

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SARAH R. PENDLETON
CLERK

Case #: 1045409

APPELLATE COURT No. 40231-2-III

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

V.

VENIAMIN NICKOLAY GAIDAICHUK, Appellant

MOTION FOR DISCRETIONARY REVIEW

[*Treated as petition for review.](#)

By: Veniamin Nickolay Gaidaichuk, Pro Se, DOC #440097
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA. 98520

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FOR THE STATE OF WASHINGTON

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Respondent

vs.

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REVIEW OF COA III DECISION
DENYING APPEAL

1. Identity of Petitioner

Veniamin Gaidaichuk, Appellant in *State v. Gaidaichuk*, 2025 Wash. App. LEXIS 1402, COA Div. III #40231-2-III, filing this Motion for Discretionary Review, Pro Se.

2. Citation to COA Decision Appellant Wants Reviewed

Appellant, Veniamin Gaidaichuk request review of Court of Appeals III decision in *State v. Gaidaichuk*, 2025 WASH. App. LEXIS 1402, decision filed July 17, 2025, reconsideration requested August 6, 2025 and denied on August 14, 2025.

3. Issue(s) Presented for Review Which Comply With RAP 13.4(b)

Issue#1. Under RAP 13.4 (b)(1)(2)(3)(4). The decision of Court of Appeals Div. III conflicts with requirements and findings established by the WA Supreme Court, conflicts with prior decisions of the COA. Issue #1 is a significant question of law under the constitution of the united states and involves an issue of substantial public interest which should be determined

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Veniamin Gaidaichuk
No. 40231-2-III

by the Supreme Court.

In Gaidaichuk's Statement of Additional Grounds, for the first time on appeal he claims Outrageous Government Conduct in violation of the 5th and 14th Amendments of the United States Constitution. The "Net Nanny" sting operation designed, initiated and ran from beginning to end by law enforcement violated his right to due process established in, *United States v. Russell*, 411 U.S. 423 (1973); *Hampton v. United States*, 425 U.S. 484 (1976) and *State v. Lively*, 130 Wn.2d 1. The COA Div III declined to complete a "Lively Factor" analysis on Gaidaichuk's appeal, contradicting the WA Supreme Ct. requirements established in "Lively", ¶12 of COA decision.

The COA Div III contradicted WA Supreme Ct. findings in *State v. Aborgast*, 199 Wn.2d 356 (2022) and their own findings in *State v. Aborgast*, 15 Wn.App.2d 852 (2020) by finding Gaidaichuk initiated the crime when he "sent the first message", ¶15 of COA III decision.

The COA Div III was required to complete the Lively Factor Analysis by the WA Supreme Ct. The COA III is in conflict by faulting Gaidaichuk for initiating the crime by replying to an Ad placed by law enforcement. Gaidaichuk completed a Lively Factor Analysis for the Court of Appeals in his Statement of Additional Grounds, submitted 12/05/2024. The COA III did not rebuttle to any of Gaidaichuk's assertions which prove Outrageous Conduct by law enforcement. Gaidaichuk request review of his Outrageous government conduct assertion, which is required by Lively, request the decision faulting him for responding to the

advertisement be reversed. An evidentiary hearing should be ordered in the trial court or Gaidaichuk's conviction reversed for Outrageous government conduct.

4. Statement of The Case

On 7/28/2019, Gaidaichuk, using the name "Ben" responded to a 29 year old woman on the website "Meetme". Nothing about the Ad Gaidaichuk responded to indicated the person was a minor. The person Gaidaichuk responded to was really an undercover detective waiting to instigate child sex crimes and arrest responders who were not committing any crimes by responding to law enforcements advertisement.

Shortly after Ben responded to the Ad, law enforcement told Ben they were young, this confused Ben who replied "I mean ok but not teen". Law enforcement then told Ben they were 13 yo to which Ben replied "oh no way way young".

Ben continued conversation with fictitious profile until 7/30/2019, the conversation Never turned Sexual despite law enforcements continuous attempts to steer conversation that way. Between this time law enforcement tells Ben "ur cute BTW", "Dont wast My time..." introduces the idea to "Netflix n chill", tells Ben "boring kids Netflix and chill" and tells Ben "no offense but u seem kinda boring...".

The law enforcement operation ended and no contact was made after 7/30/2019, Ben had avoided the coercive tactics of law enforcement.

On 11/13/2019, Ben reached out to fictional persona again,

unaware he was entering another separate Net Nanny operation. Law enforcement immediately attempts to coerce Ben using pleas of sympathy by telling him, "My dad an moms care more about gettin high and whatever boyfriend she has this week then me". Law enforcement being unable to solicit sexual language from Ben then tells him how cute he is, asks Ben if "u gonna come see me, My auntie will be gone soon" and "so since we're gonna be alone????"

On 11/17/2019, law enforcement still unable to solicit sexual language, tells Ben "I like older guys because they more experienced" and Ben makes it clear he wants to meet in person. After persistent solicitation over a week and multiple operations, law enforcement was finally able to entrap Ben through continuously implying they wanted something more than meeting. Later that day, Ben called the fictitious person at the request of law enforcement as seen on pg. 23 of suspect information report. The conversation was not recorded. Gaidaichuk specifically steers this unrecorded conversation towards a public meeting. Trooper Wilcox admits having no "independent recollection" to this conversation and possibly may have "added a word here and there".

The conversation can be seen in the "State's trial memorandum and Motions in Limine". It is Trooper Wilcox that shifts the proposal by Gaidaichuk from "food or coffee" to "sex and condoms".

Ben was arrested on 11/17/2019 and charged with ROAC 2° and communication with a minor for immoral purpose.

5. Legal Argument

1. Outrageous Government Conduct Defense.

The Wa. Supreme Court acknowledged and created the outrageous conduct defense in *State v. Lively*, 130 Wn.2d 1. Citing *Lively*, "Violating due process standards are those cases where the government conduct is so integrally involved in the offense that the government agents directed the crime from beginning to end, or where the crime is fabricated by the police to obtain a defendant's conviction".

The WA Supreme Court established a set of factors WA courts are required to use when Outrageous Government Conduct is asserted by a defendant called the *Lively Factors*. COA III failed to utilize these factors faulting Gaidaichuk for raising the defense for the first time on appeal as well as faulting him for responding to the ADULT AD placed by law enforcement. COA III in its unpublished opinion says, "A defendant waives his right to assert an affirmative defense if he fails to raise the defense at trial".

This decision by COA III contradicts the WA Supreme Ct. in *Lively*, "constitutional error may be raised for the first time on appeal, particularly where the error affects fundamental aspects of due process". Following the courts decline to perform a *Lively Factor Analysis*, COA III then contradicts its own opinion in *State v. Aborgast*, 15 WN.App.2d 851, and WA Supreme Ct. in *State v. Aborgast*, 199 Wn.2d 356, by shifting fault to Gaidaichuk for initiating the crime by replying to law enforcement's Ad.

The WA Supreme Ct. in *Arbogast* specifically found, "The police
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created and executed the on-line sting operation" and "the crime originated with the Washington State Patrol". The COA III was required to complete a Lively Factor Analysis and make finding that the crime was initiated by law enforcement. Gaidaichuk's motion therefore meets the requirements of RAP 13.4 (b)(1)(2)(3).

2. Public Interest per RAP 13.4.

The use of Net Nanny Operations have grown in popularity over recent years. WA legislature has acknowledged the operations as well as the punishments for violators as unfair and excessive. In 2022, WA legislature directed the WA State Institute of Public Policy to study Net Nanny Operations. This study produced WSIPP document #23-06-1101. In 2025, the WA Senate proposed SB 5312 with the intent to remove lifetime registration requirements and shorten community custody. This proposed SB 5312 is a direct reflection of public interest.

Many members of our community are fighting against Net Nanny Operations primarily where law enforcement is posing as Adults on Adult websites. I have attached a copy of a rebuttle to the WSIPP Study submitted to legislature by CAGE. CAGE is a group of Community members concerned about the tactics in Net Nanny Operations. This group consist of thousands of persons. This rebuttle demonstrates public interest as required by RAP 13.4 (b)(4).

6. Conclusion

The COA III is in clear conflict with the WA Supreme Ct. by declining to complete a Lively Factor Analysis. The COA III is in conflict with its own decisions and WA Supreme Ct. decisions by faulting Gaidaichuk for initiating the crime created and ran from start to finish by law enforcement.

Gaidaichuk request a Lively Factor Analysis be completed on law enforcements conduct in his case. Gaidaichuk request this analysis be completed by the WA Supreme Ct. due to WA Appeals Courts incorrectly faulting defendants for responding to Ads posted by law enforcement. Gaidaichuk also request immediate release from his incarceration.

Dated this 28th day of August, 2025.

Respectfully Submitted,

Veniamin Nickolay Gaidaichuk
Pro Se, #440097

Stafford Creek Corr. Cntr.
191 Constantine Way
Aberdeen, WA. 98520

DECLARATION OF CERTIFICATE:

I, Veniamin Nickolay Gaidaichuk, herby declare under penalty of perjury and the laws of the State of Washington, that the foregoing is true and correct.

DATED this 28th day of August, 2025.

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COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,

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Appellant.

No. 40231-2-III

ORDER DENYING MOTION
FOR RECONSIDERATION

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of July 17, 2025 is hereby denied.

PANEL: Judges Staab, Cooney, Murphy

FOR THE COURT:

Lawrence Berrey, C.J.
ROBERT LAWRENCE-BERREY
Chief Judge

FILED
JULY 17, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

| | | |
|-------------------------------|---|---------------------|
| STATE OF WASHINGTON, |) | |
| |) | No. 40231-2-III |
| Respondent, |) | |
| |) | |
| v. |) | |
| |) | |
| VENIAMIN NICKOLAY GAIDAICHUK, |) | UNPUBLISHED OPINION |
| |) | |
| Appellant. |) | |

STAAB, A.C.J. — Veniamin Gaidaichuk appeals his convictions for second degree attempted rape of a child and communicating with a minor for immoral purposes. For the first time on appeal, he contends the trial court erred in giving jury instruction 3, which is the verbatim instruction taken from WPIC 3.01. 11 WASHINGTON PRACTICE:

WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 3.01, at 92 (5th ed. 2021) (WPIC). Specifically, he contends the language “your verdict on one count *should* not control your verdict on the other count” is permissive rather than mandatory and suggested to the jury that it could consider their verdict on one count to control the verdict on the other count. We decline to review the issue because Gaidaichuk has failed to demonstrate a manifest constitutional error warranting review under RAP 2.5(a)(3).

We also deny the issues raised by Gaidaichuk’s statement of additional grounds and affirm the judgment and sentence.

BACKGROUND

On November 17, 2019, Gaidaichuk traveled from Bellevue to Yakima to meet with someone named “Anna” at a designated address. Anna had informed him on several prior occasions that she was thirteen years old. While Gaidaichuk was on his way, he requested a phone call and spoke with Anna about sex. When Gaidaichuk arrived at the designated address, he was greeted by an undercover police officer who was posing as Anna’s friend. A few moments later, Gaidaichuk entered the home. He was charged with second degree attempted rape of a child and communicating with a minor for immoral purposes.

The case proceeded to trial. Gaidaichuk testified that he did not believe the person he was communicating with was 13 years old. During closing argument, the prosecutor explained that the basis for the communication charge was the text messages from July to November, whereas the rape charge was based on Gaidaichuk’s act of driving to Yakima and entering the home with the intent to engage in sexual intercourse with a 13-year-old female. At the close of evidence, jury instruction 3 stated that “[a] separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on the other count.” Clerk’s Papers at 43. The jury found Gaidaichuk guilty as charged.

Gaidaichuk appeals.

ANALYSIS

JURY INSTRUCTION CHALLENGE

Gaidaichuk contends that jury instruction 3 failed to make the relevant legal standard manifestly clear for the jurors. Specifically, he argues that the use of the word “should” is suggestive rather than mandatory and suggested the jury could find Gaidaichuk guilty of both counts without finding that the State had proved each charge, thus implicating double jeopardy. The State contends we should decline review because the alleged error is not preserved or manifest. Alternatively, the State claims the error is harmless beyond a reasonable doubt. We determine the error is not manifest and decline to review it.

Generally, this court will not review a claim of error raised for the first time on appeal unless it is a “manifest error affecting a constitutional right.” RAP 2.5(a)(3). Put another way, “the appellant must ‘identify a constitutional error and show how the alleged error actually affected the [appellant]’s rights at trial.’” *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009) (quoting *State v. Kirkman*, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007)). Here, Gaidaichuk did not object or make any arguments regarding jury instruction 3 to the trial court. Therefore, Gaidaichuk “must demonstrate (1) the error is manifest, and (2) the error is truly of constitutional dimension.” *Id.*

For several reasons Gaidaichuk fails to meet this burden. First, he fails to demonstrate that the alleged error is truly of constitutional dimension. While he contends

that jury instruction 3 implicates double jeopardy, simply claiming double jeopardy does not meet the burden of RAP 2.5(a)(3). We do “not assume [an] alleged error is of constitutional magnitude.” *Matter of Det. of M.S.*, 18 Wn. App. 2d 651, 655, 492 P.3d 882-(2021). Instead, we assess whether the claimed error, if true, would implicate “a constitutional interest as compared to another form of trial error.” *Id.*

Gaidaichuk contends that the use of the word “should” in the jury instruction allowed the jury to consider their verdict on one count when deciding the other count, thus allowing the jury to convict him of both counts even if they were not convinced that the State had proved both charges. Even if true, this is not a double jeopardy error. “[D]ouble jeopardy protects a defendant . . . against multiple punishments for the same offense.” *State v. Mutch*, 171 Wn.2d 646, 661, 254 P.3d 803 (2011) (alteration in original) (quoting *State v. Noltie*, 116 Wn.2d 831, 848, 809 P.3d 190 (1991)); *see also* U.S. CONST. amend. V; WASH. CONST. art. I, § 9. Gaidaichuk does not contend that the instruction may have led the jury to convict him twice for the same act.

In support of his double jeopardy claim, Gaidaichuk cites *State v. Sage*, 1 Wn. App. 2d 685, 695, 407 P.3d 359 (2017). In *Sage*, the court held that where “multiple counts charge the same crime against the same victim occurring during the same time period” courts must give a “separate and distinct act” instruction in order to avoid a double jeopardy violation. *Sage*, 1 Wn. App. 2d at 694-95. Unlike the defendant in

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State v. Gaidaichuk

Sage, Gaidaichuk was charged with different crimes alleged to have occurred at different times.

Even if we were to find that Gaidaichuk raises an error that is truly of constitutional dimension, he fails to show that any such error is manifest. “‘Manifest error’” is an “‘error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.’” *O’Hara*, 167 Wn.2d at 91, 100 n.1 (quoting BLACK’S LAW DICTIONARY 622 (9th ed. 2009)). Gaidaichuk makes no attempt to argue that the alleged error in this case was plain and indisputable.

STATEMENT OF ADDITIONAL GROUNDS

Gaidaichuk raises one issue in his statement of additional grounds. He contends that outrageous conduct of law enforcement officers violates his right to due process protected by the Fifth and Fourteenth Amendments to the United States Constitution. He claims this requires an evaluation with the procedure established in *State v. Lively*, 130 Wn.2d 1, 921 P.2d 1035 (1996).

As an initial matter, Gaidaichuk raises this issue for the first time on appeal. *See* RAP 2.5(a); *see also Rapid Settlements, Ltd.’s Application for Approval of Transfer of Structured Settlement Payments Rts. v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 695, 271 P.3d 925 (2012) (“A defendant waives his right to assert an affirmative defense if he fails to raise the defense at trial.”). However, even if we consider the issue, Gaidaichuk fails to show error.

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Outrageous government conduct will be shown when the actions of law enforcement officers are “‘so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction.’ For the police conduct to violate due process, the conduct must shock the universal sense of fairness.” *Lively*, 130 Wn.2d at 19 (internal citation omitted) (quoting *United States v. Russell*, 411 U.S. 423, 431-32, 93 S. Ct. 1637, 36 L. Ed. 2d 366 (1973)).

Lively outlined five factors to consider in determining whether the government’s conduct was outrageous: (1) “whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity,” (2) “whether the defendant’s reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation,” (3) “whether the government controls the criminal activity or simply allows for the criminal activity to occur,” (4) “whether the police motive was to prevent crime or protect the public,” and (5) “whether the government conduct itself amounted to criminal activity or conduct ‘repugnant to a sense of justice.’” *Id.* at 22 (quoting *People v. Isaacson*, 378 N.E.2d 78, 83 (1978)).

Here, there is no evidence that any of these factors are met. There is no evidence that police contacted Gaidaichuk and overcame his reluctance to meet an underage person. Although the original profile picture indicated the female in question was 29 years old, the profile was created in the persona of a 13-year-old female “Anna.”

Gaidaichuk, communicating from a profile with the name “Ben,” sent the first message.

No. 40231-2-III
State v. Gaidaichuk

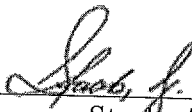
After an exchange of text messages, Anna revealed that she was 13 years old and Gaidaichuk continued the communication.

Nor is there evidence that the government was controlling the criminal activity, had illicit motives, or committed criminal activity to entrap Gaidaichuk. Instead Gaidaichuk made plans to meet Anna in Yakima. On his way over, he spoke with Anna by phone and the two discussed the topic of sex. When he arrived at the home, Trooper Wilcox, who had been the one texting Gaidaichuk, met him at the door. Gaidaichuk entered the residence and was arrested.

We find no evidence of outrageous government conduct.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.




Staab, A.C.J.

WE CONCUR:



Murphy, J.



Cooney, J.

APdX B
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STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
RAP 10.10

STATE OF WASHINGTON

Respondent,

v.

Veniamin Galdaichuk
(your name)

Appellant.

No. 40231-2-III

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Veniamin Galdaichuk have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Outrageous government conduct. The conduct of law-enforcement in my case violated my rights to due process protected by the 5th and 14th Amendments of the United States Constitution. My case requires an evaluation with the procedure established in "State v. Lively, 130 - Wn. 2d 1"

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 12/5/24

Signature: Gaid

pg1 Outrageous government conduct. No. 40231-2-III

The Conduct of law enforcement in my Case Violated my rights to due process protected by the 5th and 14th Amendments of the United States Constitution.

1. Citing "State V. Lively, 130 Wn. 2d 1"

"Constitutional error may be raised for the first time on appeal, particularly where the error affects fundamental aspects of due process"

2. Citing "State V. Athan, 160 Wn 2d 354"

"dismissal is appropriate only in the most egregious of cases, such as where the government agents direct a crime from beginning to end or a crime is fabricated for the sole purpose of obtaining a conviction."

3. Wash. CR 8.3 (B) also affords superior courts the ability to dismiss a case where "arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair Trial."

I am asking the Washington COA to evaluate the government's conduct in my case. Law enforcement's conduct was engineered and ran from start to finish, merely for the sake of prosecution, violated fundamental fairness and ruined any right I had to a fair trial.

Factor #1. whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity.

Law enforcement initiated and instigated a child sex crime that was not occurring. Operation "Net Nanny" identifies itself as an operation to "Investigate individuals who are online seeking sexual contact with minors", This is clearly not what occurred in my case. I responded to a 29 year old Adult female who utilized adult pictures on a website designed for Adults, I was not "seeking sexual contact with minors."

NO criminal activity was occurring or infiltrated by Law enforcement, It is undisputed that child sex crimes occur on the internet on websites such as "craigslist" but Law enforcement offers NO Evidence that "MeetMe" is being used to solicit children, without presenting this evidence law enforcement's claim they are infiltrating existing crime is unfounded and nothing more than a conclusory Allegation.

Our Supreme Court in "State v. Arbogast, 199 Wn.2d 356" Acknowledges "The police created and executed the online sting operation" and "The crime originated with the Washington state patrol."

pg 3

Factor #2. whether the defendants reluctance to Commit a crime was overcome by pleas of sympathy promises of excessive profit or persistent solicitation.

AS seen by my text messages to Law enforcement I was very reluctant to commit any crime and would like to Acknowledge I proceeded through an entire operation known as the "Bremerton operation" without any discussions of sex. This operation was terminated and I was found not to be a proper target for law enforcement.

AS Trooper Jennifer Wilcox Admitted It was her that brought up the topic of sex, but I did not Acknowledge any intent to commit AROCZ at any time. Any intent found in my conversation is conclusory at best due to the fact I never specifically state I would like to commit a sexual act.

It's important to note law enforcement persistently tells me Im cute, tells me multiple times how boring I am when I wont discuss sex (as they want) and eventually try to earn my sympathy by telling me her mom cared more about getting high and boyfriends.

I would additionally like to point out the primary evidence used in my conviction rest

pg 4.

On a phone conversation I allegedly state without using any sexual language my intent to have sexual intercourse. On page 879 of my trial transcripts, Lines 19-24 Trooper Wilcox has no "Independent recollection", may have added a word "Here and there" and was the "Meat and potatoes I guess the best of can you say of the phone conversation".

In short, my conviction and alleged intent rest on trooper Wilcox's handwritten notes, which she took while attempting to carry on a conversation, had no recollection of and may have admittedly added words to. These are large allegations to rest solely upon this hearsay evidence that may or may not express a desire for sex and the words used do not contain sexual language.

pg. 5

Factor #3. whether the government controls the Criminal activity or simply allows the activity to occur.

The government completely controls the criminal activity. I never directly express any desire to have sex with a minor. All references to conversation that may be sexual in nature are initiated by law enforcement. law Enforcement ask's me to obtain condoms, which I did not bring inside with me. Law enforcement created the Adult profile on "meetme", They used Adult pictures.

law enforcement used mental Coercion, persistent solicitation and pleas for sympathy over multiple sting operations to even get me to meet them in what they consider an attempt to commit a crime.

pg 6

Factor #4. whether the police motive was to prevent crime or protect the public.

police motive was merely for the sake of prosecution. Law enforcement offers no proof other than "Conclusory Allegations" that "meetme" is used by minors to meet adults for sex.

- Citing "United States v. Lofstead, 574 F. Supp. 3d 831"
1. "There is little to distinguish law enforcements conduct here from Trolling for targets"
 2. "Agents were not responding to observed offensive behavior"
 3. "It was Law enforcements decision to change the age.
•• materially altering the type of crime and bringing it within the operations purview"

Law enforcement in my case was not necessary to protect the public, I never would have committed My Alleged crime without government involvement. My conversation does not indicate any excitement to sex with a minor as found in many other Net nanny operations. If the motive is to protect minor's law enforcement would have to somehow indicate a minors involvement to attract those predisposed to commit a child sex crime.



June 2023

Internet Stings and Operation Net Nanny

In May 2021, the Washington Legislature directed the Washington State Institute for Public Policy (WSIPP) to conduct a study of Washington State Patrol's (WSP) Operation Net Nanny.

Operation Net Nanny ("Net Nanny") is an internet sting operation that has been active since August 2015. Net Nanny is designed to apprehend adults who use the internet to solicit sexual activity with minors (i.e., under age 16).¹

The legislative assignment specified that WSIPP's study must include a description of the current research on internet sting operations and a comparison of individuals convicted through Net Nanny with individuals convicted of child sex offenses through other avenues.

To address this assignment, we review academic research on internet sting operations and analyze data on individuals convicted of child sex crimes. We do not evaluate whether Net Nanny is effective at reducing crime or investigate the exact methods that WSP detectives use to make arrests.

Summary

There is limited research on internet sting operations. It is unclear whether these operations are effective at deterring or reducing crime.

Using administrative data, WSIPP examined 299 Net Nanny arrests made between August 2015 and September 2022. Most arrests (96%) came from one of two sting scenarios.

Scenario #1 (57%): Undercover officers posed online as a minor posting personal ads on dating websites or internet forums.

Scenario #2 (39%): Undercover officers posed online as a parent seeking adults to engage in sexual activity with their children.

WSIPP compared two groups: 1) individuals with Net Nanny cases that resulted in conviction and 2) individuals with cases from the same time period that resulted in conviction for similar offenses (not Net Nanny).

Individuals in both groups exhibit similar demographic characteristics and criminal history. On average, across these specific measures individuals convicted through Net Nanny resemble people convicted of sexual crimes against minors who were arrested via traditional police tactics.

Suggested citation: Whichard, C., & Kelley, K.M. (2023). *Internet stings and Operation Net Nanny* (Document Number 23-06-1101). Olympia: Washington State Institute for Public Policy.

¹ In Washington State, the age of consent for sexual activity is 16 years old. See RCW 9A.44.079 and 9A.44.089.

This report is presented in four sections. Section I provides background information on internet sting operations and describes Net Nanny in depth. Section II describes previous academic research on internet sting operations. Section III presents our comparisons between individuals convicted through Net Nanny stings and those convicted of similar offenses by other means. Section IV summarizes the findings and limitations of our study.

Legislative Assignment

The Washington State Institute for Public Policy must:

- a) Describe the current research on Net Nanny-type sting operations, including any evidence of their effectiveness in deterring or reducing crime, their costs, and the potential advantages or drawbacks of their use in crime prevention; and
- b) Compare the characteristics of individuals convicted under net nanny stings with individuals convicted of child sex offenses through other avenues.

ESSB 5092, Chapter 334, Laws of 2021, Section 610

I. Background

Operation Net Nanny falls into a category of police activity known as a "sting operation." In this section, we provide background information on sting operations, describe laws related to these operations, and offer a detailed description of Operation Net Nanny.

Police Sting Operations

Police sting operations are a type of undercover law enforcement activity. The defining characteristic of a sting operation is that police use deception to create opportunities for illegal behavior, secretly monitor the situation, and then arrest individuals who try to engage in the staged crime.²

Police have used sting operations in different ways to target various crimes. Depending on the sting operation, undercover police may pose as participants in a crime or as potential victims.

Internet Sting Operations

This report focuses on *internet* sting operations. This report uses the term "internet sting operation" to refer to operations designed to target adults who use the internet to arrange face-to-face meetings with minors for sexual activity. There are three elements to these operations:

- 1) An initial phase where undercover police officers engage in online communication with adults who express interest in having sexual contact with minors.
- 2) A subsequent phase where the targeted adult travels to an agreed-upon location for the express purpose of engaging in sexual activity with a minor.
- 3) A final phase where the targeted adult is arrested on-site.

We have intentionally adopted a narrow definition of "internet sting operation" to limit our focus to police activity that directly corresponds to the core features of Operation Net Nanny. Although police use sting tactics to target a variety of internet crimes against children (e.g., child pornography, human trafficking), we exclude these from our discussion for the sake of clarity.

Attempt Liability

When individuals are arrested through sting operations, they are typically charged with *attempted* offenses. The U.S. legal system has developed unique standards and practices for cases involving attempted offenses, resulting in a specialized area of criminal law known as "attempt liability."

Before the 1800s, courts only punished individuals based on actual behaviors and the consequences of those behaviors. Legal experts eventually abandoned this approach because they were concerned it limited the state's ability to prevent crime.³

² Hay, B. (2005). Sting operations, undercover agents, and entrapment. *Missouri Law Review*, 70, 387.

³ Rogers, A. (2004). New technology, old defenses: internet sting operations and attempt liability. *University of Richmond Law Review*, 38, 483.

In particular, this approach prevented the state from punishing actors who had clearly signaled their intent to cause harm, taken necessary steps toward causing harm, but were unable to successfully execute their plan due to factors outside of their control. These concerns led to the development of attempt liability, which was codified into common practice with the passage of the Model Penal Code in 1962.

RCW 9A.28.020 outlines Washington State's approach to attempt liability. The first section of this statute defines criminal attempt:

"A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime."

Thus, two conditions must be satisfied to convict someone of an attempted offense: 1) there is evidence that the individual intended to commit a specific crime, and 2) there is evidence that the individual took a "substantial step" toward completing that crime.

Operation Net Nanny

Operation Net Nanny ("Net Nanny") is an internet sting operation administered by Washington State Patrol (WSP). Net Nanny has been active since August 2015. As of May 2023, WSP has conducted 20 sting operations⁴ and made a total of 311 arrests.⁵

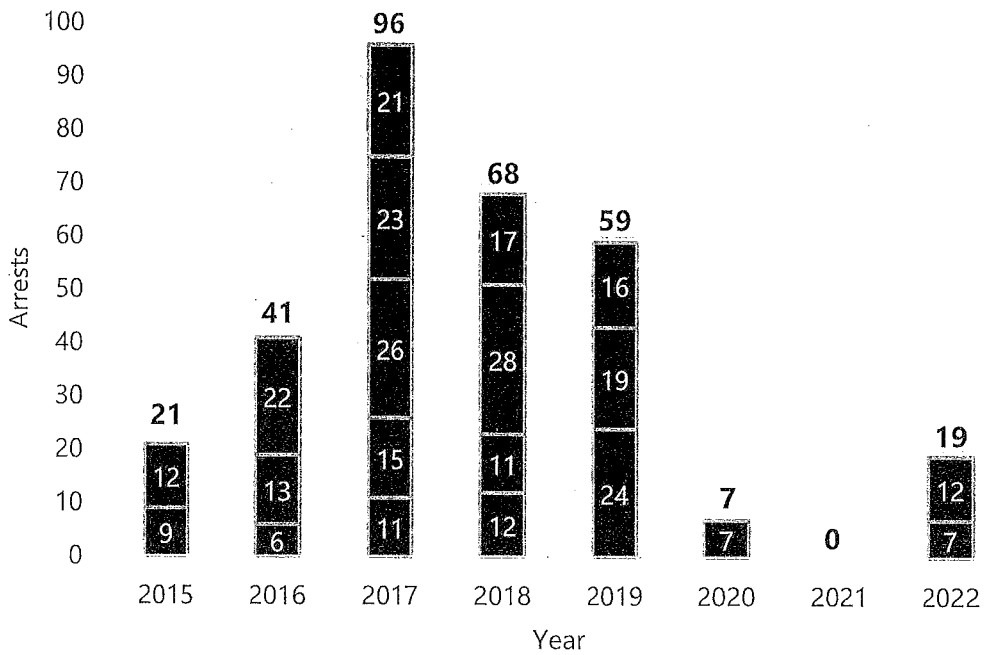
⁴ We use the term "operation" to refer to a multi-day event where undercover officers made consecutive arrests.

⁵ The data we received from WSP categorized each arrest based on the specific operation that was active at the time the arrest was made. Because most arrests occurred within a few days of initial online contact (see Appendix I), the majority of Net Nanny cases were initiated and completed within the span of the same operation. However, WSP

officials explained that a small percentage of arrests were the result of "one-off" cases that were not associated with a specific operation. These "one-off" cases pose problems for determining what "counts" as a Net Nanny arrest. As a result, the total number of Net Nanny arrests we report here may not match the numbers reported in other sources, but the difference is small.

Exhibit 1

Annual Net Nanny Arrests by Operation



Note:

Each rectangle represents a different sting operation. The numbers in each rectangle refer to the number of arrests from that operation. The bold numbers above each bar represent the total arrests for that year.

Exhibit 1 displays the number of arrests and calendar year for each sting operation.

On average, each sting operation resulted in about 16 arrests. Net Nanny generated relatively few arrests between 2020 and 2022. According to WSP officials, this was caused by complications arising from the outbreak of COVID-19.⁶

In October 2022, WSP provided WSIPP with data on 299 Net Nanny arrests from 19 sting operations.⁷ We review this information in greater detail in Appendix I.

Operational Costs

Net Nanny is an investigative model used by WSP's Missing and Exploited Children's Taskforce (MECTF). All Net Nanny operations are funded through the MECTF, which is primarily funded by the State General Fund.

WSP does not have its budget specified down to the Net Nanny level and thus was unable to provide WSIPP with a specific cost estimate. WSP approximates that each operation costs between \$20,000 to \$40,000.⁸

⁶ This information is consistent with prior WSIPP research showing that COVID-19 resulted in changes to how the criminal justice system operated in Washington State: Hirsch, M. (2021). *COVID-19 and adult criminal justice: A quantitative look at affected systems* (Doc. No. 21-07-1901). Olympia: Washington State Institute for Public Policy.

⁷ WSP conducted an additional operation in November 2022 that resulted in 12 arrests, bringing the total Net Nanny arrests to 311. Since the current study focuses on *convictions*, we chose to exclude these 12 cases because there was not sufficient time for these cases to be processed by the courts.

⁸ Email correspondence with WSP Budget Manager.

In general, these funds are used to pay for travel, supplies, a rental house, and salaries/benefits (including overtime).⁹ WSP conducted three Net Nanny stings in 2019, which was the last fully operational year before the pandemic. Assuming a cost of \$20,000 to \$40,000 per operation, this would have cost the agency between \$60,000 and \$120,000, or about 0.02% to 0.04% of WSP's total expenditures in 2019.¹⁰

Sting Scenarios

The Washington State Patrol also provided WSIPP with data on the fictitious scenario that undercover officers used to conduct each arrest (see Exhibit 2). Virtually all arrests involved undercover officers posing online as a fictitious juvenile (57%) or a fictitious parent with multiple children (39%). We describe these two scenarios below.¹¹

Sting Tactics for Scenario #1

According to WSP officials, undercover officers using this scenario are trained to begin the operation by posting personal ads online. For most operations involving scenario #1, undercover officers post ads on platforms for adults seeking romantic relationships or casual sex.¹² Because these platforms are intended for adults, the personal ads are designed to appear as though an adult posted them. Undercover officers then wait until they are contacted by someone in response to the personal ad, at which point they begin "chatting" with the other person.

⁹ Ibid.

¹⁰ Email correspondence with OFM and WSP.

¹¹ Because there were so few arrests for scenario #3, we elected not to include additional descriptive statistics for this category.

¹² For simplicity, we describe the tactics officers used for the majority of arrests involving sting #1, which involved ads posted on adults-only platforms. However, in about 28%

During the chatting stage, undercover officers are trained to follow a specific protocol. Soon after they start communicating with the other person, officers reveal that they are actually minors (i.e., under age 16). Officers are also trained to mimic the online communication habits of young adolescents.¹³ In addition, officers are instructed not to initiate communication about sexual activity and are only permitted to discuss sexual activity *after* the other person brings it up.

Exhibit 2

Arrests by Sting Scenario

| Net Nanny sting scenarios | | |
|--------------------------------|-----------|---------|
| Category | Frequency | Percent |
| #1. Single juvenile, no parent | 169 | 56.5% |
| #2. Parent, multiple children | 117 | 39.1% |
| #3. Other scenario | 8 | 2.7% |
| Missing | 5 | 1.7% |

Note:

N = 299.

If the other person expresses interest in having a sexual encounter, officers communicate a time window when their parent/guardian will be away from home, and the fictitious juvenile will be alone. Officers then provide the other person with a residential address. Once the individual arrives and knocks on the door, an undercover officer dressed as an adolescent answers and invites them inside,¹⁴ where they are arrested.

arrests involving scenario #1, undercover officers were contacted through ads posted on dating platforms for teenagers.

¹³ Examples include using limited vocabulary and displaying underdeveloped typing skills.

¹⁴ WSP officials selected police officers with a youthful appearance to play this role.

The Washington State Patrol designed this scenario to meet the two requirements of attempt liability. Transcripts of the online communication provide evidence that the arrested individual intended to engage in sexual activity with a minor. When the individual travels to a residential address, this behavior serves as evidence for the "substantial step towards the commission of a crime" requirement.¹⁵

Arrest Characteristics for Scenario #1

Exhibit 3 provides information on the characteristics of 169 arrests involving scenario #1.¹⁶

In virtually all these arrests (98%), the officer posed as a 13-year-old youth. In most cases (75%), the fictitious victim was portrayed as female.

The majority of arrests (70%) took place after undercover police were contacted in response to personal ads posted on adults-only platforms (i.e., age 18+). About 28% of arrests took place after undercover officers were contacted through online platforms designed for teenagers (i.e., age 13+).

The bottom panel of Exhibit 3 describes how arrests involving scenario #1 were initially charged. We focus on the four crimes most commonly charged in association with Net Nanny.¹⁷ For a comprehensive list of the crimes charged in relation to Net Nanny, see Appendix II.

¹⁵ RCW 9A.28.020.

¹⁶ The information reported in Exhibit 3 is not representative of all Net Nanny activity involving scenario #1, as it excludes instances where undercover officers used this scenario but were unable to make an arrest.

Exhibit 3 Arrest Characteristics: Sting Scenario #1

| Fictitious victim age | | | |
|---|-----------|---------|---------------|
| Range | Median | Mean | Standard dev. |
| 11 - 14 | 13 | 12.9 | 0.2 |
| Fictitious victim sex | | | |
| Category | Frequency | Percent | |
| Female | 126 | 74.6% | |
| Male | 43 | 25.4% | |
| Platform used to initiate contact | | | |
| Category | Frequency | Percent | |
| 18+ dating | 119 | 70.4% | |
| 13+ dating | 47 | 27.8% | |
| Other | 2 | 1.2% | |
| Missing | 1 | 0.6% | |
| Initial charges | | | |
| Offense charged | Acronym | Percent | |
| Attempted rape of a child, first degree | AROC1 | 1.8% | |
| Attempted rape of a child, second degree | AROC2 | 96.5% | |
| Communicating with a minor for immoral purposes | CMIP | 95.3% | |
| Commercial sexual abuse of a minor | CSAM | 17.2% | |

Note:
N = 169.

Nearly everyone arrested as a result of scenario #1 was initially charged with attempted rape of a child, second degree (AROC2; 96%), and communicating with a minor for immoral purposes (CMIP; 95%).

¹⁷ In 297 out of 299 Net Nanny arrests, the defendant was initially charged with at least one of the offenses listed in Exhibit 3. In other words, these four offenses account for over 99% of the initial charges brought against Net Nanny defendants.

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According to Washington law, adults who attempt sexual intercourse with someone between ages 12-13 have committed AROC2. Because most fictitious victims in scenario #1 were age 13, this explains the high percentage of charges for AROC2.

By law, adults have committed CMIP if they communicate with a minor (or someone they believe to be a minor) "for the predatory purpose of promoting the exposure of children to and involvement in sexual misconduct."¹⁸ Because individuals arrested in scenario #1 communicated directly with the fictitious victim, this explains the high percentage of charges for CMIP.

Sting Tactics for Scenario #2

Undercover officers using this scenario are trained to begin the operation by posting personal ads online. For most operations involving scenario #2, undercover officers post ads on platforms for adults seeking romantic relationships or casual sex.¹⁹ These personal ads typically include text indicating the post is intended for adults interested in an unspecified type of sexual activity that is unconventional (i.e., "not for everyone").

Undercover officers then wait until they are contacted by individuals who read the personal ad, at which point they begin "chatting" with the other person.

During the chatting stage, undercover officers are trained to communicate that they are a parent interested in arranging a sexual encounter between their children and another adult.²⁰

If the other individual expresses interest, undercover officers coordinate a time for the sexual encounter and provide a residential address. After arriving at this address and entering the premises, the individual is arrested.

Arrest Characteristics for Scenario #2

Exhibit 4 provides information on the characteristics of 117 arrests from scenario #2.

Because this scenario involved multiple fictitious victims, we display information on the age of the *youngest* fictitious victim. On average, the youngest fictitious victim was about eight years old. In 50% of arrests, the youngest fictitious victim was six. Arrests typically involved fictitious victims of both sexes (52%).

The majority of arrests (90%) took place after police were contacted in response to personal ads posted on adults-only platforms (i.e., age 18+). About 9% of arrests took place after police were contacted through online platforms designed for teenagers (i.e., age 13+).

Most arrests from scenario #2 resulted in charges for attempted rape of a child, first degree (AROC1; 89%). By law, adults who attempt sexual intercourse with someone younger than age 12 have committed AROC1. Because most arrests from scenario #2 involved a fictitious victim younger than age 12, this explains the high percentage of charges for AROC1.

¹⁸ *Washington v. McNallie* (1993).

¹⁹ Again, we focus on describing the most common tactics that officers use in relation to scenario #2, which involve posting personal ads on platforms intended for adults.

²⁰ According to WSP officials, the motivation for scenario #2 came from WSP officers' experiences with real criminal cases involving parents who facilitated sexual abuse against their own children.

Although most arrests from scenario #1 involved charges for CMIP, only about 14% of arrests from scenario #2 were charged with CMIP. This is because scenario #2 typically involved adults communicating with a fictitious parent instead of a fictitious minor.

Finally, about 38% of arrests from scenario #2 resulted in charges for commercial sexual abuse of a minor (CSAM). During discussions with WSP officials, we learned that it was relatively common for people arrested as a result of scenario #2 to arrive on-site with gifts intended for their fictitious victims, such as toys designed for young children. This behavior demonstrates that the arrested person was attempting to provide minors with material rewards for sexual activity, leading to the initial charges for CSAM.

Exhibit 4

Arrest Characteristics: Sting Scenario #2

| Fictitious victim age, youngest | | | |
|---|-----------|---------|---------------|
| Range | Median | Mean | Standard Dev. |
| 3 - 13 | 6 | 7.7 | 2.3 |
| Fictitious victim sex | | | |
| Category | Frequency | Percent | |
| Both sexes | 61 | 52.1% | |
| Females only | 52 | 44.4% | |
| Males only | 4 | 3.4% | |
| Platform used to initiate contact | | | |
| Category | Frequency | Percent | |
| 18+ dating | 105 | 89.8% | |
| 13+ dating | 10 | 8.6% | |
| Other | 1 | 0.8% | |
| Missing | 1 | 0.8% | |
| Initial charges | | | |
| Offense charged | Acronym | Percent | |
| Attempted rape of a child, first degree | AROC1 | 89.7% | |
| Attempted rape of a child, second degree | AROC2 | 52.9% | |
| Communicating with a minor for immoral purposes | CMIP | 13.7% | |
| Commercial sexual abuse of a minor | CSAM | 37.6% | |

Note:

N = 117.

A D

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II. Research on Internet Sting Operations

In this section, we describe the current state of knowledge on internet sting operations.

Effectiveness in Reducing Crime

To date, no outcome evaluations have investigated the effectiveness of internet sting operations in reducing crime. As a result, it is ultimately unclear whether internet sting operations have any effect on crime.

However, criminologists have identified two distinct ways that sting operations could reduce crime. We describe these below.

Incapacitation

Internet sting operations could reduce crime through *incapacitation*. Incapacitation occurs when a person cannot commit a crime because they have been removed from the community, typically through incarceration.

If individuals arrested in internet sting operations are motivated and willing to commit sexual crimes against minors, then incarcerating these individuals will prevent them from committing additional crimes while in confinement. However, it is impossible to measure the number of crimes prevented this way.

For example, if someone is arrested in an internet sting operation and incarcerated for five years, then that person cannot commit sexual crimes against minors while in prison. However, it is impossible to determine how many, if any, potential crimes were prevented during these five years. This issue makes it difficult to study the impact of internet sting operations on crime.

Deterrence

Internet sting operations could also reduce crime through *deterrence*. Deterrence occurs when people avoid committing crimes because they fear punishment.

It is common for police to announce the results of a successful sting operation and publicly identify individuals who were arrested. This alerts the public to the existence of the sting operation and serves as a warning. People aware that the sting operation exists may conclude that engaging in the targeted offense is too risky, resulting in less crime.

However, it is difficult to measure the deterrent effect of a specific law enforcement intervention.²¹ Because many forces influence the crime rate, it is often impossible to isolate the impact of a single factor (such as a sting operation) on crime. In addition, minors who experience sexual abuse do not always report the crime to the police,²² which complicates attempts at measuring whether rates of sexual abuse have changed over time. These issues also make it difficult to study the impact of internet sting operations on crime.

²¹ Kleck, G., Sever, B., Li, S., & Gertz, M. (2005). The missing link in general deterrence research. *Criminology*, 43(3), 623-660.

²² Scurich, N. (2020). Introduction to this special issue: Underreporting of sexual abuse. *Behavioral Sciences & the Law*, 38(6), 537-656.

Costs

After conducting a literature review, we did not find any information on how much internet sting operations (in general) typically cost. However, we received estimates from WSP and OFM on the costs specifically associated with Net Nanny. We review this information in Section I.

Potential Advantages

Proponents of internet sting operations highlight the fact that these operations allow police to take a proactive approach to law enforcement. Under normal circumstances, police must take a reactive approach where they only become involved in a case after a crime has taken place. In contrast, internet sting operations are intended to prevent crime by allowing police to intervene *before* the offense can be completed. In theory, this means that internet sting operations can be used to punish adults who are intent on sexually abusing minors without needing to wait for a real-life victim to be harmed.

An additional benefit of internet sting operations is that they may lead police to uncover evidence of sexual abuse that was previously undetected. For example, adults arrested in sting operations may confess to the police that they have committed sexual abuse in the past.

Proponents have also argued that internet sting operations represent a necessary innovation in police tactics to protect minors in the internet era.²³ According to this perspective, as long as there are adults who will use the internet to sexually abuse children, police must be allowed to use internet sting operations to disrupt these efforts.

Research confirms that the internet creates opportunities for youth to be sexually exploited by adults. For example, a recent meta-analysis found that about 11.5% of youth aged 12-16 had experienced unwanted sexual solicitation while using the internet.²⁴ Although it is unclear whether internet sting operations are effective at reducing sexual crimes against minors, proponents argue that these operations are a necessary tool to combat internet crimes against children.

Potential Drawbacks

Research identifies three potential drawbacks to using internet sting operations. First, even when they are well-executed, internet sting operations tend to be regarded as controversial. Second, when these operations are *not* conducted properly, there is a risk that irresponsible police conduct could result in entrapment. Third, critics of internet sting operations have argued that under certain circumstances, these operations pose a risk of criminalizing protected speech.

²³ Rogers (2004).

²⁴ Madigan, S., Villani, V., Azzopardi, C., Laut, D., Smith, T., Temple, J.R., Browne, D., & Dimitropoulos, G. (2018). The

prevalence of unwanted online sexual exposure and solicitation among youth: A meta-analysis. *Journal of Adolescent Health*, 63(2), 133-141.

Controversy

Perhaps the main criticism of internet sting operations is that they are controversial. A fundamental feature of these operations is that they involve police using surveillance and deception against citizens, which may raise concerns about government overreach.²⁵ Similarly, since the victims are fictitious and no sexual abuse took place, members of the public may conclude that individuals arrested in internet stings did not actually commit a crime and are being treated unfairly.²⁶ Due to these concerns, internet sting operations may attract controversy even if they are conducted in a professional and legally responsible manner.

In addition, police often reveal the identities of individuals caught in internet sting operations soon after being arrested. Since it is possible that the courts will later determine that an arrested individual is not guilty of a crime, there is a risk that this practice may cause significant reputational harm to innocent people.

Entrapment

Another potential drawback of internet sting operations is that when they are poorly designed and conducted improperly, these operations could lead to entrapment. Entrapment occurs when police put excessive pressure on someone to commit a crime that they were otherwise unmotivated to commit. For internet sting operations, this could happen if undercover officers make online contact with someone who repeatedly expresses reluctance to pursue a sexual relationship with an underage partner but eventually relents after prolonged efforts by police to entice the individual into participating in a sexual encounter.²⁷

Although entrapment is certainly a possibility, research indicates that defendants in internet sting operations are rarely successful when they attempt to argue that police entrapped them.²⁸ Washington State law notes that "the defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime."²⁹ Thus, if the police create an opportunity for someone to break the law, that fact alone is not sufficient for establishing entrapment.

²⁵ Hay (2005).

²⁶ The tacit assumption here is that people should only be punished if their behavior actually results in harm. However, the U.S. legal system long ago rejected this perspective and developed attempt liability as means of punishing individuals who try (but fail) to cause harm. See Rogers (2004).

²⁷ Legal scholars have written extensively about the topic of entrapment, internet sting operations, and attempt liability: Boggess, B.M. (2007). Attempted enticement of a minor: No place for pedophiles to hide under 18 U.S.C. 2422

(b). *Missouri Law Review*, 72(3), 909; Gregg, J. (1996). Caught in the web: entrapment in cyberspace. *Hastings Communications and Entertainment Law Journal*, 19, 157; and Moore, R., Lee, T., & Hunt, R. (2007). Entrapped on the web? Applying the entrapment defense to cases involving online sting operations. *American Journal of Criminal Justice*, 32, 87-98.

²⁸ Stevenson, D. (2005). Entrapment by numbers. *University of Florida Journal of Law & Public Policy*, 16(1).

²⁹ RCW 9A.16.070.

Criminalizing Protected Speech

Critics of internet sting operations have also argued that these operations carry a risk of punishing innocent people by criminalizing protected speech.

In the interest of explaining this perspective, consider the following: It is not illegal for two consenting adults to engage in role-playing where one sexual partner pretends to be underage. It is also not illegal for adults in this situation to communicate with each other over the internet as part of their fantasy/role-playing experience. Under these circumstances, the online communication is protected speech. By extension, it is theoretically possible that law-abiding adults who have a preference for this type of role-playing could become ensnared in an internet sting operation.³⁰

To avoid the risk of criminalizing innocent internet conduct, police should approach online communication in such a way that it is clear to the other person that they are interacting with a minor.³¹ For example, such tactics might involve undercover officers imitating the online communication style of adolescents and repeatedly stating that they are underage.

³⁰ Legal scholars have observed that it is common for defendants in internet sting cases to claim they never believed they were communicating with a minor and that they thought the other person was an adult pretending to be

a minor as part of a fantasy or role-playing experience. When these cases go to court, this "fantasy" defense is typically not successful. See Rogers (2004).

³¹ Rogers (2004).

III. Comparative Analyses

In this section, we present the results of analyses that compare the characteristics of individuals convicted under Net Nanny stings with individuals convicted of child sex offenses through other avenues.

Data

Net Nanny Group

WSP provided WSIPP with data on 299 Net Nanny arrests that were made between August 2015 and September 2022. To get additional information about each arrested individual's criminal history and demographic characteristics, we linked these arrests to WSIPP's Criminal History Database (CHD) records. The CHD combines information from multiple criminal justice agencies across Washington State.³² After successfully matching 294 Net Nanny arrests to CHD records,³³ we identified 235 criminal cases that resulted in convictions.

Comparison Group

Before creating the comparison group, we developed selection criteria to identify criminal cases that occurred during the same period as Net Nanny and resulted in convictions for similar offenses.

As an initial step, we identified all criminal charges for the 235 Net Nanny cases that resulted in a conviction. We found that individuals convicted via Net Nanny were charged with at least one of the following crimes:

- Rape of a child (1st, 2nd, or 3rd degree),
- Child molestation (1st or 2nd degree),
- Communicating with a minor for immoral purposes,
- Commercial sexual abuse of a minor,
- Dealing in depictions of a minor engaged in sexually explicit conduct, and
- Possession of depictions of a minor engaged in sexually explicit conduct.

To create the comparison group, we extracted CHD records for cases that met the following criteria:

- Individuals in the case were charged with at least one of the offenses listed above;
- The case was filed between August 2015 and September 2022;
- The case was not associated with Operation Net Nanny;
- The defendant in the case was an adult; and
- The case resulted in a conviction.

We identified 3,534 criminal cases that met these selection criteria.

³² WSIPP's Criminal History Database (CHD) is a synthesis of criminal charge information for individuals using data from the Administrative Office of the Courts' (AOC), the Department of Corrections' (DOC), and the Department of Children, Youth, and Families' Juvenile Rehabilitation (JR).

³³ We were unable to match five arrests in the WSP data to records in the CHD. These five arrests failed to match for one of the following reasons: the arrested individual was not a resident of Washington State; the arrested individual had their Net Nanny case processed by a military court; or the arrested individual died shortly after their arrest.

Exhibit 5

Charges for Completed Offenses

| Criminal charges | Acronym | Percent | | |
|--|---------|-----------|------------|----|
| | | Net Nanny | Comparison | |
| Rape of a child, first degree | ROC1 | 0.0% | 10.8% | ** |
| Rape of a child, second degree | ROC2 | 1.3% | 6.8% | ** |
| Rape of a child, third degree | ROC3 | 0.4% | 13.1% | ** |
| Child molestation, first degree | CMOL1 | 0.4% | 18.9% | ** |
| Child molestation, second degree | CMOL2 | 16.2% | 16.2% | |
| Communicating with a minor for immoral purposes | CMIP | 47.2% | 25.9% | ** |
| Commercial sexual abuse of a minor | CSAM | 16.6% | 0.7% | ** |
| Dealing in depictions of a minor engaged in SEC | DDMESEC | 1.3% | 4.3% | |
| Possession of depictions of a minor engaged in SEC | PDMESEC | 1.7% | 16.6% | ** |

Notes:

SEC = sexually explicit conduct.

Net Nanny (N = 235) and comparison group (N = 3,534).

** Significant at the 0.001 level.

Analyses and Results

Charges for Completed/Attempted Crimes

The selection criteria for creating the comparison group only included cases where individuals were convicted of similar crimes as the Net Nanny group. However, there may be differences in how often cases in each group involved charges for completed versus attempted crimes.

Since individuals in the comparison group were arrested through traditional police tactics (i.e., after a crime took place), we expect it will be more common for these cases to be charged with *completed* offenses. Similarly, because Net Nanny is a sting operation, we expect it will be more common for individuals in these cases to be charged with *attempted* offenses.

For the first analysis, we test these expectations using Net Nanny cases (N = 235) and comparison group cases (N = 3,534) that resulted in convictions. We examine the percentage of cases in each group involving charges for completed and attempted offenses.

Completed Offenses. Among cases resulting in conviction, Net Nanny cases were less likely than comparison group cases to involve charges for completed offenses (Exhibit 5). These results are consistent with our expectations. However, there are two exceptions to this general pattern.

First, it was more common for Net Nanny cases to be charged with communicating with a minor for immoral purposes (CMIP) and commercial sexual abuse of a minor (CSAM). Although CMIP and CSAM are technically completed crimes, the definition of these offenses applies to situations involving fictitious minors.³⁴

³⁴ See Appendix II for definitions of CMIP and CSAM.

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Second, 16.2% of cases in both groups were charged with child molestation, second degree (CMOL2). Despite this charge, individuals arrested through Net Nanny did *not* literally engage in child molestation. After contacting prosecutors involved in these cases, we learned that the CMOL2 charges were the result of plea bargains.³⁵ These individuals were initially charged with attempted offenses categorized as class A felonies, and they later pleaded guilty to CMOL2, a class B felony.³⁶

We found that the vast majority of instances where individuals in Net Nanny cases plead guilty to CMOL2 occurred in Kitsap County and Pierce County. These patterns reflect notable differences in prosecutorial discretion across Washington counties.

Attempted Offenses. Among cases resulting in conviction, Net Nanny cases were more likely than comparison group cases to have charges for attempted offenses (Exhibit 6). Indeed, it was rare for cases in the comparison group to have charges for attempted offenses.

Overall, these patterns are consistent with expectations. Net Nanny cases typically involved charges for attempted child sex crimes, while comparison group cases typically involved charges for completed child sex crimes.

Demographic Characteristics

For the second analysis, we compare individuals in both groups across measures of sex, race/ethnicity, and age. To measure age, we focus on age at the time the individual's *index case* was filed.

Exhibit 6
Charges for Attempted Offenses

| Criminal charges | Acronym | Percent | |
|--|---------|-----------|------------|
| | | Net Nanny | Comparison |
| Attempted rape of a child, first degree | AROC1 | 14.9% | 0.4% ** |
| Attempted rape of a child, second degree | AROC2 | 37.4% | 0.9% ** |
| Attempted rape of a child, third degree | AROC3 | 1.3% | 0.3% |
| Attempted child molestation, first degree | ACMOL1 | 0.9% | 0.8% |
| Attempted child molestation, second degree | ACMOL2 | 10.2% | 0.7% ** |
| Attempted communication with a minor for IP | ACMIP | 0.4% | 0.3% |
| Attempted commercial sexual abuse of a minor | ACSAM | 8.9% | 0.4% ** |

Notes:

IP = immoral purposes.

Net Nanny (N = 235) and comparison group (N = 3,534).

** Significant at the 0.001 level.

³⁵ The term "plea bargain" describes a legal arrangement where prosecutors agree to reduce the severity of criminal charges against a defendant in exchange for a guilty plea.

³⁶ Because CMOL2 was the most common completed child sex offense among individuals convicted via Net Nanny, we engaged in targeted outreach with practitioners involved in

these specific cases and verified that this pattern was the result of plea bargains. Although we emphasize the importance of plea bargains in association with CMOL2, it is likely that plea bargains also played a role in other Net Nanny cases where individuals were convicted of completed child sex offenses (e.g., ROC2, ROC3, CMOL1).

For individuals in the Net Nanny group, the index case refers to the criminal case associated with their Net Nanny arrest. For individuals in the comparison group, the index case refers to the first child sex offense case filed during the study period.

Exhibit 7 shows that people convicted through Net Nanny share many of the same demographic characteristics as people in the comparison group. Men account for about 98% of individuals in both groups, and the average age is around 38.³⁷ These patterns are consistent with past research on people convicted of sexual felonies in Washington State, who are overwhelmingly male and tend to be older than the average individual convicted of a non-sexual felony.³⁸

The only noteworthy difference is that the Net Nanny group has a lower percentage of Hispanic individuals than the comparison group (8.9% vs. 16.1%) and a higher percentage of non-Hispanic White individuals (79.1% vs. 70.5%). Washington State Patrol officials noted that the first 18 Net Nanny operations were administered by officers who were only fluent in English. Later operations included Spanish-speaking officers.

Exhibit 7
Demographic Characteristics

| Sex | Percent | |
|----------------|-----------|------------|
| | Net Nanny | Comparison |
| Male | 98.7 | 97.8 |
| Female | 1.3 | 2.2 |
| Race/ethnicity | Percent | |
| | Net Nanny | Comparison |
| White | 79.1 | 70.5 * |
| Hispanic | 8.9 | 16.1 * |
| Black | 8.1 | 6.7 |
| Asian | 3.4 | 4.1 |
| Native Am. | 0.4 | 1.6 |
| Age | Average | |
| | Net Nanny | Comparison |
| | 37.9 | 37.6 |

Notes:

The category "Hispanic" includes all Hispanic individuals regardless of race. Other race categories exclude Hispanic individuals (e.g., non-Hispanic White, non-Hispanic Black). Net Nanny Group (N = 234) and Comparison Group (N = 3,448).

* Significant at the 0.01 level.

³⁷ In results not shown, we found that the standard deviation for age was about 14 years for both groups. In addition, both groups had a median age of 35.

³⁸ Barnoski, R. 2005. *Sex offender sentencing in Washington State: How sex offenders differ from other felony offenders* (Doc. No. 05-09-1201). Olympia: Washington State Institute for Public Policy.

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Exhibit 8
Criminal History

| Conviction prior to index case | Percent | |
|--|-----------|------------|
| | Net Nanny | Comparison |
| Any infraction, misdemeanor, or felony | 60.7% | 63.4% |
| Any misdemeanor or felony | 35.0% | 39.9% |
| Any misdemeanor | 28.2% | 33.0% |
| Misdemeanor - weapon offense | 0.0% | 0.0% |
| Misdemeanor - assault | 8.5% | 15.4% * |
| Misdemeanor - alcohol or drug offense | 15.4% | 17.8% |
| Misdemeanor - property offense | 12.4% | 14.6% |
| Misdemeanor - sexual offense | 0.8% | 0.6% |
| Any felony | 18.4% | 23.1% |
| Felony - weapon offense | 1.3% | 1.7% |
| Felony - violent offense (non-sexual) | 5.6% | 8.8% |
| Felony - alcohol or drug offense | 4.3% | 5.3% |
| Felony - property offense | 10.3% | 10.5% |
| Felony - sexual offense (adult victim) | 2.9% | 2.9% |
| Felony - sexual offense (child victim) | 2.9% | 6.3% |

Notes:

Net Nanny (N = 234) and Comparison Group (N = 3,448)

* Significant at the 0.01 level.

Criminal History

Next, we compare the criminal history of individuals in both groups. We measure criminal history by examining the percentage of individuals in each group who were convicted of various crimes before the filing date of their index case.

Exhibit 8 shows that individuals in the Net Nanny group have a similar pattern of past convictions as individuals in the comparison group. Individuals in the Net Nanny group resembled individuals in the comparison group across 14 out of 15 measures of criminal history. Although individuals in the comparison group have a slightly higher percentage of prior convictions for nearly every measure, most of these differences are small in magnitude (i.e., less than 5%) and are not statistically significant.

The only exception to this pattern relates to prior convictions for misdemeanor assault. While 8.5% of individuals in the Net Nanny group had previously been convicted of a misdemeanor assault charge, the percentage of people in the comparison group with a prior misdemeanor assault conviction was about twice as high (15.4%).

More generally, about 30% of individuals in both groups had previously been convicted of a misdemeanor and about 20% had previously been convicted of a felony. These patterns are broadly consistent with past research on people convicted of sexual felony offenses in Washington State, who tend to have less extensive criminal records than people convicted of non-sexual felony offenses.³⁹

³⁹ See Barnoski (2005).

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Sentencing Outcomes

Finally, we examine between-group differences in sentencing outcomes associated with index case convictions.⁴⁰

Impact of SSOSA. Individuals convicted of sexual offenses in Washington State may be eligible for a sentencing alternative known as the Special Sex Offender Sentencing Alternative (SSOSA; see Appendix III).

One of the eligibility requirements for SSOSA is that the defendant must have “an established relationship” with the victim. However, because individuals convicted via Net Nanny have fictitious victims, they cannot meet this requirement and are automatically denied access to SSOSA.

⁴⁰ WSIPP receives sentencing data on an annual basis. At the time we extracted data for this study, sentencing outcomes were unavailable for 25 (out of 235) Net Nanny cases and 1,138 (out of 3,534) comparison group cases. Thus, the initial

sample for our sentencing analysis consists of 210 Net Nanny cases that resulted in conviction and 2,396 comparison group cases that resulted in conviction.

Exhibit 9

Sentencing Outcomes (in months) for Net Nanny and Comparison Group Cases

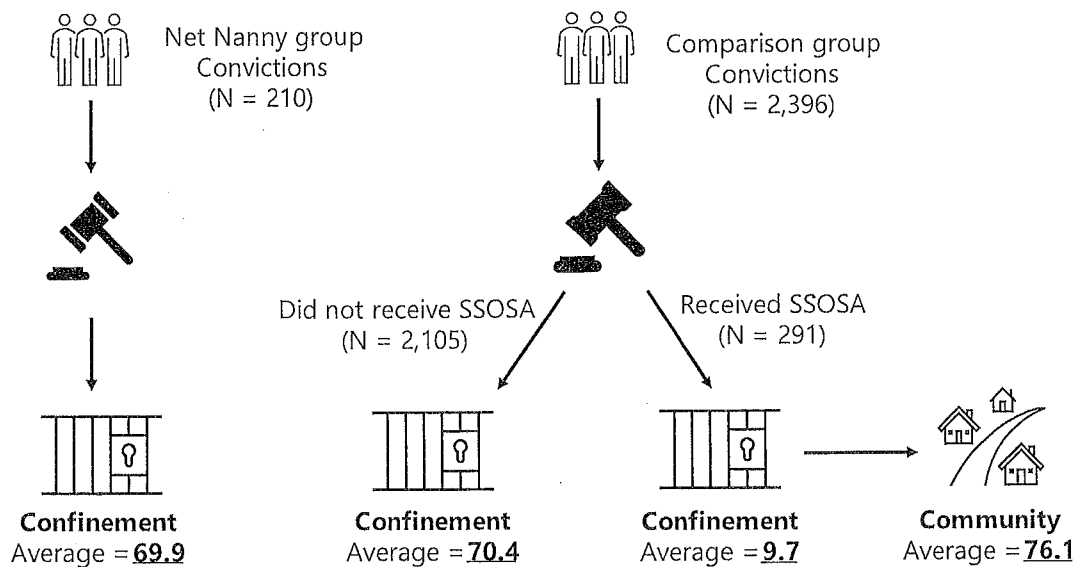


Exhibit 9 provides information on how cases in each group were sentenced.⁴¹ On average, cases in the Net Nanny group (N = 210) were sentenced to about 70 months in confinement (i.e., 5.8 years). About 88% of cases in the comparison group did not receive SSOSA (N = 2,105). On average, these cases were also sentenced to about 70 months in confinement.

In contrast, about 12% of cases in the comparison group sample (N = 291) received SSOSA. On average, these cases were sentenced to 9.7 months in confinement, followed by about 76 months of community custody. This means that (on average) individuals who received SSOSA

were sentenced to about 15 additional months in custody than individuals who did not receive SSOSA. However, individuals who received SSOSA were allowed to serve roughly 87% of their sentence in the community instead of in prison.

Past research suggests that SSOSA is associated with lower punishment costs and lower recidivism among individuals convicted of child sex offenses.⁴² The Sex Offender Policy Board (SOPB) has recommended that a sentencing alternative similar to SSOSA be enacted for individuals convicted through internet sting operations.⁴³

⁴¹ The values we report in Exhibit 9 represent the length of time individuals were *ordered* to serve, which may be different than actual time served. In addition, Washington State law requires that individuals convicted of sex offenses who have a prior conviction for a "two-strike" offense (see RCW 9.94A.031) receive an indeterminate sentence, also known as "determinate plus." For these "determinate plus" individuals, we report the minimum term of confinement.

Washington State Caseload Forecast Council. (2022). *Statistical summary of adult felony sentencing: Fiscal year 2022*, 68.

⁴² Barnoski, R. (2005).

⁴³ Hunt, W. (2022). *Recommendations for SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register; washouts; and system improvements*. Sex Offender Policy Board, 9.

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Judicial Discretion. We also examine differences in how judges sentence individuals convicted of sexual crimes involving minors. In particular, we investigate whether judges treat Net Nanny cases differently (e.g., with more leniency/harshness) than comparison group cases.

In Washington State, courts use determinate sentencing guidelines that are intended to standardize punishment practices.⁴⁴ The sentencing guideline grid relies on the defendant's criminal history and the severity of the defendant's offense. The guidelines specify a standard sentencing range with an established minimum and maximum length of incarceration. Judges have the discretion to select a term of confinement that falls within this standard range.⁴⁵

The use of presumptive sentencing guidelines provides an opportunity to study judicial discretion by using a technique known as "Where in the Range?" (WIR).⁴⁶ This technique operates by calculating a statistic for individuals who were sentenced within the standard range.⁴⁷

The WIR statistic ranges from 0 to 100, where 0 corresponds to a sentence at the minimum of the range, 50 corresponds to the mid-point of the range, and 100 corresponds to a sentence at the maximum of the range.

The logic of sentencing guidelines assumes that judges will treat the mid-point of the range as the default punishment. This means judges should (on average) issue sentences at the mid-point of the range (i.e., WIR statistic = 50). However, judges may determine that the details of a case call for harsher or more lenient punishment. To enact harsher punishment, judges may issue longer sentences closer to the maximum of the range (i.e., WIR > 50). To enact more lenient punishment, judges may issue shorter sentences that are closer to the minimum of the range (i.e., WIR < 50).

We use the WIR statistic to compare sentencing outcomes between the Net Nanny and the comparison groups. As an initial step, we excluded cases that were not sentenced within the standard range.⁴⁸ The sample for our WIR analysis consists of Net Nanny cases (N = 182) and comparison group cases (N = 1,830) that were sentenced within the standard range.

⁴⁴ Knoth, L. (2021). *Examining Washington State's sentencing guidelines: A report for the Criminal Sentencing Task Force* (Doc. No. 21-05-1901). Olympia: Washington State Institute for Public Policy; see also Washington State Caseload Forecast Council. (2021). *2021 Washington State Adult Sentencing Guidelines Manual*.

⁴⁵ There are special circumstances that allow judges to issue sentences that fall below or above the standard range. However, most felony sentences are within the standard range. Caseload Forecast Council (2022), pg. 7.

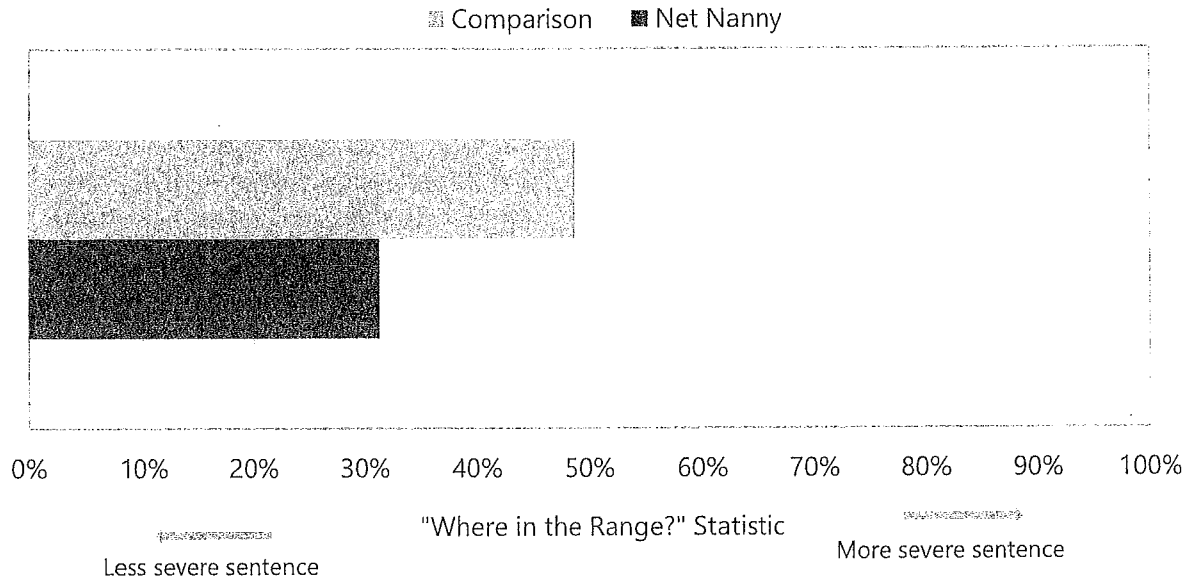
⁴⁶ Caseload Forecast Council (2022), pg. 49.

⁴⁷ The WIR statistic examines how individuals are sentenced relative to the standard range. Because the standard range adjusts for differences in criminal history and offense

severity, the WIR statistic can be used to make valid comparisons in sentencing outcomes between individuals who have different criminal histories or who were convicted of different crimes.

⁴⁸ Our initial sample for this analysis consisted of Net Nanny cases (N = 210) and comparison group cases (N = 2,396) that resulted in conviction. To prepare the data for the WIR analysis, we dropped cases that were sentenced above the standard range due to aggravating factors, which applied to 7% of cases in both groups. We also dropped cases that were sentenced below the standard range due to mitigating factors, which applied to 3% of cases in both groups. In addition, we dropped 12% of comparison group cases that received SSOSA.

Exhibit 10
Differences in Average Punishment Severity



Note:

The values for the "Where in the Range?" statistic range from 0 to 100. A value of 0 corresponds to the minimum of the standard sentence range. A value of 50 corresponds to the mid-point of the standard range. A value of 100 corresponds to the maximum of the standard range.

Net Nanny (N = 182) comparison group (N = 1,830).

Among cases that received standard sentences, the average case in the comparison group was sentenced to 49% of the maximum term of confinement (Exhibit 10). This pattern is consistent with the idea that judges are using the mid-point of the standard range as the default punishment.

In contrast, the average Net Nanny case was sentenced to 31% of the maximum term of confinement.⁴⁹ Thus, the WIR statistic is about 18% lower for the Net Nanny group than the comparison group.⁵⁰

This indicates that judges tend to issue more lenient sentences for Net Nanny cases than comparison group cases.

Sensitivity Analyses. Earlier, we reported that the average term of confinement was similar (i.e., 70 months) for Net Nanny cases and comparison group cases that did not receive SSOSA. The results of the WIR analysis indicate that Net Nanny cases receive more lenient punishment than comparison group cases. To explain this apparent discrepancy, we reviewed the seriousness level of offenses for Net Nanny (N = 182) and comparison group cases (N = 1,830).

⁴⁹ For most crimes, Washington courts adjust the punishment for an attempted offense by taking the standard sentence for the completed offense and applying a 75% modifier (see RCW 9.94A.595). This practice could bias our analyses of sentencing outcomes since Net Nanny cases primarily involve charges for attempted offenses. However, before

running our analyses, we reviewed the data and verified that these adjustments were made prior to calculating the WIR statistic. Thus, the results of our WIR analysis are not affected by the courts' downward adjustment for attempted offenses.

⁵⁰ Using an independent samples t-test, we found that this difference is statistically significant at the 0.001 level.

We found that the Net Nanny group primarily consisted of high-severity offenses, while the comparison group had a greater percentage of cases with low-severity offenses.⁵¹ This explains how both groups can have the same average sentence (i.e., 70 months), but the relative intensity of this punishment is still lower-than-expected for the Net Nanny group.

In results not shown, we re-ran our WIR analysis after restricting the sample only to include cases with high-severity offenses (i.e., seriousness level 10 or higher). Among cases with high-severity offenses, the average Net Nanny case was sentenced to about one-fourth of the range, and the average comparison group case was sentenced to about one-half the range. These results reinforce our original findings, which indicate that judges tend to issue more lenient sentences for Net Nanny cases.

⁵¹ Washington courts categorize offenses using a seriousness level score that ranges (low to high) from 1 to 16 (see RCW 9.94A.510). The median seriousness score for Net Nanny

cases (N = 182) was 11, while the median score for comparison group cases (N = 1,830) was 7.

IV. Summary and Limitations

The current study addressed two research objectives. First, we reviewed the available research on internet sting operations similar to Net Nanny. Second, we compared individuals convicted via Net Nanny with individuals convicted of similar crimes through other avenues.

In the text below, we review our key findings and describe the limitations of the current study.

Research on Internet Sting Operations

We did not find any studies that evaluated whether internet sting operations are effective at reducing crime. The subject is difficult to study, as the main ways that internet sting operations might reduce crime (e.g., incapacitation and deterrence) cannot be directly measured.

We also did not find any studies that examined the costs of administering internet sting operations. Although we obtained basic information on the costs associated with Net Nanny, it is unclear how they compare to internet sting operations conducted by other law enforcement agencies.

Finally, we reviewed multiple articles by legal experts discussing the potential advantages and drawbacks of internet sting operations. Proponents argue that these operations are beneficial because they have the potential to prevent crime.

In contrast, critics argue that these operations involve controversial police tactics and—when conducted improperly—carry the risk of punishing innocent people.

Comparative Analyses

We compared two groups: individuals convicted via Net Nanny and individuals convicted of similar crimes during the same period who were not associated with Net Nanny.

Background Characteristics

We found that individuals in both groups were similar in sex, race/ethnicity, and age. We also found that individuals in both groups were similar across extensive measures of criminal history. Overall, these results suggest that Net Nanny is arresting people with similar demographic characteristics and criminal records as individuals convicted of completed child sex crimes.

It is also noteworthy that both groups in our study had an average age of about 38 and overwhelmingly consisted of males (≈99%). In addition, only about 20% of individuals in both groups had previously been convicted of a felony. These patterns are consistent with research showing that adults convicted of sex crimes in Washington State tend to be older, disproportionately male, and have less extensive criminal histories than adults convicted of non-sexual crimes.⁵²

⁵² See Barnoski (2005).

Sentencing Outcomes

We also compared sentencing outcomes for individuals in our sample. This comparison produced two noteworthy findings.

The first finding concerned the impact of the Special Sex Offender Sentencing Alternative (SSOSA). About 12% of individuals in the comparison group received SSOSA and were ordered to serve the vast majority of their sentence in community custody instead of prison. In contrast, none of the individuals convicted via Net Nanny received SSOSA.

The second finding concerned differences in how judges sentenced cases that received standard sentences. On average, judges used the halfway point of the sentencing range to punish comparison group cases. However, judges punished the average Net Nanny case at about one-third of the range. In other words, judges were more lenient when sentencing Net Nanny cases than comparison group cases.

These two findings reveal a possible discrepancy in the policies and practices related to how Washington courts punish individuals convicted through internet sting operations. Presumably, judges tend to be more lenient in punishing Net Nanny cases because these cases involve sexual crimes against fictitious victims rather than real-life children. However, for this very reason, Net Nanny cases are ineligible for SSOSA.

Limitations

Although the current study provides an extensive description of Operation Net Nanny, there are limits to this research.

First, our analyses used measures of age, sex, race/ethnicity, and criminal history. Although we found that individuals in the Net Nanny and comparison groups were similar across these measures, there may be unobserved differences that we could not detect because the measures were not available in our data. For example, past research suggests that individuals convicted of attempted child sex crimes have different levels of education, income, and exposure to child pornography than individuals convicted of completed child sex crimes.⁵³ However, the data for the current study did not include such measures.

Second, Net Nanny is not the only internet sting operation in Washington State. Because our data do not indicate whether an individual was arrested via an internet sting operation or through traditional police tactics, it is likely that at least some of the individuals in our comparison group were apprehended as a result of internet sting operations other than Net Nanny.

However, our research indicates other police organizations in Washington State arrest relatively few people each year using Net Nanny-style sting operations. For this report, we met with a King County prosecutor who works closely with the Seattle Police Department and the Washington Internet Crimes Against Children Task Force.

⁵³ Mitchell, K.J., Wolak, J., & Finkelhor, D. (2005). Police posing as juveniles online to catch sex offenders: Is it working? *Sexual Abuse: A Journal of Research and Treatment*, 17, 241-267 and Seto, M.C., Wood, J.M., Babchishin, K.M., &

Flynn, S. (2012). Online solicitation offenders are different from child pornography offenders and lower risk contact sexual offenders. *Law and Human Behavior*, 36(4), 320.

We learned that between 2015 and 2022, major law enforcement operations in the state made fewer than 30 arrests via internet sting operations that resemble Net Nanny.⁵⁴ In contrast, the comparison group for the current study contains data on over 3,500 criminal cases from the same period. Thus, we are confident that the vast majority (i.e., over 95%) of cases in our comparison group are people who were arrested via traditional police tactics.

In closing, it is worth noting what the evidence from the current study does *not* tell us. For example, the current study does not tell us whether Net Nanny is effective at reducing crime. More generally, the ways Net Nanny might reduce crime cannot be directly measured. As a result, it is not possible to generate the evidence necessary to evaluate the impact of Net Nanny on crime.

In addition, the current study does not tell us exactly how WSP detectives made each arrest. We spoke with WSP officials to learn about the general tactics that they used for the two primary sting scenarios. However, we did not conduct an independent investigation of these tactics, such as by reviewing transcripts of online communication between undercover officers and individuals who were later arrested. Such an investigation is beyond the scope of the legislative assignment.

Finally, the current study also does not tell us whether it is likely that people convicted via Net Nanny would have committed child sex crimes in other circumstances. To address this question, we would need reliable measures of each convicted individual's propensity (i.e., motivation/willingness) to commit child sexual abuse. The current study cannot address this question because we do not have access to such measures.

⁵⁴ Personal correspondence with King County prosecutor.

Appendices

Internet Stings and Operation Net Nanny

Appendices

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I. Additional Descriptive Statistics

Exhibit A1 provides information on the legal status of 294 Net Nanny cases.⁵⁵ As of Fall 2022, 42 cases had not yet been processed by the courts. Of the remaining 252 cases, 236 resulted in a conviction, which translates to a conviction rate of about 94%.⁵⁶

Exhibit A1
Legal Status of Net Nanny Cases (N = 294)

| Status as of fall 2022 | | |
|------------------------|-----------|---------|
| Category | Frequency | Percent |
| Not yet adjudicated | 42 | 14.2% |
| Conviction | 236 | 80.3% |
| Dismissed | 14 | 4.8% |
| Not guilty | 2 | 0.7% |

$236 \div 14 = 0.059$
6% dismissal of
Adjudicated cases

Exhibit A2 provides information on additional characteristics of 299 Net Nanny arrest events. Most Net Nanny arrests occurred soon after undercover officers made online contact. Nearly half of the arrests (45%) occurred within 24 hours of initial online contact, and two-thirds (66%) occurred within 48 hours.

In slightly more than half of all Net Nanny arrests (52%), the arrested person brought sexual paraphernalia (e.g., condoms, lubricant) to the sting location. In contrast, it was relatively uncommon for people to bring alcohol, drugs, or weapons to the sting location.

⁵⁵ We were unable to match five arrests to records in the Criminal History Database (CHD).

⁵⁶ In results not shown, we calculated the conviction rate for cases with similar charges that were filed during the same time period but not associated with Net Nanny. The conviction rate for these cases came to 77.9% (i.e., 5,629 convictions out of 7,224 cases), which is about 16% lower than the conviction rate for Net Nanny. This pattern is consistent with past research, which indicates that internet

sting operations have relatively high conviction rates. See Mitchell, K.J., Wolak, J., & Finkelhor, D. (2005). Police posing as juveniles online to catch sex offenders: Is it working? *Sexual Abuse: A Journal of Research and Treatment*, 17, 241-267 and Newman, G.R., & Socia, K. (2007). *Sting operations*. US Department of Justice, Office of Community Oriented Policing Services.

Exhibit A2

Characteristics of Net Nanny Arrests (N = 299)

| Time elapsed from initial online contact to arrest | | |
|---|-----------|---------|
| Category | Frequency | Percent |
| 0-24 hours | 136 | 45.5 |
| 24-48 hours | 63 | 21.1 |
| 2-3 days | 32 | 10.7 |
| 3-7 days | 26 | 8.7 |
| 1-4 weeks | 9 | 3.0 |
| Over 1 month | 20 | 6.7 |
| Missing | 13 | 4.4 |
| Distance traveled from home address to sting location | | |
| Miles | Frequency | Percent |
| 0-12 | 120 | 40.1 |
| 13-24 | 60 | 20.1 |
| 25-50 | 58 | 19.4 |
| 51-100 | 40 | 13.4 |
| 100+ | 14 | 4.7 |
| Missing | 7 | 2.3 |
| Person brought sexual paraphernalia to sting location | | |
| Category | Frequency | Percent |
| Yes | 157 | 52.5 |
| No | 114 | 38.1 |
| Missing | 28 | 9.4 |
| Person brought weapon to sting location | | |
| Category | Frequency | Percent |
| Yes | 19 | 6.4 |
| No | 246 | 82.3 |
| Missing | 34 | 11.4 |
| Person brought drugs/alcohol to sting location | | |
| Category | Frequency | Percent |
| Yes | 29 | 9.7 |
| No | 236 | 78.9 |
| Missing | 34 | 11.4 |

II. Definitions of Child Sex Crimes

Exhibit A3

Washington State Statute Definitions of Child Sex Crimes

| Statute | Offense name | Acronym | Severity |
|---|--|---------|--------------------------------|
| 9A.44.073 | Rape of a child, first degree | ROC1 | Class A felony |
| A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and the perpetrator is at least twenty-four months older than the victim. | | | |
| 9A.44.076 | Rape of a child, second degree | ROC2 | Class A felony |
| A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim. | | | |
| 9A.44.079 | Rape of a child, third degree | ROC3 | Class C felony |
| A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and the perpetrator is at least forty-eight months older than the victim. | | | |
| 9A.44.083 | Child molestation, first degree | CMOL1 | Class A felony |
| A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and the perpetrator is at least thirty-six months older than the victim. | | | |
| 9A.44.083 | Child molestation, second degree | CMOL2 | Class B felony |
| A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim. | | | |
| 9.68A.090 | Communicating with a minor for immoral purposes [#] | CMIP | Gross misdemeanor [^] |
| A person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor. | | | |
| 9.68A.100 | Commercial sexual abuse of a minor | CSAM | Class B felony |
| A person is guilty of commercial sexual abuse of a minor if (a) he or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her; (b) he or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or (c) he or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value. | | | |
| 9.68A.050 | Dealing in depictions of a minor engaged in sexually explicit conduct | DDMESEC | Class B felony |
| A person eighteen years of age or older commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct when he or she knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e). | | | |
| 9.68A.070 | Possession of depictions of a minor engaged in sexually explicit conduct | PDMESEC | Class B felony |
| A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e). | | | |

Notes:

[#] In Washington v. McNallie (Feb. 1993), Washington courts ruled that "immoral purposes" means "for the predatory purpose of promoting the exposure of children to and involvement in sexual misconduct."

[^] If the perpetrator has previously been convicted of a felony sexual offense and communicated electronically, the crime of communicating with a minor for immoral purposes is a class C felony.

III. Washington's Special Sex Offender Sentencing Alternative (SSOSA)

Individuals convicted of sexual offenses in Washington State may be eligible for a sentencing alternative known as the Special Sex Offender Sentencing Alternative (SSOSA). SSOSA was created after Washington State changed from an indeterminate to a determinate sentencing system during the 1980s. This change substantially increased the severity of punishment and reduced community-based treatment options for people convicted of sexual offenses.⁵⁷

After Washington shifted to a determinate sentencing structure, advocacy groups raised concerns about how this would impact victims of child sexual abuse. Advocates noted that most victims of sexual abuse are children who were abused by family members. Because determinate sentencing greatly increased the severity of punishment for sex offenses, advocacy groups argued that child victims would be discouraged from reporting the abuse to the police, as this might result in sending a family member to prison. In response to these concerns, the legislature created SSOSA.

In practical terms, an SSOSA sentence "consists of a suspended sentence, incarceration up to 12 months, treatment for up to 5 years, and a term of community custody."⁵⁸ The rationale behind SSOSA is to provide a less-punitive alternative for individuals who are amenable to treatment while ensuring that they will still be held accountable for their crimes.

During the last three decades, WSIPP has conducted multiple studies of SSOSA. WSIPP found the following:

- The vast majority of individuals who receive SSOSA sentences have never previously been incarcerated.⁵⁹
- Most individuals who receive SSOSA sentences were convicted of sexual crimes involving children.⁶⁰
- State expenses associated with punishment are substantially lower for individuals who receive SSOSA sentences than for individuals convicted of similar offenses who did not receive an SSOSA sentence.⁶¹
- Receipt of SSOSA is associated with significantly lower recidivism rates.⁶²

Individuals convicted as a result of internet sting operations are *not* eligible for SSOSA, which requires defendants to have "an established relationship with the victim" (see Exhibit A4). SSOSA was originally developed during the 1980s, long before internet sting operations existed.

⁵⁷ Sex Offender Policy Board. (2013). *Review of the Special Sex Offender Sentencing Alternative (SSOSA)*.

⁵⁸ Hunt, W. (2022). *Recommendations for SSOSA reforms; treatment alternatives for certain sex offenses; lifetime supervision; failure to register; washouts; and system improvements*. Sex Offender Policy Board. Report submitted to the House Public Safety Committee, 20.

⁵⁹ Barnoski, R. (2005). *Sex offender sentencing in Washington State: Initial sentencing decision* (Doc. No. 05-09-1202). Olympia: Washington State Institute for Public Policy.

⁶⁰ Barnoski, R. (2005). *Sex offender sentencing in Washington State: Recidivism rates* (Doc. No. 05-08-1203). Olympia: Washington State Institute for Public Policy.

⁶¹ Lieb, R., H. Scogin, & G. Weeks. (1993). *Washington State sex offenders: Costs of sentencing options* (Doc. No. 93-02-1101). Olympia: Washington State Institute for Public Policy.

⁶² Barnoski (2005) and Song, L., & R. Lieb (1995). *Washington State sex offenders: Overview of recidivism studies* (Doc. No. 95-02-1101). Olympia: Washington State Institute for Public Policy.

Exhibit A4
SSOSA Eligibility Requirements

- Individual had an **established relationship** with the victim;
- Individual is found to be amenable to treatment;
- Individual is willing and able to pay for the diagnostic and treatment costs;
- Individual has no prior convictions for sexual offenses;
- Individual has not been convicted of a violent offense within the last 5 years;
- The crime did not result in substantial bodily harm to the victim;
- The crime is not classified as both a sex offense and a serious violent offense; and
- The standard range for the offense includes the possibility of confinement of less than 11 years.

Note:

RCW 9.94A.670.

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Internet Stings and Operation Net Nanny – WSIPP Study Rebuttal

Rev 1.4 –4-Aug-2023

This rebuttal to the Internet Stings and Operation Net Nanny WSIPP Study by Corey Whichard and Katelyn Kelley notes our comments and concerns with certain sections of this study. This rebuttal was written, reviewed, and edited by founders and members of Citizens Against Government Entrapment (CAGE - www.cage.fyi) as well as others affected by these sting operations. Various experts in criminal investigation, legal defense, and child trafficking have also been a part of the information gathering for this rebuttal. Those of us in CAGE represent many impacted by Operation Net Nanny and have been collecting data from these sting operations over the prior five years - long enough to qualify us as subject matter experts.

Page 1:

Operation Net Nanny ("Net Nanny") is an internet sting operation that has been active since August 2015. Net Nanny is designed to apprehend adults who use the internet to solicit sexual activity with minors (i.e., under age 16).

We have a concern with this language. The adults being arrested were all on Adult Dating and Hookup sites. So, if it is designed to apprehend adults that used the internet to solicit sexual activity with minors, then why is the WSP (MECTF) running these stings on 18+ sites? These stings appear to be nothing more than a ruse, designed to bait and switch and lure unsuspecting men from these "hookup" or similar Adult dating/meetup type websites. If minors appear on these sites, then is targeting adult subscribers the best way to effect public safety goals?

Scenario #1 (57%): Undercover officers posed online as a minor posting personal ads on dating websites or internet forums.

★ To clarify, online postings WERE NOT officers posing as a minor. The profiles were those of an adult which would indicate adults wanting adult interactions and activities. No description or mention of children is made in any of the profiles. Profiles included pictures of adult men and women.

Scenario #2 (39%): Undercover officers posed online as a parent seeking adults to engage in sexual activity with their children.

Online postings WERE NOT officers posing as a parent seeking adults to engage in sexual activity with their children. There was NOTHING in the ads indicating or suggesting a parent seeking sexual activity with their children. In fact, many of the ads included the phrase "W4M", which means, "Woman for Man", or Woman wanting sex with a Man, and included a playlist of role play activities.

There is nothing in the ads or profiles of either of the scenarios which indicates they have anything to do with child exploitation or sexual contact with a minor as the WSP repeatedly states. Detectives and Prosecutors use this language to create a mindset of someone preying on children which was not the case.

On average, across these specific measures individuals convicted through Net Nanny resemble people convicted of sexual crimes against minors who were arrested via traditional police tactics.

We believe this statement references Exhibit 8 on page 18 of the study. The statistics show a lower percentage in ALL the Net Nanny cases with the exception of one (0.2%), representing a difference that might be statistically equal. When referencing a statistic like this, however, it is important to also have additional comparisons countering each with the general population. We believe you will find similar numbers. We talk in more detail about this below, but it is very important to note that prior convictions are overall LESS than those for similar crimes and without comparing to the general population; therefore, it doesn't hold weight. Your wording and conclusion here add bias to the report and does not increase understanding of the problem enumerated.

Page 3:

Police have used sting operations in different ways to target various crimes. Depending on the sting operation, undercover police may pose as participants in a crime or as potential victims.

Each Net Nanny Operation has a stated "MISSION" describing how the plan would be realized. For Net Nanny #5 in Thurston County the MISSION reads: *MECTF is placing CL ads, answering CL ads, and chatting with individuals that want to perpetrate commercial and non-commercial sex crimes against children. The Online UC operation will focus on suspects that have history with sexually abusing children, have stated they sexually exploit children, and recovering children that are being sexually exploited.*¹

By analyzing actual sting chat logs, interviewing targets, and in discussions with those arrested, CAGE has discovered the following:

- MECTF did place ads on Craigslist Casual Encounters with titles like "Family Play Time!?!? - w4m" - note the adult character of the ad.
- The individuals on these Adult, 18+ sites, were all introduced to the idea of perpetrating sex crimes against children by the undercover officer because they led the discussion and introduced the possibility of sex with children.
- MECTF notes they would "focus on suspects that have a history" yet the WSIPP study reveals that less than 10% of those arrested had any prior history of abusing children.
- ✖ • MECTF was randomly fishing for suspects in a large pool of individuals. It appears that **no specific person was targeted.**
- Many arrested had NO prior criminal history and no predisposition, yet they were detained and prosecuted nonetheless. There was also NO diversion program offered. Instead, the harshest penalties were sought through police virtue testing, mischaracterization of user profiles, abuse of citizen rights, and manufactured criminality.

✖ We would agree that if Law Enforcement (WSP – MECTF) is going to conduct an undercover sting operation then it would be best to catch someone known to police (a reported concern/Probable Cause), or one who had a history evincing serious concern in the community. We do not agree with the casting of a WIDE net on the Dating and Hookup sites, due to pervasive intrusion in one of the most intimate and vulnerable settings adults frequent. These have included: SKOUT, Badoo, Tinder,



Whisper, OkCupid, Grindr, Scruff, Grizzly, Plenty of Fish, Book of Matches, Skipthegames, MeetMe and many others.²

The Miami Herald recently published an article about an ICAC detective tipping off suspects during an ongoing child sting operation.³ This is someone who worked the "child crimes unit" for more than 7 years. Though "the sheriff's office did not release what may have prompted the detective to warn the suspects" we can imagine it was likely related to a gross ethical violation of fairness. Interestingly, LE arrested the detective and charged him with 15 felony counts! This is law enforcement working to protect their questionable practices and continue the cash cow (Collars for Dollars⁴). Sadly, as your report seems to show, this isn't helping stop crime or protect children.

Chelsea Reynold's 2017 Craigslist Casual Encounters research⁵ found most Craigslist sex forum users were normal people seeking to explore their sexual desires with strangers online. She described the majority of the users as "sexual outsiders," people who are LGBTQ, non-monogamous, or kink and fetish community members who are different from most people on regular dating sites. She also discovered "statistically very few" users of the website were victims of sex trafficking, a finding that didn't match law enforcement's and the media's reports of Craigslist personal ads.

This report uses the term "internet sting operation" to refer to operations designed to target adults who use the internet to arrange face-to-face meetings with minors for sexual activity.

→ This refers back to what we said above. Police claims do not match the reality; please refer back to MECTF's Mission Statement (for example NN#5¹). We maintain it is unrealistic, unfair, and unreasonable to target adults on adult dating/hookup sites by claiming without cause that the chief reason adults appear on such platforms is to arrange a sexual meeting with a minor. What law enforcement does on these sites is lure unsuspecting individuals via deception and convince them to meet with a minor. This is exactly what MECTF has done for the majority of those arrested. Adults looking for minors would more likely be on social media sites where minors congregate. That might mean Facebook, Instagram, Snapchat, Tik Tok, Discord, Roblox, or similar.

- 1) An initial phase where undercover police officers engage in online communication with adults who express interest in having sexual contact with minors.
- 2) A subsequent phase where the targeted adult travels to an agreed-upon location for the express purpose of engaging in sexual activity with a minor.
- 3) A final phase where the targeted adult is arrested on-site.

#1: It is in fact the undercover officer who introduces the minor/children into the conversation (or bait and switch on the age) and then pushes the sex with the minor. Of course, being on a dating/hookup site it isn't far-fetched that "sex" would be brought up by someone. Often, sex is discussed prior to knowing the exact age of the image in the profile picture, with adults relying on the language of the user agreement often stating minors are not welcome or allowed onto the site.

Moreover, profile photos used are also of adults or individuals appearing over the age of consent.⁶

Deception is often added by putting filters on the person's photo to further disguise the age so that one can not visually determine the age with certainty. This deliberate obfuscation is designed to set up the adult mark and transfer an unreasonable fact-checking burden onto the adult user, who has no reason to suspect he/she is not talking to an adult. If MECTF is looking for persons interested in

What about Websites that ID verify? Defendants are still

not eligible for entrapment, dont believe the Age Scheme and
have NO Available defense. How is that fundamentally Fair?

children, pictures of children should be supplied. They have the ability to do this as detailed in the ICAC manual Section 8.5, so long as the "Employee" has given their consent of use. But in that event, LE's arrest stats would plummet.

#3: There have been many arrests where the individual never made it to the location (be it trap house, store, park, etc.). In some cases the individual was driving away or passed by and still was arrested and prosecuted⁷. If the study had access to the transcripts and reports it would be evident that a good percentage never made it to the trap house location or inside the trap house.

A statement made during one of the stings by the head of MECTF about Probable Cause (PC) was: *"If PC is established during the chats, that will be relayed from the CP to the arrest and surveillance team. If PC cannot be established, the surveillance TL will consult with the CP on whether or not to conduct a Terry Stop. Vehicles will be towed to Lakewood PD for search warrants and or seizure."* Researching Transcripts of texts would have shown the many differences between Net Nanny Stings and other arrests made in teen chat rooms, the dark web, and sites where minors hang out.

Before the 1800s, courts only punished individuals based on actual behaviors and the consequences of those behaviors. Legal experts eventually abandoned this approach because they were concerned it limited the state's ability to prevent crime.

In Washington State RCW 9A.28.020 is the Criminal Attempt law that allows these stings to be prosecuted since the crime can be *factually or legally impossible of commission* — sex with a fictitious minor, for example. The Attempted Rape of a Child could be charged in a WA State Child Sex Sting operation but not in an OR State sting operation since it has a different Attempt Clause. This clause was enacted in 1975 well before the internet and these proactive child sex stings both existed and we do not believe it would have been the legislature's intent to support such bad faith policing tactics. One of the CAGE co-founders has spoken with several legislators who believe these arrests should be treated with a diversion program (as also noted by the SOPB's Fall 2022 report to legislature).

Page 4:

1) there is evidence that the individual intended to commit a specific crime, and 2) there is evidence that the individual took a "substantial step" toward completing that crime.

It can be difficult to properly determine what constitutes a "Substantial Step." Part of the challenge for the person arrested is there is often "doubt" about truth in these conversations, because a feature of the online adult dating platform is fantasy, chicanery, and dishonesty. Many subscribers are wary of being catfished, a real danger in the digital age where entire profiles are stolen, misused, and abused. Thus, by default a user may show up at the meet location as a "trust but verify" action. Many do not believe they are talking to minors or adults with minors (refer to text transcripts) due to role-play scenarios and smack-talk. No site subscriber can know for certain without seeking confirmation, and it cannot be confirmed unless one meets the person with whom you are chatting. This is the internet, remember: most people lie or exaggerate, even more so on "dating" type sites.

Verifying our claims can only be gleaned by reviewing the whole conversation, not by cherry picking parts of the text chatter. What we have found is that those arrested outside the "meet location" or trap house have often fared better in their trial and plea negotiations.

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In rebuttal

4

However, if one is to take this as a minor posting, then posting an ad on Craigslist Casual Encounters, No Strings Attached to solicit men, and initiating a sexual conversation for casual sex effectively suggests law enforcement are exploiting minors, pimping them out. Then there is the argument as to why LE is creating a virtue test without any probable cause, which is violative of the 4th Amendment. Of the people who use dating sites or apps, 24 percent admitted to using them to find consensual casual sex partners (Pew Research Center)¹³. These sting operations target the 24% of men from that group.

It should be remembered ALL of these types of stings are conducted on a dating and/or hookup site so the sexual conversation is sure to come up. In the majority of these cases sex is initiated by the officers. It is 100% untrue that the officers do not initiate communication about sexual activity first. Again, for this we can refer to chat transcripts to prove who brings the idea up first and how it is often solicited from the person on the other end of the chat. For example, here is law enforcement prodding one to incriminate themselves, "...but tell me specifically what you want with me kids." [sic]

However, in about 28% arrests involving scenario #1, undercover officers were contacted through ads posted on dating platforms for teenagers.

Why is primary target adult sites and not teen platforms?

We disagree, and ask, which platforms? These platforms should be listed. We are aware of only one case conducted on Facebook (Brandon C. Pamon) and he has intellectual deficiencies. Yet, law enforcement reached out to him rather than him engaging first in the conversation. In the Appeal Opinion (3/2/2022 – No. 83468-1-1) during sentencing, the court noted that the degree to which law enforcement targeted Pamon here was unusual compared to typical MECTF "Net Nanny" operations. The court found by a preponderance of the evidence **three mitigating factors** justifying an exceptional downward sentence. The first mitigating factor was that law enforcement, as the "complaining witness," was "to a significant degree, an initiator, willing participant, aggressor, or provoker of the incident." The second mitigating factor was that "the Defendant, with no apparent predisposition to do so was induced by others to participate in the crime" and the court found there was no evidence Pamon had been "friending young girls" on Facebook. And the third mitigating factor was that "the Defendant's capacity to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of the law, was significantly impaired." The court found that Pamon "has a compromised intellect" and that Sam "initiated discussions of commercial sexual exploitation." The court sentenced Pamon to an indeterminate sentence of **96 months to life in prison.**¹⁴

Officers then provide the other person with a residential address. Once the individual arrives and knocks on the door, an undercover officer dressed as an adolescent answers and invites them inside, where they are arrested.

If done at a TRAP HOUSE location law enforcement will provide an intermediate address, like a 7-11, gas station or similar for observation purposes before providing a "residential" address. There are other cases where men are told to meet at a McDonald's; see cases of Daniel Kennedy (19-1-00352-34) and Aaron Lee Kinley (17-1-01639-37). And Todd Lee Schock (19-100341-34) was arrested at a Safeway. There have been cases where men never travel to the final location. In the case of Joshua A. Garcia (19-1-00349-34) he was told to go to a location, said no but because he shared his location, the police arrested him anyway, though not at the meet location. Kyran John Lien (17-1-01555-3) never went near the trap house and Kyle Jackson (16-1-01582-34) was arrested at the

gas station also never making it to the trap house. Mr. Kyle Jackson was later acquitted but spent almost 2 years in jail waiting for his trial, effectively punished for a crime he did not commit. Highly unlikely for any sexual encounter with a minor to occur at a McDonalds, Safeway, or on a neighborhood street, yet these individuals have been arrested and prosecuted anyway. There are others who were arrested while leaving and driving by the meet location. Apparently getting close was sufficient for law enforcement to make an arrest and prosecutors to continue their prosecution. While prosecutions using circumstantial evidence are common, where serious deprivation of citizen liberties is highly probable, law enforcement must respect the sensitivities inherent on dating and sex sites. It is not the job of law enforcement to be arbiters of virtue. Yet, the ruse works because it strikes at the heart of the most vulnerable, and, worse, does nothing to impact real public safety goals. Manufactured crimes lead to manufactured results.

It should be noted again that most caught up in stings have no criminal record and would never have taken affirmative steps toward commission of a crime absent police pressure or interference. By reviewing the Pre Sentencing Information (PSI) document or Psychosexual evaluation, one finds additional mitigating factors which law enforcement never considers but nevertheless effectively exploits. These include marital problems, family issues, homelessness, drug or alcohol addiction, porn addiction, loss of career, loneliness, identity issues, mental health issues and so on. While not an excuse, these men are an easier target for law enforcement, and are therefore at greater risk of exploitation, not unlike what one sees in physical assaults of citizens by police, which has captured the public's outrage in recent years.

Page 7:

Transcripts of the online communication provide evidence that the arrested individual intended to engage in sexual activity with a minor.

Clearly, WSIPP study authors took LE's word for this. Later in the study (p.26) **it is noted the transcripts were NOT reviewed.** How can this claim be made without analyzing at least SOME of the transcripts? There is NO justification for this claim, though it appears to be something the WSP would write in their Probable Cause document. Many of the transcripts note the target's shock and disbelief when ages or kids are mentioned. Most wonder then if this is a setup or cop, or similar that they must be chatting with. It is the undercover who claims those chatting with the target are NOT police, but continues to encourage the behavior and often leads the individual onward. LE does not merely provide an opportunity to commit a crime, as LE repeatedly claims. If they refuse to participate they might be shamed or called out as a flake or otherwise induced to aid LE in commission of the ruse. Transcripts can be reviewed to find this shaming behavior all **over the chats** (We can provide examples if requested). While we can all agree there was intent to engage in sexual activity, it was not necessarily with a minor, as there was still doubt on whom the conversation participants were. LE gets around this ambiguity they caused by claiming the mark should have disengaged in the conversation immediately upon learning a prospective minor was present, but this is not how people typically behave – there is confusion, shock, disbelief, checking for veracity, role-playing, and other mitigating behavioral factors which are not of themselves illegal. It should also be noted that in State v. Parker (Case #1910035434) some of the SCOUT text was lost/deleted. As a result Parker's case was later dismissed. It is unknown how many other cases had missing conversations especially with over 74% of those arrested taking pleas, but we have evidence in some used for that some altered chats were

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p9 54

used in prosecutions in other states (see Commonwealth v. Achin, 2019 - successful, but Commonwealth v. Rehm, 2023, - unsuccessful - both in Virginia).

The majority of arrests (70%) took place after undercover police were contacted in response to personal ads posted on adults-only platforms (i.e., age 18+). About 28% of arrests took place after undercover officers were contacted through online platforms designed for teenagers (i.e., age 13+).

The platforms should be listed. We are aware of the following platforms being used for these STING operations: Craigslist Casual Encounters as well as Social Media Dating Apps including: SKOUT, Badoo, Tinder, Whisper, OkCupid, Grindr, Scruff, Grizzly, Plenty of Fish, Ok Cupid, Book of Matches, Skipthegames, and MeetMe. The early stings were done in Washington state on Craigslist Casual Encounters until it was shut down due to new legislation (FOSTA) enacted in 2018. We do not believe this 28% number – as noted before, we are aware of only one sting that was conducted on FACEBOOK which consisted of questionable and aggressive tactics by law enforcement going after someone with compromised intellect.

Page 8:

These personal ads typically include text indicating the post is intended for adults interested in an unspecified type of sexual activity that is unconventional (i.e., “not for everyone”).

It is difficult to determine if WSP-MECTF is doing this to target the KINK community or perhaps to make their ad stand out or be a little different from all the other ads online. MECTF will say it targets “predators” but most respond to a variety of ads in their hookup question and encounter law enforcement randomly. The rate of rapid-fire response by law enforcement is unusual. It would require speaking with those arrested in these stings to verify this.

One example ad, posted on Craigslist Casual Encounters for NN#5 was titled: *“Family Play time!?!? - w4m”* With the the following text: *“Mommy/daughter, Daddy/ daughter, Daddy/son, Mommy/son...you get the drift. If you know what I’m talking about hit me up we’ll chat more about what I have to offer you.”*¹⁵ This would certainly seem like a role play/fantasy type activity to most.

After arriving at this address and entering the premises, the individual is arrested.

→ There is NO OPPORTUNITY ever given for the target to **not commit the crime**. Detectives allow NO time to “observe and decide” the validity of their suspicion. They are always met by an adult, even when one is not supposed to be there. Why would they not assume the adult is playing a game?

Because this scenario involved multiple fictitious victims, we display information on the age of the *youngest* fictitious victim. On average, the youngest fictitious victim was about eight years old. In 50% of arrests, the youngest fictitious victim was six. Arrests typically involved fictitious victims of both sexes (52%).

Law enforcement knows that they can get double/ triple charges by inventing multiple children - extending the already excessive sentences and all but guaranteeing plea deals. Roughly 74% end up taking pleas and another 20% go to trial. Someone with 4 or more charges is looking at a 10 year plus

sentence if they lose in a trial (of which there have been over 55). Law enforcement typically sets 3 ages for the children: 6 year old girl, 11 year old girl, and 13 year old boy. This would allow for two charges of AROC1 and one charge of AROC2.

During court testimony from Sgt. Rodriguez, 1/6/202, in State v. Parker, Sgt. Rodriguez noted "we have limited resources, so we do want to focus on the more egregious crimes, which is the AROC1 and AROC2."¹⁶

X The majority of arrests (90%) took place after police were contacted in response to personal ads posted on adults-only platforms (i.e., age 18+). About 9% of arrests took place after police were contacted through online platforms designed for teenagers (i.e., age 13+).

This is not surprising, because most are on such sites to hookup and meet others. It requires responding to a bunch of ads or the "matches" that the dating platform algorithm pairs the dating profile with, either by geolocating those closest to the subscriber, or by swiping left or right. Many of the individuals likely sent out 5-10 other responses to post that same day. Since these are adult-only platforms, and matches were paired with 18 and older dating profiles, clearly none of these individuals were seeking minors, absent law enforcement enticements or badgering. CAGE does question the stats on the teenage platforms and would like to know what sites these 9% were on. Regardless of all this, if law enforcement wants to protect the community they would be on websites where minors are present, not on adult sites. Common sense dictates that; so what is the motive of LE, what is their purpose – perhaps to pad arrest numbers, to get additional funding, to appease OUR, and foster closer working relationship (quid pro quo). Posing as an Adult on a Site - minors are not and cannot be present = merely for the sake of prosecution
Because most arrests from scenario #2 involved a fictitious victim younger than age 12, this explains the high percentage of charges for AROC1.

MECTF manipulates the age, often saying "almost 12" in order to get this AROC1, Felony A count to stick. In fact, the WSP's training slides (delivered by Carlos Rodrigues at various conferences around the US) show they are going for the most aggressive felony charges like AROC1 and AROC2; it is a part of their scheme.¹⁷ None of those online realize this is "Felony A" with lifetime CC and ISRB. They just realize having sex with a minor is wrong and against the law (as noted during some conversations). It has been noted in testimony (depositions, etc.) LE goes for the highest charges possible; otherwise, it isn't worth doing these stings to prosecute people for 1-3 months of jail time and a minor felony or gross misdemeanor. By threatening many decades in prison, they achieve high rates of return by extorting plea deals of otherwise unlikely criminals.

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During discussions with WSP officials, we learned that it was relatively common for people arrested as a result of scenario #2 to arrive on-site with gifts intended for their fictitious victims, such as toys designed for young children.

When reading transcripts of the conversations you will discover that in most, if not ALL of these cases, the idea of gifts was requested and encouraged by the fictitious victim (law enforcement). The reason was to increase the evidence for the case they were building by manipulating the target into taking a

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'substantial step'. Additionally, if LE could get the individual to bring a "gift," then they can stack on an additional Felony B charge: Commercial Sex Abuse of a Minor (CSAM), RCW 9.68A.100. This charge also carries with it a huge fine, often \$2,500. One could consider this extortion by law enforcement to add money to their budgets. We refer you back to the WSP training slides;¹⁷ all of this is a part of the MECTF's master plan to stack charges in order to obtain easy convictions (pleas).

This behavior demonstrates that the arrested person was attempting to provide minors with material rewards for sexual activity, leading to the initial charges for CSAM.

This is an assumption and law enforcement's deceptive way of leading the reader and public. Net Nanny is much like a shell game. The more one learns about what went on in and during the stings you will realize that the PERCEPTION OF LEGITIMACY WHICH THEY PORTRAY IS MORE IMPORTANT THAN THE LEGITIMACY ITSELF.

It is most likely the comment about behavior was written by the WSP. This does not belong in a study/factual document. This behavior demonstrates that law enforcement was able to encourage/manipulate the individual to bring something. Sometimes they did, sometimes they didn't. Many did not and went to the location for an assessment and confirmation, only to be arrested without the opportunity **not to commit the crime.**

Let's also not ignore the fact that this also goes along with the role-playing. If the person role-playing (pretending to be a deviant teen who was desperate for sex) requested gifts and demanded all along that the men play along with them, then of course, it makes sense that the men are playing along with this as well. A case in Jefferson County, David L. Sprague (Case #18-1-00069-16), hung the jury twice on a role play defense. His case was later dismissed.

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Internet sting operations could reduce crime through *incapacitation*. Incapacitation occurs when a person cannot commit a crime because they have been removed from the community, typically through incarceration.

The US has more people incarcerated than any other nation (more than 2.2M) which is about 0.7% of the US population; an incredibly high rate of incarceration compared to all other countries.^{18,19} Why do we need to do stings to put more people into prison/incapacitate people? This obviously isn't working. The only thing this is doing is crowding prisons, courts, and destroying lives and families and creating collateral damage emanating through communities. The one notable 'benefit' is that it manipulates public opinion to believe public safety is mitigated by these efforts, and, of course, it fills the coffers of police and lawyers. The end result is people with felonies who have more difficulty finding jobs, housing, and resources to stabilize their lives, often end up relying on the state and federal government for support. ASK YOURSELF, DOES POSING AS AN ADULT CAUSE MORE HARM THEN GOOD?

✖✖ Importantly, it cannot be proven that any of these men would have ever "raped a minor" as they claim. They did not stop anybody from raping any minors (like they have falsely claimed) because these men were not looking for that, and it's not realistic that random police targets would have ever come across a real minor in one of these places who would be pushing sex on them or a parent who

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would be demanding sex for their children from them and harassing them about it, etc. It was a fantasy created by law enforcement and forced on men visiting these sites; law enforcement did not merely create an 'opportunity' to commit a crime as they have often claimed.

If individuals arrested in internet sting operations are motivated and willing to commit sexual crimes against minors, then incarcerating these individuals will prevent them from committing additional crimes while in confinement. However, it is impossible to measure the number of crimes prevented this way.

We would agree it is impossible to measure the number of crimes this helped prevent. Generally we would put it very low since we do not believe law enforcement were arresting predators or individuals who would commit crimes against minors. In fact, most stings are 'proactive' in character. They do not rely on a tip involving endangerment of a real child. Therefore, the character, actions, and motivations are imputed by the subjective judgements of LE, which in turn create many opportunities ripe for abuse and mischaracterization. This too is deliberate, as officers get to control the narrative from sting to conviction, manipulating screenshots and placing them like puzzle-pieces into a preconceived scenario they themselves create. By referring to the transcripts, one will find law enforcement doing the inducing and luring with very aggressive and sexual language, all, of course, conducted on adult sites. Stings done correctly, on sites with minors, following proper procedures (not bringing up sex and letting the target lead the conversations) might arrest the right perpetrators but the Net Nanny Operations went a different route. We believe society was made worse through these operations as those arrested along with their families have had their "dreams" evaporated and their abilities to ever live a normal life is gone. The felony and SO registration label will hinder career opportunities and growth for the rest of their lives and all without improving public safety, but hindering it.

People aware that the sting operation exists may conclude that engaging in the targeted offense is too risky, resulting in less crime.

There are two other consequences the study does not mention: First, the public believes LE is keeping them safe when in fact they are refusing real cases (reactive cases) in favor of 'easy arrests' via proactive cases to claim more rescued children (this transition was noted on page 67 of a Jan 6, 2020 deposition: State v. Parker).¹⁶ Second, it creates complete paralysis of their prey as those listed suffer emotional, financial, and physical trauma. They lose their jobs quickly with no way to make an income with which to fight the accusations. They are also often restricted from the family and home that would be their support, and the community which turns their back due to fear, loathing, and misinformation.

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In contrast, internet sting operations are intended to prevent crime by allowing police to intervene *before* the offense can be completed. In theory, this means that internet sting operations can be used to punish adults who are intent on sexually abusing minors without needing to wait for a real-life victim to be harmed.

This is what Law Enforcement wants the public to believe -- that there is clear *intent*. We do not believe these individuals would have sought out minors without the prodding and encouragement by



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law enforcement to follow through (e.g. Entrapment). In our research of independent cases have found NO EVIDENCE that intent existed in virtually all of those arrested.

People who are aware of these sting operations and familiarize themselves with them, understand that these sting operations are not targeting those who are seeking minors online to exploit and abuse. In all likelihood, it is protecting real people (predators) seeking minors because law enforcement is spending their time entrapping men looking for adult consensual sex online rather than going after the real groomers.

An additional benefit of internet sting operations is that they may lead police to uncover evidence of sexual abuse that was previously undetected.

LE variously claimed 31 children, or more, were rescued during Operation Net Nanny. This also does not appear to be true. For example, one man, Nathan, who was arrested was married with two infant children. These two children would be considered "rescued" as a result of the sting operation even though there was no proof of harm to these children upon investigation (a review which was not always undertaken). Nathan was separated from his children, not allowed to see them or attend to their needs. Psychologists will tell you that this action is hardly beneficial to infants. Nathan was forced to take a plea of 60 months and went to prison for those five years no longer able to support his wife and children. His wife divorced him and he has had difficulty holding down a job, finding lodging and supporting his family due to the sting operation, arrest, and prosecution. Had the operation been done properly they would have investigated and discovered no issues with his children and put Nathan on a diversion program so he could get some counseling (if/as needed) and continue to support his family. There was NO attempt to do that for ANY of these Net Nanny cases. Prosecutors were part of the stings (their names appear in the Safety Plans and they showed up at the Command Posts or were on call to provide legal cover for deprivation of liberty) *but* a diversion program was never a part of the operation. If investigations and diversions were part of these stings we would be less inclined to believe some ulterior motive was at play here (funding, power, hero-playing, pandering/manipulation of public perception, etc.). No real children were saved yet real children were harmed by ruining families across the state. A cynical irony.

Proponents have also argued that internet sting operations represent a necessary innovation in police tactics to protect minors in the internet era.

Unfortunately, this argument rings hollow. This would require each of these cases to be reactive, and vigorously worked and investigated, ideally prior to arrests. Law Enforcement only needs what is creatively massaged and collected during the sting to make an arrest and prosecute. Why spend more resources digging further if not needed? These cases as they stand are considered slam dunks because of the loopholes in the laws that exist. Reactive cases take work, cost more to prosecute, and result in lower sentences and conviction rates. In Virginia, independently, both an ICAC officer and a police public information officer recently admitted to a CAGE member that the proactive stings are preferred because they are simply easier.

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Similarly, since the victims are fictitious and no sexual abuse took place, members of the public may conclude that individuals arrested in internet stings did not actually commit a crime and are being treated unfairly.

X The fact that sting targets have been deemed ineligible for SOSA, and involve victimless crimes for which they often serve **more prison time than one does for crimes against a human being**, is certainly unjust. This is shown via the WSIPP Study's own statistics. Our statistics show sentencing has changed over time. As CAGE has fought more, spread the word, worked with others, the NY Times Magazine Article came out and other news about OUR (Operation Underground Railroad) funding some prosecutors have eased up and the sentences have gone down a bit. The average sentence in 2015-2020 was closer to 76 months (6.3 years) and now 3 years later we are closer to 64 months. This is a 1 year reduction in sentencing which took tremendous pressure by members of CAGE, legislators, lawyers, media, and others, but it still is not sufficient or enough to curb injustice.

In addition, police often reveal the identities of individuals caught in internet sting operations soon after being arrested. Since it is possible that the courts will later determine that an arrested individual is not guilty of a crime, there is a risk that this practice may cause significant reputational harm to innocent people.

This might be the understatement of the year. We just stepped back 330 years to 1692 and the Salem witch trials. Public shaming (via media and press releases), media reporting one side of the events – never mentioning how these were conducted (on Adult sites), and tainting a potential jury pool. The police have all the evidence, witnesses, and a person showing up to the meet location – all of which make these cases a slam dunk – 74% take a plea, 20% go to trial with 95% losing in trial (2-3 acquittals). This is a > 94% effective rate. Out of the 15 dismissals 9 of them were related to someone dying (3%) often of suicide, 1 hung jury, 1 due to insanity defense, 3 due to the prosecutor and 1 due to the judge dismissing the case. So 8 cases out of 313 or around 3% with a no charge outcome but still publicly shamed. Police and prosecutors use their position of power and qualified immunity to manufacture, manipulate, and prosecute these cases. There is no reason to reduce a plea for most cases and so they do not, no matter what evidence the defense presents. One prosecutor replied to a defense lawyer when asked for an offer, "why should I compete against myself." How can this arrogant, contemptuous behavior be a part of a fair, democratic, and just system?

So yes, the practice of naming individuals arrested does cause significant reputational harm. We have wondered about the legality of this naming and shaming prior to conviction but it seems that is how our society works – guilty until proven innocent.

For internet sting operations, this could happen if undercover officers make online contact with someone who repeatedly expresses reluctance to pursue a sexual relationship with an underage partner but eventually relents after prolonged efforts by police to entice the individual into participating in a sexual encounter.

Numerous cases presented the lack of desire or intent to have a sexual encounter with a child. Defendants repeated several times they weren't interested in children or stopped the conversation only to be pressured, shamed, or just plain harassed and pursued eventually leading them to capitulate and travel to a location.

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Prior to Net Nanny there was Joshua Solomon (Appeal Case #76298-2-I). It was dismissed in the lower courts, appealed by the prosecutor and affirmed in the Appellate Courts. At least two cases during Net Nanny had heavy persuasion as well: Dillon Russell Lawson (17-1-01640-37) and Colin M. Wood (20-1-00682-31). There are many other conversations encouraging the subject to engage with a minor. Law enforcement uses manipulation and other grooming tactics to get individuals to show up and also re-engagement after the chatting has ended (Kenneth Chapman (15-1-01040-7) and Kevin Best (16-1-00594-7) are two cases).

Although entrapment is certainly a possibility, research indicates that defendants in internet sting operations are rarely successful when they attempt to argue that police entrapped them.

There have been over 55 trials. At least 18 requests for Entrapment were denied by the lower court. Approximately 7 cases were allowed to utilize the entrapment argument. Two cases denied entrapment won their appeal to retry the case with entrapment (Chapman and Arbogast). Out of the 7 cases allowed use of entrapment 3 were successful at getting an acquittal and/or hung jury leading to dismissal. Out of 25 cases, 7 cases were allowed to use the argument which is about 28%. The Arbogast ruling has now set the bar to allow for any case to ask for the entrapment defense. Many courts, especially prosecutors, exhibit open hostility to the entrapment defense.

Thus, if the police create an opportunity for someone to break the law, that fact alone is not sufficient for establishing entrapment.

We disagree. Enticement and Inducement, as used by WSP-MECT to collect easy collars (dollars for collars again), is sufficient to establish entrapment. Therefore, the failure for the entrapment defense to work as it was intended can be explained by public bias, prosecutor overcharge, and WA judges knowledge that upholding the law in these cases could be portrayed as 'lenient' and therefore be detrimental to their careers.

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By extension, it is theoretically possible that law-abiding adults who have a preference for this type of role-playing could become ensnared in an internet sting operation.

Theoretically possible? Outside of role-playing, adults are getting ensnared in these sting operations who have no predisposition to seek sex with minors. Reading a few of the psychosexual examinations will show this. The *ICAC Operational and Investigative Standards*²⁰ state in section 8.6:

Absent prosecutorial input to the contrary, during online dialogue, Investigators shall allow the Investigative target to set the tone, pace, and subject matter of the online conversation.

The WSP, MECTF IAD Standard Operating Procedures Manual also states this in Section 7 under Undercover Investigations. This Rule should be followed, **but isn't.** Why? Is it because they have been successful in court depriving people of their liberty without meaningful oversight? The way the stings are run makes it VERY easy for **anyone** to become ensnared in these kinds of internet sting operations done on Adult Sites and Apps. Have Courts made it too easy to deviate from ICAC Standards?

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To avoid the risk of criminalizing innocent internet conduct, police should approach online communication in such a way that it is clear to the other person that they are interacting with a minor. For example, such tactics might involve undercover officers imitating the online communication style of adolescents and repeatedly stating that they are underage.

We mostly agree with this. We've found that often times nothing is ever "clear" on the internet – especially when it comes to dating and hookups where lies, mistruths, and deception are common. Toss in mixed messaging, aggressive conversations (especially for a 13 year old), pictures of individuals who are clearly over the age of 18 and so you leave the only clear way to truthfulness is the old-fashioned way – to meet in person. Perhaps even video / zoom type meeting can be done – although we haven't heard of any of these situations.

★ It does not matter how many times the person claims to be a minor or how many times they misspell words or use teen slang, etc. The pushing and controlling behavior LE uses does NOT match the behavior of a real teen or a real kid. If the fact is that they are soliciting the men for sex, pushing sex on the men, even demanding sex from them (sexual talk, etc.) and they are in an adult place that adults use for this, then it is more likely than not that it is an adult who simply enjoys pretending to be a kid who is desperate for sex (perhaps Catfishing). It would be better if the Study said this: *To avoid the risk of criminalizing innocent internet conduct, police should not be soliciting men online for sex.*

★ Legal scholars have observed that it is common for defendants in internet sting cases to claim they never believed they were communicating with a minor and that they thought the other person was an adult pretending to be a minor as part of a fantasy or role-playing experience. When these cases go to court, this "fantasy" defense is typically not successful. See Rogers (2004).

Unfortunately this is correct. It is also true that rarely is ANY defense successful, leading to a new meaning for the old adage, "Sex sells." We have observed two cases where a "Role-Play" defense was used: David L. Sprague (18-1-00069-16) used the defense 2x with a 6/6, resulting in a 7/5 hung jury. His case was later dismissed. Benjamin A. Stott (18-1-03034-1) used the defense in his second trial (first was a hung jury) and was later found guilty. Also see "State V. Stott 29 Wn App.2d 55"
COAII faulted Stott for responding to Ad, Outrageous government Conduct
This is because people who work in the system (and prosecutor, judge, jury, etc.) have to understand what these sites and apps are, who they are used by, how, why, etc. Clearly, they have not understood that, and they have not understood the fact that law enforcement has indeed been soliciting the men for sex in these sting operations. We are not certain that they would desist even if they understood the damage they caused. COA Findings are conflicting with Supreme Ct.
Findings in "State V. Arbogast, 199 Wn.2d 356"
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To get additional information about each arrested individual's criminal history and demographic characteristics, we linked these arrests to WSIPP's Criminal History Database (CHD) records.

We would ideally like to see these records. We do question some of these results. If a "general population" statistic were added that would help.

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Since individuals in the comparison group were arrested through traditional police tactics (i.e., after a crime took place), we expect it will be more common for these cases to be charged with *completed* offenses.

Traditional meaning *reactive* – a crime in process or completed. Thus the reason there are no “Attempt Rape” crimes for the comparison group and no actual “Rape” crimes for the Sting group as it would be impossible for non “attempt” crimes via proactive sting since no real person is involved. The ROC2 and ROC3 must have been actual pleas. We suspect that later in Exhibit 6 the limited “attempt” crimes in the comparison group is due to prosecutors having a difficult time at proving the “attempt” crime in these hands on cases so they default to something else like Child Molestation or similar, but again, not attempt because they are more difficult to prove. Interesting data.

Although CMIP and CSAM are technically completed crimes, the definition of these offenses applies to situations involving fictitious minors.

It should be noted that CMIP can be attempted or not but CSAM must be an attempted charge as it will not hold, outside a plea, without Attempt (Yasir M. Majeed, 17-1-00793-9, set precedence on this).

CMIP does have the 'believes' part - which cannot be 'proven' - CSAM does not: RCW 9.68A.100
Commercial sexual abuse of a minor CSAM Class B felony A person is guilty of commercial sexual abuse of a minor if (a) he or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her; (b) he or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or (c) he or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

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For individuals in the Net Nanny group, the index case refers to the criminal case associated with their Net Nanny arrest. For individuals in the comparison group, the index case refers to the first child sex offense case filed during the study period.

Many of the Net Nanny cases will have multiple “stacking” charges. It isn’t surprising to see Scenario #2 with 2-3 charges and Scenario #1 with 3-4 charges. Wondering if the study tracked multiple charges here or just the main charge? This would be between Exhibit #5 and #6.

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Exhibit 8 – Criminal History

Although individuals in the comparison group have a slightly higher percentage of prior convictions for nearly every measure, most of these differences are small in magnitude (i.e., less than 5%) and are not statistically significant.

We disagree.

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We think adding in another column for GENERAL POPULATION would improve understanding of actionable statistics. For example, we know that in the US between 8-9% of people have a Felony conviction. It is higher for African Americans.¹⁷ When CAGE and NY Times did its research we knew the number would be around that 10-15% number. The 18.4% is a surprise because it is so high. Also, about one third of the US population has a criminal record so the 35% with any misdemeanor or felony falls within the statistical norm for the US population. What is the bottom line here? It is that these numbers for NET NANNY arrest are similar to the general population as a whole. In the comparison group all categories are higher if not significantly higher. The one exception is the misdemeanor sexual offense which seems to be likely a statistical calculation error. **The big statistic to look at is the Felony Sex offense with child victim – 2.9% to 6.3% which is a VERY LARGE disparity. That is the key statistic to focus on. These stings are NOT catching predators by any means.**

More generally, about 30% of individuals in both groups had previously been convicted of a misdemeanor and about 20% had previously been convicted of a felony. These patterns are broadly consistent with past research on people convicted of sexual felony offenses in Washington State, who tend to have less extensive criminal records than people convicted of non-sexual felony offenses.

This appears to be similar to a comparison of the general population of WA State and others as well. It would appear to us that those being arrested tend to follow similar numbers to the population at large. The Felony convictions seem to be a little higher than expected and are above the general population.

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However, because individuals convicted via Net Nanny have fictitious victims, they cannot meet this requirement and are automatically denied access to SSOSA.

Thank you for pointing this out in your report. Law enforcement knows this as well, that SSOSA can't be used and there is no diversion program. Also, most other states, like Oregon, have specific charges for online luring cases (Luring a minor ORS 167.057) and use those charges versus an Attempted Rape charge. CAGE has worked with the SOPB and Legislature to get this changed and enact diversions. Currently the laws, with the attempt clause, are being misapplied and misused for these stings.

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Exhibit 9 – Confinement comparison

As noted previously this has changed over time. Today we (CAGE statistics) have N=251 and Average = 63.69 months. But a few years back we had N=178 and Average = 76 Months. Your study denotes N=210 so you are in-between these two numbers which would be accurate. Bottom line is these STING convictions are treated worse than the comparison hands-on group who have the ability to benefit from using the SSOSA diversion, but are denied this remedy. This is not justice at work.



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It should be noted most of those under the Net Nanny group going to prison for these crimes will have LIFETIME CC - this group is about 50% of the Net Nanny cases. This is unknown for real cases but at least 36 months for most. And if Felony A, the penalty tilts to LIFETIME community custody. We have seen 20% of the sting cases (7 out of 29) before the ISRB flop be required to serve an additional 18-24 months making the true sentences for these ridiculously out of proportion to hands-on offenders.

The Sex Offender Policy Board (SOPB) has recommended that a sentencing alternative similar to SSOSA be enacted for individuals convicted through Internet sting operations.

This page is the **MOST IMPORTANT** page in this whole document to us and everyone incarcerated or affected by these stings. Not having a diversion option has been a HUGE burden. Using the laws as aggressively as they are is unjust. CAGE will continue to work with the legislature to make changes; the SOPB also sees the need, and we hope the legislature will as well with the release of this study.

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Among cases that received standard sentences, the average case in the comparison group was sentenced to 49% of the maximum term of confinement (Exhibit 10). This pattern is consistent with the idea that judges are using the mid-point of the standard range as the default punishment. In contrast, the average Net Nanny case was sentenced to 31% of the maximum term of confinement.

Why all the research and data on sentencing? That is not in scope, and kind of sounds like WSP propaganda to us, trying to put bias in the report. Does the WSP (or someone) think the sentences are HIGH enough for these STING cases? Not enough prison time when they are effectively HIGHER than hands-on crimes? We disagree. We know these are substantially overcharged and over-prosecuted. Especially considering how these stings are conducted pushing the bounds of outrageous government conduct (which we would say they are but the courts have yet to be convinced of this).

WA Courts

see "United States v. Lofstead 574 F.Supp 3d 831"

This indicates that judges tend to issue more lenient sentences for Net Nanny cases than comparison group cases.

This would be an OPINION. We have found that as we've exposed more and more misconduct by detectives and prosecutors, newer cases are given lesser charges and sentences. That said, shouldn't this be the case; the judge being more lenient for a victimless crime? These are ALL being overcharged, the judge knows it but can't do anything because of the law! These cases are NOT hands-on, the STING entrapped all of these people - no one was specifically targeted as in a reactive sting, everyone was lured in via deception and coaxing. We implore you to read the transcripts of these cases. Most individuals were turned by law enforcement, convinced and often manipulated to show up.

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We found that the Net Nanny group primarily consisted of high-severity offenses, while the comparison group had a greater percentage of cases with low-severity offenses. This explains how

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both groups can have the same average sentence (i.e., 70 months), but the relative intensity of this punishment is still lower-than-expected for the Net Nanny group.

This statement is a framing bias. Many of the Net Nanny cases are Felony A – lifetime CC, with ISRB and indeterminate registration/lifetime registration. We would argue that many of the HANDS ON CRIMES end in PLEA deals that are likely FELONY B – 36 months CC, no board and 1/3rd off prison time. Where most of the Net Nanny cases end with FELONY A charges – lifetime CC and go before the board with a 20% chance of getting flopped and doing more time in prison. **The Net Nanny cases are OVERPROSECUTED!**

✶ The prosecutors and law enforcement try to stack the charges in these cases. Some people have 5 charges making them more likely to take an 87 month plea versus facing 10+ years in prison. Fighting these cases, as we have seen and noted, is very difficult with the 94%+ conviction rate.

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We did not find any studies that evaluated whether internet sting operations are effective at reducing crime. The subject is difficult to study, as the main ways that internet sting operations might reduce crime (e.g., incapacitation and deterrence) cannot be directly measured.

This is a stunning admission. There are substantial, professional, peer-reviewed articles and meta-analyses questioning these stings which do provide substantial insight into criminality, questionable police tactics, and equally questionable public benefit. We cannot know if a crime would have ever occurred without the creative intervention by police. We can assume that all these adult men were on adult sites not originally seeking minors. With the police getting hundreds of hits (let's say 500 over the course of a sting), it isn't difficult to imagine a 3-4% effective rate (15-20) at reeling people in. Statistically this would be reasonable for many people in sales, scams, or similar. Remember, law enforcement is casting a wide net by using multiple adult dating and hookup sites when doing these stings.

We also did not find any studies that examined the costs of administering internet sting operations.

Florida conducts dozens of these stings every year. Perhaps contacting the Polk County Sheriff's office and Sheriff Grady Judd would be helpful. Or any of the head ICAC offices around the US. Anyone running these stings should have these figures. We encourage you to look at our Appendix 5 as an example of the operational cost of a Net Nanny sting.

In contrast, critics argue that these operations involve controversial police tactics and—when conducted improperly—carry the risk of punishing innocent people.

✶ Punishing innocent people with proactive stings is more than a risk, it's a certainty. That would be why the ICAC rules on investigations are explicit about setting the tone, using pictures of real children, and prioritizing investigations of real children above creating victimless scenarios. These stings are DEFINITELY punishing "innocent people." It just depends on one's definition of "innocent." If a man is going on a dating site and cheating on his wife, is he "innocent?" It would appear he is committing adultery. If he follows through maybe this could be considered attempted adultery. These stings

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shame and they bring out those who may be "cheating" on another. This may be a perception in the public's eye and why they accept these even if their tactics are suspect. However, it is not the function of a democratic police force to enforce moral judgment on a populace.

Overall, these results suggest that Net Nanny is arresting people with similar demographic characteristics and criminal records as individuals convicted of completed child sex crimes.

These results say little about those entrapped in proactive stings since the study was unable to find persons being charged similarly for similar actions. That alone speaks to the unrealistic manner in which people are charged and prosecuted. A DIVERSION program and/or new and more appropriate laws are very important to help correct an individual's behavior versus punishment with prison. The report also should have done a comparison with the general population (public).

Page 25:

In contrast, none of the individuals convicted via Net Nanny received SSOSA.

As it was not allowed. This was tested and shot down in the lower court when in *State v. Wright* (2019) the Judge ruled as follows: *Based upon the guidance that this court must rely upon, which is case law, the court is determining that the case law results in Mr. Wright not being eligible for SSOSA in this case.*²¹

There is no diversion. Prosecutors know this and likely MECTF knows this. There is no escaping these aggressive charges.

Second, Net Nanny is not the only internet sting operation in Washington State. Because our data do not indicate whether an individual was arrested via an internet sting operation or through traditional police tactics, it is likely that at least some of the individuals in our comparison group were apprehended as a result of internet sting operations other than Net Nanny.

This is a huge issue. The FBI does not keep complete or disaggregated sting data thus making it impossible to distinguish who is and who is not charged in these undercover sting operations. Therefore, all of this data is in question!

For this report, we met with a King County prosecutor who works closely with the Seattle Police Department and the Washington Internet Crimes Against Children Task Force.

It would have been more prudent to connect with Sergeant Brandon James who is involved with the Washington ICAC Task Force, as well as with citizen groups who study this sting phenomenon.

Page 26:

We learned that between 2015 and 2022, major law enforcement operations in the state made fewer than 30 arrests via internet sting operations that resemble Net Nanny

We wonder why there have been so few. Perhaps they follow the ICAC standards?



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Thus, we are confident that the vast majority (i.e., over 95%) of cases in our comparison group are people who were arrested via traditional police tactics.

We are guessing these are reactive operations, whereby the police get a tip and follow through. Or maybe the crime has already been committed. We know that 95% of the sex crimes on minors are committed by family or known individuals. Very few are committed by strangers.²²

We spoke with WSP officials to learn about the general tactics that they used for the two primary sting scenarios.

As part of the study, WSIPP should have spoken with us (CAGE) at least to review/evaluate and vet this report before release. We offered up our assistance many times. It has taken us many hours of work to put this "rebuttal" document together. It is very important we have our facts straight along with our data. To offer up FACTS and not OPINIONS is simply honest and professional. One must be careful to put bias into the study which appears to be the case. We have done A LOT of research on these cases as well as we have contacts with over 100 individuals affected by these Net Nanny stings (in and out of prison) and/or their families. Not contacting CAGE or independent, non-partisan, outside researchers speaks volumes as to the bias contained within this study.

However, we did not conduct an independent investigation of these tactics, such as by reviewing transcripts of online communication between undercover officers and individuals who were later arrested.

And why not? This is unfortunate. The review of the transcripts would help answer some of the questions raised as we have noted above. Please refer to Appendix 4 for one example.

Finally, the current study also does not tell us whether it is likely that people convicted via Net Nanny would have committed child sex crimes in other circumstances. To address this question, we would need reliable measures of each convicted individual's propensity (i.e., motivation/willingness) to commit child sexual abuse. The current study cannot address this question because we do not have access to such measures.

It is reasonable then to refrain from speculation. Thank you for not adding any more bias or opinion. One could have read the Psychosexual evaluation done to glean more detail on the charged individual. Many of the Psychologists concluded their report with "no pre-disposition." Unfortunately the prosecutors often didn't care; the pleas did not change. On occasion, the judges utilize these to minimize or keep the sentencing towards the low end of the range. Perhaps this can help explain your "judges were more lenient" comment on page 25.

Page 27:

Exhibit A1

Much of the data aligns with our data. It should be noted many of the dismissals were the result of death, often suicide. The convictions are so high because prosecutors know these are slam dunk

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cases – they don't have to worry about a child not taking the stand or subjecting them to talk about the sex crime. And the public readily believes the police line that police are doing the work to protect endangered kids.

Nanny arrests occurred soon after undercover officers made online contact. Nearly half of the arrests (45%) occurred within 24 hours of initial online contact, and two-thirds (66%) occurred within 48 hours.

Wouldn't this imply no grooming was going on. Psychologists tell us that generally predators take a long time to groom their victims. Again we go back to our argument about how these stings are being conducted. We have spoken with Seattle PD, ICAC Task Force, Brandon James via deposition and know they run their stings over a longer period of time.

Page 28:

Exhibit A2

It would be nice to see comparison data here.

Page 30:

Individuals convicted as a result of internet sting operations are not eligible for SSOSA, which requires defendants to have "an established relationship with the victim" (see Exhibit A4). SSOSA was originally developed during the 1980s, long before internet sting operations existed.

We force the court to rule on SSOSA for these sting cases.²¹ They confirmed that without a victim they are not eligible.

IN CONCLUSION

We thank you for reading our comments and concerns on your study. We would have liked to have contributed and/or been given a pre-read (as was done with some legislators) to provide feedback; this was noted in our numerous attempts to reach out to WSIPP over the past 6-12 months when this project encountered delays.

We have a couple questions below we hope you can answer for us. If you are willing to lend an ear and have an in person discussion a few of us in the area would definitely be willing to visit with you to speak more on this topic and share our data. We understand the Study is complete but as noted in the pages above we feel it is important for you to hear from the other side to understand the bias we saw when we read the study.

QUESTIONS FOR THE AUTHOR(S) OF THIS WSIP STUDY

- 1) Did the WSP help in any way with writing any of this report (outside of providing data, and press releases)? Including any rewrites or edits of this document?
 - a) We see a potential conflict of interest depending on their level of contribution.
- 2) Please provide us a list of the ADULT and TEENAGE dating sites claimed to be used for these stings.
- 3) Would it be possible to get a copy of the data you used for this study?

Appreciatively,

Dan Wright (danwright@fusecon.com) - Oregon
Kathleen Hambrick (ladyjusticemyth@gmail.com) - Indiana
Audra Garcia (audra@audragarcia.com) - Colorado
Aracely Yates (aracely103@gmail.com) - Texas
Norm Achin (normanachin@gmail.com) - Virginia
Heidi Brodt (brodt.heidi@gmail.com) - Arizona
Bruce Glant (bglant@msn.com) - Washington

Attached/Enclosed: WSIPP Study Rebuttal Appendix.pdf

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References:

1. NN#5 Safety Plan from September 2016. Plan was obtained via FOIA but had the Mission redacted. An unredacted version was obtained via other discovery methods in order to determine the MECTF's mission. See Appendix 1.
2. As noted during testimony of various cases including State of Washington vs. Quentin Parker (#19-1-00354-34) on 23-Sept-2019 (Kristi Pohl, p.11 "A. Grindr, Scruff, Grizzly, Plenty of Fish, OkCupid" and on p.12 noted Book of Matches and Double List) and State of Washington vs. Timothy Rondeau (#18-1-00073-16) on 11-Jun-2019 @2:18pm during trial by Det. Sgt. Carlos Rodriguez noted these sites: Craigslist (which was shut down), and other sites kids are being sexually abused or exploited: tinder, bumble, skout, meet me, badoo, book of matches. Also noted in Probable Cause Documents from NN#19 and NN#20 these social media sites: Tinder, Omegle, Skout, Grindr, Badoo, and skipthegames. See Appendix 2.
3. Detective tipped off suspects about child sex sting operation, Florida sheriff says, July 28, 2023, Miami Herald. <https://www.miamiherald.com/news/state/florida/article277751303.html>. See Appendix 3.
4. Police love overtime and incentive to bring in more money keeps the arrest coming. This was a big problem back in the 90's with the NYPD. <https://abovethelaw.com/2018/03/collars-for-dollars-an-unconstitutional-police-practice/>
5. Chelsea Reynolds (2021) "Craigslist is Nothing More than an Internet Brothel": Sex Work and Sex Trafficking in U.S. Newspaper Coverage of Craigslist Sex Forums, The Journal of Sex Research, 58:6, 681-693, DOI: [10.1080/00224499.2020.1786662](https://doi.org/10.1080/00224499.2020.1786662) Although this research was available this information was not used or cited in the WSIPP study. It might have helped with comparing Net Nanny/sting individuals to others.
6. For one such photo example of an "adult" posting as a minor refer to the NY Times Magazine Article, *Convicted of Sex Crimes, but With No Victims*, August 2020. <https://www.nytimes.com/2020/08/26/magazine/sex-offender-operation-net-nanny.html>
7. Kyle Jackson (NN#5) was arrested at the parking lot of a gas station/convenience store, he never made it to the trap house. Kyle was acquitted. Kyran Lein (NN#9) never went to the trap house. David Williams (NN#13) was arrested at the Army Base and charged with Communicating with a Minor. Joshua Garcia (NN#15) was arrested on the street, not near a trap house. Steven Cantor (NN#3) was arrested several blocks away from the location while driving to meet his family for dinner. There are many others.
8. Refer to Probable Cause Document of Joshua Leonard (NN#19 - 96 month sentence) in Appendix 4. It includes text to show how LE profile started at 32, went to 12 and steered conversation into sex. Also pushing back. When Joshua figured it was a sting LE pushed back and said "I am real nd this isnt a sting lol." Joshua suspected it was a sting, was concerned for this minor but still showed up. There was quite a bit of manipulative text from LE like "either move the fuk on or get right" and "bro wut do u wanna do?, be upfront about it or fuck off and leave, acting like ill boys my age lol"
9. View various WSP and OUR Press releases: <https://cage.fyi/washington/>
10. Vice World News Article about OUR titled "A Famed Anti-Sex Trafficking Group Has a Problem With the Truth" talks about OUR funding for Operation Net Nanny, the WSP's acknowledgement of it and decision to forgo future donations. <https://www.vice.com/en/article/k7a3qw/a-famed-anti-sex-trafficking-group-has-a-problem-with-the-truth>
 - a. WSP decided in 2020 to decline further donations by OUR. https://www.spokesman.com/stories/2021/may/02/lawsuit-state-operation-to-catch-pedophiles-entrap
11. Various funding for the WSP MECTF Division:
 - a. Washington ICAC Task Force Program Funding in 2021, 2022 via OJJDP website: <https://ojjdp.ojp.gov/funding/awards/15pjdp-21-gk-03807-mecp>
 - b. Refer to Appendix 5 where we included details on OUR contributions and operational expenses. One included is an email with Carlos Rodriguez discussing NN#3 with OUR and estimated operational cost of around \$100k with a 31 person staff. These documents came from Bryan Glant's Motion to Dismiss Exhibits from NN#5.
12. Article from 2017 in Psychology, Public Policy, and Law. Drouin, M., Egan, V., Yergens, N., & Hernandez, E. (2018). "I'm 13. I'm online. U believe me?": Implications for undercover Internet stings. *Psychology, Public Policy, and Law*, 24(1), 80-92. <https://doi.org/10.1037/law0000149>
13. Pew Research about ONLINE DATING from Feb 2023. <https://www.pewresearch.org/short-reads/2023/02/02/key-findings-about-online-dating-in-the-u-s/>

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14. Brandon C. Pamón Appeal Opinion - No. 83468-1-I. See Appendix 6.
15. Sample Ad posted for NN#5 on Craigslist. See Appendix 7.
16. Sgt. Rodriguez Testimony on charges related to rescued children and harsher sentences from State v. Parker, January 6, 2020. See Appendix 8.
17. Various Charges used for these stings. Appendix 9 contains three pages, 10, 11, 12 from the Operation Net Nanny: A Collaborative Attack on Child Sex Trafficking presentation delivered by Carlos Rodriguez at the Dallas, Texas 2019 Crimes against Children Conference (31st Annual) <https://cacconference.org/>
18. World Prison population report:
<https://nicic.gov/resources/nic-library/all-library-items/world-prison-population-listeleventh-edition>
19. Prison studies. And Prison Policy Websites. <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/>
https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf
- a. Felony convictions: <https://news.uga.edu/total-us-population-with-felony-convictions/>
20. See Appendix 10 for a recent version of the ICAC Operational and Investigative Standards.
21. Refer to the case State v. Wright (16-1-01590-34) during sentencing on 4-Mar-2019
22. National Report, 2014, page 46 (<https://www.ojdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf>).

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Veniamin Nickolay Gaidaichuks
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September 3, 2025

Nielson Koch & Grannis, PLLC
ATTN: Christopher H. Gibson
The Denny Building
2200 Sixth Avenue, Ste 1250
Seattle, WA. 98121

RE: State v. Gaidaichuk, #19-1-02201-4/ Withdrawal of Counsel.

Mr. Gibson,

I am writing this letter to ask for your removal from my case based upon the letter I received dated 7/17/25, of your being at the end of our appellate stage. I know under RAP 15 (g) this can be achieved and I am requesting that you do file this action in this matter to the courts as provided under rule 18.3(b). As stated in your letter that your office has determined that you will no longer proceed beyond the ruling in Division III.

Please take immediate action to motion the court of your withdrawal status and respond to this letter. Thank you for your time and commitment in this case. I look forward to your quick response.

Respectfully Requested,



Veniamin N. Gaidaichuk
Pro se

CC: WA Supreme Court, _____

Court of Appeals, Div. III #40231-2-III
Yakima Co. Superior Court #19-1-02201-4

IN THE Supreme COURT FOR WASHINGTON
IN AND FOR ~~Yakima~~ Thurston COUNTY

State of Washington
Plaintiff

No. 40231-2-III

v.

DECLARATION OF SERVICE BY
MAILING

Veniamin Gaidaichuk
Defendant.

I Veniamin Gaidaichuk, the Defendant, in the above entitled cause, do
hereby declare that I have served the following documents;

Motion for Discretionary Review

PARTIES SERVED:

CLERK OF THE COURT

PLAINTIFF / PROSECUTOR

Nicholas Kiewik

Attorney General of Washington

800 5th Ave Ste 2000

Seattle, WA 98104-3188

That I deposited in with the Unit Officer's Station, by processing as Legal Mail,
with First Class Postage at: _____

Dated this 4 day of September, 20 25

I certify under the penalty of perjury under the laws of Washington that the
aforementioned is true and correct.

(Signature)

E-Filing

September 04, 2025 - 10:15 AM

Transmittal Information

Filed With Court: Supreme Court
Appellate Court Case Number: 402312
Appellate Court Case Title: State of Washington v. Veniamin Nickolay Gaidaichuk
Trial Court Case Number: 19-1-02201-4

DOC filing on behalf of gaidaichuk - DOC Number 440097

The following documents have been uploaded:

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The E-Filer's Last Name is gaidaichuk

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