

# ISSUE BRIEF

## COMPONENT 6.5

<b>Area of Law</b>	Criminal Justice Tools for Investigation and Prosecution
<b>The Policy Goal</b>	Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.
<b>The Reason</b>	The growing use of the Internet to accomplish crimes of domestic minor sex trafficking necessitates new investigative techniques and tools for law enforcement. Laws establishing a separate or enhanced penalty for using the Internet to commit an underlying offense, and the express inclusion of CSEC or sex trafficking of a minor as such an offense, are critical. Eliminating a defense based on the prohibited contact occurring online with a law enforcement officer posing as a decoy rather than with an actual minor is also critical. Internet crimes against children are committed against minors of all ages, and any state law prohibiting this conduct should protect all minors under 18 from the crime.

### Examples of Legislative Solutions

The following statutes prohibit the use of the Internet to commit a commercial sexual offense against a child and prohibit a defense based on the “minor” being law enforcement.

#### Alabama

Ala. Code § 13A-6-127 (Defenses) provides that “an undercover operative or law enforcement officer’s [involvement] in the detection and investigation of an offense” is not a defense to prosecution.

#### Georgia

Ga. Code Ann. § 16-12-100.2(g) (Computer or electronic pornography and child exploitation prevention) clarifies that “[t]he sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section [Computer or electronic pornography and child exploitation prevention] shall not constitute a defense to prosecution under this Code section.”

#### Kentucky

Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities) states, “It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or

promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of . . . KRS 529.100 [Human trafficking] where that offense involves commercial sexual activity, or 530.064(1)(a) [Unlawful transaction with a minor in the first degree], or KRS Chapter 531 [Pornography].”

#### Louisiana

La. Rev. Stat. Ann. § 14:81.3(C) (Computer-aided solicitation of a minor) states, “It shall not constitute a defense to a prosecution brought pursuant to this Section [Computer-aided solicitation of a minor] that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.”

#### Maryland

Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of a minor) states, “A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of a prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.” Pursuant subsection (a), “‘Solicit’ means to command, authorize, urge,

entice, request, or advise a person by any means, including . . . (6) by computer or Internet; or (7) by any other electronic means.”

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### Michigan

Mich. Comp. Laws § 750.145d(1)(a) (Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions) makes it illegal for a defendant to, “use the internet or a computer, [etc.] . . . for the purpose of . . . Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [child pornography] . . . in which the victim or intended victim is . . . believed by that person to be a minor.”

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### South Dakota

S.D. Codified Laws § 22-24A-5(2) (Solicitation of minor) criminalizes a person who “[k]nowingly compiles or transmits by means of computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges, or disseminates, any notice, statement or advertisement of any minor’s [under 16] name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.” Additionally, S.D. Codified Laws § 22-24A-5 states, “The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.”