



## CRIMINALIZING THE SEXUAL GROOMING OF CHILDREN Several States Expand Child Protection Laws

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### THE ABUSER'S GROOMING PROCESS

Preventing child sexual abuse in child-serving programs continues to present a significant challenge. Sexual abusers have no visual profile, so the risk cannot be recognized visually – it can *only* be recognized *behaviorally*. These behaviors are known as *the abuser's grooming process*, the process by which an abuser chooses and prepares a child for inappropriate sexual behavior. To effectively prevent sexual abuse, staff members and volunteers must understand the grooming process and *common grooming behaviors*. These behaviors are knowable, *but not intuitive*; which is why training is imperative to equip organization leaders with eyes to see an abuser's attempts to induce, entice, coerce, persuade or solicit a child into inappropriate sexual behavior.

To equip organization leaders, Abuse Prevention Systems provides online Sexual Abuse Awareness Training; see more below.

### GROOMING CRIMINALIZED

In the last twelve months, several states have enacted new legislation or expanded existing legislation to make 'grooming' a criminal offense, independent of the intended sexual activity. So far, that list of states includes Arkansas, Georgia, Illinois, Iowa, Minnesota, Mississippi, Montana, Nebraska, Ohio, Oregon, South Dakota, Texas and West Virginia<sup>1</sup>. Though each state's legislation varies, there is a clear legislative intent: in these states the grooming behavior *alone* is subject to criminal prosecution – separate and apart from any inappropriate sexual behavior.

Similar to a 'conspiracy' charge, the underlying crime and a *conspiracy to commit* the underlying crime constitute *two separate criminal charges*; it is no defense to the conspiracy charge that the underlying crime was not actually committed. Likewise, grooming a child for inappropriate sexual activity and the inappropriate sexual activity itself are now *two separate criminal charges* in the above-referenced states. Again, it is not a defense to the grooming charge that the underlying inappropriate sexual activity *did not actually occur*. These changes in law will significantly impact child-serving organizations in these states.

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<sup>1</sup> West Virginia Code Chapter 18, Section 18-A-3-6(f) seems to apply to school personnel only, and provides grounds for revocation, suspension or 'other authorized actions'. The West Virginia law does not appear to be in the form of a criminal code.

## EXAMPLES OF NEW STATE LEGISLATION

Though the language and approach is different in each state, the fundamental concept or purpose is similar: to criminalize the sexual grooming of children. A brief analysis below describes legislative efforts passed in Texas, Georgia and Ohio.

### **Texas Penal Code – Chapter 15: Preparatory Offenses**

#### Section 15.032(a)(1) Child Grooming – Third Degree Felony

**Author's Summary:** A person commits the offense of *Child Grooming* if the person **knowingly persuades, induces, entices or coerces** (or attempts to persuade, induce, entice or coerce) a child younger than 18 years of age to engage in specific conduct involving sexual activity, the occurrence of which would subject the actor to criminal liability under certain criminal statutes. Note: the criminal behavior relates to knowingly persuading, inducing, enticing, coercing or attempting to persuade, induce, entice or coerce – *not the sexual activity itself*.

Exacerbating elements may exist (prior convictions make Child Grooming a Second Degree Felony), as well as mitigating elements (Romeo & Juliet provisions).

### **Georgia Code Annotated – Title 16 Chapter 12**

#### Section 16-12-100 Grooming of a Minor – Felony

**Author's Summary:** A person commits the offense of *Grooming of a Minor* if the person **knowingly and intentionally engages in a pattern of conduct or communication to gain access to, to gain the compliance of, to prepare, to persuade, to induce, or to coerce** a minor to engage in a sexual offense. Behavior that constitutes Grooming of a Minor may take any form: in person or through the use of a computer, electronic device, social media or text messages.

Note: the criminal behavior relates to gaining access, gaining compliance, preparing, persuading, inducing or coercing – *not the sexual activity itself*.

Proximity of age may provide an exception (Romeo & Juliet provisions).

### **Ohio Revised Code: Offense of Grooming**

#### Section 2907.071(B) Child Grooming

**Author's Summary:** A person commits the offense of *Child Grooming* if the person engages in a pattern of conduct with a minor with the purpose to **entice, coerce or solicit** the minor to engage in sexual activity or **knowingly prepare** the minor to engage in sexual activity.

Note: the criminal behavior relates to knowingly preparing, enticing, coercing or soliciting the minor for sexual activity – *not the sexual activity itself*.

Criminal grooming may range from a Second Degree Misdemeanor to a Third Degree Felony, depending on the age of the minor and whether the offender supplied alcohol or drugs in the course of the behavior.

## RELEVANCE / VALUE OF LEGISLATION

Countless fact patterns relate to an abuser grooming a child into inappropriate – *and criminal* – sexual interaction. Oftentimes, an abuser is clearly engaged in behavior attempting to *prepare* a child for sexual abuse, while creating opportunities for *trusted time alone* with the child. These behaviors are referred to as ‘grooming’ and are specifically directed toward the child or the child’s ‘gatekeepers’ or caregivers. The newly-enacted criminal code sections are focused on behaviors related to the abuser’s *grooming process*, rather than actual sexual touch.

The purpose of these statutes is to criminalize the abuser's efforts to *persuade, prepare, induce, entice, solicit, or coerce* a child to engage in sexual activity BEFORE sexual touch actually occurs. If the abuser engages in the planned sexual behavior with the child, criminal law prohibiting grooming is not necessary for prosecution, but *does* provide additional criminal counts to be added to an indictment (e.g., murder and conspiracy to commit murder), giving law enforcement additional options to secure a conviction. In South Dakota, for example:

It is not a defense to prosecution of grooming ... that no sexual contact or penetration with the child occurred. *Section 22-22, South Dakota Code*

Child Grooming legislation provides an avenue for prosecution when an abuser is stopped short of sexually inappropriate behavior, but has participated in grooming behaviors meant to create opportunity for sexual abuse of a child. Criminal charges for these grooming behaviors are now available to law enforcement and criminal prosecutors in these states.

In many circumstances, an abuser attempts to groom several children of the abuser's age and gender of preference, but only has the opportunity to engage in *actual sexual behavior* with one or two of the targeted children. Law enforcement now has the ability to pursue criminal charges related to *all* the groomed minors, as well as the one or two wherein criminal sexual behavior actually occurred. This is particularly important in circumstances where one or more victims refuse to participate in the investigation or prosecution, common when one or more of the victims are family members of the abuser, or the abuser is a trusted family friend.

Child Grooming legislation is particularly valuable given the proliferation of electronic communication and social media applications, whereby an abuser can communicate electronically to *persuade, induce, entice or coerce* a minor to (1) meet for sexual activity; (2) send and/or receive images or video of an inappropriate sexual nature; or (3) engage in video chat that involves sexual activity. It has been a common criminal defense that 'no in-person sexual activity took place': the new Child Grooming legislation provides a new pathway to criminal prosecution and conviction in these states.

In addition, Child Grooming legislation supports victims of sexual abuse by acknowledging the reality that *grooming, alone, is harmful*. Even if an abuser's behavior stops short of actual sexual abuse, grooming behaviors may form a significant source of trauma for a child.

## **REPORTING REQUIREMENTS – NOT SPECIFICALLY ADDRESSED**

Every state has mandatory reporting requirements for child abuse and neglect; legal requirements outlining *who* is required by law to report suspicions or allegations of child abuse or neglect, *how* and *to whom* such a report must be made, and *when* it must occur (specific time requirements—e.g., within 48 hours).

In Texas, for example, child abuse reporting requirements are outlined by **Texas Family Code Chapter 261.101**, *making every adult in Texas a mandatory reporter of child abuse and neglect*, including any allegation or *reasonable suspicion* of abuse or neglect. Given the fact that Child Grooming is now criminalized in Texas, does a corresponding requirement to report grooming exist? As of this writing, neither Texas nor any other state has addressed whether instances of

*child grooming* constitute a mandatory report. In an abundance of caution, the authors advise that organizations assume so, and report accordingly.

## **RECOGNIZING THE GROOMING PROCESS**

An understanding of mandatory reporting requirements related to child sexual abuse is critical for organization leaders. Equally important is an understanding of behaviors commonly indicating abusive behavior; the *grooming process* of the abuser.

When organization leaders better understand the *grooming process* of the offender — how an offender gains access to children, grooms a child for sexual touch and subsequently keeps the child silent — that organization leader is better equipped to recognize risky behavior as it is encountered; *before the offender has abused a child*. With effective training, organization leaders develop ‘eyes to see and ears to hear’ predatory behavior. In other words, *don’t wait until an individual is caught in a compromising position with a child* to suspect a problem *might* exist.

An understanding of the abuser’s grooming process and the role it plays in child sexual abuse is driving new criminal legislation. An understanding of the grooming process forms the basis of an effective safety system to *prevent* child sexual abuse. Instruction related to the grooming process and *common grooming behaviors* is provided by Abuse Prevention Systems through Sexual Abuse Awareness Training.

To learn more about the *abuser’s grooming process* and behaviors indicative of child sexual abuse, visit [AbusePreventionSystems.com](https://AbusePreventionSystems.com) or request a sample training link by contacting [Support@AbusePreventionSystems.com](mailto:Support@AbusePreventionSystems.com).

## **SUMMARY**

In the last year, many states have enacted new legislation to criminalize *grooming of a child* for inappropriate sexual behavior, including Arkansas, Georgia, Illinois, Iowa, Minnesota, Mississippi, Montana, Nebraska, Ohio, Oregon, South Dakota, Texas and West Virginia. The clear legislative intent is this: grooming behavior *alone* is subject to criminal prosecution – separate and apart from any inappropriate sexual behavior. Organization leaders can expect to see this trend continue, with specific reporting responsibilities to follow.