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RESEARCH ARTICLE



An analysis of child sexual grooming legislation in the United States

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ABSTRACT

Both in-person and online sexual grooming of children is a common process used by those who sexually abuse children. Sexual grooming refers to the method by which an adult manipulates a potential minor victim into situations where sexual abuse can more readily take place while at the same time preventing the minor from disclosing the abuse or others recognizing the inappropriate behaviors. Child sexual grooming is considered a precursor to the criminal act of child sexual abuse; however, in some jurisdictions child sexual grooming in and of itself is considered a standalone criminal offense. Both federal and state governments in the United States have created anti-grooming laws to criminalize these preparatory acts to protect children before the sexual abuse can occur. This paper will explore the current research on sexual grooming to provide a framework for understanding sexual grooming behaviors, critically examine federal and state sexual grooming legislation, and provide recommendations on how to evaluate and integrate sexual grooming research into criminal prosecution and policy.

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: Legislation; child sexual abuse; child sexual grooming; anti-grooming statutes; sexual offending

Both in-person and online sexual grooming of children is a common process used by those who sexually abuse children (Ezioni, 2020; Kool, 2011) and it is estimated that nearly 50% of child sexual abuse (CSA) cases involve sexual grooming (Canter et al., 1998; Finkelhor, 1984; Hall & Hirschman, 1992; Ward, 2002; Ward & Siebert, 2002). Broadly, sexual grooming refers to the method by which an adult manipulates a potential minor victim into situations where sexual abuse can more readily take place while at the same time preventing the minor from disclosing the abuse or others recognizing the inappropriate behaviors (Gallagher et al., 2003; Gillespie, 2001, p. 2004; McAlinden, 2006; Williams, 2015). Child sexual grooming is considered a precursor to the criminal act of CSA; however, in some jurisdictions child sexual grooming in and of itself is considered a standalone criminal offense (Pollack, 2015). Both federal and state governments in the United States (U.S.) have created anti-grooming laws to criminalize these preparatory acts to protect children before the sexual abuse can occur (Chetosky, 2019; McElvaney, 2019; Ost, 2004; Sorell, 2017). Given the long-term negative impact of childhood sexual

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abuse (e.g. depression, anxiety, post-traumatic stress disorder, substance misuse; Hailes et al., 2019), having legislation to enable prosecution for preparatory acts can aid CSA prevention efforts and potentially stop child sex crimes before they occur. Notably, however, there is a dearth of literature exploring the application of sexual grooming in legal settings. To this end, this paper will explore the current research on sexual grooming to provide a framework for understanding sexual grooming behaviors, critically examine federal and state sexual grooming legislation, and provide recommendations on how to evaluate and integrate sexual grooming research into criminal prosecution and policy.

Sexual grooming model and definition

In the past decade, the use of the term child sexual grooming to describe the pre-offense behaviors used by child sexual predators has become more commonplace by law enforcement, mental health professionals, the media, and laypersons (Lanning, 2018). Child sexual grooming may take place in a variety of contexts (e.g. in-person, online, child sex trafficking, institutional) and as such, the grooming behaviors may look different depending upon the situation (e.g. based upon victim age, gender, adult supervision status; Elliott, 2017). It is estimated that one-third to one-half of all in-person CSA cases involve sexual grooming (Canter et al., 1998; Finkelhor, 1984; Hall & Hirschman, 1992; Ward, 2002; Ward & Siegert, 2002). Given the significant proportion of cases of CSA that involve sexual grooming, criminal justice professionals must be equipped with a clear definition of the construct and a list of observable behaviors to successfully identify those perpetrating or attempting to perpetrate CSA and once apprehended to build and develop their prosecution.

Despite increased usage of the term child sexual grooming, there remains much confusion and disagreement over the exact meaning of the construct and the specific behaviors it entails. Child sexual grooming is also confused with and incorrectly interchangeably used with child sexual solicitation (Greene-Colozzi et al., 2020). With regard to sexual solicitation, the Internet is used to engage with minors for sexual purposes (e.g. exchange of sexually explicit images or videos, sexualized conversations and/or behaviors for the purpose of sexual gratification; Döring, 2000; Schulz et al., 2016; Seto et al., 2012). Sexual solicitation can be engaged in many times; however, to meet the definition the individual must only engage in this behavior once (Greene-Colozzi et al., 2020). Conversely, child sexual grooming is a lengthier process by which an individual forms an intimate relationship with the minor prior to engaging in sexual acts or conversations (Broome et al., 2018; Greene-Colozzi et al., 2020).

In an effort to bring cohesion to the field, Winters and colleagues (2020) conducted a thorough review of the sexual grooming research and developed a model of child sexual grooming – the Sexual Grooming Model (SGM) – comprised of five overarching stages of the grooming process, as well as a comprehensive list of specific behaviors and tactics corresponding to each stage of the grooming process (see Winters et al., 2020 for a detailed list of behaviors). The first stage of the SGM is *victim selection* wherein the offender identifies a potential victim by selecting a minor who is vulnerable, either because of psychological/emotional reasons or because of family circumstances such as a lack of supervision, family discord, or living in a single-parent home. The next stage involves *gaining access and isolating the minor* either through working or volunteering in youth-

serving organizations or by gaining the trust of the minor's guardians. Once they have access to the minor, the perpetrator often tries to separate the minor from peers and caretaking adults so that they can begin the grooming process in private. This may involve driving them places alone, taking them on outings or overnight stays, and/or emotionally distancing them from family and friends. In the third stage, *developing trust with the minor and other adults in the minor's life*, the perpetrator works to gain the trust and compliance of the minor and significant adults in their lives (e.g. caretakers, community members). It should be noted that in this part of the process the perpetrator is often also grooming the minor's family, the organizations in which they may be accessing the child, and their community, to gain their trust so they can have easy access to the minor without suspicion. The fourth stage *desensitizing the minor to sexual content and physical contact* usually happens right before the abuse occurs. During this stage, the perpetrator prepares the minor for abuse by desensitizing them to sexual content (such as showing them pornography, using sexual language or telling sexual jokes and the display of nudity) and increasing non-sexual touch. The fifth and final stage of sexual grooming *maintenance behaviors following the commission of the abuse* occurs once the abuse has already happened. The purpose of these maintenance behaviors is for the individual to be able to continue the abuse and avoid detection, often by manipulating the minor into feeling guilty or responsible for the abuse or causing them to fear the consequences of disclosure.

The SGM is the first and only content validated model of sexual grooming as determined by feedback from experts in the field. Based upon the SGM, Winters and Jeglic (2021) developed a self-report assessment of grooming behaviors and tactics – the *Sexual Grooming Scale – Victim Version (SGS-V)*, which can be used to assess grooming behaviors as reported by the victim. Additionally, to address limitations of previous definitions (see Bennett & O'Donohue, 2014; Craven et al., 2007; Knoll, 2010; McAlinden, 2007, 2013; Salter, 1995) and promote a more universal understanding of the construct of child sexual grooming, Winters and colleagues (2021) defined child sexual grooming as:

'The deceptive process by which a would-be abuser, prior to the commission of the child sexual abuse, selects a victim, gains access to and isolates the minor, develops trust with the minor and often other adults in the minor's life, and desensitizes the minor to sexual content and physical contact. Post-abuse, the offender may use maintenance strategies on the victim following the sexual contact in order to facilitate future sexual abuse and/or to prevent disclosure' (Winters et al., 2021, p. 17).

Sexual grooming and criminal law

Federal and some state legislation has been created to allow child sexual grooming to be punishable as a standalone criminal offense, even if contact sexual abuse does not take place (Pollack, 2015). Given that child sexual grooming is often the antecedent to the criminal act of child sexual abuse, this type of legislation enables law enforcement to protect children by permitting the arrest of an individual who is engaging in sexual grooming behaviors (Ezoni, 2020; Ost, 2004). Importantly, there is great variability in the language and intent of the legislation across federal and state grooming statutes. Moreover, there is a lack of specificity (e.g. behaviors indicative of child sexual grooming) that spans across the federal and state legislation. To further complicate matters, the legal

definition of child sexual grooming is not synonymous with the concept of in-person child sexual grooming as outlined in the scientific and theoretical literature (see Winters et al., 2020). Below, we present the sexual grooming statutes at the federal level (18 U.S. Criminal Code § 2422) and state level to illustrate the complex and varying existing laws involving child sexual grooming.

Federal enticement statute

The federal enticement statute under section § 2422 of the U.S. Criminal Code reads:

- (a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.
- (b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

State enticement statutes

In addition to the federal statute, 42 states have enacted their own anti-grooming legislation (Chetosky, 2019), while other states do not have legislation specific to sexual grooming. As seen in Table 1, anti-grooming legislation from several states such as Alabama, Alaska, Connecticut, Florida, Idaho, Illinois, Louisiana, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Texas, Utah, and West Virginia states that the enticement, solicitation, or luring, must involve the use of an electronic device, computer, Internet, or text messaging. As such, at face value, these state laws may not encompass in-person sexual grooming that does not involve electronic devices or electronic communication. However, other states are vaguer in their language and use language such as 'entice,' 'coerce' or even 'groom' the child to engage in sexual activity (see Arkansas, 1979) which could encompass in-person sexual grooming. Further, some states use the word 'attempt' when describing the sexual behavior suggesting that the abuse does not yet have to occur for a crime to be committed (see Iowa). Table 1 highlights the inconsistency in anti-grooming laws across states. Further, some states, such as Washington, do not have legislation to address pre-offense behaviors. Thus, unless the sexual abuse has already happened, the perpetrator cannot be charged (Sadler, 2018).

Limitations with anti-grooming legislation

Anti-grooming laws must protect children by legally prosecuting potential abusers before the abuse occurs, but also avoid false accusations by including acts that are too broad or

Table 1. Examples of state anti-grooming legislation.

State	Anti-Grooming Legislation
Federal	(a)Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both. (b)Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.
Alabama	AL Code § 13A-6-122 (2012) – Electronic solicitation of a child. A person who, knowingly, with the intent to commit an unlawful sex act, entices, ... attempts to entice ... by means of [electronic system], a child ... to meet with the defendant ... for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct.
Alaska	AS § 11.41.452. Online Enticement of a Minor. (a) 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 11.41.455(a)
Arkansas	Arkansas Protection of Children Against Exploitation Act of 1979 § 5-27-307 - Sexually grooming a child. (b) A person commits sexually grooming a child if he or she knowingly disseminates to a child thirteen (13) years of age or younger ... visual or print medium depicting sexually explicit conduct with the purpose to entice, induce, or groom the child ... to engage in the following with a person: (1) Sexual intercourse; (2) Sexually explicit conduct; or (3) Deviate sexual activity.
Colorado	CRS 18-3-305 – Colorado Law re ‘Enticement of a Child Under 15’ A person ... invites or persuades, or attempts to invite or persuade, a child under the age of fifteen years to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact upon said child.
Connecticut	Sec. 53a-90a. Enticing a minor. Penalties. (a) A person is guilty of enticing a minor when ... 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 ...
Delaware	2 DE Code § 1112A – Sexual solicitation of a child. (a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly: (1) Solicits ... otherwise attempts to cause any child who has not yet reached that child’s eighteenth birthday to engage in a prohibited sexual act; or (2) Solicits, ... otherwise attempts to cause any child who has not yet reached that child’s sixteenth birthday to meet with such person or any other person for the purpose of engaging in a prohibited sexual act; or (3) Possesses by any means ... physical characteristics or other descriptive or identifying information pertaining to any child who has not yet reached that child’s sixteenth birthday for the purpose of facilitating, encouraging, offering or soliciting a prohibited sexual act involving such child and such person or any other person.
Florida	847.0135 Computer pornography; prohibited computer usage; traveling to meet minor; penalties. — Any person who knowingly uses [electronic system] (a) Seduce ... a child or another person believed by the person to be a child, to commit any ... unlawful sexual conduct with a child or with another person believed by the person to be a child; or (b) Solicit ... 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 [above]. (4) Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described [above] or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using [electronic system]
Georgia	O.C.G.A. 16-12-100 (2010) 16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties (b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.
Idaho	Idaho Code § 18-1509A (1) A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses [electronic system] 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.
Iowa	Iowa Code § 728.12 1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act.
Illinois	(720 ILCS 5/11-25) Sec. 11-25. Grooming. (a) A person commits grooming when he or she knowingly uses [electronic system] to seduce ... a child, a child’s guardian, or another person

(Continued)

Table 1. Continued.

State	Anti-Grooming Legislation
	believed ... 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 ...
Indiana	Ind. Code § 35-42-4-6 (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;(5) by advertisement of any kind; or (6) by any other means; (b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age ... believes to be a child under fourteen (14) years of age, to engage in sexual intercourse, other sexual conduct or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation.
Kansas	21-5510. Sexual exploitation of a child. (a) Sexual exploitation of a child is: (1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age ... believes to be a child ... , to engage in sexually explicit conduct with the intent to promote any performance; (2) possessing any visual depiction of a child ... shown or heard engaging in sexually explicit conduct ...
Louisiana	LA Rev Stat § 14:81.3 – Computer-aided solicitation of a minor. A.(1) 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 ... 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 in R.S. 14:2(B)
Maine	§259-A. Solicitation of a child to commit a prohibited act 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 ... For purposes of this section, 'prohibited act' means: A. A sexual act; B. Sexual contact; or C. Sexual exploitation of a minor pursuant to section 282.
Maryland	§ 3-324. Sexual solicitation of minor. (a) 'Solicit' means to command, authorize, urge, entice, request, or advise a person by any means, including: (1) in person; (2) through an agent or agency; (3) over the telephone; (4) print medium; (5) by mail; (6) by computer or Internet; or (7) by any other electronic means.
Massachusetts	Section 26C. (a) "Entice" shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite. (b) Anyone who entices a child under the age of 16, or ... believed to be ... to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate [section and chapter listings] ... or any offense that has as an element the use or attempted use of force.
Michigan	Act 328 of 1931 750.145a Accosting, enticing or soliciting child for immoral purpose. Sec. 145a. 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 ... with the intent to induce or force that child ... 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.
Minnesota	609.352 Solicitation of children to engage in sexual conduct; Communication of sexually explicit materials to children. Subd. 2a. A person 18 years of age or older who [an electronic system] 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: (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct; (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child ...
Mississippi	Miss. Code § 97-5-33 (1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
Missouri	566.151. Enticement of a child. 1. A person twenty-one years of age or older ... persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via ... any electronic communication, any person who is less than fifteen years for the purpose of engaging in sexual conduct.
Nebraska	Nebraska Revised Statute 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 ... to be a child ... , 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 [numbers listed]
New Hampshire	NH Rev Stat § 649-B:4 Certain Uses of Computer Services Prohibited. – I. No person shall knowingly utilize [electronic system] to seduce, solicit, lure, or entice a child or...believed ... to be a child, to commit any of the following: (a) Any offense under RSA 632-A, relative to sexual assault and

(Continued)

Table 1. Continued.

State	Anti-Grooming Legislation
	related offenses. (b) Indecent exposure and lewdness under RSA 645:1. (c) Endangering a child as defined in RSA 639:3, III.
New Jersey	NJ Rev Stat § 2C:13-6 - Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions. a. A person commits ... attempts, via electronic ... to lure or entice a child or one who ... 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.
New Mexico	NM Stat § 30-37-3.2 - Child solicitation by electronic communication device. 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.
New York	New York Consolidated Laws, Penal Law - PEN § 100.08 Criminal solicitation in the third degree A person is guilty of criminal solicitation in the third degree when, being over eighteen years of age, with intent that another person under sixteen years of age ... he solicits, ... attempts to cause such other person to engage in such conduct.
North Carolina	§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act. (a) A person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices ... , by means of [electronic system] a child who is less than 16 years of age and at least five years younger than the defendant, or ... believes to be a child to meet with the defendant or any other person for the purpose of committing an unlawful sex act.
North Dakota	N.D. Cent. Code § 12.1-20-05 1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor ... fifteen years of age or older. 2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty ...
Ohio	Section 2905.05 Criminal child enticement. (A) Solicit, coax, entice, or lure any child under fourteen years of age to accompany the person ... including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child ... if (1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity. (B) No person, with a sexual motivation, shall violate section (A).
Oklahoma	OK Stat § 21-1123 (2014) – Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery. 1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age ... believes to be a child ... , for the child to have unlawful sexual relations or sexual intercourse with any person; or 2. Look upon, touch, maul, or feel the body or private parts of any child ... in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or 3. Ask, invite, entice, or persuade any child ... believes to be a child ... to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality ... with the child; ... 5. ... for the purpose of sexual gratification:
Oregon	ORS 167.057 – Luring a minor. (1) If the person ... uses with, a minor, a police officer posing as a minor or an agent of a police officer posing as a minor, a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor ... to engage in sexual conduct.
Rhode Island	RI Gen L § 11-37-8.8 Indecent solicitation of a child. (a) A person ... knowingly solicits another person under eighteen (18) years of age or ... believes ... 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. (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.
South Carolina	SC Code § 16-15-342 (2012) – Criminal solicitation of a minor; defenses; penalties. (A) A person knowingly contacts or communicates with, or attempts ... a person who is under the age of eighteen, or ... believed ... 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 with the intent to perform a sexual activity in the presence of the person under the age of eighteen ...
South Dakota	S.D. Codified Laws § 22-24A-5 (1) Solicits a minor, or ... believes ... to engage in a prohibited sexual act; or(2) Knowingly compiles or transmits by ... electronic means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's ... identifying information for the purpose of soliciting a minor ... to engage in a prohibited sexual act.

(Continued)

Table 1. Continued.

State	Anti-Grooming Legislation
Tennessee	TN Code § 39-13-528 (2019) – Offense of solicitation of a minor. (a) It is an offense for a person eighteen (18) years of age or older, by [electronic means] to intentionally ... induce a person ... is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and ... reasonably believes ... , to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following [sexual] offenses
Texas	Texas Penal Code 33.021 - PENAL § 33.021. Online Solicitation of a Minor (b) A person who is 17 years of age or older ... with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, the person, [electronic means] intentionally: (1) communicates in a sexually explicit manner ... ; or (2) distributes sexually explicit material ... (c) A person ... 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.
Utah	Section 401. Enticing a minor. (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. (b) a person ... knowingly uses [electronic means] to solicits ... attempts to solicit, ... the minor or ... believes to be the minor to engage in any sexual activity.
Vermont	Vt. Stat. tit. 13 § 2828 (a) No person shall knowingly solicit, ... to attempt to solicit, ... a child under 16 years of age or ... believed ... 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.(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.
Virginia	Code of Virginia Title 18.2 - Crimes and Offenses Generally § 18.2-374.4. Display of child pornography or grooming video or materials to a child unlawful; penalty A. Any person 18 years of age or older who displays child pornography or a grooming video or materials to a child under 13 years of age with the intent to entice, solicit, or encourage the child to engage in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts ...
Washington, DC	§22-3008. First degree child sexual abuse. Whoever, being at least 4 years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act ...
West Virginia	Chapter 61. Crimes and Their Punishment § 61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties (a) Any person over the age of eighteen, who knowingly uses a computer to solicit ... or attempt to solicit ... a minor known or believed to be at least four years younger ... believes to be such a minor, in order to engage in any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter (b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) ... and who additionally engages in any overt act designed to bring himself ... into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in any sexual activity or conduct ...
Wyoming	6-2-318. Soliciting to engage in illicit sexual relations; penalty 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 ... , to engage in sexual intrusion as defined in W.S. 6-2-301 ...

* The entries in this table are the best estimate based upon review of extant state legislation.

**Some entries have been shorten for brevity.

are not scientifically validated to be indicative of child sexual grooming. As such, the construct must be clearly defined in legislation. Given the tremendous variability across federal and state anti-grooming statutes (see Table 1), there is a clear need for empirical research to provide a framework for understanding sexual grooming behaviors in the legal realm. Having standardized legal language would provide clarity of the construct and evidence for intent, enabling jurors to better understand the sexual grooming process. Below we discuss current limitations and controversies with existing sexual grooming legislation pertaining to five major issues: 1) varying definitions across jurisdictions; 2) applicable settings in which the legislation is intended; 3) states without grooming legislation; 4) difficulties with proving intent; and 5) the use of expert testimony on sexual grooming.

Varying definitions across jurisdictions

To our knowledge, existing grooming legislation is not based upon sexual grooming research, thus it is unclear how these laws were derived. This is problematic as experts have emphasized that a clear definition of child sexual grooming is integral to constructing valid and relevant laws (Bennett & O'Donohue, 2014; Winters et al., 2021). The prosecution of these laws hinges on having a clear and measurable understanding of what behaviors and tactics encompass sexual grooming. Thus, the varying definitions of sexual grooming across jurisdictions can lead to discrepancies in prosecution and sentencing (McElvaney, 2019; Moorehouse, 2008). As is depicted in Table 1, there is a wide range of language used across federal and state anti-grooming statutes. For example, in Arkansas sexual grooming refers to 'sexual intercourse, sexually explicit conduct, deviant sexual activity' while Colorado describes grooming as 'inviting or luring a child to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact.' Defining a crime, such as child sexual grooming, in which it is the intent that must be demonstrated can be difficult; especially if contact or harm is not explicitly required (Moorehouse, 2008). This is further complicated by the fact that many identified sexual grooming behaviors in and of themselves (e.g. hugging, buying gifts, giving attention) can present as normal adult/child interactions (Knoll, 2010; McAlinden, 2013). However, given that historically perpetrators that have used sexual grooming have moved from one institution to another, often across state lines, it is important that anti-grooming legislation is consistent across states to be effective at preventing CSA and grooming-based CSA in particular (Winters & Jeglic, 2022).

Applicable setting

There has been a global recognition of the dangers of on-line sexual grooming for the exploitation of children. As such, the International Centre for Missing and Exploited Children (ICMEC, 2017) examined legislation in 196 countries to determine whether it contained the characteristics of model on-line sexual grooming legislation:

- 1) Exists with regard to the online grooming of children for sexual purposes;
- 2) Provides a definition of (or describes) grooming, including online grooming, and utilizes computer- and Internet-specific terminology;
- 3) Criminalizes online grooming, with the intent to meet the child offline;
- 4) Criminalizes online grooming, regardless of the intent to meet the child offline; and
- 5) Criminalizes showing pornography to a child (ICMEC, 2017, p. 6).

Overall, ICMEC found that of the 196 countries reviewed, 63 countries had some sexual grooming legislation and of those, 24 countries met all five of the aforementioned criteria, while 133 countries had no legislation for online sexual grooming.

While it is encouraging that combatting the exploitation of children has become a global priority, as shown in the ICMEC study (2017), these international laws focus on on-line grooming and do not encompass in-person child sexual grooming. The same trend has been mirrored in U.S. legislation, with both the federal and state enticement

statutes primarily *appearing* to apply to cases of online sexual grooming whereby an electronic device must be involved or there is travel involved before engaging in the sexual abuse (e.g. Louisiana, Missouri, Nebraska). For example, the Minnesota statute requires the use of ‘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.’ Moreover, the federal enticement statute indicates the law applies to an individual who ‘knowingly persuades, induces, entices, or coerces any individual *to travel ...*’ to commit a contact sexual offense, which suggests this legislation will primarily apply to cases of Internet-facilitated child sexual grooming or sex trafficking. Interestingly, however, subsequent case law pertaining to the federal enticement statute section § 2422 (b) has determined that travel is not necessary (U.S. v. Nitschke, 2011); that is, if a violation occurs before travel has happened, the crime is complete at the point of persuasion or attempted persuasion (U.S. v. Nitschke, 2011). In addition, if travel is involved, under section § 2422 it can still be considered a violation if the travel is confined to one state (18 U.S.C. § 2422 - U.S. Code). Thus, as they are currently written, these laws *appear* to apply to online child sexual grooming or sex trafficking cases even if that may not be correct according to case law. Consequently, many in-person grooming cases may be missed or go unprosecuted if the law is read and applied at face value without further investigation or consultation of case law. If legal statutes do not clearly include or describe in-person child sexual grooming, along with online grooming, children may unnecessarily be put at risk.

States without grooming legislation

Some states have unclear or vague language (e.g. Pennsylvania 18 P.S. § 6312, Kentucky 508 KRS 508.100) making prosecution of pre-offense behaviors unlikely. While some states, such as Washington state, recognize child sex offenses and sexual exploitation; they do not have legislation recognizing child sexual grooming as a crime in and of itself. In other words, in the state of Washington, if an adult who has no conviction history of a sexual offense takes identifiable steps towards coaxing, enticing, seducing, soliciting, or persuading a minor into a sexual encounter (i.e. child sexual grooming) and does so without the Internet or technology (i.e. in-person) and without the intention of profiting from the sexual encounter (i.e. trafficking), law enforcement is not able to make an arrest (Sadler, 2018; Wash. Admin. Code § 181-88-060). In Washington state, the penalty post-assault ranges from Gross Misdemeanor to a Class A Felony; however, this only applies after a minor has been sexually abused. Modifications to language within legislation must be made to better support law enforcement’s ability to identify and intervene in cases of in-person sexual grooming in order to protect minors before a physical sexual assault can occur (Sadler, 2018).

Proving intent

To charge an individual with child sexual grooming, it needs to be demonstrated to the courts that the individual’s intention was to sexually abuse a child (Ezoni, 2020; Ost, 2004). In numerous jurisdictions, a person can be convicted of a crime solely for

engaging in child sexual grooming, as long as the *intent* to commit a sexual offense is established, even if contact sexual abuse never took place (Ezioni, 2020). For example, the federal enticement statute indicates one can violate § 2422 by attempting to persuade a child to partake in illegal sexual activity even if no contact occurs (Pollack, 2015). The prosecutor must provide evidence that an individual: a) intended to commit the crime of child sexual abuse; and b) the individual took a ‘substantial step’ towards CSA (Pollack & MacIver, 2015). The term ‘substantial step’ is a nebulous construct, as it must be more than preparation, but less than the last act before the crime of CSA is committed (Pollack & MacIver, 2015). Ultimately, legal professionals must rely on the constructs of *mens rea* (‘a guilty mind;’ i.e. intent was formed for the crime) and *actus reus* (‘guilty act;’ i.e. the act or omission that comprise the physical elements of a crime [Ezioni, 2020; Goodman-Delahunty & Martschuk, 2020; Kool, 2011]) to prove sexual grooming took place. As such, child sexual grooming legislation allows for punishment of the act of sexual grooming with the intent to commit CSA (*mens rea*), without committing the *actus reus* of CSA itself.

It is important to note that many individual sexual grooming behaviors are highly nuanced and often look like normal adult/child interactions (Knoll, 2010; McAlinden, 2013); however, the underlying intention behind the behavior is deviant. Since child sexual grooming behaviors are often subtle and may not appear outright inappropriate, child sexual grooming can be difficult to prove in the court of law. An individual who commits acts of sexual grooming (e.g. giving a child treats, special attention) may claim these behaviors are both legal and harmless (Ezioni, 2020). If an individual does not have any prior convictions for child sex crimes or no sexual acts occurred with the alleged victim, proving harmful intent can be challenging (Ost, 2004). The burden lies with the prosecutor to prove the individual’s intent was criminal in nature even though a sexual assault on a child did not occur (Pollack, 2015).

Another challenge to proving intent is especially evident in cases of online child sexual grooming. Some offenders (i.e. fantasy-driven) may engage in sexualized online chats with minors with no intention of moving the online interactions to criminal acts such as sending or receiving CSA material or in-person sexual contact (Briggs et al., 2011; Gilden, 2016). Some experts argue that engaging in fantasy-driven sexualized conversation online does not constitute a preparatory action for in-person sexual contact or other sex crimes (e.g. possession/transmission of CSA material; Sorell, 2017) and as such, cannot be prosecuted under sexual grooming legislation. The ability to assume any identity online makes intent to groom with the goal of CSA difficult to prove. Indeed, there are several cases in which the jury found Internet conversations alone were not enough to establish necessary intent (See description of sexual fantasy defense in the Naughton case; Yamagami, 2000).

Expert testimony

Expert witnesses have increasingly been called upon to testify in criminal cases involving child sexual grooming to assist the trier of fact when determining intent or modus operandi (Pollack & MacIver, 2015). However, some controversies have emerged regarding expert testimony pertaining to child sexual grooming including whether the grooming

of children for sexual purposes is a legitimate subject for expert testimony (e.g. *Morris v. State*, 2018; *State v. Perez*, 2013), concerns about who qualifies as an expert (e.g. *Colorado v. Romero*, 2017), and issues of scientific validity (e.g. *State v. Akins*, 2014; *State v. Henley*, 2018).

Showing evidence of sexual grooming behaviors at trial can bolster a case proving intent in jurisdictions where child sexual grooming behaviors are criminal (Pollack, 2015). However, some critics argue that sexual grooming evidence can be equated with character or profile evidence, which is customarily forbidden at trial because juries may place undue weight on this evidence (Garrick, 2017). This is problematic as convictions (e.g. *State v. Braham*, 1992) have been reversed based on unfairly prejudicial expert testimony of child sexual grooming (Garrick, 2017).

Another concern is who qualifies as an 'expert' on child sexual grooming, as they tend to be child forensic interviewers or child therapists who may base their testimony on professional opinions rather than empirical literature (Garrick, 2017). While these clinical professional opinions can be helpful to determine the impact the grooming behavior has had on the minor, experts by definition should have specific expertise in the research and theory and likely should have conducted research and/or published on the topic of sexual grooming themselves.

Finally, in order for expert testimony to be included, the matter upon which the expert is testifying on must meet the rules of evidence. Daubert (*Daubert v. Merrell Dow Chemical*, 1993) is generally considered the gold standard for evidence [Currently, states may choose to follow Daubert ($n = 40$), Frye ($n = 9$), or some combination of the two ($n = 3$) when an expert opines testimony on scientific issues (Morgenstein, 2020)], and if the expert fails to meet the Daubert standard, then some or all of the expert testimony could be excluded. According to Daubert, an expert witness can only testify when the following criteria are met:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case (Rule 702: Testimony by expert witness).

In a 2014 article examining conceptual and measurement issues for the construct of sexual grooming, Bennett and O'Donoghue concluded that 'right now it does not appear to be the case that there are 'reliable principles and methods' to define and detect grooming' (p. 974). However, since that time, the development of the SGM and the *SGS-V* has significantly advanced the empirical basis of sexual grooming. Further, courts generally do not require child sexual grooming testimony to pass Daubert or Frye (Garrick, 2017). However, testimony on child sexual grooming behaviors do not follow Daubert or Frye and information can be presented to the court by those who may lack expertise in the construct or without being grounded by peer-reviewed research and scientific method (Garrick, 2017).

Conclusion and recommendations

The goal of the anti-grooming statutes is to recognize child sexual grooming behaviors whether by words, actions, or through communication via the Internet or any electronic communication prior to the minor being sexually abused (Ost, 2004). In recent years, protecting minors from possible future sexual abuse has gained traction (Ezioni, 2020) and as such, it is anticipated that more standalone grooming offenses will be prosecuted. Successful prosecution will be difficult if some of the above limitations and controversies of sexual grooming legislation are not addressed and thus, we provide recommendations below to improve sexual grooming legislation in order to better reflect empirically-supported constructs.

1. **Develop a consistent definition based upon current empirical research.** A fundamental element of legislation is that a law must be clear (Ezioni, 2020). Having a precise definition of child sexual grooming is important from a legal perspective to standardize what exactly the child sexual grooming process entails (Pollack, 2015). At present there is a lack of specificity in both federal and state statutes (e.g. specific behaviors that are indicative of grooming). Given the variability in how sexual grooming is defined across federal and state jurisdictions, or the complete lack of grooming legislation (e.g. Washington state; Sadler, 2018), there is a need for a more standardized universal definition and framework for child sexual grooming that is based in scientific literature so that sexually grooming can be universally understood and prosecuted. To help address some of these limitations, we propose that the content validated SGM and its corresponding observable behaviors and definition (Winters et al., 2020; 2021), can be used to develop legislation. Moreover, law makers should integrate current child sexual grooming research into the formulation of legislation and policy based on scientific evidence.
2. **Continue research on the assessment and measurement of sexual grooming.** As highlighted in the Daubert standard (Rule 702; Testimony by expert witness), testimony must be based upon reliable principles and methods. While the SGM and the SGS-V (Winters et al., 2020; Winters & Jeglic, 2021) represent significant steps forward in the validation and measurement of the construct as per Daubert, continued empirical research is needed. For example, as highlighted in Bennett and O'Donohue (2014), many of the behaviors involved in sexual grooming cannot be differentiated from normal adult-child interactions prior to the abuse occurring. As such the identification of the sexual grooming behaviors that are uniquely indicative of CSA is needed (see Winters & Jeglic, 2022 for a discussion of future research).
3. **Create inclusive child sexual grooming legislation that encompasses both in-person and online grooming.** Current federal and state legislation *appear* to primarily apply to child sex trafficking, online solicitation, or online grooming where travel is involved. This is problematic as subsequent case law has shown travel is not necessary (U.S. v. Nitschke, 2011) to prosecute child sexual grooming, suggesting that the existing federal statute as it is currently written is unclear. Although these laws do not specifically target child sexual grooming, they can be applied to do so. Legislation must be modified to explicitly encompass various settings, including sexual grooming behaviors as they apply to child sex trafficking, online grooming, and in-person

grooming. Without clearly including and describing the preparatory actions involved across these diverse settings, children will continue to be in danger as the current language (depending upon jurisdiction) may not allow for intervention prior to a sexual assault (Sadler, 2018).

4. **Utilize current research of pre-offense predatory behaviors to prove intent.** The SGM's list of observable pre-offense behaviors can aid legal professionals in understanding and identifying predatory behaviors, proving intent, and prosecuting cases of sexual grooming (Pollack & MacIver, 2015). The first three stages of the SGM correspond solely to grooming behaviors that do not involve physical sexual contact. These observable behaviors delineated in the SGM may allow for greater ease in prosecuting child sexual grooming as a standalone offense before sexual contact has occurred. Historically, child sexual grooming has been difficult to prove as a standalone offense, thus, it has often been used as an aggravating circumstance in cases where the sexual assault has already occurred (Ezoni, 2020). In prior cases of successful standalone grooming convictions, cases appear to rely heavily on behaviors from Stage 4 of the SGM which involve desensitization to touch and sexual content (e.g. U.S. v. Chambers, 2011).

It should be noted that if there is a presentation of such evidence, the limitations of the information included in the SGM and other sexual grooming literature *must* be addressed. For example, the SGM was content validated using experts in the field, but has not yet been validated using real-world cases of offenders or victims; thus, law professionals should be cautious to rely too heavily on such evidence.

1. **Utilize expert testimony to educate the court and jury on complex behaviors grounded in science.** There has been controversy over whether child sexual grooming should be a legitimate topic for expert testimony. There is a strong foundation of scientific literature on sexual grooming of children that would meet the standards of Daubert or Frye tests. As such, expert testimony should be ruled admissible for both relevancy and reliability. Similarly, there has been debate surrounding who can be qualified to give expert testimony on child sexual grooming behaviors. Individuals most appropriate to serve as experts would be those who are well versed in current empirical literature on behaviors that encompass child sexual grooming, and not solely utilize personal professional opinions for testimony.

While some critics equate sexual grooming evidence with character or profile evidence, there has been testimony on the modus operandi of individuals who sexually groom and abuse children which has been deemed admissible and relevant (Pollack & MacIver, 2015). Experts can explain how these behaviors may appear innocent to the layperson and provide research grounded in sound scientific practice.

Moreover, testimony can be used to explain case-specific behaviors. For example, a victim's testimony may be unclear, contradictory, or misleading (Pollack & MacIver, 2015). In these situations, expert testimony may be used to educate the court about a would-be offender's behavior or puzzling victim behaviors (e.g. delayed disclosure, compliance with sexual abuse; Lanning, 2018). Whether the testimony is used in more general terms or tailored to the case at hand, the SGM and its corresponding behaviors enable

experts to give educated testimony grounded in science and research establishing scientific validity of child sexual grooming behaviors.

It is important for criminal justice professionals and policy makers to understand that while the research on child sexual grooming is rapidly developing, it is still relatively in its nascent stage. We suggest that the SGM and other empirical research on child sexual grooming can be useful in the courtroom; however, the limitations of the research must be understood and accurately presented. For example, while the SGM is the only existing model that had been content-validated by experts in the field, further support for its validity and reliability have not yet been established. Additional empirical support for the SGM stages and behaviors which is currently being undertaken using samples of victims and perpetrators will help provide further evidence for the model. Taken together, there is a need for continued empirical research, addressing issues such as identification of behaviors and intent that are salient for the development of effective legislation that can be successfully prosecuted. Until then, those using the child sexual grooming literature in the criminal justice system must be cautious about the limitations of the findings and relay those accordingly.

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