



Defending Against the Charge of Patronizing Prostitution

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Disclaimer

The content in this book is intended to be general legal information for unrepresented defendants. I do not know the specifics of your case, and this book is not legal advice based upon the particular details of your case. I do not automatically become your attorney just because you are reading this book. If you are already represented by an attorney, then you should listen to him or her. With that out of the way, happy reading!

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Question #1: How much trouble am I in?

As with many sex crime offenses, the greatest penalty of a conviction may not be not the actual potential jail time, but the social stigma it can cause. Imagine that a potential employer does a background check on you, and he or she learns that you were convicted for trying to sleep with a prostitute! So whether you actually have to serve jail time on it or not, your primary focus should be trying to avoid a conviction altogether.

Depending on the facts of the case, a conviction for this offense could result in jail, placement on the Sex Offense Registry (in some cases), a felony on your record, loss of your marriage, child visitation, employment, immigration status, loss of car or house (in some cases), and many more.

You are about to have to make a very difficult decision – do you have the heart for the battle to come? It will be very tempting to plead guilty rather than go to trial because it's cheaper, quicker, and easier ... but you will be wearing a scarlet letter forevermore.

Question #2: Do I have a good chance at trial?

I can only give general advice here without having read the specific facts in your case, but I can say this – often, when the Vice Squad runs an undercover operation, they initiate the takedown signal too early, which can help us argue that there was not a completed transaction.

This is often what happens: a man is interested in hiring a prostitute who is actually an undercover officer. Whether he tries to engage her through a profile such as backpage.com or whether he approaches her on the street, there is some brief conversation about what acts the alleged prostitute will do in exchange for money. In many cases, the defendant either decides not to complete the transaction by actually tendering money, but there is a tentative verbal agreement.

My position (obviously defense friendly) is that unless money is exchanged, the act has not been completed. Take, for example, a drug sale. Without money, there is no sale; only talk. If someone came to your house and wanted to

buy your car and you and he agreed on a price, you still wouldn't hand the keys over to him until he paid for it! Everything before that is just negotiations in my opinion.

However, the statute does not specifically say that money has to be tendered. If the judge or the jury decides that the offense has been committed and does not require money, then the appellate court will likely uphold the verdict. The prosecutor must show that the criminal defendant was “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.” Tenn. Code Ann. § 39-13-512.

Even if the judge or jury decided that the transaction had not been completed, the facts may still support a conviction for “attempted” patronizing prostitution. A person has committed criminal attempt when they “act with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.” Tenn. Code Ann. § 39-12-101. Under that definition,

a person discussing sex acts with an undercover officer in exchange for compensation could be found guilty of at least criminal attempt of patronizing prostitution.

In rare circumstances, the officers act too aggressively and can open themselves to a claim of entrapment. Let me begin by saying that entrapment very rarely works – it is not enough merely to provide an opportunity; instead, law enforcement officials must induce or persuade an otherwise unwilling person to commit an unlawful act when the person was not predisposed to do so. Tenn. Code Ann. § 39-11-505.

Question #3: What facts can make the charge more serious?

Patronizing prostitution is a Class B misdemeanor. The range of punishment for a Class B misdemeanor is “not greater than six

(6) months or a fine not to exceed five hundred dollars (\$500), or both.” Tenn. Code Ann. § 40-35-111.

Patronizing prostitution within one hundred feet (100') of a church or within one and one-half (1.5) miles of a school is a Class A misdemeanor. The range of punishment for a Class A misdemeanor is “not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars (\$2,500), or both.” Tenn. Code Ann. § 40-35-111.

The statute specifically states that “a person convicted of patronizing prostitution within one and one-half (1.5) miles of a school shall, in addition to any other authorized punishment, be sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars (\$1,000).” In most cases, this will be the minimum sentence offered by the prosecutor.

Although it is a rare occurrence, if the defendant is accused of patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability, the offense becomes a very serious

felony of trafficking for commercial sex acts under § 39-13-309. This offense can potentially lead from a range of eight to fifteen years in prison, depending on various facts.

Question #4: Could this charge put me on the Sex Offender Registry?

Patronizing prostitution will not normally place a criminal defendant onto the Sex Offender Registry. However, if the defendant is accused of patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability, the offense becomes a very serious felony of trafficking for commercial sex acts under § 39-13-309.

Along with a range of eight to fifteen years in prison, the offense will place the

defendant on the Sex Offender Registry. Tenn. Code Ann. § 40-39-202(20)(A)(xix).

Question #5: Can I get a diversion on this offense?

If you've done some research online (perhaps on my website, which is located at MemphisDiversions.com), then you know that judicial diversion is a wonderful program that allows individuals with little to no criminal background to enter a guilty plea in a manner that avoids future jail time and the eventual expunction of the criminal charge upon the successful completion of a probationary period. Tenn. Code Ann. § 40-35-313.

After the criminal defendant enters a guilty plea, the sentence is suspended and the charge would show on a criminal background check as a pending offense (not a conviction). If the criminal defendant is successful, he or

she has achieved the same result as winning at trial.

Patronizing prostitution is eligible for diversion unless the defendant is accused of patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability. In that case, it is defined as a “sexual offense” under Tenn. Code Ann. § 40-39-202(20)(A)(xix).

Question #6: What defenses are unavailable?

A criminal defendant seeking to raise a defense against the criminal charge of patronizing prostitution cannot argue that because the alleged prostitute was a law enforcement officer and was never going to engage in a sex act, the offense never could have actually occurred.

The statute specifically states that “it is not a defense to a violation of this section that the subject of the offense is a law enforcement officer.” Tenn. Code Ann. § 39-13-514(d)(1).

Additionally, the statute states that a criminal defendant cannot raise a defense that the victim of the offense is a minor and consented to the offense (because a minor cannot consent as a matter of law). Tenn. Code Ann. § 39-13-514(d)(2).

Question #7: Do I have to get tested at the Health Department?

If a criminal defendant is convicted for patronizing prostitution, the court shall order the convicted person to submit to an HIV test. The test shall be performed by a licensed medical laboratory at the expense of the defendant. The defendant shall obtain a confirmatory test when necessary.

The defendant shall also be referred to appropriate counseling. The defendant shall return a certified copy of the results of all tests to the court. The court shall examine results in camera and seal the record. Tenn. Code Ann. § 39-13-521.

Question #8: Could law enforcement seize my house or car over this?

If a criminal defendant was found to have used his or her house or any personal property in the commission of patronizing prostitution, the real or personal property is subject to judicial forfeiture, but only if the offense is committed against a person under eighteen (18) years of age and was committed on or after July 1, 2006. Tenn. Code Ann. § 39-13-530.

Patronizing prostitution

Tenn. Code Ann. § 39-13-512:

"Patronizing prostitution" means soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.

Tenn. Code Ann. § 39-13-514

- (a) A person commits an offense under this section who patronizes prostitution.
- (b)
 - (1) Patronizing prostitution is a Class B misdemeanor.
 - (2) Patronizing prostitution within one hundred feet (100') of a church or within one and one-half (1 1/2) miles of a school, such distance being that established by § 49-6-2101, for state-funded school transportation, is a Class A misdemeanor.
 - (3) A person convicted of patronizing prostitution within one and one-half (1 1/2) miles of a school shall, in addition to any other authorized punishment, be

sentenced to at least seven (7) days of incarceration and be fined at least one thousand dollars (\$1,000).

(4)

(A) Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is punishable as trafficking for commercial sex acts under § 39-13-309.

(B) Nothing in this subdivision (b)(4) shall be construed as prohibiting prosecution under any other applicable law.

(c) As used in subsection (b), "school" means all public and private schools that conduct classes in any grade from kindergarten through grade twelve (K-12).

(d) It is not a defense to a violation of this section that:

(1) The subject of the offense is a law enforcement officer; or

(2) The victim of the offense is a minor and consented to the offense.

Notes

Booking and processing date: _____

Court date: _____

Court division: _____

Potential favorable witnesses: _____

Questions for the attorney: _____

Special Offer

If you found this consumer guide to be helpful and would like to read more, please contact me using the information below to request my book, 10 Mistakes that Can Sabotage Your Criminal Case.

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About the Author

J. Jeffrey Lee is one of only five Certified Criminal Trial Specialists in Memphis, Tennessee. He has been certified as a Criminal Trial Specialist by the Tennessee Commission on C.L.E. and Specialization and Certified as a Criminal Trial Specialist by the National Board of Trial Advocacy.

He has attended the Tennessee Criminal Defense College on numerous occasions, along with the renowned National Criminal Defense College in Macon, Georgia. He was recently inducted into The National Trial Lawyers Top 100 Trial Lawyers. He has also been selected as a 2015 Mid-South Rising Star by Super Lawyers. However, the distinction that gives J. Jeffrey Lee the greatest pleasure is the Client's Choice award from AVVO, and the "10 Best" Client Satisfaction Award from the American Institute of Criminal Law Attorneys, because that means that his clients are pleased with the representation he provides. He is a member of TACDL (Tennessee Association of Criminal Defense Lawyers) and NACDL (National Association of Criminal Defense Lawyers).

Mr. Lee began as an Assistant Public Defender in the 25th Judicial District of Tennessee (Lauderdale, Tipton, Fayette, Hardeman, and McNairy Counties). His responsibilities included representing the indigent accused in General Sessions Court, Circuit Court, and the Court of Criminal Appeals. He performed a variety of matters, including preliminary hearings, suppression hearings, jury and bench trials, appeals, revocation hearings, and post-conviction hearings.

After working as a public defender, he formed his own law practice and he has recently narrowed and focused his practice in the area of serious felonies and sex crimes in an effort to serve an underrepresented and marginalized group of defendants who desperately need a first-rate defense.

The Law Office of J. Jeffrey Lee primarily serves the greater Memphis area. If you or someone you love needs legal representation, please contact the author.

Testimonials

“Mr. Lee was an astounding criminal defense lawyer for my needs. He was professional, prompt, available, dependable, and reliable. He kept me informed and responsive throughout the court dates and situations. He was able to deliver better results than I imagined! Thank you for your dedicated service!”

— Mrs. M Y

“Very Good Person to be around and make you feel comfortable, very knowledgeable and professional. I would definitely use his services again if needed and would recommend him to future clients.”

— Kandice

“I actually got his contact information from a close friend of mine and he had suggested Jeff right off the bat. The first time talking to Jeff he knew exactly what needed to be done for this court date to go smoothly and well in my favor. His knowledge and calm collective way of handling my case was exactly what I was

looking for. Thanks again Jeff I really appreciate your help!”

— Kris

“This attorney provides services that are of a high caliber. He has handled two different cases for me over the past couple of years. He kept me informed of each step involved with this case. Additionally, he explained the worst case outcome and the best case outcome. Thanks to his tenacity, we came out with the best case outcome! I recommended him to several people during the course of my legal case.”

— Federal Crime Client

“Mr. Lee impressed me from the moment I retained him...actually before I gave him any payment at all!! He was accessible throughout my entire legal issue. He not only got my case dismissed, he helped me get my case expunged. I never even had the chance to be nervous that he would not show up on time. He always showed up early and was extremely prompt with all of my paperwork. I trust Mr. Lee and am very comfortable and confident to recommend him to anyone facing any type of

legal issue. I am also happy to say that I found a friend in Jeff and did not feel like just another client. :-)"

— Anonymous

"Jeff took good care of my case. Right from the onset he told me I could get a diversion, and that is what eventually happened. He took care of paperwork effectively, met me promptly at court appointments, and helped me out in court when the judge was pondering why a higher-level offence wasn't issued. He knows what he's doing, and if he didn't know something I would trust him to become knowledgeable in order to help a client."

— Aaron

"Mr. Lee helped me make the best of a very stressful situation. I was simultaneously facing college graduation and jail time (not that they are related.) I was on the fence between being on top of the world and losing it all. Mr. Lee pushed me back towards the former I would definitely hire him again!"

— Adam

Awards



CLIENT SATISFACTION AWARD

American Institute of
Criminal Law Attorneys™



Super Lawyers®



National Board of Legal Specialty Certification

