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## Sex Tourism—Arrests in the U.S. for Crimes Committed Elsewhere

Presented by: **Sunshine L. Swallers**  
and **John A. Nechman**

*There's a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of sex trade see little of life before they see the very worst of life -- an underground of brutality and lonely fear. —President George W. Bush before the UN General Assembly, September 2003*

### I. Introduction

- a. For which sort of crimes can a person be arrested under US laws relating to sex tourism?
  - i. Prostitution
  - ii. Child sex tourism
  - iii. Pornography
  - iv. Alien smuggling/human trafficking issues
- b. Global efforts to codify laws affecting sex tourism crimes
  - i. Efforts of Non Government Organizations
  - ii. Other Countries
- c. What the United States is doing
  - i. Tough laws become much tougher
  - ii. Brief review of other important American laws relating to sex tourism
    1. Violent Crime Control and Law Enforcement Act of 1994
    2. Trafficking Victims Protection Act of 2000 (reauthorized in 2003, 2005)
  - iii. New legislation (with teeth)

1. Prosecutorial Remedies and other Tools to end the Exploitation of Children Today (PROTECT) Act and the Trafficking Victim's Protection Reauthorization Act—signed into law by Bush 4/30/03
2. Operation Predator
3. U.S. Department of Justice Child Exploitation and Obscenity Section (CEOS)

## II. US Laws Relating to Sex Tourism

### a. Operation Predator

- i. Identifying, investigating, and arresting child predators and removing them from the US (if deportable); assist in prosecuting those responsible for making and distributing child porn
  1. Creating a National Child Victim Identification System
  2. Identify children depicted in child pornography to help rescue them
  3. Enhancement of partnerships with other agencies
  4. Using a single web portal to access all publicly available state Megan's Law databases
  5. Coordination with the NCIC Registered Sex Offender database
  6. Creation of an ICE toll free reporting number, 866-DHS-BICE

### ii. Enhancing Investigative Capabilities

1. Formation of a new multi-agency unit at the "ICE Cyber Smuggling Center
2. Appointment of Operation Predator Coordinator
3. Harnessing new intelligence capabilities to target sexual predators
4. Prioritizing investigations involving child exploitation
5. Targeting fugitive criminal aliens with sex offense histories for removal
6. Identifying alien sex offender inmates before release for prison

### iii. Working with Foreign Governments

1. Deportation notifications
2. Partnering in investigations

### iv. US Customs Child Pornography Enforcement Program

1. Differences in U.S. and European laws in what constitutes child pornography
2. Differences in how "child" and "pornography" are defined in the U.S. compared to Scandinavia, the Netherlands and other countries
3. Differences in the interpretation of what is legally considered pornography.

- b. PROTECT Act, 2003 (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today)
- i. U.S. prosecutors no longer have to prove that an accused intended to have sex with a minor, as in the past.
  - ii. The law affects US citizens and anyone legally residing in the United States, including international students and Green Card holders.
  - iii. The law also affects child sex tour operators and their co-conspirators.
  - iv. Maximum sentence of 30 years for each offense, double the previous penalty.
  - v. ICE investigations
  - vi. No statute of limitations for crimes involving the abduction or physical or sexual abuse of a child, in virtually all cases.
  - vii. More difficult for defendants accused of serious crimes against children to obtain bail; no chance for non-US citizens
  - viii. 2002 Supreme Court case *Ashcroft v. Free Speech Coalition*
  - ix. Strengthen the laws against child pornography in ways that can survive constitutional review
  - x. Wiretaps authorized
  - xi. Cooperation with other nations
  - xii. Establishes AMBER Alert Program
  - xiii. Examples of particular cases of extraterritorial enforcement ([www.ice.gov/pi/predator/newsreleases.htm](http://www.ice.gov/pi/predator/newsreleases.htm))

### III. Conclusion/Questions

Sunshine Swallers is an associate in the law office of Katine & Nechman L.L.P., where she focuses on criminal and family law. In 2002, Sunshine received her bachelor of arts degree in Art History from the University of Houston. While in college, Sunshine studied cultural and archaeological history abroad in Merida, Mexico. She also studied architectural history in Havana, Cuba in 2001. Other important work during her college years was her involvement in various peace and justice issues. She has faced riot police, water cannons, tear gas, and even arrest while practicing peaceful non-violent resistance from Quebec, Canada to Washington D.C., and right here in Houston, Texas. In 2006, Sunshine received her law degree from Thurgood Marshall School of Law in Houston, Texas. During law school, she interned with Texas Defender Service, a nonprofit defense firm dedicated to quality pro bono representation of defendants in death penalty cases.

John Nechman is a partner in the Houston, Texas law office of Katine and Nechman L.L.P., where he focuses on immigration law. He is also an adjunct professor at South Texas College of Law and the University of Houston Law Center. He is a past chair/president of several national, state, and local legal organizations, and he is a frequent speaker on immigration, business, human rights, criminal, and GLBT/HIV-related legal issues. He has twice been named a "Super Lawyer Rising Star" attorney by *Texas Monthly Magazine* and is the recipient of the 2004 Stonewall Law Award for Excellence in Advocacy, the Human Rights Campaign's 2005 Political Equality Award, the 2007 State Bar of Texas's Judge Norman Black Award, and the 2007 *Outsmart Magazine* Statue of Liberty Award.

## Child Pornography Statutes

- 18 USC § 2251 Production of child pornography (mandatory min. 15 yrs; max 30 years)
- 18 USC § 2251A Selling or buying children for sexual exploitation (mandatory min. 30 yrs; max life)
- 18 USC § 2252 Possession, distribution and receipt of child pornography (mandatory min 5 yrs for distribution or receipt; max 20 years)
- 18 USC § 2252A Possession, distribution and receipt of child pornography (mandatory min 5 yrs for distribution or receipt; max 20 years)
- 18 USC § 2260 Importation of child pornography (max 10 years)

## Federal Child Sex Tourism Statutes

- 18 U.S.C. §§ 1591, as amended by the Trafficking Victims Protection Act of 2000, prohibits trafficking by making it illegal to recruit, entice, or obtain a person to engage in commercial sex acts, or to benefit from such activities. The law applies to victims of any age; if the victim is over 18, however, it applies only if force, fraud, or coercion is used to cause the victim to engage in a commercial sex act. The law does not require the victims to have crossed a state or international boundary. Those who traffic victims in violation of this statute may face up to life in prison.
- 18 U.S.C. §§ 2421-2423. Also cover interstate and international sex trafficking, but generally require that actual travel across a state or international boundary or other interstate activity has taken place. Some of the key provisions that hold the traffickers accountable are:
  1. 18 U.S.C. § 2421, which prohibits transporting a person across state or international boundaries for the purposes of prostitution or other unlawful sexual activity and carries a 10 year maximum sentence;
  2. 18 U.S.C. § 2422(a), which prohibits enticing or coercing a person to travel across a state or international boundary in order to engage in prostitution or other unlawful sexual activity and carries a 20 year maximum sentence
  3. 18 U.S.C. § 2422(b), which prohibits using the mail or other interstate communications such as the telephone or the Internet to entice or coerce a person under 18 to engage in prostitution or other unlawful sexual activity and carries a 5 year minimum sentence and a 30 year maximum sentence
  4. 18 U.S.C. § 2423(a), which prohibits transporting a person under 18 across state or international boundaries for the purposes of prostitution or other unlawful sexual activity and carries a 5 year minimum, 30 year maximum penalty.
  5. 18 U.S.C. § 2423(b) prohibits traveling across state lines or into the United States for the purpose of engaging in any illicit sexual conduct (which includes any commercial sex act with a person under 18) and carries a 30 year maximum sentence
  6. 18 U.S.C. § 2423(c) prohibits an American citizen or national engaging in illicit sexual conduct outside the United States and carries a 30 year maximum sentence. 18 U.S.C. § 2423(c) does not require that the citizen have traveled outside the country with the purpose of engaging in illicit sexual conduct in a foreign country
  7. 18 U.S.C. § 2423(d) prohibits arranging or facilitating, for financial gain, another person's travel to engage in illicit sexual conduct and carries a 30 year maximum sentence

**U.S. Federal Law Regarding Child Sex Tourism  
18 USC 2423**

**Modified: April 30, 2003 with the passage of the PROTECT Act**

**SEC. 105. PENALTIES AGAINST SEX TOURISM.**

(a) In General.--Section 2423 of title 18, United States Code, is amended by striking subsection (b) and inserting the following:

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“(b) Travel With Intent To Engage in Illicit Sexual Conduct.--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

“(c) Engaging in Illicit Sexual Conduct in Foreign Places.--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, 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.

“(d) Ancillary Offenses.--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.

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

“(f) Definition.--As used in this section, the term ‘illicit sexual conduct’ means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

“(g) Defense.--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 a preponderance of the evidence, that

the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years."

(b) Conforming Amendment.--Section 2423(a) of title 18, United States Code, is amended by striking "or attempts to do so,".

#### SEC. 106. TWO STRIKES YOU'RE OUT.

(a) In General.--Section 3559 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) Mandatory Life Imprisonment for Repeated Sex Offenses Against Children.--

"(1) In general.--A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

"(2) Definitions.--For the purposes of this subsection--

"(A) the term 'Federal sex offense' means an offense under section 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a

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minor into prostitution), or 2423(a) (relating to transportation of minors);

"(B) the term 'State sex offense' means an offense under State law that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title--

"(i) the offense involved interstate or foreign commerce, or the use of the mails; or

"(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section

1151);

“(C) the term ‘prior sex conviction’ means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State sex offense;

“(D) the term ‘minor’ means an individual who has not attained the age of 17 years; and

“(E) the term ‘State’ has the meaning given that term in subsection (c)(2).

“(3) Nonqualifying Felonies.--An offense described in section 2422(b) or 2423(a) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

“(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

“(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

“(C) no sexual act or activity occurred.”.

(b) Conforming Amendment.--Sections 2247(a) and 2426(a) of title 18, United States Code, are each amended by inserting “”, unless section 3559(e) applies” before the final period.