

NO. \_\_\_\_\_

IN THE  
SUPREME COURT  
OF THE UNITED STATES

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JOSHUA JERMAIN NELSON,  
Petitioner

vs.

THE STATE OF TEXAS,  
Respondent

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On Petition for Writ of Certiorari to the First  
Court of Appeals at Houston, Texas

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APPENDICES FOR  
PETITION FOR WRIT OF CERTIORARI

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## APPENDICES

- Appendix 1** – **Order Denying Petition for Discretionary Review at Texas Court of Criminal Appeals**
- Appendix 2** – **Unpublished Opinion of the First Court of Appeals at Houston, Texas**
- Appendix 3** – **Order of Trial Court Denying Writ of Habeas Corpus**
- Appendix 4** – **50 State Survey of Grooming and Child Solicitation Statutes**
- Appendix 5** – **Sworn declaration of Paul Dohearty on the prevalence and scope of ageplay**

# **APPENDIX 1**

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

FILE COPY

2/26/2020

**NELSON, EX PARTE JOSHUA JERMAINE**

**PD-1265-19**

**COA No. 01-19-00325-CR  
Tr. Ct. No. 15-DCR-068407**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

1ST COURT OF APPEALS CLERK  
CHRISTOPHER A. PRINE  
301 FANNIN  
HOUSTON, TX 77002-7006  
\* DELIVERED VIA E-MAIL \*

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

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2/26/2020

**NELSON, EX PARTE JOSHUA JERMAINE**

**PD-1265-19**

**COA No. 01-19-00325-CR  
Tr. Ct. No. 15-DCR-068407**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

DISTRICT ATTORNEY FORT BEND COUNTY  
301 JACKSON, ROOM 101  
RICHMOND, TX 77469  
\* DELIVERED VIA E-MAIL \*

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

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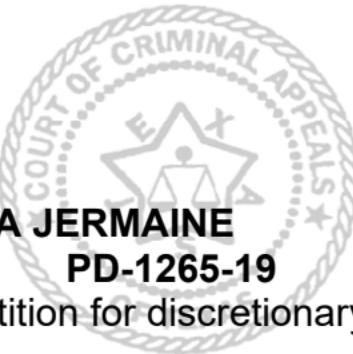
**NELSON, EX PARTE JOSHUA JERMAINE**

**PD-1265-19**

**COA No. 01-19-00325-CR  
Tr. Ct. No. 15-DCR-068407**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk



L. T. "BUTCH" BRADT  
14090 SOUTHWEST FREEWAY  
SUITE 300  
SUGAR LAND, TX 77478  
\* DELIVERED VIA E-MAIL \*

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS  
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**NELSON, EX PARTE JOSHUA JERMAINE**

**PD-1265-19**

**COA No. 01-19-00325-CR  
Tr. Ct. No. 15-DCR-068407**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY  
STACEY SOULE  
P. O. BOX 13046  
AUSTIN, TX 78711  
\* DELIVERED VIA E-MAIL \*

## **APPENDIX 2**

Opinion issued November 26, 2019



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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**NO. 01-19-00325-CR**

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**EX PARTE JOSHUA JERMAINE NELSON, Appellant**

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**On Appeal from the 458th District Court  
Fort Bend County, Texas  
Trial Court Case No. 15-DCR-068407**

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**MEMORANDUM OPINION**

Appellant, Joshua Jermaine Nelson, appeals from the trial court's denial of his amended application for a writ of habeas corpus. In eight issues, appellant contends that the trial court erred in denying him habeas relief.

We affirm.

## Background

A Fort Bend County Grand Jury issued a true bill of indictment, alleging that appellant, on or about November 19, 2014, “did then and there, over the Internet, or by electronic mail, or by a commercial online service, knowingly solicit [the complainant], an individual who represented himself to be younger than [seventeen] years of age or an individual whom [appellant] believed to be younger than [seventeen] years of age, and not the spouse of [appellant], to meet [appellant] with the intent that [the complainant would] engage in sexual contact or sexual intercourse with [appellant].” Appellant pleaded not guilty to the felony offense of online solicitation of a minor as alleged in the indictment.<sup>1</sup>

On April 22, 2019, appellant filed his amended application for a writ of habeas corpus, asserting that he was entitled to habeas relief because the statute under which he is indicted—Texas Penal Code section 33.021(c)—is unconstitutional and void. Appellant asserted:

- “Section 33.021 is unconstitutionally overbroad on its face under the First Amendment [to the United States Constitution] because it is a content-based restriction that severely criminalizes a substantial amount of speech protected under the First Amendment”;
- “Section 33.021 is unconstitutionally vague under the Fifth and Fourteenth Amendments [to the United States Constitution] because men of common intelligence must necessarily guess at its meaning and differ as to its application”;

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<sup>1</sup> See TEX. PENAL CODE ANN. § 33.021(c), (f).

- “Section 33.021 violates the Dormant Commerce Clause [of the United States Constitution] because it unduly burdens interstate commerce by attempting to place regulations on the entirety of the Internet”; and
- “Section 33.021 allows law enforcement to entrap persons such as [appellant] and is therefore unconstitutional as applied.”

The trial court denied appellant’s amended application for habeas relief.

### **Standard of Review**

We review a trial court’s ruling on a pretrial application for a writ of habeas corpus for an abuse of discretion. *See Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006); *Washington v. State*, 326 S.W.3d 701, 704 (Tex. App.—Houston [1st Dist.] 2010, no pet.). In conducting our review, we view the facts in the light most favorable to the trial court’s ruling and defer to the trial court’s implied findings that the record supports. *See Washington*, 326 S.W.3d at 704 (citing *Ex parte Wheeler*, 203 S.W.3d 317, 325–26 (Tex. Crim. App. 2006)). The applicant has the burden to prove his claims by a preponderance of the evidence. *Id.* at 706; *Ex parte Graves*, 271 S.W.3d 801, 803 (Tex. App.—Waco 2008, pet. ref’d). We will uphold the trial court’s judgment on any theory of law applicable to the case. *Ex parte Evans*, 410 S.W.3d 481, 484 (Tex. App.—Fort Worth 2013, pet. ref’d).

We review the constitutionality of a criminal statute de novo, as a question of law. *See Ex parte Lo*, 424 S.W.3d 10, 14–15 (Tex. 2013); *Ex parte Wheeler*, 478 S.W.3d 89, 93 (Tex. App.—Houston [1st Dist.] 2015, pet. ref’d). Ordinarily, when

reviewing the constitutionality of a statute, we presume that the statute is valid and that the Legislature has not acted unreasonably or arbitrarily. *See Ex parte Lo*, 424 S.W.3d at 14–15; *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002); *Ex parte Wheeler*, 478 S.W.3d at 93. If a statute can be construed in two ways, one of which sustains its validity, we apply the interpretation that sustains its validity. *Duncantell v. State*, 230 S.W.3d 835, 843 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd). The party challenging the statute carries the burden of establishing its unconstitutionality. *See Ex parte Lo*, 424 S.W.3d at 15; *Rodriguez*, 93 S.W.3d at 69. We must uphold the statute if we can determine a reasonable construction that will render it constitutional. *Ely v. State*, 582 S.W.2d 416, 419 (Tex. Crim. App. [Panel Op.] 1979).

### **Habeas Relief**

In his eight issues, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) is “unconstitutionally overbroad” in violation of the First, Fifth, and Fourteenth Amendments to the United States Constitution and Article I, sections 8 and 19 of the Texas Constitution; “unconstitutional on its face” in violation of the First Amendment to the United States Constitution and Article I, section 8 of the Texas Constitution “as it is a content-based [regulation] that severely criminalizes a substantial amount of harmless speech between adults”; “unconstitutionally vague and overbroad” in

violation of the United States Constitution and the Texas Constitution; unconstitutional in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the “Due Course of Law provision of the Texas Constitution” as it “fails to require the State to prove that [a]ppellant had a culpable mental state . . . relating to the complain[ant’s] . . . age” and it “fails to recognize the affirmative defense based upon [a]ppellant’s reasonable belief that the complain[ant] . . . was [seventeen] years of age or older at the time of the alleged offense”; and unconstitutional in violation of the Dormant Commerce Clause of the United States Constitution. *See* U.S. CONST. art. I, § 8, cl. 3; U.S. CONST. amends. I, V, XIV; TEX. CONST. art. I, §§ 8, 19.

Texas Penal Code section 33.021(c) defines the offense of online solicitation of a minor as follows:

A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

TEX. PENAL CODE ANN. § 33.021(c). At the time of appellant’s indictment, “[m]inor” was defined as “an individual who represents himself . . . to be younger than [seventeen] years of age” or “an individual whom the actor believes to be

younger than [seventeen] years of age.”<sup>2</sup> Act of June 18, 2005, 79th Leg., R.S. ch. 1273 § 1, 2005 Tex. Sess. Laws 1291 (amended 2015) (current version at TEX. PENAL CODE ANN. § 33.021(a)(1)). And it was not “a defense to prosecution under [section 33.021(c)] that . . . the actor did not intend for the meeting to occur.”<sup>3</sup> Act of June 18, 2005, 79th Leg., R.S. ch. 1273 § 1, 2005 Tex. Sess. Laws 1291 (amended 2015) (current version at TEX. PENAL CODE ANN. § 33.021(d)).

#### **A. Waiver**

In a portion of his fifth issue, as well as, his third, fourth, and seventh issues, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) violates certain provisions of the Texas Constitution. Yet, appellant, in his amended application for a writ of habeas corpus, only argued to the trial court that he was entitled to habeas relief because Texas Penal Code section 33.021(c) “violates the First Amendment, the Due Process Clause, and the Dormant Commerce Clause” of the United States Constitution. He did not assert that section 33.021(c) violates the Texas Constitution.

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<sup>2</sup> The Legislature amended this definition, effective September 1, 2015, to define a “[m]inor” as “an individual who is younger than [seventeen] years of age” or “an individual whom the actor believes to be younger than [seventeen] years of age.” *Id.* § 33.021(a)(1).

<sup>3</sup> The Legislature deleted this language from the current version of the statute. *See* TEX. PENAL CODE ANN. § 33.021(d). Section 33.021(d) now only states: “It is not a defense to prosecution under [section 33.021(c)] that the meeting did not occur.” *Id.*

To preserve error, Texas Rule of Appellate Procedure 33.1(a) requires a complaining party to make a specific objection or complaint and obtain a ruling on it before the trial court. *See* TEX. R. APP. P. 33.1(a); *see also Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002); *Ex parte James*, Nos. 01-05-00282-CR, 01-05-00480-CR to 01-05-00485-CR, 2005 WL 1540791, at \*3 (Tex. App.—Houston [1st Dist.] June 30, 2015, no pet.) (mem. op., not designated for publication) (“[A]ppellant did not preserve th[e] issue for [appellate] review because he did not raise th[e] complaint to the [trial] court in his applications for writs of habeas corpus or at the hearing.”). And issues on appeal must track the arguments made in the trial court. *See Wright v. State*, 154 S.W.3d 235, 241 (Tex. App.—Texarkana 2005, pet. ref’d); *see also Ex parte Letizia*, No. 01-16-00808-CR, 2019 WL 610719, at \*4 (Tex. App.—Houston [1st Dist.] Feb. 14, 2019, pet. ref’d) (mem. op., not designated for publication) (appellant did not preserve argument for appellate review because he did not raise it in trial court in his application for writ of habeas corpus). “Where a trial [complaint] does not comport with the issue raised on appeal, [an] appellant . . . preserve[s] nothing for review.” *Wright*, 154 S.W.3d at 241; *see also Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009) (appellate court should not address merits of issue not preserved for appeal); *Ex parte Evans*, 410 S.W.3d at 485 (declining to consider argument that appellant did not raise in application for writ of habeas corpus in trial court); *State v. Romero*, 962 S.W.2d 143, 144 (Tex.

App.—Houston [1st Dist.] 1997, no pet.). Because appellant did not argue in his amended application for a writ of habeas corpus that he was entitled to habeas relief because Texas Penal Code section 33.021(c) violates certain provisions of the Texas Constitution, we hold that appellant has not preserved for our review his third, fourth, and seventh issues, as well as, the portion of his fifth issue in which asserts that section 33.021(c) is “unconstitutionally vague and overbroad under . . . [the] Texas Constitution[.].”<sup>4</sup> See TEX. R. APP. P. 33.1(a); *Ex parte Perez*, 536 S.W.3d 877, 880 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (“In reviewing an order denying habeas relief, an intermediate court of appeals only reviews issues that were properly raised in the habeas petition and addressed by the trial court.”); *Ex parte Bui*, 983 S.W.2d 73, 76 (Tex. App.—Houston [1st Dist.] 1998, pet. ref’d); *see also Ex parte Moy*, 523 S.W.3d 830, 834 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d) (only addressing constitutional challenges to Texas Penal Code section 33.021 raised in appellant’s pretrial application for writ of habeas corpus).

In his sixth issue, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) is unconstitutional in violation of the Due Process Clause of the Fourteenth Amendment to the United

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<sup>4</sup> We note that our sister appellate court has rejected on the merits the exact arguments raised by appellant in his third, fourth, and seventh issues, as well as, the aforementioned portion of his fifth issue. See *Ex parte Victorick*, No. 09-13-00551-CR, 2014 WL 2152129, at \*1–7 (Tex. App.—Beaumont May 21, 2014, pet. ref’d) (mem. op., not designated for publication).

States Constitution as it “fails to require the State to prove that [a]ppellant had a culpable mental state . . . relating to the complain[ant’s] . . . age” and “fails to recognize the affirmative defense based upon [a]ppellant’s reasonable belief that the complain[ant] . . . was [seventeen] years of age or older at the time of the alleged offense.” Appellant did not raise this argument in his amended application for a writ of habeas corpus filed in the trial court. We therefore hold that appellant has also not preserved his sixth issue for our review.<sup>5</sup> *See* TEX. R. APP. P. 33.1(a); *Ex parte Perez*, 536 S.W.3d at 880; *Ex parte Bui*, 983 S.W.2d at 76; *see also Ex parte Moy*, 523 S.W.3d at 834.

## **B. Content-Based Regulation**

In his second issue, appellate argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) violates the First Amendment to the United States Constitution “as it is a content-based [regulation] that severely criminalizes a substantial amount of harmless speech between adults that is protected under the First Amendment.” *See* U.S. CONST. amend. I. We address this issue first because it determines our standard of review.

The First Amendment to the United States Constitution, which prohibits laws “abridging the freedom of speech” and applies to the States through the Fourteenth

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<sup>5</sup> In any event, our sister appellate court has rejected on the merits the exact argument raised by appellant in his sixth issue. *See id.* at \*7.

Amendment, limits the government's power to regulate speech based on its substantive content. *Id.; Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (content-based regulation punishes speech based on its content); *Ex parte Moy*, 523 S.W.3d at 835. Content-based regulations distinguish favored from disfavored speech based on the idea or message expressed. *Ex parte Lo*, 424 S.W.3d at 15; *Ex parte Moy*, 523 S.W.3d at 835. And such regulations operate to restrict particular viewpoints or public discussion of an entire topic or subject matter. *Ex parte Moy*, 523 S.W.3d at 835. In these situations, the usual presumption of constitutionality does not apply; the content-based regulation is presumed invalid, and the State bears the burden of rebutting this presumption. *Ex parte Lo*, 424 S.W.3d at 15; *Ex parte Moy*, 523 S.W.3d at 835; *Ex parte Wheeler*, 478 S.W.3d at 93. This is because regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content are subject to the most exacting scrutiny. *Ex parte Lo*, 424 S.W.3d at 15; *Ex parte Wheeler*, 478 S.W.3d at 93. That said, if a regulation punishes conduct rather than speech, a court applies a more deferential level of review, considering whether the regulation has a rational relationship to a legitimate state purpose. *See Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

The Court of Criminal Appeals has stated that Texas Penal Code section 33.021(c) regulates “the *conduct* of requesting a minor to engage in illegal sexual acts.” *Ex parte Lo*, 424 S.W.3d at 16–17 (emphasis added); *see also Mahmoud v.*

*State*, No. 09-17-00483-CR, 2019 WL 1461067, at \*2 (Tex. App.—Beaumont Apr. 3, 2019, pet. ref’d) (mem. op., not designated for publication) (“[S]ection 33.021(c) is a conduct-based statute and does not criminalize protected speech . . .”); *Delacruz v. State*, No. 07-15-00230-CR, 2017 WL 2822513, at \*3–4 (Tex. App.—Amarillo June 29, 2017, no pet.) (mem. op., not designated for publication); *Ex parte Moy*, 523 S.W.3d at 835–36; *Salgado v. State*, 492 S.W.3d 394, 396–97 (Tex. App.—Beaumont 2016, no pet.); *Alvarez v. State*, No. 11-15-00201-CR, 2016 WL 859363, at \*2 (Tex. App.—Eastland Mar. 3, 2016, pet. ref’d) (mem. op., not designated for publication); *Chapman v. State*, No. 11-15-00215-CR, 2016 WL 859366, at \*1–2 (Tex. App.—Eastland Mar. 3, 2016, pet. ref’d) (mem. op., not designated for publication); *State v. Paquette*, 487 S.W.3d 286, 288–89 (Tex. App.—Beaumont 2016, no pet.); *Ex parte Fisher*, 481 S.W.3d 414, 417–19 (Tex. App.—Amarillo 2015, pet. ref’d); *Ex parte Victorick*, No. 09-13-00551-CR, 2014 WL 2152129, at \*2–4 (Tex. App.—Beaumont May 21, 2014, pet. ref’d) (mem. op., not designated for publication); *Ex parte Zavala*, 421 S.W.3d 227, 231–32 (Tex. App.—San Antonio 2013, pet. ref’d). And the court has explained that section 33.021(c) is a solicitation statute and such statutes have been routinely upheld because an offer to engage in an illegal transaction such as the sexual assault of a minor is categorically excluded from First Amendment protection. *Ex parte Lo*, 424 S.W.3d at 16–17; *see also Ex parte Moy*, 523 S.W.3d at 835–36.

We have also held that section 33.021(c) regulates only conduct and unprotected speech; it does not punish speech based on its content alone. *See Ex parte Wheeler*, 478 S.W.3d at 93–94 (gravamen of offense of solicitation is conduct of soliciting sexual conduct from minors); *Maloney v. State*, 294 S.W.3d 613, 625–29 (Tex. App.—Houston [1st Dist.] 2009, pet. ref’d) (holding section 33.021(c) is conduct-based, not content-based); *see also Ex parte Spies*, No. 01-14-00925-CR, 2016 WL 1449343, at \*2–4 (Tex. App.—Houston [1st Dist.] Apr. 12, 2016, no pet.) (mem. op., not designated for publication); *Ex parte Moy*, 523 S.W.3d at 835–36. And appellant concedes as much in his brief. We therefore conclude that because Texas Penal Code section 33.021(c) does not constitute a content-based regulation, we must presume Texas Penal Code section 33.021(c)’s validity and, as a result, appellant bears the burden of proving the unconstitutionality of the statute. *See Ex parte Wheeler*, 478 S.W.3d at 93–94; *see also Ex parte Moy*, 523 S.W.3d at 835–36; *Maloney*, 294 S.W.3d at 626. Within this framework we address appellant’s remaining arguments. *See, e.g., Ex parte Victorick*, 2014 WL 2152129, at \*4.

We overrule appellant’s second issue.

### **C. Overbreadth**

In his first issue and a portion of his fifth issue, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c)

violates the First Amendment to the United States Constitution as it is “unconstitutionally overbroad.” *See U.S. CONST. amend. I.*

A statute is facially invalid under the First Amendment’s overbreadth doctrine if it prohibits a “substantial” amount of protected speech “judged in relation to the statute’s plainly legitimate sweep.” *Ex parte Lo*, 424 S.W.3d at 18 (quoting *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003)); *see also Broadrick*, 413 U.S. at 615; *Ex parte Wheeler*, 478 S.W.3d at 94. “Thus, the overbreadth doctrine prohibits the government from ‘banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.’” *Wagner v. State*, 539 S.W.3d 298, 310 (Tex. Crim. App. 2018) (quoting *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002)); *Ex parte Sauder*, 564 S.W.3d 203, 212–13 (Tex. App.—Houston [1st Dist.] 2018, pet. ref’d). An overbreadth claimant bears the burden of demonstrating from the text of the statute and from actual fact that substantial overbreadth exists. *Hicks*, 539 U.S. at 122. This burden is a heavy one: the overbreadth doctrine is “strong medicine” to be employed sparingly and only as a last resort. *Ex parte Sauder*, 564 S.W.3d at 213 (internal quotations omitted); *Ex parte Moy*, 523 S.W.3d at 836. A statute will not be invalidated for overbreadth just because it is possible to imagine some unconstitutional application. *Ex parte Sauder*, 564 S.W.3d at 213; *Ex parte Wheeler*, 478 S.W.3d at 94.

In his amended application for a writ of habeas corpus, appellant asserted that section 33.021(c) is overbroad under the First Amendment because it “forbids a substantial amount of speech that is protected under the First Amendment.” But we and our sister appellate courts have rejected appellant’s overbreadth argument and have held that Texas Penal Code section 33.021(c) is not unconstitutionally overbroad. *See Ex parte Wheeler*, 478 S.W.3d at 94–95; *Maloney*, 294 S.W.3d at 625–28; *see also Mahmoud*, 2019 WL 1461067, at \*1–4; *Sturdivant v. State*, No. 11-16-00172-CR, 2018 WL 3061402, at \*1–2 (Tex. App.—Eastland June 21, 2018, pet. ref’d) (mem. op., not designated for publication); *Swenson v. State*, No. 09-16-00142-CR, 2017 WL 6062128, at \*1 (Tex. App.—Beaumont Dec. 6, 2017, no pet.) (mem. op., not designated for publication); *Delacruz*, 2017 WL 2822513, at \*1, \*3–4; *Ex parte Rodriguez-Gutierrez*, No. 04-16-00805-CR, 2017 WL 2791317, at \*1, \*3 (Tex. App.—San Antonio June 28, 2017, no pet.) (mem. op., not designated for publication); *Ex parte Moy*, 523 S.W.3d at 836–38 (rejecting same overbreadth argument made by appellant in this case); *Ganung v. State*, 502 S.W.3d 825, 826–28 (Tex. App.—Beaumont 2016, no pet.); *Parker v. State*, No. 03-15-00755-CR, 2016 WL 3974612, at \*1–2 (Tex. App.—Austin July 19, 2016, pet. ref’d) (mem. op., not designated for publication); *Ex parte Ingram*, No. 04-15-00459-CR, 2016 WL 1690493, at \*4–5 (Tex. App.—San Antonio Apr. 27, 2016) (mem. op., not designated for publication), *aff’d*, 533 S.W.3d 887 (Tex. Crim. App. 2017); *Salgado*,

492 S.W.3d at 395–97; *Leax v. State*, Nos. 09-14-00452-CR, 09-14-00453-CR, 2016 WL 1468042, at \*1–2 (Tex. App.—Beaumont Apr. 13, 2016) (mem. op., not designated for publication), *aff’d*, 541 S.W.3d 126 (Tex. Crim. App. 2017); *Elzarka v. State*, No. 09-15-00078-CR, 2016 WL 1468173, at \*1–3 (Tex. App.—Beaumont Apr. 13, 2016, no pet.) (mem. op., not designated for publication); *Mower v. State*, No. 03-14-00094-CR, 2016 WL 1426517, at \*2–4 (Tex. App.—Austin Apr. 7, 2016, no pet.) (mem. op., not designated for publication); *Ex parte Goetz*, No. 09-15-00409-CR, 2016 WL 1267867, at \*1–2 (Tex. App.—Beaumont Mar. 30, 2016, pet. dism’d) (mem. op., not designated for publication); *Ex parte Mahmoud*, No. 09-15-00424-CR, 2016 WL 1267882, at \*1–2 (Tex. App.—Beaumont Mar. 30, 2016, pet. ref’d) (mem. op., not designated for publication); *Alvarez*, 2016 WL 859363, at \*1, \*3; *Chapman*, 2016 WL 859366, at \*1, \*3; *Radford v. State*, No. 11-15-00108-CR, 2016 WL 859478, at \*1, \*3 (Tex. App.—Eastland Mar. 3, 2016, pet. ref’d) (mem. op., not designated for publication); *Paquette*, 487 S.W.3d at 288–91; *Ex parte Fisher*, 481 S.W.3d at 416, 419–20; *Ex parte Victorick*, 2014 WL 2152129, at \*1–6 (rejecting appellant’s exact overbreadth argument).

Relying on our previous analysis and that of our sister appellate courts, we hold that section 33.021(c) is not unconstitutionally overbroad and the trial court did not err in denying appellant habeas relief on this basis.

We overrule appellant's first issue and the aforementioned portion of his fifth issue.

#### **D. Vagueness**

In another portion of his fifth issue, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) violates the Fifth and Fourteenth Amendments to the United States Constitution as it is “unconstitutionally vague.” *See U.S. CONST. amends. V, XIV.*

Under the void-for-vagueness doctrine, a statute will be invalidated if it fails to give a person of ordinary intelligence a reasonable chance to know what conduct is prohibited. *See State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006); *Ex parte Moy*, 523 S.W.3d at 838; *Ex parte Wheeler*, 478 S.W.3d at 96. A statute is not unconstitutionally vague just because the words or terms employed in the statute are not defined. *See Engelking v. State*, 750 S.W.2d 213, 215 (Tex. Crim. App. 1988); *Ex parte Moy*, 523 S.W.3d at 838; *Ex parte Wheeler*, 478 S.W.3d at 96. When a statute uses words that it does not otherwise define, we will give the words their plain meaning. *See Parker v. State*, 985 S.W.2d 460, 464 (Tex. Crim. App. 1999); *Ex parte Moy*, 523 S.W.3d at 838; *Ex parte Wheeler*, 478 S.W.3d at 96.

In his amended application for a writ of habeas corpus, appellant asserted that section 33.021(c) is unconstitutionally vague because it “forbids ‘solicitation’ that is not intended to result in a meeting” and “[m]en of common intelligence must

necessarily guess at its meaning and differ as to its application.”<sup>6</sup> Again, we and our sister appellate courts have rejected appellant’s vagueness argument and have held that Texas Penal Code section 33.021(c) is not unconstitutionally vague. *See Ex parte Wheeler*, 478 S.W.3d at 96; *Maloney*, 294 S.W.3d at 625, 628–29; *see also Sturdivant*, 2018 WL 3061402, at \*1, \*2; *Swenson*, 2017 WL 6062128, at \*1; *Ex parte Rodriguez-Gutierrez*, 2017 WL 2791317, at \*1, \*3; *Ex parte Moy*, 523 S.W.3d at 838–39 (rejecting same vagueness argument made by appellant in this case); *Ganung*, 502 S.W.3d at 826–28; *Parker*, 2016 WL 3974612, at \*1–2; *Ex parte Ingram*, 2016 WL 1690493, at \*4, \*6–7; *Salgado*, 492 S.W.3d at 395–97; *Leax*, 2016 WL 1468042, at \*1–2; *Elzarka*, 2016 WL 1468173, at \*1–3; *Mower*, 2016 WL 1426517, at \*2, \*4–5; *Ex parte Goetz*, 2016 WL 1267867, at \*1–2; *Ex parte Mahmoud*, 2016 WL 1267882, at \*1–2; *Alvarez*, 2016 WL 859363, at \*1, \*3; *Chapman*, 2016 WL 859366, at \*1, \*3; *Radford*, 2016 WL 859478, at \*1, \*3; *Paquette*, 487 S.W.3d at 288–90; *Ex parte Fisher*, 481 S.W.3d at 416, 420–21; *Ex*

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<sup>6</sup> To the extent that appellant, on appeal, attempts to raise any additional arguments related to the purported vagueness of Texas Penal Code section 33.021(c), we hold that they are not preserved for our review because appellant did not raise them in his amended application for a writ of habeas corpus. *See TEX. R. APP. P. 33.1(a); Ex parte Perez*, 536 S.W.3d 877, 880 (Tex. App.—Houston [1st Dist.] 2017, no pet.); *Ex parte Bui*, 983 S.W.2d 73, 76 (Tex. App.—Houston [1st Dist.] 1998, pet. ref’d); *see also Ex parte Moy*, 523 S.W.3d 830, 834, 838 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d) (appellant did not preserve certain arguments related to purported vagueness of Texas Penal Code section 33.021(c)).

*parte Victorick*, 2014 WL 2152129, at \*1–6 (rejecting appellant’s exact vagueness argument); *Ex parte Zavala*, 421 S.W.3d at 231–32.

Relying on our previous analysis and that of our sister appellate courts, we hold that section 33.021(c) is not unconstitutionally vague and the trial court did not err in denying appellant habeas relief on this basis.

We overrule this portion of appellant’s fifth issue.

#### **E. Dormant Commerce Clause**

In his eighth issue, appellant argues that the trial court erred in denying him habeas relief because Texas Penal Code section 33.021(c) violates the Dormant Commerce Clause of the United States Constitution. *See U.S. CONST. art. I, § 8, cl. 3.*

The Constitution of the United States empowers Congress to regulate commerce among the states. *Id.* Along with the express grant of authority to Congress, the United States Supreme Court has interpreted the Commerce Clause as an implicit restriction on the States’ power to regulate interstate commerce even without any conflicting federal regulation. *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007). A state statute violates this implicit restriction, known as the Dormant Commerce Clause,<sup>7</sup> if it

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<sup>7</sup> *See Ex parte Bradshaw*, 501 S.W.3d 665, 678 n.11 (Tex. App.—Dallas 2016, pet. ref’d) (explaining “[t]he clause is ‘dormant’ because it is nowhere to be found in the express language of Article I, [s]ection 8 of the [United States] Constitution”).

discriminates on its face against interstate commerce by providing differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. *Id.*; see also *Comptroller of Treasury of Md. v. Wynne*, 135 S. Ct. 1787, 1794 (2015) (“Under our precedents, the [D]ormant Commerce Clause precludes States from discriminat[ing] between transactions on the basis of some interstate element.” (second alteration in original) (internal quotations omitted)).

The United States Supreme Court has established a balancing test to determine whether a burden on interstate commerce imposed by a statute is excessive in relation to putative local benefits. See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *Ex parte Wheeler*, 478 S.W.3d at 97. When the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on this commerce is excessive in relation to the putative local benefits. *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443 (1960); *Ex parte Wheeler*, 478 S.W.3d at 97. If a legitimate local purpose is found, then the question becomes one of degree. *Ex parte Wheeler*, 478 S.W.3d at 97. And the extent of the burden that will be tolerated depends on the nature of the local interest involved and whether the purpose could be promoted as well with a lesser impact on interstate activities. *Pike*, 397 U.S. at 142; *Ex parte Wheeler*, 478 S.W.3d at 97.

In his amended application for a writ of habeas corpus, appellant asserted that section 33.021(c) violates the Dormant Commerce Clause because “it unduly burdens interstate commerce by attempting to place regulations on the entirety of the Internet.” We and our sister appellate courts have rejected appellant’s argument and have held that section 33.021 does not violate the Dormant Commerce Clause. *See Ex parte Wheeler*, 478 S.W.3d at 96–97; *see also Sturdivant*, 2018 WL 3061402, at \*1–2; *Swenson*, 2017 WL 6062128, at \*1; *Delacruz*, 2017 WL 2822513, at \*1, \*5; *Ex parte Rodriguez-Gutierrez*, 2017 WL 2791317, at \*1, \*4; *Ex parte Moy*, 523 S.W.3d at 839–40 (rejecting same dormant-commerce-clause argument made by appellant in this case); *Parker*, 2016 WL 3974612, at \*2–3; *Ex parte Ingram*, 2016 WL 1690493, at \*4, \*7; *Leax*, 2016 WL 1468042, at \*1–2; *Ex parte Goetz*, 2016 WL 1267867, at \*1–2; *Ex parte Mahmoud*, 2016 WL 1267882, at \*1–2; *Alvarez*, 2016 WL 859363, at \*1, \*4; *Chapman*, 2016 WL 859366, at \*1, \*4; *Radford*, 2016 WL 859478, at \*1, \*4; *Paquette*, 487 S.W.3d at 288, 291; *Ex parte Fisher*, 481 S.W.3d at 416, 421–22.

Relying on our previous analysis and that of our sister appellate courts, we hold that Texas Penal Code section 33.021(c) does not violate the Dormant Commerce Clause of the United States Constitution and the trial court did not err in denying appellant habeas relief on this basis.

We overrule appellant’s eighth issue.

## **Conclusion**

We affirm the order of the trial court.

Julie Countiss  
Justice

Panel consists of Justices Kelly, Hightower, and Countiss.

Do not publish. TEX. R. APP. P. 47.2(b).

## **APPENDIX 3**

NO. 15-DCR-068407

STATE OF TEXAS § IN THE DISTRICT COURT OF  
VS. § FORT BEND COUNTY, TEXAS  
JOSHUA JERMAINE NELSON § 458<sup>TH</sup> JUDICIAL DISTRICT

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**PROPOSED ORDER ON  
APPLICATION FOR WRIT OF HABEAS CORPUS**

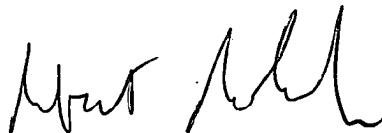
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The accused's Application for Writ of Habeas Corpus was presented to the Court, by submission. After reviewing the Application and the State's response, the Application is GRANTED / DENIED.

IT IS SO ORDERED.

SIGNED July 29, 2019

April 29, 2019



Honorable Kenneth S. Cannata,  
Judge Presiding



15-DCR-068407  
ORDER  
Order  
5752796



## **APPENDIX 4**

## 50 State Survey of Grooming and Child Solicitation Statutes

The ABA Young Lawyers Division Public Service team (“PST”) closely examined and researched statutes in all 50 states to determine the present protections available to children across the country related to grooming conduct. Specifically, the PST identified states that: (1) have sufficient statutory protections in place to protect children from predatory grooming tactics; (2) presently have no such protections in place; and (3) have statutory protections in place that need to be modified and/or bolstered to sufficiently protect children from grooming conduct. The PST’s 50-state survey is set forth in the table below, and specifically identifies any and all state statutes that arguably relate to grooming conduct. If no state statutory provision or code section properly accounts for electronic forms of solicitation, that fact is noted under the State heading.

Note that simply because a state has a statute or code provision in place that arguably relates to sexual solicitation of a child does not mean that such statute or code provision is sufficient to adequately protect children from grooming conduct.

<b>Arkansas</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
Ark. Code § 5-27-307(b)	<p>Sexual Grooming of a Child.</p> <p><b>(b)</b> A person commits sexually grooming a child if he or she knowingly disseminates to a child thirteen (13) years of age or younger with or without consideration a visual or print medium depicting sexually explicit conduct with the purpose to entice, induce, or groom the child thirteen (13) years of age or younger to engage in the following with a person:</p> <p class="list-item-l1">(1) Sexual intercourse;</p> <p class="list-item-l1">(2) Sexually explicit conduct; or</p> <p class="list-item-l1">(3) Deviate sexual activity.</p>

<b>Alabama</b>	
Does this state's statute account for electronic forms of solicitation? Yes,	
Ala. Code 13A-6-122	<p>Electronic Solicitation of a Child.</p> <p>In addition to the provisions of Section 13A-6-69, a person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the</p>

	defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child.
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### Alaska

Does this state's statute account for electronic forms of solicitation? Yes.

Alaska Stat. 11.41.452	Online Enticement of a Minor.  (a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS <u>11.41.455(a)(1) - (7)</u> and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.
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### Arizona

Does this state's statute account for electronic forms of solicitation? Yes.

Ariz. 13-3554	Luring a Minor for Sexual Exploitation.  (a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS <u>11.41.455(a)(1) - (7)</u> and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.
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### California

Does this state's statute account for electronic forms of solicitation? Yes.

Cal. Penal Code 288.3	Contact of Minor with Intent to Commit Sexual Offenses.  (a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. (b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any
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	telecommunications, wire, computer, or radio communications device or system.
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<b>Colorado</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
Colorado Rev. Statute 18-3-405.4	<p>Internet sexual exploitation of a child.</p> <p>(1) A person commits internet sexual exploitation of a child if a person, who is at least four years older than a child who is under fifteen years of age, knowingly importunes, invites, or entices the child through communication via a computer network or system to:</p> <p>(a) Expose or touch the child's own or another person's intimate parts while communicating via computer network or system; or</p> <p>(b) Observe the person's intimate parts while communicating with the person via computer network or system.</p>
Colorado Rev. Statute 18-3-306	<p>Internet luring of a child.</p> <p>(1) A person commits internet luring of a child if the person knowingly communicates a statement over a computer or computer network to a child under fifteen years of age, describing explicit sexual conduct as defined in sexual 18-6-403(2)(e), and in connection with the communication, make a statement persuading or inviting the child to meet the person for any purpose, and the person is more than four years older than the child.</p>

<b>Connecticut</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
Conn. General Statutes 53a-90a	<p>Enticing a Minor.</p> <p>(a) A person is guilty of enticing a minor when such person uses an interactive computer service to knowingly persuade, induce, entice or coerce any person under sixteen years of age to engage in prostitution or sexual activity for which the actor may be charged with a criminal offense. For purposes of this section, "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institution.</p>

<b>Delaware</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
Del. Code Ann. Title 11, 1112A	<p>Sexual solicitation of a child.</p> <p>(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:</p> <p>(1) Solicits, requests, commands, importunes or otherwise attempts to</p>

	cause any child to engage in a prohibited sexual act; or (2) Uses a computer, cellular telephone or other electronic device to communicate with another person, including a child, to solicit, request, command, importune, entice, encourage or otherwise attempt to cause a child to engage in a prohibited sexual act.
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<b>District of Columbia</b>	
Does this state's statute account for electronic forms of solicitation? No.	
D.C. Code Ann. 22-3010	<p>Enticing a child or minor.</p> <p><b>(a)</b> Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in <u>§§ 22-3002 to 22-3006</u> and <u>§§ 22-3008 to 22-3009.02</u>, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in <u>§ 22-3571.01</u>, or both.</p> <p><b>(b)</b> Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in <u>§ 22-3571.01</u>, or both.</p>

<b>Florida</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
847.0135 Fla. Stat.	<p><b>(3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES PROHIBITED.</b></p> <p>Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:</p> <p class="list-item-l1">(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or</p> <p class="list-item-l1">(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,</p>

	commits a felony of the third degree, punishable as provided in s. <u>775.082</u> , s. <u>775.083</u> , or s. <u>775.084</u> . Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. <u>775.082</u> , s. <u>775.083</u> , or s. <u>775.084</u> . Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.
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### Georgia

Does this state's statute account for electronic forms of solicitation? Yes.

Ga. Code 16-12-100.2	Computer or electronic pornography and child exploitation prevention. (d) (1) It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2, relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.
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### Hawaii

Does this state's statute account for electronic forms of solicitation? Yes.

HI Rev. Stat. 707-756	Electronic enticement of a child in the first degree. 1) Any person who, using a computer or any other electronic device: (a) Intentionally or knowingly communicates: (i) With a minor known by the person to be under the age of eighteen years; (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or (iii) With another person who represents that person to be under the age of eighteen years; (b) With the intent to promote or facilitate the commission of a felony: (i) That is a murder in the first or second degree; (ii) That is a class A felony; or (iii) That is another covered offense as defined in section 846E-1, agrees to meet with the minor, or with another person who represents that
HI Rev. Stat. 707-	

<p>757 HI Rev. Stat. 708-893</p>	<p>person to be a minor under the age of eighteen years; and  (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time,  is guilty of electronic enticement of a child in the first degree.</p> <p>Electronic enticement of a child in the second degree.  (1) Any person who, using a computer or any other electronic device:  (a) Intentionally or knowingly communicates:  (i) With a minor known by the person to be under the age of eighteen years;  (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or  (iii) With another person who represents that person to be under the age of eighteen years;  (b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and  (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time;  is guilty of electronic enticement of a child in the second degree.</p> <p>Use of a computer in the commission of a separate crime.  (1) A person commits the offense of use of a computer in the commission of a separate crime if the person:  (a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or  (b) Knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of the following offenses:  (i) Section 707-726, relating to custodial interference in the first degree;  (ii) Section 707-727, relating to custodial interference in the second degree;  (iii) Section 707-731, relating to sexual assault in the second degree;  (iv) Section 707-732, relating to sexual assault in the third degree;  (v) Section 707-733, relating to sexual assault in the fourth degree;  (vi) Section 707-751, relating to promoting child abuse in the second degree;  (vii) Section 711-1106, relating to harassment;  (viii) Section 711-1106.5, relating to harassment by stalking; or  (ix) Section 712-1215, relating to promoting pornography for minors.</p>
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## Idaho

Does this state's statute account for electronic forms of solicitation? Yes.

Idaho Code 18-	Enticing a child through the use of the internet or other communication
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1509A	<p>device.</p> <p>(1) A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be under the age of sixteen (16) years to engage in any sexual act with or against the person where such act would be a violation of chapter 15, 61 or 66, title 18, Idaho Code.</p>
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Illinois	
Does this state's statute account for electronic forms of solicitation? No.	
720 ILCS 5/11-25	<p>Grooming.</p> <p>a) A person commits grooming when he or she knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child's guardian, or another person believed by the person to be a child or a child's guardian, to commit any sex offense as defined in Section 2 of the Sex Offender Registration Act, to distribute photographs depicting the sex organs of the child, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.</p>

Indiana	
Does this state's statute account for electronic forms of solicitation? Yes.	
IC 35-42-4-6	<p>Child Solicitation.</p> <p>(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual: (1) in person; (2) by telephone or wireless device; (3) in writing; (4) by using a computer network (as defined in IC 35-43-2-3(a)); (5) by advertisement of any kind; or (6) by any other means; to perform an act described in subsection (b) or (c).</p> <p>(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child under fourteen (14) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) and: (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or (2) has a previous unrelated conviction for committing an offense under</p>

	<p>this section.</p> <p>(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age by less than sixteen (16) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, a Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5), and: (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or (2) has previous unrelated conviction for committing an offense under this section.</p>
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Iowa	
Does this state's statute account for electronic forms of solicitation? No.	
Iowa 710.10	<p>Enticing away a minor.</p> <p>1. A person commits a class "C" felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices away the minor under the age of thirteen, or entices away a person reasonably believed to be under the age of thirteen.</p> <p>2. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices away a minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.</p> <p>3. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice away a minor under the age of sixteen, or attempts to entice away a person reasonably believed to be under the age of sixteen.</p>

Kansas	
Does this state's statute account for electronic forms of solicitation? Yes.	
Kansas Stat. 21-3523	<p>Electronic solicitation.</p> <p>(a) Electronic solicitation is, by means of communication conducted through the telephone, internet, or by other electronic means:</p> <p>(1) Enticing or soliciting a person whom the offender believes to be a child 14 or more years of age but less than 16 years of age to commit or submit to an unlawful sexual act; or</p> <p>(2) enticing or soliciting a person whom the offender believes to be a</p>

	<p>child under the age of 14 to commit or submit to an unlawful sexual act.</p> <p>(b) Electronic solicitation as described in subsection (a)(1) is a severity level 3 person felony. Electronic solicitation as described in subsection (a)(2) is a severity level 1 person felony.</p> <p>(c) For the purposes of this section, "communication conducted through the internet or by other electronic means" includes but is not limited to e-mail, chatroom chats and text messaging.</p>
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### Kentucky

Does this state's statute account for electronic forms of solicitation? Yes.

Kentucky Rev. Stat. 510.155	<p>Unlawful use of electronic means to induce a minor to engage in sexual activities.</p> <p>(1) 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 a wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100 where the offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.</p>
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### Louisiana

Does this state's statute account for electronic forms of solicitation? Yes.

La. Rev. Stat. 14:81.3	<p>A. Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce entice, or coerce the person to engage or participate in sexual conduct or a crime of violence as defined by R.S. 14:2(b), or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen. It shall also be a violation of the provision of this Section when the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.</p>
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### Maine

Does this state's statute account for electronic forms of solicitation? No.

ME Rev. Stat. Ann. Tit. 17-A, 259-A	<p>Solicitation of a child to commit a prohibited act.</p> <p><b>1.</b> A person is guilty of soliciting a child to commit a prohibited act if:</p> <p>A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:</p> <ul style="list-style-type: none"> <li>(1) Is at least 16 years of age;</li> <li>(2) Knows or believes that the other person is less than 14 years of age; and</li> <li>(3) Is at least 3 years older than the age expressed by the other person.</li> </ul> <p>Violation of this paragraph is a Class D crime; or [2011, c. 597, §3 (NEW).]</p> <p>B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:</p> <ul style="list-style-type: none"> <li>(1) Is at least 16 years of age;</li> <li>(2) Knows or believes that the other person is less than 12 years of age; and</li> <li>(3) Is at least 3 years older than the age expressed by the other person.</li> </ul>
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Maryland	
Does this state's statute account for electronic forms of solicitation? Yes.	
Maryland Stat. 3-324	<p>Sexual solicitation of minor.</p> <p>(a) "Solicit" defined.- In this section, "solicit" means to command, authorize, urge, entice, request, or advise a person by any means, including:</p> <ul style="list-style-type: none"> <li>(1) in person;</li> <li>(2) through an agent or agency;</li> <li>(3) over the telephone;</li> <li>(4) through any print medium;</li> <li>(5) by mail;</li> <li>(6) by computer or Internet; or</li> <li>(7) by any other electronic means.</li> </ul> <p>(b) Prohibited.- A person may not, with the intent to commit a violation of § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 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.</p>

Massachusetts	
Does this state's statute account for electronic forms of solicitation? No.	
Mass. Ann. Laws ch. 265 sec. 26C	<p>Enticement of Children.</p> <p>(a) As used in this section, the term "entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.</p> <p>(b) Anyone who entices a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within</p>

	any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265, section 4A, 16, 28, 29, 29A, 29B, 29C, 35A, 53 or 53A of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or by both imprisonment and a fine of not more than \$5,000.
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Michigan	
Does this state's statute account for electronic forms of solicitation? Yes.	
Michigan Stat. 750.145a	<p>Accosting, enticing or soliciting child for immoral purpose.</p> <p>A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.</p>
Michigan Stat. 750.145d	<p>Use of internet or computer system; prohibited conduct; violation.</p> <p>(1) A person shall not use the internet or a computer, computer program, computer network, or computer system to communicate with any person for the purpose of doing any of the following:</p> <p>(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a, 145c, 157c, 349, 350, 520b, 520c, 520d, 520e, or 520g, or section 5 of 1978 PA 33, MCL 722.675, in which the victim or intended victim is a minor or is believed by that person to be a minor.</p>

Minnesota	
Does this state's statute account for electronic forms of solicitation? Yes.	
Minn. Stat. 609.352	<p>Solicitation of Children to Engage in Sexual Conduct.</p> <p><b>Subdivision 1. Definitions.</b></p> <p>As used in this section:</p> <p>(a) "child" means a person 15 years of age or younger;</p> <p>(b) "sexual conduct" means sexual contact of the individual's primary genital area, sexual penetration as defined in section <u>609.341</u>, or sexual performance as defined in section <u>617.246</u>; and</p>

	<p>(c) "solicit" means commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.</p> <p><b>Subd. 2. Prohibited act.</b></p> <p>A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony and may be sentenced as provided in subdivision 4.</p> <p><b>Subd. 2a. Electronic solicitation of children.</b></p> <p>A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:</p> <p>(1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;</p> <p>(2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or</p> <p>(3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.</p>
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Mississippi	
Does this state's statute account for electronic forms of solicitation? Yes.	
Miss. Code Ann. 97-5-27	<p>Dissemination of sexually oriented material to persons under eighteen years of age; Use of computer for purpose of luring or inducing persons under eighteen to engage in sexual contact.</p> <p>(3)(a) A person is guilty of computer luring when:</p> <p>(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and</p> <p>(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.</p>

### Missouri

Does this state's statute account for electronic forms of solicitation? Yes.

Mo. Rev. Stat. 566.151	Enticement of a child. 1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.
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### Montana

Does this state's statute account for electronic forms of solicitation? Yes.

Montana Stat. 45-5-625	Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person: (1)(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated; (5)(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.
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### Nebraska

Does this state's statute account for electronic forms of solicitation? Yes.

Nebraska Stat. 28-320.02	Sexual assault; use of electronic communication device; prohibited acts; penalties. (1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28.320.
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### Nevada

Does this state's statute account for electronic forms of solicitation? No.

NRS 201.560	Definitions; exceptions; penalties. 1. Except as otherwise provided in subsection 3, a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with: (a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from the child's home or from any location known to the
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	<p>child's parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:</p> <p>(1) Without the express consent of the parent or guardian or other person legally responsible for the child; and</p> <p>(2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or</p> <p>(b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.</p> <p>4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:</p> <p>(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;</p>
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<b>New Hampshire</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
New Hampshire Stat. 649-B:4	<p>Certain Uses of Computer Service Prohibited.</p> <p>I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:</p> <p>(a) Any offense under RSA 632-A, relative to sexual assault and related offenses.</p> <p>(b) Indecent exposure and lewdness under RSA 645:1.</p> <p>(c) Endangering a child as defined in RSA 639:3, III.</p>

<b>New Jersey</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
New Jersey Stat. 2C:13-6	<p>Luring, Enticing Child, Attempts.</p> <p>[1]. Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment.</p> <p>A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.</p> <p>"Child" as used in this act means a person less than 18 years old.</p>

	<p>"Electronic means" as used in this section includes, but is not limited to, the Internet, which shall have the meaning set forth in N.J.S.2C:24-4.</p> <p>"Structure" as used in this act means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.</p>
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New Mexico	
Does this state's statute account for electronic forms of solicitation? Yes.	
New Mexico Stat. 30-37-3.2	<p>Child solicitation by electronic communication device.</p> <p><b>30-37-3.2. Child solicitation by electronic communication device.</b></p> <p>A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.</p> <p>B. Whoever commits child solicitation by electronic communication device is guilty of a:</p> <p>(1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or</p> <p>(2) third degree felony if the child is under thirteen years of age.</p> <p>C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:</p> <p>(1) third degree felony if the child is at least thirteen but under sixteen years of age; or</p> <p>(2) second degree felony if the child is under thirteen years of age.</p> <p>D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.</p> <p>E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.</p> <p>F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.</p>

New York	
Does this state's statute account for electronic forms of solicitation? No.	
New York Penal Code 120.70	1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof,

	for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 of this chapter, an offense as defined in section 125.25 or 125.27 of this chapter; a felony offense that is a violation of article one hundred thirty of this chapter an offense as defined in section 135.25 of this chapter; an offense as defined 230.30, 230.33, or 230.34 of this chapter; an offense a defined in section 255.25, 255.26, 255.27 of this chapter.
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<b>North Carolina</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
North Carolina Stat. 14-202.3	<p>Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.</p> <p>(a) Offense. - A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.</p>

<b>North Dakota</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
North Dakota Stat. 12/1-20-05.1	<p>1. An adult is guilty of luring minors by computer or other electronic means when:</p> <p>a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and</p> <p>b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.</p>

<b>Ohio</b>
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Does this state's statute account for electronic forms of solicitation? Yes.	
Ohio 2907.01	<p>Importuning.</p> <p>(C) No person shall solicit another by means of a telecommunications device, as defined in section <u>2913.01</u> of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:</p> <p>(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.</p> <p>(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.</p> <p>(D) No person shall solicit another by means of a telecommunications device, as defined in section <u>2913.01</u> of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:</p> <p>(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.</p> <p>(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.</p>

Oklahoma	
Does this state's statute account for electronic forms of solicitation? Yes.	
21 OK Stat. 21-1040.13a	<p>Facilitating, encouraging, offering, or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor.</p> <p>A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, "by use of any technology" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of</p>

	any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.
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Oregon	
Does this state's statute account for electronic forms of solicitation? Yes.	
ORS 163.432	<p>Online sexual corruption of a child in the second degree.</p> <p>(1) A person commits the crime of online sexual corruption of a child in the second degree if the person is 18 years of age or older and:</p> <p>(a) For the purpose of arousing or gratifying sexual desire of the person or another person, knowingly uses an online communication to solicit a child to engage in sexual contact or sexually explicit conduct; and</p> <p>(b) Offers or agrees to physically meet with the child.</p>
ORS 163.433	<p>Online sexual corruption of a child in the first degree.</p> <p>(1) A person commits the crime of online sexual corruption of a child in the first degree if the person violated ORS 163.432 and intentionally takes a substantial step towards physically meeting with or encountering the child.</p>

Pennsylvania	
Does this state's statute account for electronic forms of solicitation? No.	
Penn. Stat. 6318	<p>Unlawful contact with minor.</p> <p><b>(a) Offense defined.</b>--A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:</p> <p>(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).</p> <p>(2) Open lewdness as defined in section 5901 (relating to open lewdness).</p> <p>(3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).</p> <p>(4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).</p> <p>(5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).</p> <p>(6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).</p>

### Rhode Island

Does this state's statute account for electronic forms of solicitation? Yes.

Rhode Island Stat. 11-37-8.8	<p>Indecent solicitation of a child.</p> <p>(a) A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9, 34, or 37 of this title.</p> <p>(b) As used in this section, the word "solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.</p>
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### South Carolina

Does this state's statute account for electronic forms of solicitation? No.

S.C. Code Ann. 16-15-342	<p>Criminal solicitation of a minor; defenses; penalties.</p> <p>(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of a the person under the age of eighteen, or persons reasonably believed to be under the age of eighteen.</p>
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### South Dakota

Does this state's statute account for electronic forms of solicitation? Yes.

South Dakota Stat. 22-24A-5	<p>Solicitation of a minor- Felony-Assessment.</p> <p>A person is guilty of solicitation of a minor if the person eighteen years of age or older:</p> <p class="list-item-l1">(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or</p> <p class="list-item-l1">(2) Knowingly compiles or transmits by means of a 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 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.</p>
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South Dakota Stat. 22-24A-4	<p>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.</p> <p>Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.</p> <p>Minor and solicit defined.</p> <p>Terms used in § 22-24A-5 mean:</p> <ul style="list-style-type: none"> <li>(1) "Minor," a person fifteen years of age or younger; and</li> <li>(2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.</li> </ul>
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Tennessee	
Does this state's statute account for electronic forms of solicitation? Yes.	
Tenn. Stat. 39-13-528	<p>Offense of solicitation of a minor.</p> <p><b>(a)</b> It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:</p> <ul style="list-style-type: none"> <li><b>(1)</b> Rape of a child, pursuant to § 39-13-522;</li> <li><b>(2)</b> Aggravated rape, pursuant to § 39-13-502;</li> <li><b>(3)</b> Rape, pursuant to § 39-13-503;</li> <li><b>(4)</b> Aggravated sexual battery, pursuant to § 39-13-504;</li> <li><b>(5)</b> Sexual battery by an authority figure, pursuant to § 39-13-527;</li> <li><b>(6)</b> Sexual battery, pursuant to § 39-13-505;</li> <li><b>(7)</b> Statutory rape, pursuant to § 39-13-506;</li> <li><b>(8)</b> Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;</li> <li><b>(9)</b> Sexual activity involving a minor, pursuant to § 39-13-529;</li> <li><b>(10)</b> Trafficking for commercial sex acts, pursuant to § 39-13-309;</li> <li><b>(11)</b> Patronizing prostitution, pursuant to § 39-13-514;</li> <li><b>(12)</b> Promoting prostitution, pursuant to § 39-13-515; or</li> <li><b>(13)</b> Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.</li> </ul>
Tenn. Stat. 39-13-528	Offense of soliciting sexual exploitation of a minor- Exploitation of a

	<p>minor by electronic means.</p> <p><b>(a)</b> It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in simulated sexual activity that is patently offensive or in sexual activity, where such simulated sexual activity or sexual activity is observed by that person or by another.</p> <p><b>(b)</b> It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:</p> <p style="padding-left: 20px;"><b>(1)</b> Engage in simulated sexual activity that is patently offensive or in sexual activity for the purpose of having the minor view the simulated sexual activity or sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;</p> <p style="padding-left: 20px;"><b>(2)</b> Display to a minor, or expose a minor to, any material containing simulated sexual activity that is patently offensive or sexual activity if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; or</p> <p style="padding-left: 20px;"><b>(3)</b> Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing simulated sexual activity that is patently offensive or sexual activity, if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.</p>
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Texas		
Does this state's statute account for electronic forms of solicitation? Yes.		
Texas Stat. 33.021	<p>Online Solicitation of a Minor.</p> <p>(a) In this section:</p> <p style="padding-left: 20px;">(1) "Minor" means:</p> <p style="padding-left: 40px;">(A) an individual who represents himself or herself to be younger than 17 years of age; or</p> <p style="padding-left: 40px;">(B) an individual whom the actor believes to be younger than 17 years of age.</p> <p style="padding-left: 20px;">(2) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section <u>21.01</u>.</p> <p style="padding-left: 20px;">(3) "Sexually explicit" means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section <u>43.25</u>.</p> <p>(b) A person who is 17 years of age or older commits an offense if, with the intent to arouse or gratify the sexual desire of any person, the person,</p>	

	<p>over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:</p> <p>(1) communicates in a sexually explicit manner with a minor; or</p> <p>(2) distributes sexually explicit material to a minor.</p> <p>(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.</p>
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<b>Utah</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	
Utah 76-4-401	<p>Enticing a minor.</p> <p>(1) As used in this section:</p> <p>(a) "Minor" means a person who is under the age of 18.</p> <p>(b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone, computer, or other electronic communication device to another person's telephone, computer, or other electronic communication device by addressing the communication to the person's telephone number or other electronic communication access code or number.</p> <p>(2) (a) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.</p> <p>(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:</p> <p>(i) initiate contact with a minor or a person the actor believes to be a minor; and</p> <p>(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.</p>

<b>Vermont</b>	
Does this state's statute account for electronic forms of solicitation? Yes.	

Vermont Stat. 2828	<p>Luring a child.</p> <p>(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.</p> <p>(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.</p> <p>(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.</p>
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Virginia	
Does this state's statute account for electronic forms of solicitation? Yes.	
Virginia Stat. 18.2-374.3	<p>Use of communications systems to facilitate certain offenses involving children.</p> <p>A. As used in subsections C, D, and E, "use a communications system" means making personal contact or direct contact through any agent or agency, any print medium, the United States mail, any common carrier or communication common carrier, any electronic communications system, the Internet, or any telecommunications, wire, computer network, or radio communications system.</p> <p>B. It is unlawful for any person to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means for the purposes of procuring or promoting the use of a minor for any activity in violation of § <u>18.2-370</u> or <u>18.2-374.1</u>. A violation of this subsection is a Class 6 felony.</p> <p>C. It is unlawful for any person 18 years of age or older to use a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting, with lascivious intent, any person he knows or has reason to believe is a child younger than 15 years of age to knowingly and intentionally:</p> <ol style="list-style-type: none"> <li>1. Expose his sexual or genital parts to any child to whom he is not legally married or propose that any such child expose his sexual or genital parts to such person;</li> <li>2. Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child;</li> <li>3. Propose to such child the performance of an act of sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act constituting an offense under § <u>18.2-361</u>; or</li> <li>4. Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any purposes set forth in the preceding subdivisions.</li> </ol>

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Washington	
Does this state's statute account for electronic forms of solicitation? Yes.	
RCW 9.68a.090	<p>Communication with minor for immoral purposes- Penalties.</p> <p>(1) Except as provided in subsection (2) of this section, 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.</p> <p>(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter <b>9A.20</b> RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter <b>9.68A</b>, 9A.44, or <b>9A.64</b> RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.</p> <p>(3) For the purposes of this section, "electronic communication" has the same meaning as defined in RCW <b>9.61.260</b>.</p>

West Virginia	
Does this state's statute account for electronic forms of solicitation? Yes.	
West Virginia Stat. 61-3C-14b	<p>Soliciting, etc. a minor via computer; penalty.</p> <p>Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, to commit any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter, or any felony offense under section four hundred one, article four, chapter sixty-a of this code, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility not less than two nor more than ten years, or both.</p>

Wisconsin	
Does this state's statute account for electronic forms of solicitation? Yes.	
Wisconsin Stat. 948.075	<p>Use of a computer to facilitate a child sex crime.</p> <p>(1) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual in violation of s.948.02(1) or (2) is guilty of a Class C felony.</p>

<b>Wyoming</b>	
Does this state's statute account for electronic forms of solicitation? No.	
WY Stat. 6-2-318	<p>Soliciting to engage in illicit sexual relations; penalty.</p> <p>Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.</p>

## **APPENDIX 5**

## Exhibit "A"

County of Milwaukee §

State of Wisconsin §

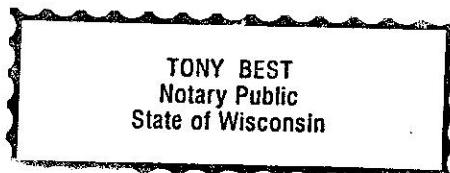
## Verification

Before me, the undersigned authority, personally appeared Paul J. Dohearty, who upon his oath being duly sworn, deposes and states as follows:

"I am the author of *The Prevalence and Scope of Ageplay*, which is attached. All of the allegations of *The Prevalence and Scope of Ageplay* are true according to my belief."

  
Paul J. Doheany

Sworn to and subscribed before me by Paul J. Dohearty on the 21<sup>st</sup> day of April, 2014.



TJB.S  
Notary Public in and for  
The State of Wisconsin

**My Commission Expires  
April 19, 2015**

## **The Prevalence and Scope of Ageplay**

By Paul J. Dohearty

## **Assignment**

This report will show the scope and wide spread of interest in ageplay. It will demonstrate that ageplay is not a rare phenomenon, but substantial and a long standing tradition. The ageplay community and its practitioners are numerous, diverse, and multifaceted. This report will look at several different quantitative and qualitative measures that may help to quantify and demonstrate the large number of individuals that have these interests.

## **Qualifications of the Author**

Paul Dohearty, who also goes by the pen name of Paul Rulof, has been part of the alternative sexuality community for over 10 years, largely focused on promoting and educating about ageplay. During that time, he has engaged in many different activities that have helped hundreds of people learn about, explore, problem-solve, and think about their interests in ageplay.

He has started and contributed to many different ageplay projects. He founded the Chicago Age Players, a group now with over 550 members, the monthly Chicago Age Play munch get-together, Chicago Age Play parties, outings, and CAPCon: The Midwest Ageplay convention. He has also assisted with the organization and running of the US Littles convention, served as Chair and Education Director of CAPCon, was the Chairperson of the Chicago Age Players, assisted perspective convention organizers, consulted on documentaries, assisted the media to find ageplay subjects, and written guest columns and the non-fiction book “Ageplay: From Diapers to Diplomas.”

He also lectures across the country, as well as internationally, largely about ageplay, mental play, and ageplay relationship dynamics. He has presented ageplay topics at 27 different alternative-sexuality conferences, clubs, and events all across the US. This includes addressing ageplay at CARAS, an alternative-sexuality academic conference for professionals including health care workers and mental health professionals. He has also recorded an ageplay class for KinkAcademy.com for online dissemination.

He has appeared on several podcasts discussing ageplay, including the Big Little Podcast twice, once as a panel member on the topic of community leadership and the other regarding ageplay conventions. He also guides and mentors many different individuals and couples, has created ageplay surveys, conducted ageplay interviews, as well as answers ageplay questions.

He is also the author of “Power Over Pleasure: A Training Program for Female Orgasm by Vocal Command” and the forthcoming “Emotional Play Handbook: Using Negative Emotions for Better Sex”. His next project is orchestrating a Daddy/girl relationship dynamic weekend long workshop for people who live an ageplay relationship lifestyle.

## **Research & Investigation**

Ageplay is roleplaying by consenting adults in which they take on different age related roles. Some ageplayers take on the role of adults or caregivers, known as “Bigs”, while other ageplayers take on the role of children, or “littles”. Ageplay is an umbrella interest that encompasses several different distinct concepts including adult babies, fictive kin relationships such as daddy, mommy, little girl, little boy, brother and sister relationships, punishment scenes, cheerleader scenes, schoolgirl or schoolboy scenes, adult nursing, as well geriatric roleplay.

Ageplay is not a rare or new phenomenon. A little bit of history will give a better idea of all of the ageplays and what they have built over the last over 30 years. The Diaper Pail Fraternity, later Diaper Pail Friends (DPF) was likely the first organized ageplay group. Starting in the 1980's they provided a physical newsletter mailed out to members and member rosters. At the maximum 15,000 members were members of DPF.

Paper newsletters eventually changed to emails lists for discussion or notification. After DPF, Big Babies, Infantilists, and Friends (BBIF) had an email list and a chat room. These email lists have become less popular as social networking emerge, but some email lists remain active. One current example, Northeast Littles (NEL), counts over a hundred members. There are still dozens of chatrooms active that ageplayers use to communicate and socialize as well.

Websites for ageplayers started to appear around 1994–1995. One of the first places that ageplayers gathered was on Usenet alt.sex.fetish.diapers. Bulletin board services (BBSes), and specific ageplay websites were created as the technology became available. Many websites were created, such as Little Girl Lost, and many are still active. Today, sites such as Understanding Infantilism still help provide factual information about adult babies and ageplay. The popular online platform Second Life has dedicated ageplay areas as well. Many ageplayers write blogs where people journal. Tumblr has a large number of Daddy/girl as well as adult baby blogs.

Social networking sites are now one of the most visible ways that ageplayers can connect with one another. There are at least 25 ageplay social networking communities that ageplayers use, including RuPadded.com, Diaperspace.com, diaperbook.com, diapertimes.com, and Fetlife.com. Some of these are solely for ageplayers, while others incorporate other interests. Fetlife.com appears to the most popular, although it does function as a social networking site for other fetishes as well. It also has more visible data on prevalence than many of the other

sites. Other social networking sites were contacted for data on members but either declined to respond or refused to participate.

### **Ageplay Events**

Besides the Internet and computer based socialization, there are many ways that ageplayers meet and socialize. Social gatherings amongst ageplayers, sometimes called *munches*, are the most common occurrence. These are usually held at bars or restaurants and are used to get to know others, connect, and socialize. Munches have been occurring since at least 1995. The size of each munch varies from a handful of people up to approximately 20–30 individuals, depending on location and timing. According to [littlesmunch.com](http://littlesmunch.com), there are active, regularly scheduled munches in the following 38 cities: Albany, NY; Calgary, Alberta; Edmonton, Alberta; Atlanta, GA; Ann Arbor, MI; Austin, TX; Boston, MA; Chicago, IL; Cleveland, OH; Hartford, CT; Washington, DC; Denver, CO; Greensboro, NC; Hampton Roads, VA; Hudson Valley, NY; Bloomington, IN; Sacramento, CA; London, England; Long Island, NY; Lynnwood, WA; Madison, WI; Montreal; Franklin Park, NJ; Philadelphia, PA; Orlando, FL; Northampton, MA; Pittsburgh, PA; Raleigh, NC; Rochester, NY; San Diego, CA; San Francisco, CA; Ypsilanti, MI; Bloomfield Hills, MI; Seattle, WA; Los Angeles, CA; Toronto; Vancouver; and Vienna, Austria. The following six cities had previously had regular munches, however, they are on hiatus searching for new hosts: Dallas/Fort Worth, TX; Huntsville, AL; Kansas City, MO; Louisville, KY; Mobile, AL; and New York, NY. There are also innumerable other ageplay munches throughout the country that are not regularly scheduled.

Munches are not the only ageplay events that exist. Until about 10 years ago, ageplay was a completely taboo topic in the alternate sexuality community, and ageplayers mostly socialized amongst themselves. Slowly, though, the alternative sexuality community has adapted and began to include ageplayers. Now not only is ageplay welcomed, but many conferences, clubs, and events include space for ageplay as well as having classes or discussions on ageplay topics.

There are also conventions dedicated solely to ageplay. DPF had regional convention events, like Diaperfest, and attempted to plan, but never achieved a national convention. Ageplay specific conventions include US Littles (varying locations), Camp Abdulia (Tennessee), CAPCon (Chicago Age Players), Baby Camp (Alberta), MASS Sockhop (Minnesota), and NeliCon (Northeast Littles Invasion). Attendance at ageplay conventions can exceed 150 people.

### **Ageplay Merchandise and Services**

To complement their roles and stir their fantasies, many different products have appeared catering to ageplayers. Starting in the 1970s, pornographic magazines

with ageplay content began to appear. These included: Rubberlife, Thumb, Adults in Babyland, Nugget, Tales from the Crib, Playpen, Tales from the Baby Room, Back to Infantile Delights, Fetish Times, Baby Letters (1981), Men in Skirts (1979; Book 1, #39), The Advocate, Forum, The Crib Sheet and Dominated & Diapered. Many other magazines had and have schoolgirl and cheerleader content that implies ageplay as well. Similarly, spanking and discipline related material often have an unstated ageplay undertone as well. This is especially true if the setting is a boarding school or if the material refers to chores or has roleplayed age differences involved.

Currently, there are hundreds of different retailers offering merchandise to ageplayers. One online seller of pacifiers for ageplayers has had over 9000 unique customers over the last decade; many of those also placed repeat orders.

Merchandise for ageplayers includes adult-sized baby furniture, clothing, diapers, outfits, plastic pants, diaper accessories, toys, pacifiers, short stories, novels, and coloring books, all focused on deepening the ageplay experience. These retailers have stock items and many offer customized furniture, clothes, and accessories. Specialized stores stock not only costumes, but also schoolgirl skirts, uniforms, dresses for sissies, footed pajamas and cheerleader uniforms specifically for ageplayers. This is in addition to those that make their own costumes or props, create art, or distribute writings for personal use or for free.

Services such as phone sex lines, dirty texting, commissioned artwork, web cam actors, and video clips catering to ageplayers also exist. Several nurseries specifically catering to ageplayers, especially adult babies, exist. These nurseries offer caretakers, activities, and appropriate sized furniture. There are nurseries being operated in Chicago, IL; Lomita, CA; St. Petersburg, FL; Denver, CO; Bangkok; Montreal; Wolverhampton, UK; Kent, South East England; Yorkshire; Derbyshire; and London.

## Books and Articles

Currently, there are about 500 pieces of ageplay and adult baby fiction sold through Amazon.com. There is much more on other sites as well as many pieces that are freely distributed. Besides the large amount of ageplay fiction available, there are several nonfiction books that speak specifically about ageplay. These include:

- *The Age Play and Diaper Fetish Handbook* by Penny Barber
- *There's a Baby in my Bed! Learning to Live Happily with the Adult Baby in your Relationship* by Rosalie Bent
- *The Toybag Guide to Age Play* by Lee Harrington

- *A Childish Nightmare: An Inside View of Psychosexual Infantilism* by Anthony J Marciano
- *Power Exchange Books: Age Play* by Robert Rubel
- *Ageplay: From Diapers to Diplomas* by Paul Rulof
- *The Babies* by Susan Sontag, Polly Borland and Mark Holborn (Photobook)

Many other books on sexuality speak about different roles in role-playing using age roles in general terms, and some do refer to ageplay in particular. Also relationship advice columnists such as Dan Savage have fielded questions about ageplay. Some other examples of parts of books and media exposure include:

- Brame, G. G., Brame, W. D., & Jacobs J., *Different Loving*, New York, NY: Villard Books, page 148.
- Friday, Nancy, (1980). *Men in Love: Men's Sexual Fantasies*, Delacorate Press, page 186.
- Gilstrap, P. (1999, March). *The Diapers They Are a-Changin'*. The New Times.
- Watson, J. (2005, June 09). *Baby Man*. Phoenix News Times.
- *LoveMaps* by John Money
- *Healing the Child Within & A Gift to Myself* by Charles L. Whitfield M.D.
- Herd, Angela (1983) *Big Babies: The Fetish of Infantilism*. Hustler 10(6), 59-62
- *Fetish Times* (1989) #187
- Gregory, James. 1983. "Diapers Turn My Husband On" Hustler, 10(6). 1983
- Owens, Tuppy. *Planet Sex Handbook*

Ageplay has been identified and studied occasionally by academics as well. Most focus on the infantilism aspect, and some ageplayers have been labeled as mentally ill in the DSM due to their interests. Currently, no study acknowledges the true breadth of ageplay that occurs. However, some academics have shown further interest in the topic. Here are some academic examples of the study of ageplay:

- Allen, C. (1969). *A Textbook of Psychosexual Disorders*. Oxford: Oxford Medical Publications
- Arndt, Jr., William B. (1991). *Gender Disorders and the Paraphilias*, page 394

- Baumeister, Roy F. (1989). *Masochism and Self*. Lawrence Erlbaum Associates, pages 82 & 159
- Croarkin, P., Nam, T. & Waldrep, D. 2004. *Comment on Adult Baby Syndrome*. American Journal of Psychiatry, 161, 2141
- Dinello, F. 1967. *Stages of Treatment in the Case of a Diaper-Wearing 17 Year Old Male*. American Journal of Psychiatry, 124: 94-96
- Evcimen, H. & Gratz, S. 2006. *Adult Baby Syndrome*. Archives of Sexual Behavior. 35(2): 115-116
- Malitz, S. 1966. *Another Report on the Wearing of Diapers and Rubber Pants by an Adult Male*. American Journal of Psychiatry, 122: 1435-1437
- Maytal, Guy, Smith, Felicia A., and Stern, Theodore A. (2006). *Naked Patients in the General Hospital: Differential Diagnosis and Management Strategies*. Psychosomatics 47:486-490
- Pandita-Gunawardena, R. (1990). *Paraphilic Infantilism: A Rare Case of Fetishistic Behavior*. The British Journal of Psychiatry: 157: 767-770
- Pate J.E., Gabbard G.O. (2003). *Adult baby syndrome*. American Journal of Psychiatry; 160: pages 1932-1936
- Speaker, Thomas John. (1989), *Psychosexual Infantilism in Adults: The Eroticization of Regression*. Columbia Pacific University
- Stekel, W. (1952). *Patterns of Psychosexual Infantilism*. Washington Square Press., page 144, ISBN 0-87140-840-6
- Roiphe, Herman & Galenson, E. 1973. *The Infantile Fetish*. Psychoanalytic Study of the Child. 28: 147-166
- Tuchman, W. & Lachman, J. 1964. An Unusual Perversion: The Wearing of Diapers and Rubber Pants in a 29 Year Old Male. American Journal of Psychiatry, 120: 1198-1199

## **Ageplay in the Media**

Ageplay is prevalent and unusual enough that it has attracted attention from the mainstream media and major networks. This is likely where most of the general population and many ageplayers have learned about ageplay. Ageplayers, especially adult babies, are well known and have a large enough population of practitioners that it has been an occasional foil, used for shock value in the media. For example, a faked picture of Al Franken in a diaper with a stuffed animal was recognizable to the general population as an adult baby.

Ageplayers have been featured on television shows in several different roles. Talk shows have been dealing with the issue of ageplay and adult babies for over 20 years. Some of the appearances of ageplay on talk shows include:

- Phil Donahue (November 1991)
- Montel Williams (February 1992)
- Jerry Springer (October 1992)
- Dr. Dean Edel (September 1992)
- Jerry Springer, “Adult Babies” (1998):
- Jerry Springer, “Sexy Stories” (July 2001)
- Jerry Springer, “Freaky Fetishes II,” (November 2001)
- Tyra Banks, (May 2008)
- The Shirley Show (2012)
- Dr. Phil, “Extreme Addictions” (2012)
- Trisha Goddard (2012)

With the advent of reality TV, several different shows have featured a more in-depth look at ageplayers, usually adult babies, in their own homes and while doing ageplay activities. These instances include:

- SexTV “Submerged Beauty/Molly Crabapple/Adult Baby Nursery,” Season 9, Episode 16, (March 2007)
- Secret Lives of Women, (April 2008), WE
- The Secret Lives of Women “Baby Ella,” (2010), WE TV
- Taboo, “Fantasy Lives,” (May 2011), National Geographic
- My Strange Addiction, (2011), TLC
- Sexcetera, (2012), PlayboyTV
- British Sex “Adult Babies and Sissyboys” (2012)

Documentaries have also been made about ageplay. The BBC filmed the 15 Stone Babies, (December 2012), an Adult Baby Documentary. Several student filmmakers have also worked with adult babies on documentaries for class projects.

Ageplay can be showcased as an oddity, for laughs or shock value. Ageplay has been used for entertainment value or a plot device, such as in the ER episode “Dead Again” (October 2002) and the CSI episode, “King Baby,” Season 5, Episode 15 (February 2005). The following shows have used depictions of ageplayers, usually adult babies, demonstrating that the audience possesses at least a passing familiarity of the phenomena of ageplay:

- “Jerry Springer: The Opera” (1998)
- The Graham Norton Effect, episode 10, (August 2004)

- “1000 Ways to Die: Fatal Distractions; Crib Your Enthusiasm” Season 3, Episode 29, (October 2010)
- Got Skits? Season 1, Episode 3; “Adult Baby,” (February 2012)

Ageplay has been a featured topic on many different podcasts, which focus on alternative sexuality practices. One example is the Dark Side Podcast, episode #45, Age Play – A Grown Up Discussion. Ageplay is the only topic of The Big Little Podcast. At the current count, they have produced a total of 94 episodes on different aspects of ageplay. For their 2011-2012 season, a total of 903,042 downloads were performed.

### Population of Ageplayers

With any topic that is sexual, personal, or potentially shameful, it is difficult to get a true count of how many individuals are interested. Acting childlike or having an interest in adults who have childlike personality traits are both seen as especially shameful. This causes many people to keep their interests to themselves. This is especially true when compounded by the fact that many individuals receive sexual enjoyment from this type of play, and often non-normative sexuality is shameful as well. Thus, many people actively conceal their interest in ageplay.

Because of the difficulty in directly measuring those who do not disclose their interests, qualitative and indirect measures, such as those described previously, can demonstrate the large number of people who are interested in ageplay.

However, these estimates will likely be low due to the fact that many people are hesitant to tell others, use services, join groups or sites, or even admit their interests to themselves.

Some people are comfortable enough to take steps towards disclosure and thus become part of the alternative sexuality community. These people disclose, look for others for relationships, seek support, go to public events and thus demonstrate a deeper interest in ageplay. Social networking is one of the easiest ways to do many of these tasks. Fetlife.com is a social networking site that has different categories, groups, and interest headings along with the number of people that have indicated interested in them. This makes the numbers of ageplayers more visible and countable.

Besides personal interviews and questioning, data from Fetlife.com appears to be the best measure for many accessible quantitative numbers, as other sources are in short supply. Due to the limitations of using a single source, using these numbers likely greatly underestimates the overall interest in ageplay.

Fetlife indicates that 94,092 of their members are interested or curious about ageplay (Fetlife.com, 2013). To try to give this number some scale, this is enough to fill the Houston Astros Minute Maid stadium about two and a quarter times. This is also about twice the number of people that attend the annual Star Wars convention, about four times the number that attend the ham radio national convention, or one and half times the number that attend the NRA's national conference.

### Population Growth

The number of people expressing interest in ageplay is growing quite rapidly. Either the number of people who are interested in ageplay is increasing, or more people are feeling more comfortable admitting an interest in ageplay. In 2011, 44,942 people expressed an interest in ageplay (Rulof, 2011). At the end of 2013, the stated interest on Fetlife.com—only one site—has grown to 94,092. This is an increase of 109.36%.

Additionally, the indication of interest on Fetlife.com in more specific aspects of ageplay has increased:

- Daddy & Daughter Roleplay, from 37,580 to 45,417, up 20.85%
- Lesbian Daddy & Son or Daughter, from 59 to 124, up 110.17%
- Sexual Ageplay, from 114 to 292, up 156.14%
- Teenage Ageplay, from 137 to 352, 156.93%

Likewise, the enrollment in some ageplay groups has increased:

- Ageplay Adoption for Adult Littles, from 1446 to 2650, up 83.26%
- Victorian Ageplay, from 238 to 428, up 79.83%
- Nonsexual Ageplay, from 568 to 556, down 2%

The juxtaposition between the rise of interest in sexual ageplay, increases in teenage ageplay, and the lower count of people belonging to the nonsexual ageplay group is of note. It could be that more people are becoming interested in or willing to admit their desires for the sexual aspects of ageplay.

Compared to 5.7% of the site members interested in ageplay in 2011, out of the 2,515,000 members on Fetlife.com, 3.7% are now interested in ageplay (Rulof, 2011; Fetlife.com, 2013). In 2011, ageplay was the 51st most popular interest out of hundreds on the site. In 2013 it is the 55th most popular interest. (Rulof, 2011)

& Fetlife.com, 2013). In terms of numbers, this makes it more popular than some staples of alternative sexuality such as cross dressing, threesomes, using restraints, and doctor/nurse roleplay (Fetlife.com, 2013). This declining percentage and the ranking of the ageplay fetish may have shifted downwards due to the increasing cultural acceptance or curiosity of BDSM activities through the popularity of the 50 Shades of Grey novels.

Once again, these numbers are only countable ageplayers on one site. The number of countable ageplayers is only a fraction of the total population of those who are interested in ageplay. Regardless of the exact percentage, starting with over 94,000 countable ageplayers, this means that the total population of those interested in ageplay is quite a significant number. In the BBC's 15 Stone Babies documentary, it is stated that some believe "there has to be a good 200,000 to 500,000 maybe in just in the U.S. and the UK"; however, it is unclear how this individual came to gauge such a range.

The best indicator available seems to be comparing the enrollment in The Big Little Podcast Fetlife group, 1082, with the number of downloads of the most popular episode, 30,083. This is only 6% of the podcast listeners that are subscribed to the Fetlife group. Examining the number of downloads from their 2011- 2012 season gives us an approximate number of people who have listened to this podcast. A show on females and ageplay was downloaded the most, 30,083 times. Using Big Little Podcast numbers as an assumption, and proceeding with a conservative 5% instead of the reported 6%, this conservative estimate shows that there are at least 1,881,840 ageplayers who have more than a passing interest in the subject. Additional measures would be needed to get a more precise number.

People can have a more active interest in ageplay, demonstrated by signing up to be part of a location-based group. On Fetlife, there are groups for ageplayers in 49 states (except Hawaii), Canada, the UK, Germany, Sweden, France, The Netherlands, Poland, Denmark, Italy, Australia, Thailand, Chile, Mexico, and Brazil. Indeed, ageplay is of worldwide interest.

On Fetlife, there are 48,390 memberships worldwide to ageplay groups that are location based. Although some of these may be people signed up to multiple location-based groups, the duplicates have been minimized by excluding groups that cover larger regions, such as the South or Northeast of the US. Most of these ageplayers are US based ageplayers, 71%. The remainder comes from other areas such as Canada, the UK, the rest of Europe, Australia, and a small amount from other places. There are likely many other foreign language ageplay sites, and many more ageplayers in non-English speaking countries, and Asia. Language,

censorship, and internet access are likely barriers for connecting to nearby ageplay communities, as well as to the ageplay community as a whole.

The mainstream interest in sexual versions of schoolgirl or cheerleader costumes and similar themes in pornography indicate that interest in ageplay is both widespread and prevalent, although not explicitly labeled as ageplay. To be interested in ageplay, one doesn't have to be interested in all aspects. For example, many more people appear to be interested in ageplay that revolves around sexuality and schoolgirls and feel disgusted by diapers or babies. Fetlife lists 97 fetishes or interests that specifically have "ageplay" in their title, with many more related to ageplay through topics like adult babies, Daddies, Mommies, little boys, little girls, and diapers. There are also 511 non-location based ageplay groups.

## Conclusions

Ageplay is a significant part of many lives as well as the larger alternative sexuality community. All the total population cannot be counted; the data shows that there are a large amount of people that are interested or curious about ageplay. The large growth of practitioners, as well as attendance at conventions, number of products available, purchases from merchants, and number of service vendors indicate that there is indeed a great amount of interest in ageplay.

The interest in ageplay only seems to grow. There are many different reasons that this growth may continue. Possibly because of support from online communities, people may feel more comfortable admitting and exploring their interests in ageplay. As the number of these communities grows, others will feel more comfortable expressing their interests.

Social knowledge contagion may be another reason. One reason that people who are interested in ageplay do not identify themselves as ageplayers is due to ignorance of the label or of the fact that there are others who share a common interest. When an individual sees someone ageplaying, meets someone who is into ageplay or discovers what the term ageplay means, they may become interested, curious, or it may describe something that they have felt themselves, but didn't have a name or label for. Many people have related that they were shocked to find out others that shared their thoughts and feelings about ageplay, that it has a name or label, and that an ageplay community has formed.

Through media exposure and an increased cultural tendency for people to reveal private aspects of their lives, the number of people who have expressed an interest in ageplay and joined in the ageplay community has begun to grow.

Many people who are transsexual enjoy ageplay, as it allows them to experience a version of childhood that they have not had growing up as the opposite sex. As the number of those identify as transsexuals increase, so may ageplay. The same appears to be true for people who identify as sissies as well.

The growth of different aspects of ageplay is also interesting. Looking at the numbers, there appears to be more people interested the sexual aspects of ageplay, rather than the nonsexual aspects. Ageplay was once seen as solely the domain of men, and especially gay men, and only in infant roles. The potential to explore teenage roles in ageplay, as well as the corresponding reenactments of sexual exploration may be another factor that intrigue or draw people to ageplay.

Overall, a substantial number of people are interested in ageplay. There are many different services, meeting opportunities, vendors, and online forums for ageplayers to learn and interact. Besides the number of people already interested, the number of ageplayers is growing, by large amount. It will be interesting to see how long this growth trend will be sustained and the amount of future growth.