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## **An Open Letter to Police Authorities Concerning Human Trafficking Related Investigations and the Affirmative Defense of Entrapment**

A growing trend in the commercial sex industry has encouraged sex buyers to buy sex online from [“digital advertisements”](#) rather than seeking prostituted-persons in public. In an effort to deter the market demand that drives commercial sexual exploitation and hold sex buyers accountable for creating this demand, some police departments have conducted undercover investigations, sometimes referred to as “sting operations” or “reverse sting operations” that target sex buyers. During these investigations, undercover investigators use fake virtual profiles to create prostitution advertisements. When sex buyers solicit these undercover officers for prostitution, law enforcement is then able to arrest and prosecute the perpetrators for the offense of “patronizing a prostitute” under 18 Pa.C.S. §5902(e). Law enforcement can also charge potential sex buyers with 18 Pa.C.S. § 901 §§A for criminal attempt to patronize prostitutes.

This letter addresses concerns expressed by [Chief Carl Graziano of the Scranton Police Department](#) towards targeting sex buyers online. In the [article](#), Chief Graziano was quoted saying these undercover operations are sensitive because [“it’s bordering on whether or not it’s entrapment.”](#) Far too often, police investigations conducted to target the sex trade result in the heightened criminalization of prostituted persons and not the criminalization of sex buyers. [In 2018, more than six hundred arrests for selling sex were recorded in the state of Pennsylvania compared to just under two hundred arrests for buying sex. Only seven of thirty-two counties that reported prostitution-related arrests in Pennsylvania arrested buyers more frequently than](#)

[sellers](#). While the CSE Institute appreciates the Reading Eagle's efforts to expose this unacceptable trend in the criminal justice system, we are concerned that Chief Graziano and other police officials are at risk of misinterpreting current law, further perpetuating the disproportionate criminalization of prostituted persons compared to sex buyers.

Entrapment is not a valid defense to charges under 18 Pa.C.S. § 5902(e) ("patronizing prostitutes") when sex buyers are targeted by undercover agents advertising sex online. The legal standard defining entrapment is clearly stated in 18 Pa.C.S. § 313: "[a] public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either: (1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or (2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it." The test for entrapment is an objective test "to determine whether there is a substantial risk that the offense will be committed by those innocently disposed." *Commonwealth v. Weiskerger*, 554 A.2d 10, 13 (Pa. 1989). A sex buyer who raises entrapment as affirmative defense to patronizing prostitutes using online advertisements will fail to satisfy this test, for at least two reasons.

First, in reference to element (1) of an entrapment defense, an undercover agent advertising sex on websites popular for selling sex does not thereby "induce the belief that such conduct is not prohibited." The officer in this scenario is merely acting under the guise of a fake persona advertising sex on websites accessed by the individual looking to purchase sex acts. The undercover agent's conduct does not induce a belief that buying sex is not a crime. Potential sex buyers, who have already gone to the lengths of visiting a website known to advertise commercial sex, are aware that their intended conduct is prohibited before clicking on the undercover agent's advertisement.

Second, in regard to element (2) of an entrapment defense, an undercover officer's fake advertisement and online persona do not "create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it." Advertisements posted on websites popular for selling sex do not run a "substantial risk" of targeting individuals who have no intention of purchasing illicit sex. Buyers exercise their own free will when they actively choose to visit a website to buy sex and search through advertisements exploiting prostituted persons. Advertisements for commercial sex are not posted on platforms accessed by the general public nor do these advertisements persuade or induce innocent individuals to purchase sex. Police officials who go undercover to arrange "dates" through these advertisements do not create a "substantial risk" that individuals will commit crimes they did not originally intend to commit. Undercover agents are simply acting to attract sex buyers who have every intention of purchasing sex before and during their interaction with undercover agents via the internet.

[Recent reports](#) reveal that [similar investigations](#) conducted by counties in Pennsylvania are successful in identifying child sexual predators online. [In Montgomery County](#), a man was caught attempting to have sex with a 14-year-old girl and exchanged sexually explicit messages online. The fictional minor was an undercover detective targeting child sexual predators on the internet. During his testimony at trial, the defendant claimed the operation was police entrapment. His defense was unsuccessful, and the judge sentenced him to 11.5-to-23-months in the county jail and eight years' probation. Since online offenders are unsuccessful in claiming entrapment in these scenarios, police officers should not be dissuaded to conduct similar online undercover operations to target sex buyers.

The CSE Institute is discouraged by any investigation, originally conducted as a means to target those responsible for human trafficking, resulting in the criminalization of those who are

sexually exploited. It is imperative authorities focus their investigative and prosecutorial resources on targeting the demand for commercial sex. Police officials should not be dissuaded from targeting demand by conducting undercover investigations operations using online portals with the fear these operations run the risk of entrapment. The CSE Institute recommends that law enforcement implement the “[Nordic Model](#)” or “[Equality Model](#)” which decriminalizes those sold for sex and places the criminalization on those that purchase sex. The truly culpable parties here are the persons who involve victims in illicit sexual activity by force, fraud or coercion as well as those who choose to use their disposable income to engage in otherwise unwanted sex acts with prostituted persons. The CSE Institute believes those who sell sex, [who have traditionally been](#) the target of law enforcement efforts, should be offered social services that address the root causes of commercial sexual exploitation – poverty, trauma, lack of resources, and addiction – to name a few. We also encourage law enforcement and all those involved to provide these victims with the services and exit strategies they need. The CSE Institute stands firm that those who buy sex drive the market for the commercial sex trade, thereby [encouraging human trafficking](#) and other forms of sexual exploitation.

The CSE Institute routinely conducts trainings on trauma-informed law enforcement techniques and protocols, as well as the substantive law regarding trafficking and prostitution. We invite members of the Scranton Police Department and all law enforcement in our Commonwealth to attend our trainings and learn more about how to combat commercial sexual exploitation by targeting the demand that drives the market for the sex trade to exist.