

# Internet Sex Stings: Fact Or Fiction?

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The following text found in this guide has been mostly transcribed from Gary Schwartz's participation on the "Registration X" Radio Show. This event occurred Sunday, September 30<sup>th</sup> 2012. The radio show host was Donavon Lace and there were different participants on the show that called in.



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**Donavon:**

In the manner which these stings are being done - are they not going by the Legislation, or are they finding loop holes in Constitutional law, or does it just come down to kind of a case by case situation?

**Gary:**

It is a case-by-case situation, but it's my position that basically they are casting the net too wide. They are being too aggressive in bringing people in to try to describe them as sex offenders and then try to convince them to hook up with these mythical kids who may and may not exist. Briefly, and I know we're going to get into this throughout the show, but one of the ways that they most often do this is to put an ad on a website like Craigslist, or Backpage, and the ad won't even mention sex with the minor. It may say something to the effect of "single mom looking to teach her daughter about life". And because on a place for casual sex, like Craigslist for example, people are online looking for adult sexual encounters. There isn't anything illegal with that. So, a person may respond to that ad. It is law enforcement personnel posing as a single mother, and the individual surfing the web with no intention to have any sex with the single mom's kid, who again doesn't exist. But the officer will push, and keep bringing a kid up, and often what happens is that the defendant in the case will give in and say "all right" because they feel like they have to say anything to have sexual relations with the adult, but they never have any realistic intention to meet a child at all.

**Donavon:**

OK. So, an individual answers an ad, goes over there, he tells the person that he needs to know what they're dealing with here, and a person reveals himself not to be a child, but to be a grown man. Yet they still arrested him. How was this possible?



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**Gary:**

Because of the way the statute is worded, it is tricky. It's "traveling with the intent to meet a minor". From the State's perspective, he didn't see the guy get out of the house and present himself as an adult man until he arrived at that house. That being the case, traveling took place before the revelation that there is a grown man. The State's argument would be that prior to the grown man coming out of the house, the individual knew it would be an underage kid. That's the State's perspective. Now, from the defensive perspective, when you're picking the jury, you're going to have to talk very candidly and do your best discussing homosexuality. I understand that in some jurisdictions it's hard to pick a fair juror who won't convict someone because

they are gay, or engaging in a sexually non-conservative lifestyle. You also have to get used to the fact that it's not only gay men, but heterosexual people going online for the purpose of hooking up for a sexual reason as well. You also have to bring up the fact that role play is not at all uncommon.

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**Donavon:**

Here is my question: this seems to hinge on belief?

**Gary:**

That's true, absolutely.

**Donavon:**

I could say, the following person who goes to church on Sunday on a consistent basis, and reads their bible; how do I prove they believe in God? They can even engage in actions, but how do you prove belief?



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## Gary:

That's an excellent point that you raise. To follow your analogy, if the State were prosecuting someone for believing in God, then their proof would be like this:

- He goes to church every Sunday
- He reads the bible
- He knows the parables
- He knows the verses

*You can only prove intent, which is required to convict someone of this crime by circumstantial evidence.*

Even if that's true, that doesn't necessarily mean that he believes in God. It is circumstantial evidence that he believes in God. Similarly,

when they try to put these cases together, the State really can't know what's going on in someone's mind, so they do the best they can to put together a situation. This is where much damning circumstantial evidence is constructed to imply intent. Depending on the investigation, they do better or worse jobs.

## Donavon:

Is it illegal for me to go over and meet the older sister, if that's my intent is just to be with her?

## Gary:

Technically no, but again, keep in mind, it's a whole case about circumstantial intent. Knowing that to be the case, if you do have a legitimate interest in rendezvousing with a 19 year old, you have to make it clear, and they're not going to leave alone. If they're law enforcement, they're going to try to push it. Sometimes they may go further and start saying things along the lines of a sister joining in sexual relations. To avoid arrest, you have to be explicitly clear that you're absolutely not interested in the young person.



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*...a solicitation is an offer.  
You could really say the  
person that is putting the  
ad is solicitor.*

There are certain things to know about Entrapment in Florida. It's up to the defendant to show that they were entrapped, because entrapment is basically saying, "I committed a crime, but I committed it because the cops went too far". So, the first thing you have to show is

inducement, which is that you only did what you did because of the police. Then if you can show that the State has to come back and show that you were pre-disposed of the crime regardless of the cops pushing too hard. In a lot of these situations, the defendants have no prior convictions. If you can convince a judge that there wasn't inducement, and that the cops went too far, many times the State is not going to prove that you are pre-disposed to the crime. You have a shot of getting a case thrown out for the entrapment.

## **Donavon:**

We know how aggressive a DA can be in this type of cases: extremely aggressive. They're dealing with an unprotected class of people, a crime that most people consider heinous. They know 9 times of 10 for jury is a slam dunk, so why would they drop the charges?

## **Gary:**

They weren't convinced that they didn't go too far. At a certain point, one of the charges they always try to throw to people in these things is solicitation.

## **Donavon:**

In some situations, the State didn't have enough evidence to say that an individual was traveling to go meet a minor for sex. They knew that wasn't the case, they didn't have the evidence to prove. Why didn't they just drop the case. Why does the DA not just dropped cases?



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## **Gary:**

The truth of the matter is that the actual State attorney is an elected official, and they have to run for re-election. They don't want to look soft on these crimes. They don't want to be seen by the voting populates as someone who is dismissing charges against perceived pedophiles. That's also from the individual assistant State attorney's perspective, they are all watched by the supervisors. I would also say that 99 percent of time, they want to get something out of the case they're prosecuting versus letting it go. The reason for this is that it is typically appreciated in the State attorney's office. Going to trial and prosecuting hard cases rather than dropping the case is unfortunately the situation because that is valued above dismissing the case quite often.

I do want to say there are individual exceptions to that, and there are prosecutors that are very careful and take their oath of attorney very seriously. They will do the right thing even if it's politically unpopular.

To raise another issue: let's assume we're playing devil's advocate in worst case scenario. You believe the person to be a child. You're going to meet her at a public place, with no intention at during that rendezvous in having sex - that's not a crime but it depends on the content of conversation. Maybe they can get you for misdemeanor contribution to the delinquency of the minor. But you know, the purpose of the traveling has to be for something sexual for you to be guilty for the crime.

## **Donavon:**

So let's say all through this conversation he's trying to break this off, he doesn't want to meet, he's got a question ability about the age, he's not certain, he's not a 100 percent OK with what's going on. It's obvious he didn't jump right on this, and say, "oh, you're 14, I'm on my way." Finally, with the officers badgering him, why is it legal for them to continue, the attack, so to speak, or the solicitation to him. When he says no, why doesn't no mean no?





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**Gary:**

Really, what we have is your mind being changed by the persistence of law enforcement, where your initial thought pattern was “I’m not interested in doing this.”

**Donavon:**

Is it illegal for 2 adults in a chat room or via an e-mail communicate, in role play situation: one is an adult or a teacher, and one is minor. This could typically morally outrage people; is that illegal to do that?

**Gary:**

Absolutely not. There are two different types of entrapment. One is with a request of inducement, we already spoke about. But the other one is objective entrapment. With that one, the question is whether a cop has broken down or induced someone to commit a crime. Is what the police do too much if what they say in determining whether the defendant was objectively entrapped and determines it violates the due process of the accused. There is nothing wrong with role playing, taking the morality out of it from a purely legal perspective, if there is no kid ever involved, and just talking and pretending to have sex with a child. It might be distasteful, but it’s not illegal.

*No one should be tested in this manner, or just continually pushed to the breaking point until they are basically bullied into committing a crime.*

By law enforcement role playing as well, and the fact their role playing is being perceived by defendants as role playing is not being brought across to the jurors. Law enforcement will try to get out from answering the question “isn’t it true that people engage sexually in online role play”. They will not give you a straight answer to that question because they’re counting on moral outrage and a lack of sophistication with this subculture of people going online for sexual reasons. There has been some research here locally with regards





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to Orange County sheriff's agency. There is a Statute in 2007 that we have pulled information from with regards to every prosecution in Orange County, and a 100 percent of the prosecutions came out of these stings in 2007. Outside of the police sting, there has never been arrest in Orange County for someone violating this law. This sort of fabricated sense of fear, the media and law enforcement have been incredibly successful to a policy of miss information and selective information and really creating this boogeyman out of the idea of Internet sexual predators.

## **Donavon:**

There are different was of these kinds of cases being thrown out based on certain circumstances. If the case isn't really substantial, how do you get rid of it?

## **Gary:**

To start, the court has basically said being drunk or high is no longer a defense to a crime. It's sort of taken away from us. Now in regards to questions about capacity - if the guy is incompetent by reason of mental retardation, that person should not be brought to trial. It can also be raised sort of like insanity defense. The other way that I think it is relevant in this case is because, obviously, the cops feel like they can go so far with pushing something without entrapping someone. There's a threshold if someone has mental capacity issues; they don't have the understanding and sophistication of a normal adult. That being the case, it will probably take a less aggressive person to get that person to do something that they might not normally have done. I think that the entrapment argument is even stronger in that situation. I do think there needs to be a hard line about how long law enforcement leaves it alone.

When law enforcement is setting these stings up, many times the agency will have an operational plan in place. That's sort of gives a set of rules that the officer are suppose to obey by, in the theory at least. When you're defending a case and you have a private lawyer, the public defender doesn't matter. They should really check to see if there are operational plans that were used in this sting and if the



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way this sting was conducted with regards the individual and whether they comply with the operational plan.

There needs to be some sort of objective line to that. They play it both ways, and it is unfair. Again, there is going to be a recognition that drugs and alcohol have some effect on a person as what's acceptable and what's not acceptable, why shouldn't that apply to a defense, or least a mitigate in criminal cases.

## **Donavon:**

I will go a step further, because I love analogies, is it that why we have ladies night at the bar? Two-for-one drinks, because we think that when women are intoxicated, guys have a better shot with them? I have a much better shot than if I am standing in front of Macy's.

## **Gary:**

To bring this into the fold with regards to the contacts with these things, I think they were encouraging the defendant to either drink or take drugs during a conversation. I think that would certainly help with the entrapment defense too.

*the way they drafted this statute is, as soon as you get up line, you take one step out to door, even if you change your mind you're still technically guilty.*

## **Donavon:**

Hypothetically, if I were walking to a bank, and I had the means to rob that bank, I had the note, and a weapon, and I walked in, and I walked in to the lobby, and I said no, not going to do this, and I leave the bank, have I committed the crime?



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## **Gary:**

No, and that's an excellent point. That's called renunciation, and that's absolute defense to attempt to a bank robbery. But the way they drafted this statute is, as soon as you get one step up to door, even if you change your mind you're still technically guilty. They've taken the abandonment defense away from us by the way they drafted a statute. This abandonment defense basically exists in every **other** attempted crime in Florida.

The other thing, in the context of drugs, there is actually some case law, federal and state, which says they're not allow to use sex to get someone to commit a crime. For example, if I am an undercover officer, and I'm saying, I will sleep with you, if you bring me whatever amount of cocaine, that's improper.

## **Donavon:**

It scares me, because being an African-American, and I don't really like that term, OK, but it's politically correct, there was a time that that same moral outrage was directed at my race of people. There was manipulation of the law. Laws didn't applied like they applied to everybody else.

We were protected on the Constitution, just like everybody else. I'm always afraid when something like this happens, because if you can do it to this sector of people, these class of people who enjoy online role play, who else can you do it to. When does it stop? If we are a nation of laws, and we do live under the Constitution, why is it OK to apply the laws only when we are not morally outraged. When you're accepted in a community, but if you're in a sector of a non protected class, the Constitution no longer applies to you. Why does that happen?

## **Gary:**

You said that wonderfully. What use is the Constitution if it doesn't apply to unpopular subsection of the population, and that's exactly why it's important.



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**Donavon:**

I do think it's important, because a lot of people believe that we live in a democracy, that we are democratic nation. We're not a democratic, we're Republic. And we don't want to live in democracy, under those guys, because a democracy is through mob rule, which means mob rule can say you have free speech this year, and then it is voted out next year. We live in a Republic, because there is certain right that cannot be removed from you, no matter what.

Your constitutional rights can't be voted away, they can't be taken away, and when things go against the Constitution, that's what raises an eyebrow with me. Yes, there are things that are constitutional but still morally outrage people. Once again, I still say, it's the best system going, if we follow it.