Committee for Protecting Students from Sexual Exploitation

Report to the Legislature

Submitted October 15, 2019

Committee Membership:

Attorney General or Designee: David Scherr
Secretary of Education or designee: Bob Stafford
Executive Director of the Vermont School Boards Association or designee: Sue Ceglowski
Executive Director of the Vermont Independent Schools Association or designee: Mill Moore
Executive Director of Vermont-NEA or designee: Jeff Fannon
Executive Director of Child Abuse Vermont or designee: Linda Johnson, Beth Hoffman
Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee: Sarah Robinson
Executive Director of the Department of State's Attorneys and Sheriffs or designee: John Campbell, James Pepper
Defender General or designee: Kerrie Johnson
Commissioner for Children and Families or designee: Jim Forbes
Executive Director of the Vermont Superintendents Association or designee: Tracy Wrend
A member appointed by the Northwest Unit of the Special Investigation Units with experience in investigating grooming behaviors: John MacCullum

Introduction:

The legislature created the Committee for Protecting Students from Sexual Exploitation with the passage of Act 5 of the Special Session of 2018.

The Committee was charged with exploring whether and how "grooming behaviors" might be made unlawful in "a school environment." "Grooming behaviors" were defined by Act 5 as "behaviors designed to establish a romantic or sexual relationship with a child or a student." The legislature directed the Committee to make recommendations about defining "grooming behaviors," as well as the scope and severity of a proposed crime.[1]

The Committee discussed current laws, both criminal and regulatory, and explored how issues related to inappropriate and unlawful contact with children are presently addressed in statute, policy, and practice. These included a review of civil enforcement mechanisms managed by the Department of Children and Families and the Agency of Education, as well as criminal enforcement managed by state's attorneys and the Attorney General's Office. The Committee worked from this knowledge to explore ways to fulfill the legislature's charge.

Committee members grappled extensively with the question of how to define "grooming behaviors." Many actions that might constitute "grooming" could be innocuous in the absence of inappropriate intent. Adults who give a child extra time and attention might be motivated by a genuine wish to help a child, or the adult could be motivated by inappropriate and harmful sexual intent. The Committee concluded that a legal definition requires an explicit reference to a sexually inappropriate intent.

Given the necessity of defining "grooming" in terms of intent, the Committee also foresaw practical challenges to bringing a prosecution. Proving intent—a state of mind—is more difficult than proving that an act occurred. The Committee, therefore, believes a grooming charge would be more likely utilized as an addition to other charges, as opposed to a stand-alone charge. Nevertheless, a new statute defining "grooming" could allow for a civil or criminal investigation to begin more quickly than is currently the practice, thereby potentially allowing the State to stop harmful behavior.

[1] The powers and duties of the committee were defined in statute as follows:

> The Committee, in consultation with school personnel, shall recommend whether behaviors by an employee of, or contractor for, a public school or recognized or approved independent school designed to establish a romantic or sexual relationship with a child or a student, so-called "grooming behaviors," should be unlawful under Vermont law, and, if the Committee recommends that grooming behaviors should be unlawful, shall include in its recommendation:
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> (1) how grooming behaviors should be defined;
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> (2) whether all students or children in a school environment should be covered;
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> (3) whether the behavior should result in a misdemeanor or a felony, and the related punishment; and
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> (4) the statute of limitations for bringing a related action.

Recommendations:

The Committee concluded that grooming behaviors could be made more clearly unlawful through 1) updated criminal statutes that address the intent issue and 2) updated civil enforcement statutes and rules that address the intent issue. Both types of enforcement currently prohibit unlawful sexual contact, but they are less clear on the problem of adults behaving in ways intended to facilitate sexual contact with a child—especially when such behavior may occur in a school environment.

I. Criminal Enforcement: Expanding 13 V.S.A. § 2828, the Luring Statute.

The Committee concluded that the most effective way to make grooming behavior more clearly criminal was to expand the luring a child statute, codified at 13 V.S.A. § 2828. That statute currently addresses harmful activity that is related to grooming; it makes it unlawful to "solicit, lure, or entice" a child under 16 to commit a sexual act. It carries a 5-year maximum sentence, or a fine of not more than $10,000, or both. There is a 40-year statute of limitations for bringing a charge.

That law, however, does not clearly address behavior specific to a school environment and does not protect every young person who might be victimized in a school environment. Although the terms "solicit," "lure," and "entice" are not defined, they arguably may be more time-limited than "grooming"—in other words, they may be behaviors that occur relatively close in time to an intended, attempted, or accomplished sexual act. Grooming, by contrast, might happen over a period of years.

<u>Proposals:</u>

The Committee decided that either of two proposed amendments to Section 2828 would appropriately criminalize and define grooming behaviors.

The first proposed amendment addresses the legislature's charge to this committee and criminalizes grooming behavior in schools.

The second proposed amendment is broader and criminalizes grooming behavior by any adult in a position of power or authority over a child. Members of the committee expressed concern that focusing only on the school environment is too narrow and does not protect children in other settings.

Amendment 1:

13 V.S.A. § 2828: Luring a Child:

(a) No person shall knowingly solicit, lure, <u>groom,</u> or entice, or to attempt to solicit, lure, <u>groom,</u> 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.

(b) No school employee, contractor, grantee, or volunteer shall knowingly solicit, lure, groom, or entice, or attempt to solicit, lure, groom, or entice, a student under the age of 18 with whom he or she has contact by virtue of his or her position as a school employee, contractor, grantee, or volunteer, 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.

(c) This section applies to solicitation, luring, grooming, or enticement by any means, including in person, through written or telephonic correspondence, or through electronic communication.

(d) 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, unless the person and alleged victim meet the criteria outlined in subsection (b) of this section.

(e) For the purposes of this section, grooming is defined as an action or actions undertaken for the purpose of facilitating sexual contact with a child or student.

Amendment 2:

Amendment 2 includes all proposed changes to Section 2828 included in Amendment 1, except that subsection (b) would be replaced with the following language:

(b) No person shall knowingly solicit, lure, groom, or entice, or to attempt to solicit, lure, groom, or entice, a child under the age of 18 or another person believed by the person to be a child under the age of 18, 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 if the person is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, religious activity, or organized recreational activities for minors.

Note Regarding Age Differential:

Members of the committee expressed concern that broadening subsection (a) of the statute to include grooming—as would happen under either amendment—could increase the risk that the romantic activity of young teenagers, those younger than 15, might be considered criminal. To prevent this problem, the legislature could consider changing subsection (d) to read as follows:

(d) This section shall not apply if the conduct is consensual and there is an age difference of less than 48 months, unless the person and alleged victim meet the criteria outlined in subsection (b) of this section.

II. Civil Enforcement

The statutes establishing the Child Protection Registry (See Title 33, Chapter 49) do not directly utilize Title 13 criminal definitions because the Department of Children and Families does not want the lack of a criminal conviction to impede a civil determination that somebody should be on the registry. Nevertheless, this Committee's proposed statutory change to the "Luring a Child" statute could allow grooming behaviors to be among those deemed to be abuse or neglect by virtue of effectively expanding the definition of "luring", a term also used in Title 33, Chapter 49. This change would require DCF to expound on the broader definition in its policy and practice. Someone alleged to be luring a child (through alleged grooming) could be subject to a DCF assessment or investigation that could lead to placement on the Child Protection Registry, among other consequences.

DCF and the Agency of Education could choose to make policy changes in accordance with this report even if no legislative action is taken. If a statutory change is made to the criminal code it may be necessary to make such policy changes. The Agency could also make changes to teacher licensing standards.

III. Conclusion

"Grooming" is a challenging and subjective term, and the Committee struggled with its meaning and application. Charging an adult with a crime of "grooming a child" could discourage well-meaning and caring adults from interacting with children, which is not the intent of the proposed law or the Committee. But the Committee in no way sanctions any adult who "grooms" a child for sexual activity. The Committee, notwithstanding the challenges, believes that adults who groom a child, no matter the setting, should be stopped.