

ATTEMPT CRIMES AND INTERNET CHAT ROOMS

One of the unfortunate side effects of the Internet boom is the use of so-called chat rooms by pedophiles to communicate with children. These sex-related communications are, by themselves, harmful to children and present the real possibility that the conversation could lead to actual contact between the adult pedophile and the child. As a result, states have passed legislation aimed at this conduct, generally making it criminal to entice a child into having unlawful sexual relations. As an example, Section 18.2-374.3 of the Virginia Code Annotated makes it a crime to use a communication system, including a computer, for the purpose of promoting unlawful sex with a child.

Police officers often enter these chat rooms and pass themselves off as young children to others using the chat room. When an adult pedophile connects with the officer, the officer engages in conversations that frequently lead to the arrest of the adult for attempted violations of these enticement statutes. The defense of legal impossibility is often raised by these defendants. Courts virtually always reject that defense, as the courts in the following cases did:

- *U.S. v. Murrell*, 368 F.3d 1283 (11th Cir. 2004), cert. denied 125 S. Ct. 439 (2004). Defendant was convicted of attempt to entice a child into having unlawful sexual relations. An investigator posed as the father of a minor child in chat room conversations with the defendant, although in fact no minor child existed. The defendant contended that he could not be convicted because he never communicated with a minor child. The court rejected this argument, saying the attempt crime required only that the government prove the defendant tried to entice a child into having sexual relations. It did not matter that no child ever heard those enticements.
- *Hix v. Com.*, 619 S.E.2d 80 (Va. 2005). The defendant was convicted of attempted indecent liberties with a child, after chat room conversations in which the defendant proposed having sex with the "child." When the defendant agreed to meet the "child" at a McDonald's restaurant, police arrested him. The court rejected his argument that he could not be convicted of the crime of indecent liberties with a child, holding it did not matter that he never actually communicated with a child. It was sufficient, the court held, that he was attempting to do so.