

Sex Laws in Thailand Part 1

US Sex Laws Abroad: The Long Arm of Uncle Sam

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3 September 2009

This article is the first in a three-part series entitled Sex Laws in Thailand. This first installment explores US sex crime laws under the Protect Act and the prosecution of US citizens engaging in illegal sexual activities in Thailand. Part 2 explores Thai sex laws and their application to the local sex industry including go-go bars and saunas; Part Three addresses the activities of civil society and international law enforcement in Thailand working to enhance and strengthen sex crime laws and bring offenders to justice.

[Sex Laws in Thailand](#) Part 2: Laws Regulating Commercial Sex and Entertainment Places

[Sex Laws in Thailand](#) Part 3: Civil Society and Law Enforcement

US citizens, and even non-US citizens, may be surprised at the scope and reach of US federal law against the sexual abuse and exploitation of minors. If a US citizen comes to Thailand and engages in sexual activity with a seventeen-year-old girl from a go-go bar, he could be subject to a penalty of up to 30 years in a US federal prison. Further, a non-US citizen residing outside the US may be extradited to the US based on trading child pornography with a US citizen. This article provides a broad overview of the US laws controlling various sexual and pornographic activities outside of its borders.

1. The very long arm of the law – the extraterritorial application of US laws against the sexual abuse of children and child pornography

By way of example, on July 20, 2009, John W., a Canadian citizen who had been living in Thailand, was extradited from the United Kingdom to the United States to face charges in federal court in the State of New Jersey. He had been arrested in London on December 15, 2008 on charges relating to the sexual abuse of boys and the production of child pornography in the Kingdom of Thailand.

John W. faces three counts relating to sex tourism (each count carrying a maximum penalty of 15 years), eight counts relating to the production of child pornography (each count carrying a maximum penalty of 15 years) and seven counts relating to the distribution of child pornography (each count carrying a maximum penalty of 10 years). He is also subject to a maximum fine of \$250,000 per count.

John W. was neither a citizen nor a resident of the United States, the alleged sexual abuse and production of pornography occurred in Thailand and the alleged victims were Thai children. He had in fact never even applied for a US visa through the [US Immigration-Thailand](#) offices, and as such never actually set foot on US soil prior to the extradition. John W.'s alleged contacts with the United States consisted of electronic communications with one U.S.

citizen, Wayne Nelson Corliss, who has already pled guilty to charges relating to sex tourism and child pornography.

John W.'s alleged crimes occurred between 2000 and 2002, so he is not subject to the Prosecutorial Remedies and Other Tools to End Exploitation of Children Today Act of 2003—the “Protect Act”. Among other things, the Protect Act provides for substantially stiffer penalties, removes the need for prosecutors to prove intent (*i.e.*, that the defendant traveled abroad with the intent to participate in illicit sexual activity) and expands the list of persons liable under law to include more than the actual exploiters and principals involved in illegal businesses.

2. History of the Protect Act:

US federal law provides a penalty of 10 years to life for any person who knowingly transports a minor in interstate or foreign commerce or in any US commonwealth, territory or possession with the intent that the minor engage in prostitution or any criminal sexual behavior. For those readers who did not study federal jurisdiction in a US law school, federal jurisdiction may be established quite easily by simply crossing a state border while traveling from US one state to another or having a prohibited item or communication pass beyond US state border is a that is required. The same penalty also applies to any person who, using the US mail or any means of interstate or foreign commerce or in any US commonwealth, territory or possession, “knowingly persuades, induces, entices, or coerces” any minor to engage in prostitution or any criminal sexual behavior. Criminal sexual behavior includes child pornography.

It is also illegal for any US citizen or legal permanent resident to: (a) travel in foreign commerce “for the purpose of engaging in any illicit sexual conduct with another person” or (b) travel in foreign commerce and actually engage in “any illicit sexual conduct with another person”. The penalty for the foregoing is up to 30 years imprisonment. The same penalty is also applicable to anyone who attempts or conspires to commit any of the foregoing crimes or who for personal gain “arranges, induces, procures, or facilitates” the travel of any person knowing that such person is traveling in foreign commerce with the intent to engage in illicit sexual conduct. Illicit sexual conduct is defined as (i) any commercial sex act with a person under 18 years of age (reasonable belief that the person was at least 18 years old is an affirmative defense) or (ii) any sexual abuse of any person under 18 years of age, which includes any sexual contact with any person under 16 years of age regardless of consent. The US federal criminal code also makes aiders and abettors liable as principals for crimes against the United States.

Repeat offenders are subject to life imprisonment (unless the death sentence is applicable) for a federal sex crime involving a minor if the defendant had previously been convicted of a federal or US state sex offense involving a minor. Otherwise, penalties for repeat offenders involving sex crimes are doubled.

The statute of limitations is not applicable during the life of the victim for violations of federal laws against the sexual abuse of minors. In addition, if later, prosecutions may be brought up to ten years after the crime.

3. Child Pornography

Production

US federal law prohibits any person from “us[ing], persuad[ing], induc[ing], entic[ing], or coerc[ing]” any minor to engage in sexually explicit conduct (which may be actual or simulated) to produce a visual depiction (including a live transmission) if such person knows or has reason to know that such visual depiction will be “transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed” or if such visual depiction is actually so transported or transmitted or if such visual depiction was produced or transmitted with materials that have been transported in or affecting interstate or foreign commerce.

It is also unlawful for any person to have a minor assist in any of the foregoing or to transport any minor in or affecting interstate or foreign commerce for the purpose of engaging in any of the foregoing or for any parent or guardian to allow a minor in his or her custody to do any of the foregoing. It is also unlawful to seek or offer any such visual depictions or to seek or offer any minor for the purpose of producing any such visual depictions if any notice or advertisement is transported by US mail or using or in interstate or foreign commerce or if the defendant knew or should have known that such means would be used.

The Protect Act added a specific provision for activity outside the United States, making it unlawful for any person to “use, persuade, induce, entice, or coerce” any minor make (or have a minor assist in making) such visual depictions outside of the US where such person intends such visual depictions to be transported or transmitted to the US or where such person actually transports such visual depictions to the US.

The penalty for producing such visual depictions is 15 to 30 years imprisonment (increased to 30 to 50 years if a person has a prior related conviction or 35 years to life if a person has two or more related convictions). If a death occurs in connection with the production of such visual depictions, the penalty is increased to 30 years to life. Any person who transfers or obtains custody for the purpose of producing such visual depictions is subject to a penalty of 30 years to life. Attempts and conspiracies to commit the above crimes are subject to the same penalties.

Distribution

The transport, sale or receipt of any “visual depiction” of a minor engaging in “sexually explicit conduct” is a violation of US federal law if the US mail or any means or facility of or affecting interstate or foreign commerce is used. The possession (or the accessing with intent to view) of any materials (books, video tapes, etc.) containing any such visual depiction is also unlawful if said materials have been delivered by US mail or transported using any means or facility of or affecting interstate or foreign commerce. The penalty for transport, sale or receipt is 5 to 20 years imprisonment, and the penalty for possession or accessing is up to 10 years imprisonment, subject in each case to increase for repeat offenders.

US federal law contains similar prohibitions against “child pornography,” which is broadly defined to include both (i) digital or computer-generated images of a minor engaged in “graphic sexual intercourse”, “lascivious simulated sexual intercourse” or graphic or lascivious simulated bestiality, masturbation, sadism or masochism or “graphic or simulated

lascivious exhibition of the genitals or pubic area” and (ii) “created, adapted, or modified” depictions of an identifiable minor engaged in sexually explicit conduct. These provisions also prohibit the advertisement or solicitation of child pornography and the production with intent to distribute any child pornography which is “an adapted or modified depiction of an identifiable minor”. The penalties correspond to the penalties set forth in the previous paragraph, except that the production with intent to distribute child pornography which is an adapted or modified visual depiction carries a penalty of up to 15 years imprisonment.

Attempts and conspiracies to commit the above crimes are subject to the same penalties.

[Sex Laws in Thailand](#) Part2: Laws Regulating Commercial Sex and Entertainment Places

Related Documents:

[US Extradition Treaty](#)

[Us Law Enforcement Cooperation: A case study in Thailand](#)

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