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EXPLAINER

How To Prosecute Eliot Spitzer

Which federal laws might the governor have broken?

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Posted Tuesday, March 11, 2008, at 6:32 PM ET

According to widely published reports, New York Gov. Eliot Spitzer was caught on a federal wiretap last month arranging to meet with a high-priced prostitute at a Washington, D.C., hotel. Can prosecutors really make a federal case from the governor's tryst with an escort?

Yes. Spitzer may have violated any number of federal laws. If prosecutors do go after him, they're most likely to focus on the Mann Act ([18 U.S.C. § 2422](#)), federal structuring laws ([31 U.S.C. § 5324](#)), and federal money-laundering statutes ([18 U.S.C. § 1956](#)). These are described in more detail below.

The Mann Act: This series of laws, passed in the early 1900s in response to [hysteria over "white slavery,"](#) proscribes the knowing persuasion, inducement, enticement, or coercion of "any individual to travel" from one state to another "to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense." If, in fact, Spitzer arranged for Emperors' Club VIP "employee" [Kristen](#) to travel by train from New York to Washington, D.C., to engage in illegal sex (and, particularly, if he paid for her train ticket), his actions would almost surely fall within the range of conduct prohibited by the Mann Act.

A violation of 18 U.S.C. § 2422 is punishable by up to 20 years' imprisonment. Under federal sentencing guidelines, however, Spitzer would probably face just 15 to 21 months if convicted. By pleading guilty and accepting responsibility for his conduct, he might reduce that prison term to 10 to 16 months. Because of where that 10- to 16-month range falls on the [sentencing table](#) associated with federal guidelines, he could receive a split sentence of five months' imprisonment and five months' home detention—just like the one [Martha Stewart got](#).

Structuring: Financial institutions are required to file [currency transactions reports](#)—known as CTRs—with the IRS for all transactions involving \$10,000 or more in cash. 18 U.S.C. § 5324 prohibits "structuring," the act of engaging in a series of financial transactions designed to avoid the filing of a CTR, such as withdrawing \$9,500 from the bank each day for a week. If Spitzer withdrew funds from his bank to pay for illicit trysts in amounts designed to skirt the \$10,000 threshold (or if he deposited those funds in Emperors' Club VIP's accounts), then he might also face federal structuring charges.

A violation of 18 U.S.C. § 5324 is punishable by up to five years' imprisonment. Under federal sentencing guidelines, however, the jail time Spitzer would face depends largely on the amount that he actually structured. If, for example, he engaged in structured transactions of up to \$70,000, he could face



15 to 21 months' imprisonment. (He'd face more time if he structured more money.) Once again, a guilty plea could reduce that prison term to 10 to 16 months (with the possibility of the same split sentence).

Money Laundering: Among other things, federal money-laundering laws prohibit engaging in financial transactions involving "dirty" money that are designed "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of" illegal conduct. There's been no suggestion that the money Spitzer allegedly paid for sex was dirty. But his payment to shell corporations controlled by Emperors' Club VIP may constitute money laundering (or, at least, participation in a money-laundering conspiracy) to the extent that he knew those shell corporations were used to disguise the source or use of the money he paid.

A violation of 18 U.S.C. § 1956 is punishable by up to 20 years' imprisonment. Under federal sentencing guidelines, however, Spitzer would probably face 27 to 33 months imprisonment if his money laundering involved up to \$70,000, a prison term that could be reduced to 15 to 24 months if he pleads guilty and accepts responsibility for his conduct. (Like structuring, the more he laundered, the longer the prison term.) If he is charged as part of a wider money-laundering conspiracy, however, all bets are off: He could face a much longer prison term because he could be held responsible for all of the funds laundered by all of his co-conspirators (which, in this case, comprises more than \$1 million).

Of course, Spitzer—aka Client 9—is not the only person mentioned in the [criminal complaint](#) who faces these potential federal charges. Clients 1 to 8 and Client 10 also do.

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Article URL: <http://www.slate.com/id/2186345/>

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