3d 833, 837-38 (7th Cir. 2009); *United States v. Jones*, 471 F.3d 535, 539 (4th Cir. 2006); *United States v. Griffith*, 284 F.3d 338, 350-51 (2d Cir. 2002); and *United States v. Taylor*, 239 F.3d 994, 997 (9th Cir. 2001).

[144] *United States v. Engle*, 676 F.3d 405, 412 (4th Cir. 2012); *United States v. Barlow*, 568 F.3d 215, 219 n.10 (5th Cir. 2009).

[145] *United States v. Berk*, 652 F.3d 132, 140 (6th Cir. 2011)("Section 2422(b) criminalizes an intentional attempt to achieve a mental state—a minor's asset—regardless of the accused's intentions vis-a-vis the actual consummation of sexual activities with the minor").

[146] *United States v. Engle*, 676 F.3d 405, 411 n.3 (4th Cir. 2012).

[147] *United States v. Rashkovski*, 301 F.3d 1133, 1136-137 (9th Cir. 2002)(construing identical term in §2423(a)).

Child: 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.[148] 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.[149]

Prostitution or Unlawful Activity: The unlawful sexual activity element demands conduct that is unlawful under applicable state or federal law including offenses that are misdemeanors.[150] The lower federal appellate courts are divided over the question of whether the activity must consist of contact between two people.[151]

Attempt: 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 towards the commission of the crime.[152] Entrapment defense implications arise when a defendant has become ensnarled 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."[153]

Consequences of Conviction: 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);[154] and unless indigent, to a special assessment of $5,000.[155] Individuals are also subject to a term of supervised release of not less than five years.[156] They may be compelled to pay restitution.[157] Property generated by the offense or used to facilitate its commission may be subject to confiscation.[158]

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[148] *United States v. McMillan*, 744 F.3d 1033, 1035-36 (7th Cir. 2014), citing in accord inter alia, *United States v. Caudill*, 709 F.3d 444 (5th Cir. 2013); *United States v. Laureys*, 653 F.3d 27 (D.C.Cir. 2011); *United States v. Berk*, 652 F.3d 132 (1st Cir. 2011); *United States v. Douglas*, 626 F.3d 161 (2d Cir. 2010).

[149] *United States v. Slaughter*, 708 F.3d 1208, 1215 (11th Cir. 2013); *United States v. Lundy*, 676 F.3d 444, 448 (5th Cir. 2012)("[F]actual impossibility to complete a criminal act does not preclude a conviction for attempting to break the law").

[150] *United States v. Shill*, 740 F.3d 1347, 1354 (9th Cir. 2014)(state misdemeanor); *United States v. Davila-Nieves*, 670 F.3d 1, 7 (1st Cir. 2012)(state law).

[151] Compare, *United States v. Taylor*, 640 F.3d 255, 259 (7th Cir. 2011)("If 'sexual activity' and 'sexual act' are synonymous in Title 18, as they appear to be, then 'sexual activity' requires contact [between two people] because 'sexual act,' we know does"), with, *United States v. Fugit*, 703 F.3d 248, 254-55 (4th Cir. 2012)("[W]e hold that interpersonal physical contact is not a requirement of §2422(b)'s 'sexual activity' element.... [W]e believe that the Seventh Circuit's decision in *United States v. Taylor* ... was mistaken").

[152] *United States v. Pawlowski*, 682 F.3d 205, 211 (3d Cir. 2012); *United States v. Shinn*, 681 F.3d 924, 931 (8th Cir. 2012); *United States v. Engle*, 676 F.3d 405, 491-20 (4th Cir. 2012)("[I]n order to convict a defendant of attempt, the government prove beyond a reasonable doubt, that (1) he had culpable intent to commit the crime and (2) he took a substantial step towards completion of the crime that strongly corroborates that intent"); *United States v. Broussard*, 669 F.3d 537, 547 (5th Cir. 2012).

[153] *United States v. Davila-Nieves*, 670 F.3d 1, 9 (1st Cir. 2012); see also, *United States v. Shinn*, 681 F.3d 924, 930 (8th Cir. 2012)("Inducement focuses on the government's actions, whereas predisposition focuses on whether the defendant was an unwary innocent or instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime").

[154] 18 U.S.C. 2422(b), 3571, 3581.

[155] 18 U.S.C. 3014.

[156] 18 U.S.C. 3583(k).

[157] 18 U.S.C. 3663, 3583.

[158] 18 U.S.C. 2428

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 a Child)

"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."[159]

Knowledge: Guilty knowledge consists of an awareness that an individual is transported; "the knowledge requirement does not apply to the victim's age,"[160] nor to the fact that a state line has been crossed.[161]

Transportation: The transportation element, that is causing another to be transported, can be met without evidence that the defendant accompanied the victim during the journey.[162]

Purpose: Prostitution or unlawful sexual activity must be a dominant purpose for the transportation, but it need not be the sole purpose.[163]

Prostitution or Unlawful Activity: Conviction does not require proof that an underlying act of prostitution or unlawful sexual activity with a child actually occurred.[164]

Attempt, Conspiracy, Aiding and Abetting: Section 2423(e) outlaws attempt and conspiracy to violate §2423(a).[165] Conspiracy charges may also be prosecuted under the general conspiracy statute, 18 U.S.C 371.[166] Here, as elsewhere, conspirators are liable for foreseeable crimes committed by their fellows in furtherance of the scheme.[167] The conviction on a conspiracy charge becomes complicated when one of the necessary parties is the individual transported.[168]

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[159] *United States v. Vargas-Cordon*, 733 F.3d 366, 375 (2d Cir. 2013). The text of §2423(a) reads: "A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life."

[160] *United States v. Washington*, 743 F.3d 938, 943 (4th Cir. 2014), citing in accord, *United States v. Tavares*, 705 F.3d 4, 19-20 (1st Cir. 2013); *United States v. Daniels*, 685 F.3d 1237, 1248 (11th Cir. 2012); *United States v. Daniels*, 653 F.3d 399, 410(6th Cir. 2011); *United States v. Cox*, 577 F.3d 833, 838 (7th Cir. 2009).

[161] *United States v. Al-Cholan*, 619 F.3d 945, 952 n.2 (6th Cir. 2010).

[162] *United States v. Weingarten*, 713 F.3d 704, 708-709 (2d Cir. 2013); *United States v. Holland*, 381 F.3d 80, 86-7 (2d Cir. 2004).

[163] *United States v. Vargas-Cordon*, 733 F.3d 366, 375-76 (2d Cir. 2013).

[164] *United States v. Vargas-Cordon*, 733 F.3d 366, 375 (2d Cir. 2013).

[165] 18 U.S.C. 2423(e)("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").

[166] E.g., *United States v. Tavares*, 705 F.3d 4, 15-7 (1st Cir. 2013).

[167] *United States v. Cephus*, 684 F.3d 703, 707 (7th Cir. 2012).

[168] E.g., *United States v. Footman*, 215 F.3d 145, 151 (1st Cir. 2000)("Footman says Tes was a mere victim and that a woman who simply prostitutes herself under the control of a pimp and consents to being transported across state lines

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.[169]

Consequences of Conviction: Conviction carries a mandatory minimum term of imprisonment of not less than 10 years (not less than 20 years for repeat offenders);[170] a mandatory term of supervised release of not less than 5 years;[171] a fine of not more than $250,000 (not more than $500,000 for an organization);[172] and unless indigent, to a special assessment of $5,000.[173] The offender may be ordered to pay restitution as well.[174] Property generated by the offense or used to facilitate its commission may be forfeited to the United States.[175]

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.[176]

Travel: Section 2423(b) extends to interstate travel, to travel into the United States, and travel in foreign commerce. Travel in foreign commerce, however, does not include between two foreign countries with no territorial connection to the United States.[177] There may also be some doubt whether the section applies to foreign travel for purposes of child sexual abuse other than child prostitution.[178]

Purpose: Speaking of prostitution and unlawful sexual purposes under §2423(a), the courts have declared that prostitution or some other form of unlawful sexual activity must be a dominant

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cannot be a co-conspirator under the Mann Act. There is law to this effect. *See Gebardi v. United States*, 297 U.S. 112, 123 [1932].... The real question is whether the jury had adequate evidence to conclude that Tes was more than a victim—that she was in fact a co-conspirator. The dividing line is an important one. There is an inherent policy judgment in the Mann Act not to prosecute women who do no more than consent to being transported across state lines for the purpose of prostitution. But that policy simply does not apply when the women assume roles in running the business.").

[169] *United States v. Tavares*, 705 F.3d 4, 20 (1st Cir. 2013).

[170] 18 U.S.C. 2423(a); 18 U.S.C. 2426 ("(a) Maximum Term of Imprisonment.-The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term of imprisonment otherwise provided by this chapter, unless section 3559(e) applies. (b) Definitions.-In this section- (1) the term "prior sex offense conviction" means a conviction for an offense- (A) under this chapter, chapter 109A, chapter 110, or section 1591; or (B) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States; and (2) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States").

[171] 18 U.S.C. 3583(k).

[172] 18 U.S.C. 2423(a), 3571, 3581.

[173] 18 U.S.C. 3014.

[174] 18 U.S.C. 3663.

[175] 18 U.S.C. 2428.

[176] 18 U.S.C. 2423(b)("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").

[177] *United States v. Weingarten*, 632 F.3d 60, 71 (2d Cir. 2011).

[178] *United States v. al-Maliki*, ___ F.3d ___, ___ *4-*5 (6th Cir. May 27, 2015)(expressing doubt in a case of parental sexual abuse whether the proscriptions of 18 U.S.C. 2423(c)(illicit sexual abuse following foreign travel) rest beyond Congress's legislative authority under the Foreign Commerce Clause).

purpose for the transportation, but it need not be the sole purpose.[179] One court has conceded the prevalence of this construction, but has taken exception to it, because it does not comport with the language of the statute ("*the* purpose").[180]

Illicit Sexual Activity: Section 2423(f) supplies a statutory definition of "illicit sexual activity" that applies to both §2423(b) and §2423(c).[181] The term covers "commercial sex activity" with an individual who is under 18 years of age as defined in 18 U.S.C. 1591.[182] It also covers sexual acts with such a child (aggravated sexual assault) that would be punishable had they occurred within the U.S. special maritime and territorial jurisdiction, i.e., 18 U.S.C. 2241(a), 2241(c), or 2423(b). Thus, §2423(b) "criminalizes interstate and foreign travel undertaken for any of the following purposes: (1) engaging in a sexual act with a minor under the age of 12, see §2241(c); (2) engaging in a sexual act with a minor between the ages of 12 and 16 if the perpetrator is at least four years older than the victim, see §2243(a); and (3) engaging in a sexual act with a minor between the ages of 16 and 18 by the use of force or threat, see §2241(a)."[183]

The crime is one of travel and purpose, and thus "the government need not prove an actual minor was placed at risk in order to secure a conviction under §2423(b)."[184]

Age of the Victim: 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.[185]

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[179] E.g., *United States v. Vargas-Cordon*, 733 F.3d 366, 375-76 (2d Cir. 2013). The cases under §2421 of the Mann Act reflect a similar view, e.g., *United States v. Julian*, 427 F.3d 471, 485 (7th Cir. 2005)(principal purpose); *United States v. Campbell*, 49 F.3d 1079, 1083-84 (5th Cir. 1995)(one of the dominant purposes).

[180] *United States v. McGuire*, 627 F.3d 622, 624-25 (7th Cir. 2010)("The courts have had trouble dealing with cases in which the travel prosecuted under section 2423(b) may have had dual purposes, only one of which was to have sex with minors. The statute says 'the' purpose must be sex rather than "*a*" purpose, but in *United States v. Vang*, 128 F.3d 1065, 1068 (7th Cir. 1997), we approved a jury instruction which said that sex didn't have to be 'the sole purpose' of the travel, though it did have to be 'a dominant purpose, as opposed to an incidental one. A person may have more than one dominant purpose for traveling across a state line.' To speak of multiple dominant purposes is not idiomatic, but given the evidence in *Vang* the precise wording of the instruction hardly mattered. Other cases, too, fasten on 'dominant,' but then define it down to mean 'significant,' 'efficient and compelling,' 'predominat[ing],' 'motivating,' not 'incidental,' or not 'an incident' to the defendant's purpose in traveling. E.g., *United States v. Julian*, 427 F.3d 471, 485 (7th Cir. 2005); *United States v. Hitt*, 473 F.3d 146, 152 (5th Cir. 2006); *United States v. Hayward*, 359 F.3d 631, 637-38 (3d Cir. 2004); *United States v. Meacham*, 115 F.3d 1488, 1495-496 (10th Cir. 1997); *United States v. Campbell*, 49 F.3d 1079, 1083-84 (5th Cir. 1995); *United States v. Ellis*, 935 F.2d 385, 390 (1st Cir. 1991); *United States v. Bennett*, 364 F.2d 77, 79 (4th Cir. 1996). These verbal formulas are strained; the courts turn handsprings trying to define 'dominant' as if it were a statutory term, see, e.g., *United States v. Miller*, 148 F.3d 207, 212-13 (2d Cir. 1998), which it is not. It would be better to ask whether, had a sex motive not been present, the trip would not have taken place or would have differed substantially").

[181] 18 U.S.C. 2423(f)("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 of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age; or (3) production of child pornography (as defined in section 2256(8))").

[182] 18 U.S.C. 1591(e)(3)("The term 'commercial sex act' means any sex act, on account of which anything of value is given to or received by any person").

[183] *United States v. Stokes*, 726 F.3d 880, 896 (7th Cir. 2013).

[184] *United States v. Kelly*, 510 F.3d 433, 441 & n.7 (4th Cir. 2007), citing in accord, *United States v. Hicks*, 457 F.3d 838, 841 (8th Cir. 2006); *United States v. Tykarsky*, 446 F.3d 458, 469 (3d Cir. 2005); *United States v. Sims*, 428 F.3d 945, 959 (10th Cir. 2005); *United States v. Root*, 296 F.3d 1065, 1069 (7th Cir. 1997).

[185] 18 U.S.C. 2423(g)("In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by clear and convincing evidence, that the defendant reasonably

Attempt, Conspiracy, Aiding and Abetting: Section 2423(e) outlaws attempt or conspiracy to violate §2423(b) under the same penalties as apply to the underlying offense, noted below. Recall that attempt consists of the intent to commit the underlying offense coupled with a substantial step, corroborative of that intent.[186] Here and elsewhere, conspiracy exposes the schemers to punishment for any foreseeable offenses committed by any of their number in furtherance of the common plot.[187] An accused has aided and abetted in the crime of another, and merits comparable punishment, when he has assisted in its commission with the intent to do so.[188]

Consequences of Conviction: Violation of §2423(b) is punishable by imprisonment for more than 30 years (not more than 60 years for repeat offenders);[189] a mandatory term of supervised release of not less than 5 years;[190] a fine of not more than $250,000 (not more than $500,000 for an organization);[191] and unless indigent, to a special assessment of $5,000.[192] The offender may be ordered to pay restitution as well.[193] Property derived from the offense or used to facilitate its commission may be forfeited to the United States.[194]

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."[195]

Illicit Sexual Activity: As noted above, §2423(f) supplies a statutory definition of "illicit sexual activity" that governs both §2423(b), §2423(c), and §2423(c).[196] It encompasses commercial sexual activity as understood in the case of commercial sex trafficking under 18 U.S.C. 1591,[197]

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believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years"). Prior to the 2015 Victims Justice Act, defendant's burden of proof stood at proof by a preponderance of the evidence, 18 U.S.C. 2423(g)(2012 ed.).

[186] *United States v. Aldawsari*, 740 F.3d 1015, 1019-20 (5th Cir. 2014); *United States v. Muratovic*, 719 F.3d 809, 815 (7th Cir. 2013); *United States v. Villarreal*, 707 F.3d 942, 960 (8th Cir. 2013); *United States v. Desposito*, 704 F.3d 221, 230 (2d Cir. 2013).

[187] *Pinkerton v. United States*, 328 U.S. 640, 646-47 (1946); *United States v. Blackman*, 746 F.3d 137, 141 (4th Cir. 2014); *United States v. Grasso*, 724 F.3d 1077, 1089 (9th Cir. 2013).

[188] 18 U.S.C. 2; *United States v. Ali*, 718 F.3d 929, 936 (D.C. Cir. 2013); *United States v. Rufal*, 732 F.3d 1175, 1190 (10th Cir. 2013)("[T]he Government must prove that the defendant (1) willfully associated with the charged criminal venture and (2) aided the venture through affirmative action"); *United States v. Lyons*, 740 F.3d 702, 715 (1st Cir. 2014)("An aider and abettor is punishable as a principal if, first, someone else actually committed the offense, and second, the aider and abettor became associated with the endeavor and took part in it, intending to ensure its success").

[189] 18 U.S.C. 2423(b); 18 U.S.C. 2426.

[190] 18 U.S.C. 3583(k).

[191] 18 U.S.C. 2423(a), 3571, 3581.

[192] 18 U.S.C. 3014.

[193] 18 U.S.C. 3663.

[194] 18 U.S.C. 2428.

[195] *United States v. Pendleton*, 658 F.3d 299, 304 (3d Cir. 2011). With the recently added residential alternative to the travel element, the section now reads: "Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both".

[196] 18 U.S.C. 2423(f)("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 of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age; or (3) production of child pornography (as defined in section 2256(8))").

[197] 18 U.S.C. 1591(e)(3)("The term 'commercial sex act' means any sex act, on account of which anything of value is

aggravated assault against children provisions found in 18 U.S.C. ch. 109A, and the production of child pornography.[198] Unlike the "travel with a purpose" prohibition, the violation of §2423(c) is not complete until illicit sexual activity occurs.[199]

Travel or Reside: Section 2423(c) originally outlawed illicit sexual activity by a defendant who had travelled from the United States.[200] Although the travel and illicit sexual activity did not have to closely coincide,[201] the section did not reach travel occurring prior to enactment even if the illicit sexual activity occurred thereafter.[202] The section now provides a residential alternative to the travel element. A U.S. citizen who resides overseas and engages in illicit sexual activity violates §2423(c) regardless of when he travelled abroad.[203] There may be some doubt whether §2423(c) covers overseas illicit sexual activity other than child prostitution.[204]

Age of the Victim: 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.

Attempt, Conspiracy, Aiding and Abetting: Attempting to violate §2423(c) or conspiring to do so subjects the offender to the same consequences as flow from the breach of the underlying offense.[205] The same can be said of one who aids and abets commission of the underlying offense.[206] Conspiracy is complete once the corrupt agreement is joined; no further step or overt

given to or received by any person"); see e.g., *United States v. Frank*, 599 F.3d 1221, 1233 (11th Cir. 2010).

[198] 18 U.S.C. 2423(f); *United States v. Stokes*, 726 F.3d 880, 896 (7th Cir. 2013).

[199] *United States v. Pendleton*, 658 F.3d 299, 304 (3d Cir. 2011).

[200] 18 U.S.C. 2423(c)(2006 ed.).

[201] *United States v. Clark*, 435 F.3d 1100, 1107 (9th Cir. 2006)("The statute ... does not require that the conduct occur while traveling in foreign commerce. In Clark's case, the lapse in time between his most recent transit between the United States and Cambodia and his arrest was less than two months. We see no plausible reading of the statute that would exclude its application to Clark's conduct because of this limited gap").

[202] *United States v. Stokes*, 726 F.3d 880, 888 (7th Cir. 2013), citing in accord, *United States v. Jackson*, 480 F.3d 1014, 1018, 1024 (9th Cir. 2007).

[203] 18 U.S.C. 2423(c)(emphasis added)("Any United States citizen or alien admitted for permanent residence who travels in foreign commerce *or resides, either temporarily or permanently*, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both").

[204] *United States v. al-Maliki*, ___ F.3d ___, ___ *4-*5 (6th Cir. May 27, 2015)(expressing doubt in a case of parental sexual abuse whether the proscriptions of 18 U.S.C. 2423(c)(illicit sexual abuse following foreign travel) rest beyond Congress's legislative authority under the Foreign Commerce Clause).

[205] 18 U.S.C. 2423(e).

[206] 18 U.S.C. 3.

act is required.[207] Attempt is complete when a substantial guilty step is taken.[208] Aiding and abetting is complete only when someone else has committed the underlying offense.[209]

Consequences of Conviction: The consequences under §2423(c) are the same as those under §2423(b): imprisonment for not more than 30 years (not more than 60 years for repeat offenders);[210] a mandatory term of supervised release of not less than 5 years;[211] a fine of not more than $250,000 (not more than $500,000 for an organization);[212] and unless indigent, to a special assessment of $5,000.[213] The offender may be ordered to pay restitution as well.[214] Property generated by the offense or used to facilitate its commission may be forfeited to the United States.[215]

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."[216]

Although written somewhat cryptically, the section's use of the "illicit sexual conduct" limits its application to the only two other offenses where the statutorily defined term is used: §2423(b)(travel with intent to engage in specific unlawful sexual activity with a child) and §2423(c)(travel followed by specific unlawful sexual activity with a child).

Attempt, Conspiracy, Aiding and Abetting: 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.[217] Aiding and abetting a §2423(d) offense warrants the same treatment.[218]

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[207] The general conspiracy prohibition is only complete when one of the conspirators "do[es] an[] act to effect the object of the conspiracy," 18 U.S.C. 371. Because the conspiracy provision here, §2423(e), has no comparable language, the completion need not await the commission of an overt act, *Whitfield v. United States*, 543 U.S. 209, 214 (2004)("*Nash* and *Singer* give Congress a formulary: by choosing a text modeled on §371, it gets an over-act requirement; by choosing a text modeled on the Sherman Act ... it dispenses with such a requirement); *Salinas v. United States*, 522 U.S. 52, 64 (1997); *United States v. Shabani*, 513 U.S. 10, 13-4 (1994).

[208] *United States v. Aldawsari*, 740 F.3d 1015, 1019-20 (5th Cir. 2014)("The district court's instruction properly emphasized that a conviction for attempt requires proof beyond a reasonable doubt that the Defendant ... did an act constituting a substantial step towards the commission of that crime which strongly corroborates the Defendant's criminal intent ...")(5th Cir. 2014); *United States v. Muratovic*, 719 F.3d 809, 815 (7th Cir. 2013); *United States v. Villarreal*, 707 F.3d 942, 960 (8th Cir. 2013); *United States v. Desposito*, 704 F.3d 221, 230 (2d Cir. 2013).

[209] *United States v. Lyons*, 740 F.3d 702, 715 (1st Cir. 2014)("An aider and abettor is punishable as a principal if, first, someone else has committed the offense and, second the aider and abettor became associated with endeavor and took part in it, intending to ensure its success"); *United States v. Rufal*, 732 F.3d 1197, 1190 (10th Cir. 2013); *United States v. Capers*, 708 F.3d 1286, 1306 (11th Cir. 2013); *United States v. Litwok*, 678 F.3d 208, 213 (2d Cir. 2012).

[210] 18 U.S.C. 2423(c); 18 U.S.C. 2426.

[211] 18 U.S.C. 3583(k).

[212] 18 U.S.C. 2423(c), 3571, 3581.

[213] 18 U.S.C. 3014.

[214] 18 U.S.C. 3663.

[215] 18 U.S.C. 2428.

[216] 18 U.S.C. 2423(d).

[217] 18 U.S.C. 2423(e).

[218] 18 U.S.C. 2.

Consequences of Conviction: 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);[219] a mandatory term of supervised release of not less than 5 years;[220] a fine of not more than $250,000 (not more than $500,000 for an organization);[221] and unless indigent, to a special assessment of $5,000.[222] The court may order the defendant to pay restitution.[223] Property realized through the offense or used to facilitate its commission may be forfeited to the United States.[224]

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[219] 18 U.S.C. 2423(d); 18 U.S.C. 2426.
[220] 18 U.S.C. 3583(k).
[221] 18 U.S.C. 2423(d), 3571, 3581.
[222] 18 U.S.C. 3014.
[223] 18 U.S.C. 3663.
[224] 18 U.S.C. 2428.