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SIGN OF THE TIMES: MASSACHUSETTS' NEED TO AMEND STATE LAW AGAINST ON-LINE PREDATORS

I. INTRODUCTION

Preying on innocent children via email and internet chat rooms is easier due to the recent advent of internet technology.¹ More homes across Massachusetts are equipped with computers than ever before, and therefore there has been an increased public awareness of safety issues germane to protecting children on the internet.² Recent cases across the country address issues of on-line predators: offenses include solicitation of a minor, attempted child molestation, on-line child pornography, and sexual abuse.³ In Massachusetts, undercover state police are going on-line and pretending to be young children in order to catch child predators.⁴ Defenses to crimes of internet predation include suppression of key evidence, entrapment, and statutory vagueness; in Massachusetts the viability of these defenses have yet to be confirmed.⁵ Massachusetts state law does not yet specifically protect children from solicitation or communication via the internet, and as technology advances, adjusting Massachusetts state law to this dynamic environment is critical to protecting children.⁶ Like other states, Massa-

¹ See generally Attorney Grievance Comm'n of Maryland v. Childress, 770 A.2d 685, 695 (2001) (discussing need to deter future conduct of on-line child solicitation).

² See *id.* at 695 (Cathell, J., dissenting) (noting public's growing concern of adults preying on children).

³ See *State v. Bass*, 31 P.3d 857, 859 (Ariz. Ct. App. 2001) (holding internet communications evidenced criminal sexual assault); *People v. Scott*, 740 N.E.2d 1201, 1204 (Ill. App. Ct. 2000) (holding intent combined with action equals substantial step to commit crime); *People v. Patterson*, 734 N.E.2d 462, 463 (Ill. App. Ct. 2000) (arriving at agreed upon meeting place constituted substantial step); *State v. Kemp*, 753 N.E.2d 47, 48 (Ind. Ct. App. 2001) (finding child victim necessary to charge); *People v. Thousand*, 631 N.W.2d 694, 695 (Mich. 2001) (holding no actual child necessary for attempt); *State v. Brady*, 753 A.2d 1175, 1176 (N.J. Super. Ct. App. Div. 2000) (holding amended statute helped clear ambiguities); see also *State v. Duke*, 709 So. 2d 580, 581 (Fla. Dist. Ct. App. 1998) (holding more than substantial step needed).

⁴ See *Patterson*, 734 N.E.2d at 465 (describing police procedure while undercover on-line).

⁵ See *Childress*, 770 A.2d at 695 (discussing advancements in deterring future conduct of on-line child solicitation).

⁶ See MASS. GEN. LAWS ch. 272 (2001) (outlining state law designed to protect actual minors).

chusetts must respond to these technological changes to protect its children and to eliminate loopholes existing in current law.⁷

Massachusetts General Laws chapter 272, "Crimes Against Chastity, Morality, Decency and Good Order," currently covers the protection of minors.⁸ This chapter includes such offenses as solicitation of a minor,⁹ enticing unlawful intercourse,¹⁰ unnatural acts with a minor,¹¹ and child pornography.¹² The lack of specificity in the statute, however, allows online child predators to successfully assert numerous defenses: grounds for such defenses often include warrantless search arguments, overbroad or vague statutes, and unclear definitions of the statutory terms "solicitation" and "communication."¹³ Chapter 272 does not specifically include the term "electronic communication," and it classifies internet chats between state police and predators as "warrantless searches."¹⁴ As a result, Massachusetts risks losing the fight against sexual predators and creates loopholes that an accused predator can easily slip through.¹⁵

This Note examines from various angles the defects in Massachusetts state law concerning the protection of children from on-line predation.¹⁶ To that end, Part II discusses the procedures of undercover police officers and the substantial step principal involved in internet offenses that allows other states to convict internet predators.¹⁷ Part III looks at how legislatures in other jurisdictions are amending state law in response to

⁷ See generally *Bass*, 31 P.3d at 859-60 (holding internet communications evidenced criminal sexual assault under state statute); *Scott*, 740 N.E.2d at 1206 (holding intent combined with action equals substantial step to commit crime); *Kemp*, 753 N.E.2d at 49 (finding child victim necessary under statute to charge); *Thousand*, 631 N.W.2d at 695 (holding no evidence presented showing child solicitation).

⁸ See ch. 272 (2001) (outlining crimes against minors).

⁹ See ch. 272 § 29A (2001) (posing or exhibiting children in states of nudity or sexual conduct includes punishment).

¹⁰ See ch. 272, § 4 (2001) (defining unlawfulness of inducing person under eighteen to have sexual intercourse).

¹¹ See ch. 272, § 35A (2001) (describing what constitutes unnatural and lascivious acts with children under sixteen).

¹² See ch. 272, § 29A (2001) (describing punishment for posing or exhibiting children in states of nudity or sexual conduct).

¹³ See *State v. Kemp*, 753 N.E.2d 47, 49 (Ind. Ct. App. 2001) (holding child victim necessary in definition of offense); *State v. Brady*, 332 N.J. Super. 445, 450-51 (N.J. Super. Ct. App. Div. 2000) (discussing vagueness test for defense). *But see* *People v. Thousand*, 631 N.W.2d 694, 702 (Mich. 2001) (deciding impossibility defense irrelevant to charges of attempt); *People v. Barrows*, 709 N.Y.S.2d 573, 575 (N.Y. App. Div. 2000) (ruling protection of children from pedophiles compelling enough to find penal law not overbroad).

¹⁴ See *Kemp*, 753 N.E.2d at 52.

¹⁵ See *id.* (holding legislation needs to amend state laws to protect children from online predators).

¹⁶ See *Thousand*, 631 N.W.2d at 704 (discussing need for police to patrol cyberchats).

¹⁷ See *id.* (noting procedures used by police to patrol internet communication).

recent cases.¹⁸ Part IV analyzes current Massachusetts' law and concludes that the legislature needs to address the shortfalls of the current statute.¹⁹ Any amendments or new legislation should reflect the perpetual developments in on-line offenses, police investigations, and evidentiary issues.²⁰

II. POLICE PROCEDURE AND THE SUBSTANTIAL STEP

As communication technology advances, police now include internet patrol as a part of their crime prevention responsibility.²¹ Police are able to connect with child predators by using on-line instant messaging and internet chat rooms.²² The predator's screen-name is usually the first indication that an officer's instant-messaging partner is actually a child predator.²³ When the conversation becomes sexual, the police officer will save the dialogue to disk or print it out.²⁴ The predator may begin by asking general questions in order to make simple conversation and end with an attempt to arrange a one-on-one meeting with the child.²⁵

Many courts find that when the conversation ends in an attempt to arrange a meeting, a substantial step towards aggravated criminal sexual abuse has been established.²⁶ In *People v. Barrows*,²⁷ the Appellate Division of the Supreme Court of New York found that a distribution of child pornography via email to an undercover police officer, that resulted in an arranged meeting, was enough to show intent to commit a crime.²⁸ In *Bar-*

¹⁸ See *Kemp*, 753 N.E.2d at 50 (showing how amending state law could assist courts).

¹⁹ *Id.*

²⁰ See generally *Commonwealth v. Accetta*, 1999 Mass. Super. LEXIS 414, at *6 (1999) (holding evidence of communications by police officer with predator constitutes illegal evidence of warrantless search).

²¹ See *People v. Barrows*, 709 N.Y.S.2d 573, 575 (N.Y. App. Div. 2000) (discussing use of screen names to aid in investigation of internet); see also *Thousand*, 631 N.W.2d at 697 (inferring state's need for undercover internet investigations).

²² See *Thousand*, 631 N.W.2d at 696 (detailing procedures undercover officers use in on-line investigations). An officer on-line adopts a screen-name (usually one with a child's name followed by their age) and enters a chat room. Intrigued by the combined name and age screen-name, the predator believes that the undercover officer is a minor and begins to communicate with the officer. See *id.* The dialogue usually leads to sexually explicit conversations initiated by the predator. See *id.*

²³ See *People v. Patterson*, 734 N.E.2d 462, 465 (Ill. App. Ct. 2000) (showing evidence of recorded private internet conversation from "Boysneeded").

²⁴ See *id.* at 462 (allowing recorded private internet conversation with "Boysneeded" as trial evidence).

²⁵ *Id.* at 464 (conversing with "Boysneeded" ended in meeting at McDonalds).

²⁶ See *id.* at 470 (holding that agreeing upon meeting place constituted substantial step). The court used the term substantial step to note that the last proximate act for attempt was not necessary so long as enough evidence showed the defendant took substantial steps toward committing the act. *Id.*

²⁷ 709 N.Y.S.2d 573 (N.Y. App. Div. 2000).

²⁸ See *id.* at 574 (reinstating jury verdict to convict defendant). In *Barrows*, the de-

rows, the defendant had several cyber-chats with a police officer who used the name "Tori83;" the predator went so far as to send several obscene photographs over the internet of nude adolescent girls.²⁹ Police officers arrested the predator when he arrived at the pre-arranged meeting, "for taking the substantial step in committing his intended crime."³⁰

In *People v. Patterson*,³¹ the Appellate Court of Illinois upheld the conviction of Richard Patterson, finding that his acts constituted a substantial step towards the commission of an offense.³² The defendant had several on-line communications in an internet chat room with the undercover detective (the detective posed as an adolescent boy with the screen name "Yacco").³³ The defendant arranged a meeting and ultimately met "Yacco" at a nearby McDonalds; the defendant offered sexual favors to the detective, who he believed was a fifteen-year old boy.³⁴ The court held that the arranged meeting was sufficient to qualify as the substantial step toward the crime of attempted aggravated criminal sexual abuse.³⁵

In addition to the substantial step required by New York and Illinois, Indiana further requires that the victim be an *actual* child in order for a crime to have occurred: this certainly creates difficulties for police officers patrolling the internet.³⁶ In *State v. Kemp*³⁷ a twenty-five year old man, using the screen name "Ineedyoungtight1," arranged with an undercover detective to meet for sex in a motel parking lot.³⁸ Police subsequently arrested the defendant when he appeared at the pre-arranged meeting place with a bag full of condoms in the back seat of his car.³⁹ The Indiana Court of Appeals dismissed the charges against the defendant because the victim was not an actual child, as required by statute, but a *fictional* child created by the police officer.⁴⁰ Moreover, Indiana's child so-

defendant's motion to set aside the jury verdict was originally granted by the trial court and eventually overturned by the appellate division. *Id.*

²⁹ *See id.* (discussing evolution of "cyberchats" of defendant with undercover detective).

³⁰ *See id.* (arriving at meeting place was substantial step toward commission of crime).

³¹ 734 N.E.2d 462 (Ill. App. Ct. 2000).

³² *See id.* at 469 (holding intent plus actions constitute substantial steps towards commission of crime).

³³ *See id.* at 464 (using screenname "Boysneeded" signaled online child predator).

³⁴ *See id.* at 465-66 (acting on arranged meeting constituted substantial step).

³⁵ *See id.* at 470 (describing court's holding). The court held that the actual arrival of the defendant established intent to commit the offense and the substantial step towards the commission. *Id.*

³⁶ *See State v. Kemp*, 753 N.E.2d 47, 51 (Ind. Ct. App. 2001) (upholding trial court's ruling of actual child victim necessary in defining offense).

³⁷ 753 N.E.2d 47 (Ind. Ct. App. 2001).

³⁸ *Id.* at 48.

³⁹ *See id.* (outlining details of offense).

⁴⁰ *See id.* at 50 (quoting I.C. § 35-41-5-1(a)).

licitation laws require more than just preparation and planning to convict on a charge of attempt.⁴¹ The defendant was released and acquitted of all charges because his actions merely constituted planning to commit a crime with a non-child victim.⁴²

Although the substantial steps of preparation, planning, and others are in many cases adequate to convict an on-line predator of attempted criminal activity, some states feel that an overt act and an *actual* child victim is necessary.⁴³ Massachusetts should learn from the prosecutorial hardships encountered in New York, Illinois, and Indiana, and amend chapter 272 to more clearly define that an attempt to solicit a minor includes communication over the internet.⁴⁴

III. AMENDING STATE LAW

Faced with loopholes in their statutes, state legislatures need to amend the language of their statutes to ensure the safety of children.⁴⁵ Many courts now face the problem of determining the validity of defenses such as statutory vagueness and non-child victims.⁴⁶ Furthermore, some laws do not include the specific use of computers in their definitions of solicitation, nor do they address such issues as warrantless searches via the internet.⁴⁷ In jurisdictions where these vagaries – or loopholes – have gone unaddressed, courts are often forced to find innocent those who likely preyed on children over the internet; these same courts implore the legislature to do its part to ensure safety for children on-line.⁴⁸ In order to keep up with constantly advancing computer technology, courts depend on legislatures to expand the definition of child solicitation to include computer networks and the like.⁴⁹ These frustrated courts can do little more than

⁴¹ See *People v. Patterson*, 734 N.E.2d 462, 465-66 (Ill. App. Ct. 2000) (holding Indiana's child solicitation statute to include actual child victim). The Indiana Court of Appeals upheld the trial court's ruling that the undercover detective's screen name "Brittney4u2" was not an actual child victim. *Id.*

⁴² See *Kemp*, 753 N.E.2d at 51 (ruling allegations solely constituted planning by defendant). The court ruled that to hold otherwise would create a slippery slope for the definition of "attempt." *Id.*

⁴³ See *id.* at 50 (ruling overt act missing from defendant's conduct); see also *Duke*, 709 So. 2d at 582 (finding defendant's conduct did not reach overt act defined by statute). *But see Scott*, 740 N.E.2d at 1207 (holding defendant's intent and actions met substantial step requirement).

⁴⁴ See ch. 272 (defining solicitation under Massachusetts law).

⁴⁵ See *id.* (stating what Massachusetts law does include in defining solicitation).

⁴⁶ See *id.* (citing to Massachusetts law).

⁴⁷ See *Kemp*, 753 N.E.2d at 49 (showing flaws in current statutes include vagueness, lack of specificity, and actual child victim requirement).

⁴⁸ See *id.* at 52 (discussing legislature's need in Indiana to amend law to include "computers").

⁴⁹ See *id.* (citing Florida law for example of amended law).

wait for the legislatures to do their part to protect children who access the internet.⁵⁰

In *State v. Duke*,⁵¹ the Florida Court of Appeals specifically called upon the State Legislature for help in dealing with its attempt statute.⁵² In *Duke*, the court held that the defendant's actions were not the kind of overt acts required by the Florida attempt statute, even though the defendant arrived at the pre-arranged meeting place where he was to meet the undercover police detective ("Niki 012") for sexual activities.⁵³ The court found that even though the defendant discussed, intended, and even planned sexual acts with Niki, the law did not define these actions as constituting an attempt to commit sexual battery.⁵⁴ The court went further and addressed the difficulty of policing the cyber world, making clear the need for the legislature to address these new issues specifically in order to avoid similar challenges in the future.⁵⁵

To facilitate cyber world policing, the New Jersey Legislature amended a previously-vague child pornography statute by including the term "internet" in the statute.⁵⁶ *State v. Brady*⁵⁷ demonstrates how such a simple change in statute allows for more efficient policing of the internet.⁵⁸ The defendant sent several pornographic child images to an undercover detective over the internet.⁵⁹ Applying the previous statute (which did not include the term "internet" or "electronic communication,") the predator's sexual solicitation of the child would not have resulted in a conviction because the defendant's actions would have been beyond the scope of the statute.⁶⁰ Simply adding the term "internet," the defendant could no longer

⁵⁰ See *id.* (stating legislature's job to ensure against future acts).

⁵¹ 709 So. 2d 580 (Fla. Dist. Ct. App. 1998).

⁵² See *id.* (calling upon legislature to assist in deterring future conduct).

⁵³ See *id.* at 582 (holding intent coupled with actions not enough to equal overt act); see also *Thousand*, 631 N.W.2d at 695 (finding no evidence that defendant solicited "child" to commit felony).

⁵⁴ See *People v. Thousand*, 631 N.W.2d 694, 704-05 (Mich. 2001) (finding defendant only requested sexual acts).

⁵⁵ See *id.* at 710 n.2 (Taylor, J., concurring in part and dissenting in part) (finding need for legislature to revisit solicitation statute).

⁵⁶ See *State v. Brady*, 753 A.2d 1175, 1177 (N.J. Super. Ct. App. Div. 2000) (explaining original statute as vague by not including "internet" in definition). The amended statute defined the term "internet." *Id.*

⁵⁷ 753 A.2d 1175 (N.J. Super. Ct. App. Div. 2000).

⁵⁸ See *id.* at 1178 (holding change in law clarified existing law). The change in law resulted in unsupported and subsequently dismissed vagueness defense by the defendant. *Id.*

⁵⁹ See *id.* at 1176-77 (stating three pictures sent to Detective DiMatteo). Following these on-line conversations and e-mails, Detective DiMatteo obtained a search warrant for America Online (AOL) information and forwarded his search results to the New Jersey State Police. *Id.*

⁶⁰ See *id.* (finding only amended statute to clearly define previous, vague law).

raise vagueness as a defense to the charge, and the court held Brady guilty of endangering the welfare of a child.⁶¹

In July, 1995 the Illinois Legislature amended its solicitation statute to include the word “computer” in its definition.⁶² This amendment allowed for the conviction of the defendant in *People v. Scott*.⁶³ After communicating online with an undercover police officer, e-mailing pornography to the officer, and arranging a meeting, the defendant was arrested and convicted of predatory criminal sexual assault of a child, attempted aggravated criminal sexual abuse, and attempted indecent solicitation of a child.⁶⁴ The court noted that these convictions were a direct result of the addition of the term “computer” in the statute.⁶⁵ By simply adding a term referring to a computer or internet, the court was able to convict an otherwise conviction-proof child predator.⁶⁶

In the year 2000 – the same year as the *Patterson* case – Illinois updated its law once again to improve the definition of “internet solicitation” in the Illinois indecent-child solicitation statute.⁶⁷ As amended, the law now clearly defines what constitutes “internet solicitation:” the statute now covers electronic communications to *anyone* the predator believes to be a minor.⁶⁸ The change in state law allowed Illinois to convict an otherwise dangerous sexual predator who used the defense of impossibility.⁶⁹

Tennessee updated its solicitation statute in 1998 “to plug holes” in their current child solicitation statute.⁷⁰ The legislature stated that its purpose was to further criminalize conduct not prohibited in the pre-amendment statute.⁷¹ The resulting statute included “electronic communi-

⁶¹ See *id.* at 1178 (holding amended statute clearly defined already existing law). The New Jersey Penal Law, as amended, applied to distribution of child pornography by the internet (defined therein). *Id.*

⁶² See *People v. Scott*, 740 N.E.2d 1201, 1208-09 (Ill. App. Ct. 2000).

⁶³ 740 N.E.2d 1201 (Ill. App. Ct. 2000).

⁶⁴ See *id.* at 1204, 1210 (affirming defendant’s convictions).

⁶⁵ See *Thousand*, 631 N.W.2d at 695 (describing previous unconstitutionally vague statute can be amended).

⁶⁶ See *id.* (demonstrating how statute can be amended to make vague statute clear).

⁶⁷ See *State v. Ruppenthal*, 771 N.E.2d 1002, 1005 (Ill. App. Ct. 2002) (citing 720 ILCS 5/11-6(a)). In *Ruppenthal* the child solicitation law defined solicitation to occur “over the phone, in writing by computer, or by advertisement of any kind.” *Id.*

⁶⁸ See *id.* (showing how to conform laws to protect children from on-line solicitation). In *Ruppenthal* the defendant unsuccessfully tried to argue impossibility of a crime against minors when the victim was actually an undercover adult police officer. *Id.*

⁶⁹ See *id.* at 1008 (upholding defendant’s conviction).

⁷⁰ *State v. Coleman*, 2000 Tenn. Crim. App. LEXIS 19, at *9.

⁷¹ See *id.* at *10. (quoting legislature’s reasoning for amending state law). In *Coleman*, the defendant’s actions occurred before the amendment to the law. *Id.* Even though the court found his conduct “deplorable,” it was not solicitation at the time it was committed. *Id.*

cation” in its solicitation definition and clearly defined on-line solicitation of a minor as a criminal violation.⁷²

IV. MASSACHUSETTS LAW

Attempt under chapter 272 includes any act that moves toward the commission of a crime.⁷³ Crimes under chapter 272 are defined as solicitation of a minor, enticing unlawful intercourse with a minor, or performance of unnatural acts with a minor.⁷⁴ In addition, a minor under chapter 272 is defined as an *actual* child victim.⁷⁵ Further, Massachusetts’ law holds that computer printouts of on-line chats between undercover police officers and child predators constitute illegal, unwarranted searches in the privacy of one’s home.⁷⁶ To prevent defendants from asserting defenses grounded in statutory vagueness, warrantless search, or non-child victims, Massachusetts needs to amend its laws so that electronic solicitation becomes an express crime and that direct evidence of on-line solicitation may be admitted into evidence.⁷⁷

In Illinois the change by the State Legislature to include the term “computer” in its solicitation statute was in response to public concern over the increasing use of the internet by children.⁷⁸ Though the court reasoned the prior law *might* have included such communication in its definition, the specificity of the new law eliminated any confusion and thereby prevented a “misunderstanding” defense.⁷⁹ Emulating the Illinois statute, which specifically includes the word “computer,” the Massachusetts Legislature could amend the specific wording of the current child solicitation statutes to include on-line communication and attempts to arrange in person meetings through internet communications.⁸⁰

An amendment to the Massachusetts’ solicitation law expressly including electronic communications would also allay the common defense of entrapment.⁸¹ In *United States v. Parker*,⁸² the Court denied the entrap-

⁷² See *id.* at *9-10 (citing TENN. CODE ANN. § 39-13-528, *as amended* in 1998).

⁷³ See ch. 272 (defining Massachusetts’ law for child solicitation).

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *Accetta*, 1999 Mass. Super. LEXIS 414, at *7 (1999) (suppressing evidence of on-line chats by undercover police with defendant).

⁷⁷ See generally *State v. Kemp*, 753 N.E.2d 47, 49 (Ind. Ct. App. 2001) (showing state courts forced to find in favor of defendant for lack of clear law).

⁷⁸ See *Scott*, 740 N.E.2d at 1209 (reasoning change in law due to growing public concern for child welfare).

⁷⁹ See *id.* (holding previous statute defines similar conduct, though vague in its definition).

⁸⁰ See ch. 272 (outlining Massachusetts laws on child solicitation); see also *Scott*, 740 N.E.2d at 1209 (showing adequate law may still need amending).

⁸¹ See *Scott*, 740 N.E.2d at 1210 (Ill. App. Ct. 2000) (including computer communication in amended statute).

ment defense for the same reasons many courts find that on-line communications do not constitute solicitation – the lack of contact between the defendant and law enforcement officials.⁸³ The Court in *Parker* held that minimal contact with authorities was sufficient to deny the defense of entrapment by the defendant.⁸⁴ The Court found Parker's claim that a law enforcement officer induced him to commit a crime to be unsupported by the evidence.⁸⁵

In *Commonwealth v. Accetta*,⁸⁶ the Massachusetts Superior Court held that computer print-out evidence of the defendant's attempt to solicit a minor was instigated by state officials through direct on-line communication and thereby allowed the defendant's motion to suppress the evidence.⁸⁷ In *Accetta*, the father of the child-victim discovered the defendant's solicitation when the defendant mistakenly contacted the minor through instant-messaging.⁸⁸ In *Accetta*, the suppression, coupled with the ill-defined crime of attempt under chapter 272, facilitated the defendant's release.⁸⁹ Massachusetts' statutes do not expressly include a predator's use of email or other internet chats with a minor as instances of specific criminal attempts to commit a crime toward minors.⁹⁰

Recently in Worcester Massachusetts, a forty-two year old man propositioned a thirteen-year old boy for oral sex by delivering a note in the boy's home.⁹¹ The man was never convicted of a crime.⁹² The court found the act didn't constitute a lewd act under Massachusetts law because the note did not fit the exact definition under the statute.⁹³ If the writing of a note intending to sexually solicit a child is not considered against the law,

⁸² No. 00-3391/00-3396, 01-1010, 2001 U.S. App. LEXIS 21576 (8th Cir. Oct. 9, 2001).

⁸³ *See id.* at *15-16 (holding Parker failed to comply with any law enforcement instruction to begin with).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 1999 Mass. Super. LEXIS 414 (1999).

⁸⁷ *See id.* at *5 (holding communications instigated by state officials must be suppressed). The Fourth Amendment guarantees against illegal search and seizure by government officials. *See also* *Commonwealth v. Leone*, 435 N.E.2d 1036, 1039, 386 Mass. 329, 333 (1982) (discussing constitutional rights relating to Massachusetts law).

⁸⁸ *Accetta*, 1999 Mass. Super. LEXIS 414, at *1-2.

⁸⁹ *See id.* at *5 (holding on-line printouts suppressed when communications instigated by state officials); *see also* ch. 272, § 99 (defining interception of wire communications by government officials as illegal without warrant). Section 99 gives a defendant standing to seek the suppression of evidence obtained by government officials without a warrant. *See* ch. 272, § 99.

⁹⁰ *See Accetta*, 1999 Mass. Super LEXIS 414, at *5.

⁹¹ Diane Williamson, *Arm of Law Sometimes Too Short*, WORCESTER TELEGRAM, December 13, 2001 at B1.

⁹² *See id.* (referring to December 6, 2001 court appearance in Worcester District Court).

⁹³ *See id.* at B2 (finding charges thrown out due to no criminal commission).

on-line child solicitation clearly is not yet against the law in the Commonwealth of Massachusetts.⁹⁴

V. CONCLUSION

The cyber world can be an unsafe world for children to explore. It has become another arm by which child predators reach out to lure and entice innocent children. On-line child predators can send photographs and messages to children in their own home while they play on their computer.⁹⁵ Even the home is no longer a safe place for children so long as Massachusetts law does not prevent child predators from utilizing the internet as a predatory tool.⁹⁶

There are many problems with the Massachusetts child protection statutes as they currently stand. First, the Massachusetts statute is vague.⁹⁷ Second, to be guilty of child solicitation Massachusetts, courts interpret the statute to require the victim to be an *actual* child victim, and that there be an in-person, actual solicitation of a child.⁹⁸ Under the current laws, culpable solicitation can occur in the privacy of one's home but not through communications over the internet.⁹⁹ Massachusetts courts can not convict on-line child predators unless the law is amended to specifically state that use of electronic communication – by way of the internet, chat room conversations, and instant messaging – is included in the law's definition of solicitation of a minor.¹⁰⁰

In addition to amending the wording of the solicitation statutes, Massachusetts must address the related evidentiary issues of electronic communication. If an actual child victim exists and a defendant is charged with online solicitation, any and all direct evidence of solicitation may be suppressed if any conversation is instigated by undercover state officials.

With technology and communication devices continuing to advance at a rapid rate, it is necessary for police to have the legal right to patrol the internet. Including the term "computer" in the statute's solicitation definition, and changing the statute to allow direct evidence of online solicitation

⁹⁴ See *id.* (citing handwritten note did not constitute solicitation of minor).

⁹⁵ See generally *People v. Barrows*, 709 N.Y.S.2d 573 (N.Y. App. Div. 2000) (showing ways child predators use internet chat rooms and email to solicit children); *People v. Thousand*, 631 N.W.2d 694 (Mich. 2001) (inferring state's need for undercover internet investigations).

⁹⁶ See *Commonwealth v. Accetta*, 1999 Mass. Super. LEXIS 414, at *8 (1999) (finding Massachusetts' law not to include computer communication).

⁹⁷ See generally ch. 272 (defining what Massachusetts law does cover in its solicitation statute).

⁹⁸ See *id.* (showing loopholes in Massachusetts statutes).

⁹⁹ See *Williamson*, *supra* note 91, at B1.

¹⁰⁰ See *State v. Brady*, 753 A.2d 1175, 1178 (N.J. Super. Ct. App. Div. 2000) (finding un-amended law ambiguous when applied to Internet transmissions).

communications, will allow for police to ensure the safety of young children using computers in their homes.

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