SEX, LIES, AND THE INTERNET:
WHAT FLORIDA JUDGES NEED TO KNOW ABOUT
INTERNET SEX CRIMES AND HUMAN TRAFFICKING

Professor Terence Coonan
Judge Raag Singhal

OBJECTIVES:

After this session, you will be able to:

1. Identify what “Internet sex crimes” and “human trafficking” are;
2. Summarize evidentiary issues; and
3. Properly analyze sentencing issues.

REQUIRED READING: PAGE

1. Terence Coonan & Raag Singhal, Sex, Lies, and the Internet: What Florida Judges Need to Know about Internet Sex Crimes and Human Trafficking (July 2015) [NJC Document] .................................................................1


Sex, Lies and the Internet: What Florida Judges Need to Know about Internet Sex Crimes and Human Trafficking

Professor Terry Coonan
Judge Raag Singhal

Learning Objectives
Internet Sex Crimes & Human Trafficking

1. Identify what they are
2. Summarize evidentiary issues
3. Properly analyze sentencing issues

Video Voyeurism
Fla. Stat. § 810.145
Penalties range from first degree misdemeanor to second degree felony
Sexual Performance by a Child 
Fla. Stat. § 827.071
- Second degree felony to promote or intend to promote
- Third degree felony to only possess or intentionally view

Computer Pornography 
Fla. Stat. § 847.0135
- Second or third degree felony depending upon circumstances
- Includes subsection prohibiting traveling to meet a minor

Transmission of Pornography by Electronic Device or Equipment Prohibited (Fla. Stat. § 847.0137)
- Third degree felony
- Each transmission can be a separate count
Selling or Buying of Minors
Fla. Stat. § 847.0145

- Statute designed to penalize selling or buying for specific purpose of producing child pornography
- First degree felony

New Human Trafficking Jury Instructions

- Adopted in 131 So.3d 692 (Fla. 2013)
- Human Trafficking instructions
  - 29.24
  - 29.25

Petitions to Expunge

- Amendments to Florida Rules of Criminal Procedure
- 137 So.3d 1015 (Fla. 2014)
Juvenile Issues

- Amendments to Florida Rules of Juvenile Procedure
- 158 So.3d 523 (Fla. 2015)

Guidelines for determination of Dependent Child of Special Needs

Human Trafficking

- Sex Trafficking (F.S. 787.06)
- Labor Trafficking (F.S. 787.05)

“transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.”

Cases in Florida

National Human Trafficking Resource Center (NHTRC) 2014 data:

- 1,428 phone calls
- 48 emails
- 67 online tip reports
- Florida continues to be number 3
Human Trafficking Cases (2014)

Total FL Cases: 364

Total U.S. Cases: 5,167

Florida follows only New York & California

Florida Resources

- FSU, Center for the Advancement of Human Rights
  - (850) 644-4550
  - www.cahr.fsu.edu
- DCF Statewide Human Trafficking Coordinator, Kimberly Grabert
  - (352) 303-1366
  - Kimberly.Grabert@myflfamilies.com

What Is Human Trafficking?

- Forms of modern-day slavery that involve the exploitation of persons for commercial sex or forced labor
- Often involves crossing an international border but does not require movement
- Traffickers use force, fraud, or coercion to control their victims
Organized Crime

- After drug trafficking, human trafficking is the most lucrative business for organized crime
- Unlike drugs, humans can be resold again and again

It’s Here in the United States

It’s Here in Florida
Trafficking: It’s Here in Florida

- Florida ranks number three in the country for human trafficking cases (following New York and California)
- Florida has been the scene of the largest sex trafficking and labor trafficking cases in the U.S.

Internet-based Prostitution

Prostitution 20 Yrs Ago: Streetwalking
10 Yrs Ago: Throwaway Newspapers

2014: Internet’s Virtual Street Corner

- Prostitution – and sex trafficking – have proliferated through websites
- Backpage allows 3rd party users to post ads for $5-$10 . . . Makes over $22 million annually
- 70% of profits from “adult services” ads
Backpage Advertising of Minors

Polk County Florida Internet Sting
(Sheriff Grady Judd)

“Operation Last House Call”
“Operation Last House Call”
- Internet child sex trafficking sting by Polk County Sheriff’s Office
- 22 suspects encountered in the sting included white and blue collar workers, a member of the National Guard, a registered sex offender and a government contractor with top security clearance.

Domestic Minor Sex Trafficking
- Minors engaged in prostitution typically enter between 12-14
- Children are being groomed into prostitution
An estimated 100,000+ victims annually
Many resort to “survival sex”
Pimps increasingly use the internet to advertise underage victims for commercial sex

Domestic Recruiting Locations
- Schools
- Juvenile courts
- Malls
- Bus stations
- Chat rooms

DMST Victims
The Reality
DMST Victims
Before and After

Tattoo Branding by Pimps

Tattoo Branding by Pimps
2011 Gordon Case
(Jacksonville)

- 15 year old female runs away from juvenile treatment & rehabilitation center in Jacksonville
- Within 36 hours meets Ian Sean Gordon
- Is taken to a private residence and introduced to crack cocaine

2011 Gordon Case
(Jacksonville)

- Kept naked at Super 8 Motel on Phillips Hwy
- Nude photos posted to Internet from Gordon’s cellphone
- For 3 weeks victim is beaten, choked, and forced into 50+ commercial sex acts
Gordon Victim Escape & Gordon Sentencing

- Girl escapes on 3rd attempt and contacts mother
- Jacksonville Sheriff's Office & FBI investigate
- Gordon given life sentence by federal judge, citing his brutality and his manipulation of the victim with illicit drugs

2013 Rodriguez Case (Orlando)

- Dec. 2010: 15 year old girl visiting Ybor City with a friend is offered a ride home by pimp Weylin “Rico” Rodriguez
- Once in his car, pimp’s accomplice Tatuana Joye hands him a gun
- Rodriguez tells the girl, “now you’re a ho.”
Rodriguez’s “Bottom Bitches”

2013 Rodriguez Case (Orlando)
- Rodriguez posts pictures of girls deemed attractive on Backpage
- Assigns “less attractive” girls to street walk on Orange Blossom Trail
- LE discovers Rodriguez exploited over a dozen minors from 3 states

2013 Rodriguez Case (Orlando)
- March 2013: Rodriguez given life sentence for child sex trafficking
- Victims attend his sentencing and note how the “power equation” had changed
Sporting Events and Sex Trafficking

Child Sex Trafficking & Sporting Events

- Major sporting events have become lucrative venues for sex trafficking of women and children
- Large groups of male sports fans with $$$$ provide demand
- Backpage ads reflect greatly enhanced supply & demand

Hotel “Incall” Prostitution

- Customer goes to the prostitute’s hotel location
- Often Internet driven
- Meant to evade traditional law enforcement brothel surveillance
Prostitution sting leads to discovery that U.S. citizen single mother is working for a pimp who takes her five-month-old infant every morning as collateral for a debt

Victim is “advertised” on Internet for “incall” sex

1st jury trial charged under Florida sex trafficking statute resulting in a conviction
Trafficking Victims Protection Act of 2000 (TVPA)

Professor Terry Coonan

Elements of Trafficking

- Force: physical violence such as beatings, rape, shootings, starvation, or confinement
- Fraud: can include false or deceptive offers of employment, marriage, or a better life
- Coercion: can include
  - Threats of serious harm to the victim, the victim’s family, or another person
  - Document confiscation
  - Threats of deportation
Physical Force Not Required
- Physical force is no longer required
- Showing of fraud or psychological coercion now suffices
- Prosecutors now have new tools to prove up slavery in U.S. courts

New Immigration Remedy
- “T” trafficking visa created by Congress to give victims temporary legal status
- Victims must be willing to participate in law enforcement investigation

Florida Anti-Trafficking Statutes
Florida Anti-trafficking Statutes

- Florida enacted its first anti-trafficking statutes in 2004 and has added to them substantially
- 2012 “Bondi Bill” greatly enhanced Florida criminal sanctions for trafficking
- Bills pass Florida Legislature unanimously

Florida Anti-trafficking Statutes

- Florida’s Criminal Code now defines and describes human trafficking offenses in one section of state law (787.06)
- All trafficking offenses are now 1st degree felonies (up to 30 years imprisonment) and Level 8-10 Sentencing
Florida Anti-trafficking Statutes

- Using Coercion for labor or services is a 1st Degree Felony (787.06(3)(a))
- Using Coercion for commercial sexual activity is a 1st Degree Felony (787.06(3)(b))

Coercion Defined (787.06(2)(a))

- Use or threat of physical force
- Restraining or isolating a victim
- Use of debt servitude (where value of labor not reasonably applied toward a debt, or length & nature of labor not limited and defined)

Coercion Defined (787.06(2)(a))

- Destroying or confiscating immigration or identification documents (either actual or purported)
- Causing or threatening financial harm
Enticing or luring a person by fraud or deceit
Providing a controlled substance to someone for purpose of exploiting them

Coercion Defined (787.06(2)(a))

Blackmail
Threat to interfere with parental rights
Exploiting developmental disability
Exploiting pornographic performance
Exploiting human needs for food, shelter, safety, or affection

Coercion for Prostitution (769.09(3))

Any parent, legal guardian, or person who has legal control of a minor and who causes the minor to engage in prostitution, perform naked for compensation, or participate in sex trafficking commits a 1st degree felony

Selling or Buying Minors into Sex Trafficking / Prostitution (796.035)
New Burden of Proof

- Anyone who knowingly or in reckless disregard of the facts engages in or benefits financially by receiving anything of value from trafficking can be prosecuted (787.06)
- Requirement that coercion be demonstrated in sex trafficking of minors now eliminated

Florida Anti-trafficking Statutes

- All human trafficking offenses can be prosecuted as RICO offenses in Florida (as organized crime) (895.02)
- Office of the Statewide Prosecutor given explicit jurisdiction over trafficking cases (16.56)

Florida Anti-trafficking Statutes

- Interception of wire, oral, and electronic communications of suspected traffickers authorized (934.07)
- Definition of “commercial sexual activity” expanded to include production of pornography and sexually explicit performances (787.06(2)(i))
Florida Safe Harbor Law (2012) 409.1678

- Establishes that the dependency track rather than the delinquency track will be the standard approach in dealing with minors found to be engaged in commercial sex (domestic minor sex trafficking victims)
- Gives law enforcement the option (strongly encouraged!) of referring minors to DCF safe harbor facilities (with 24 hour supervision) instead of detention facilities

- Follows the logic that a child who cannot consent to sex cannot consent to commercial sex
- Meant to sever the trauma bond between the child and a pimp
- DCF tasked with meeting the service needs of sexually exploited children

- Raises solicitation fine in Florida to $5,000 (796.07(6))
- First $500 will pay for drug treatment program costs and remaining $4,500 will be used to fund safe harbor shelters
- Law meant to both fund victim care and address demand side of prostitution
Florida Anti-trafficking Statutes

- Victims can now expunge criminal history incurred as a result of human trafficking (943.0583)
- Do so with the court of original jurisdiction over their crime
- Expunctions deemed to be vacated due to substantive defect in underlying criminal proceedings

Thank You!

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National Hotline Number

- 1-888-3737-888
- 24/7 hotline service that alerts local law enforcement and service providers about potential cases

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Resource for Judges and Courts
http://www.htcourts.org

- Information Cards
- Fact Sheets
- Educational Materials
- HT Guide

Session Sponsor and Collaboration

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### FLORIDA INTERNET SEX CRIMES SENTENCING FRAMEWORK

<table>
<thead>
<tr>
<th>Florida Statute</th>
<th>Degree</th>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>847.0135(5)(c)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>4 (22 pts)</td>
<td>L or L using computer; D under 18</td>
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<tr>
<td>796.05(1)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>Live on earnings of prostitute; 1&lt;sup&gt;st&lt;/sup&gt; off.</td>
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<tr>
<td>827.071(4)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>PWI promote child sexual photo material</td>
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<tr>
<td>827.071(5)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>P or view child sexual photo material</td>
</tr>
<tr>
<td>847.0135(5)(b)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>L or L using computer; D 18 or older</td>
</tr>
<tr>
<td>847.0137(2) &amp; (3)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>Electronically transmit pornography</td>
</tr>
<tr>
<td>847.0138(2) &amp; (3)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>5 (28 pts)</td>
<td>Electronically transmit harmful material</td>
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<tr>
<td>810.145(8)(b)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>6 (36 pts)</td>
<td>Video voyeurism; 2&lt;sup&gt;nd&lt;/sup&gt; or more offense</td>
</tr>
<tr>
<td>827.071(2) &amp; (3)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>6 (36 pts)</td>
<td>Use, induce or promote child sexual perf</td>
</tr>
<tr>
<td>787.06(3)(a)2.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Human trafficking with coercion for labor</td>
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<tr>
<td>787.06(3)(e)2.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Human trafficking; transport to Florida</td>
</tr>
<tr>
<td>796.05(1)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Live on earnings of prostitute; 2&lt;sup&gt;nd&lt;/sup&gt; off.</td>
</tr>
<tr>
<td>796.05(1)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Live on earnings of prostitute; 3&lt;sup&gt;rd&lt;/sup&gt;+ off.</td>
</tr>
<tr>
<td>847.0135(3)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Solicitation of child via computer for sex</td>
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<tr>
<td>847.0135(4)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>7 (56 pts)</td>
<td>Traveling to meet a minor for sex</td>
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<tr>
<td>787.06(3)(e)1.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>8 (74 pts)</td>
<td>Human trafficking labor child transport</td>
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<tr>
<td>787.06(3)(f)2.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>8 (74 pts)</td>
<td>Human trafficking coerce sex adult trans</td>
</tr>
<tr>
<td>787.06(3)(c)1.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>9 (92 pts)</td>
<td>Human trafficking labor alien child</td>
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<tr>
<td>787.06(3)(d)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>9 (92 pts)</td>
<td>Human trafficking coerce sex alien adult</td>
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<tr>
<td>787.06(3)(f)1.</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; PBL</td>
<td>9 (92 pts)</td>
<td>Human trafficking comm. sex child trans</td>
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<tr>
<td>787.06(3)(g)</td>
<td>Life</td>
<td>10 (116 pts)</td>
<td>Human trafficking commercial sex child/incapacitated/mentally defective</td>
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</tbody>
</table>

Keep in mind at sentencing that a victim of any of the above crimes who appears before you for sentencing as a defendant may qualify for downward departure under the mitigating circumstances statute. **Fla. Stat. § 921.0026(2)(g)** “the defendant acted under extreme duress or under the domination of another person.”
I. Character Evidence

Special consideration is given pursuant to Fla. Stat. § 90.404(2)(b) and (c) regarding admissibility of “other crimes, wrongs, or acts” in cases involving child molestation or sexual offenses.

90.404(2)(b) reads as follows:

“in a criminal case in which the defendant is charged with a crime involving child molestation, evidence of the defendant’s commission of other crimes, wrongs or acts of child molestation is admissible and may be considered for its bearing on any matter to which it is relevant.”

This subsection applies to crimes under the following statutes:

- 787.06(3)(g)
- 827.071
- 847.0135(5)
- 847.0145

90.404(2)(c) contains the same language as (b) but replaces “child molestation” with “sexual offense.”

This subsection applies to crimes under 787.06(3)(b),(d),(f) and (g).

Remember that 90.404 normally allows admissibility of such evidence only if relevant to proving motive, opportunity, intent, preparation, plan, knowledge or absence of mistake. The same relevance analysis is not necessary for internet sex crimes and human trafficking crimes as listed above.
II. Double Jeopardy

The difference between “any” and “a”

Fla. Stat. §827.071

- (4) intent to promote “any”
- (5) knowingly possess, control or intentionally view “a”

See *State v. Parella*, 736 So.2d 94 (Fla. 4th DCA 1999)

- Intent to promote “any” generally means that ALL images merge into one count
- Possession of “a” photograph generally means EACH image can be a separate count

III. Double Jeopardy and Fla. R. Cr. Pro. 3.850

Recent cases

- **Chessser v. State**, 148 So.3d 497 (Fla. 2d DCA 2014)
  Nine photographs

- **Cocking v. State**, 154 So.3d 1198 (Fla. 2d DCA 2015)
  Forty-five photographs

Both cases reversed for ineffective assistance of counsel as each case should have been one count.

Other interesting cases:

- **Crosby v. State**, 757 So.2d 584 (Fla. 2d DCA 2000)
  Possession of several copies of the SAME photograph properly charged as multiple counts.

Note also that possession of ten or more photographs elevates the degree of the charge from a third degree felony to a second degree felony.

- **Stowe v. State**, 66 So.3d 1015 (Fla. 1st DCA 2011)
  One photograph but multiple children equals ONE count.
IV. Unique Discovery Issues

**State v. Ross**, 792 So.2d 699 (Fla. 5th DCA 2001)

Discovery which includes illegal images should not be given to the defendant to possess. In this case, the State and defense made arrangements to view the evidence in a manner in which FDLE retained possession of the images.

V. Elements and Defenses

Age

Knowledge of victim’s age is not an element of offense of use of child in sexual performance.

**Nicholson v. State**, 748 So.2d 1092 (Fla. 4th DCA 2000)

Lack of knowledge of victim’s age is not a defense to the charge.

**Denhart v. State**, 987 So.2d 1257 (Fla. 5th DCA 2008)

Child

The victim must be a child with regard to the sexual act.

**Parker v. State**, 81 So.3d 451 (Fla. 2d DCA 2011)

**Stelmack v. State**, 58 So.3d 874 (Fla. 2d DCA 2010)

In each of these cases, an adult woman’s body was “photoshopped” with a child’s face. The court in each case held that this did NOT constitute child pornography.