

**“Communication with a Minor for Immoral Purposes”
What Washington State Law is Not Talking About**

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Abstract

The term “child grooming” describes a pattern of behaviors used by child sex offenders to gain access to, and control of, a child victim in order to build a sexual relationship with that child. Washington State law does not wholly define nor recognize penalties for the act of “child grooming” as a direct crime where the behaviors occur in situations of direct contact between an offender and a child victim. This oversight interrupts law enforcement investigation and places children in the community at risk to predatory offenders. This is an exploratory study of a policy change to better address child grooming behaviors within Washington State law. Using crosstabulation and a case study scenario, I examine the effectiveness of the current statutes, and explore discrepancies within the laws. I conclude that modifications to the written language within RCW 9.68A.090 “Communication with Minor for Immoral Purposes” might better support law enforcement investigation for addressing child grooming behaviors.

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1. Case Scenario

James¹ is a 10-year-old boy. He was invited to stay over-night at his friend Samuel's house, who is also a 10-year-old boy. During the first day of his visit, Samuel's stepfather, George, was very friendly with James. George played games with James and Samuel, and gave them a lot of attention. George was also very affectionate toward James. He gave James many hugs, kissed him on the forehead many times, and complimented him often by telling him "what a nice boy" he was. George also offered James and Samuel beer, but they declined. In the evening, James and Samuel played video games in Samuel's bedroom while George sat on Samuel's bed and watched. During this time, James looked over at George and saw that George had his hand down the front of his pants and was rubbing himself. At nighttime, George "cuddled" in bed between the two boys, and "spooned" James. George slept the entire duration of the night in the bed with the children until morning.

The next day, George took James and Samuel to a park. While at the park, James told George that he had to use the restroom. Instead of taking James to the public restroom facilities, George took James to a secluded area under a bridge and told him to urinate there. James turned away from George, and began to unbutton his pants. George told James to turn back around because it was "okay to show him his penis" as "guys go pee together all the time". After the park, the trio went back to George and Samuel's residence. George was in the master bedroom while the two children played in the living room. Samuel left the living room to join George in the master bedroom. James heard Samuel laughing and giggling, so James walked down the hallway to see what his friend was doing. When James looked through the open door of the master bedroom, he saw that George had his pants down and was masturbating in front of Samuel. James saw that Samuel was laughing and giggling at the action of George masturbating. When James arrived home from his visit, he told his mother about the events that had occurred. He expressed to his

¹ The scenario provided by the case study is based on true events. However, details provided such as names, time and place of the occurrences, relationships, or other potentially identifiable information has been altered to protect the subjects' identities.

mother that the events made him feel “uncomfortable”. James’s mother called 911. Samuel’s other guardian did not make a report.

Detective Davis responded to the call. Ultimately, he arrested George (the offender) on the charge of “Indecent Exposure” because George knowingly allowed James (the child victim) to see him masturbating. Detective Davis strongly felt that George made significant steps toward pursuing sexual contact with James. However, because Washington State law does not recognize any of George’s other behaviors as a direct crime, Detective Davis was not able to consider the totality of events that occurred leading up to the masturbation. In this case, “Indecent Exposure” is a gross misdemeanor crime, with a maximum punishment of up to 364 days in jail and/or a fine of up to \$5000.00. There is no minimum punishment for this crime. Additionally, because the arresting charge is a gross misdemeanor in Detective Davis’ jurisdiction, the charge could not be investigated and pursued through the special unit that investigates child sex crimes. This means that the conviction will not be recognized as a child sex crime, nor will preventative conditions be placed on the offender, such as monitoring or sex offender treatment alternatives. This also means that George will be allowed back into the community and into the residence where Samuel still resides without any conditions, restrictions, or monitoring by the court, placing Samuel and other children in the community at risk to George’s predatory behaviors.

2. Introduction

The behaviors described above constitute “child grooming”, which is a pattern of behaviors used by child sex offenders to gain access to, and control of, a child victim with the intention of building a sexual relationship with that child (Burgess and Hartman, 2018; Lanning, 2018; Dietz, 2018). These techniques are usually nonviolent, and can be tailored depending on the relationship between the offender and the child victim (Lanning, 2018). Unfortunately, child grooming behaviors are often identified only after a

“post-assault”² child sex crime has occurred (Williams, 2015). This oversight puts children at risk for child sexual abuse (CSA) and negates prevention efforts to reduce occurrences of child sexual assault.

Washington State Law recognizes child sex crimes through the punishable classification and designation of sex offenses³ and sexual exploitation⁴ statutes implemented through the Washington State Legislative Revised Code of Washington (RCW)⁵. However, Washington State does not wholly define nor recognize penalties for the act of “child grooming” as a direct crime, where the behaviors occur in scenarios other than commercial sexual abuse⁶, sex trafficking⁷, through electronic communication⁸ or unless pursuant to conditions for convicted sex offenders⁹. This means that, when an adult who has not been convicted of a prior sex offense takes identifiable steps to seduce, entice, coax, solicit, or persuade a child into a sexual relationship, and does so without the use of electronic communication or without the intention of exploiting or profiting from the sexual relationship, then it is likely that law enforcement will not be able to make an arrest.

This study explores how modifications to the language within current Washington State statutes might better support law enforcement’s ability to identify and address child grooming behaviors occurring under the conditions presented above. Using cross tabulation and a case study scenario, I analyze 24 Washington State child sex crime statutes to understand the effectiveness of the current statutes. I then determine how laws could be modified to support law enforcement in addressing child grooming behaviors. I conclude that modifications to the written language within RCW 9.68A.090 “Communication with Minor for Immoral Purposes” might better support law enforcement investigation in addressing child grooming behaviors for sex crimes committed against children. This policy change applies to situations of

² “Post-assault” child sex crimes include offenses where a child has been physically sexually assaulted by the offender. An example of a “post-assault” child sex crime is RCW 9A.44.073 “Rape of a child in the first degree.”

³ “Chapter 9A.20 RCW: Classification of Crimes.”

⁴ “RCW 9.68A.011: Definitions.”

⁵ “Revised Code of Washington (RCW).” RCW 26.44.030: Reports-Duty and Authority to Make-Duty of Receiving Agency-Duty to Notify-Case Planning and Consultation-Penalty for Unauthorized Exchange of Information-Filing Dependency Petitions-Investigations-Interviews of Children-Records-Risk Assessment Process. (Effective until July 1, 2018.), apps.leg.wa.gov/rcw/.

⁶ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

⁷ “RCW 9A.40.100: Trafficking.”

⁸ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.” Part (2).

⁹ “RCW 9a.44.130. Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.”

direct contact between a first-time offender and a child victim(s), where no form of electronic communication is used. It also applies to scenarios where the intention of the offender is not to traffic the child, sexually exploit the child, or involve the child in the commercial sex trade.

To help prevent the rape and sexual molestation of children, child grooming behaviors must be identified before child sexual assault occurs. Addressing these clear and identifiable behaviors as evidence for conditioning a child through a premeditated course of action, where the result is to rape and/or sexually molest the child, needs to be recognized by the state of Washington as a crime within itself, and held punishable by law, as it is within other U.S. states.

For this study, I use the terms child sexual abuse and child sexual assault interchangeably to describe all forms of sexual contact between a child and an adult, as defined by RCW Title 9A¹⁰. I also use the terms “child grooming” and “grooming” to describe all forms of child grooming behaviors presented in Appendix 1 of this study.

3. Previous Literature

Etymology of Child Grooming

The terms child “grooming” and “seduction” are said to be pioneered by FBI Agent Kenneth Lanning¹¹, who used the terms to describe a pattern of behaviors used by child sex offenders to gain sexual access to, and control of, a child victim (Burgess and Hartman, 2018; Lanning, 2018; Dietz, 2018). Lanning, however, recalls the term “grooming” first being used in the late 1970’s by a group of law enforcement investigators to try to explain observed seductive behavioral patterns of child sex offenders that were not yet fully understood by CSA professionals and law enforcement at the time (Lanning, 2018). Through the

¹⁰ “RCW 9A.44.010: Definitions.”

¹¹ Kenneth Lanning is a retired FBI Agent. CAC Consultants, Fredericksburg, VA 22407, USA

1980's, CSA professionals focused on developing an understanding of the process and techniques of these behaviors, most often referring to them as “seduction” (Lanning, 2018). The first known published naming for the grooming term was in a 1984 article by Jon Conte, where he describes an observed set of behaviors displayed by child sex offenders being conducted “through a grooming process” (Lanning, 2018). Although Conte is proclaimed as the first to publish the naming of grooming, he attributes his understanding of the grooming *process* to a book written by Nicolas Groth (1979), which is the first known published description of the process (Lanning, 2018).

Evolution of the term “grooming” became more apparent as scholars and other CSA professionals began studying behaviors more closely, absorbing the descriptive patterns of “seduction” and the behavioral patterns of child sex offenders along with it (Lanning, 2018). Gradually increasing from the 1980's into 2008, “grooming” has now become a widely recognized word to describe the identifiable pattern of techniques used by child sex offenders to lure and condition children into a sexual relationship (Dietz, 2018). The term's contextual legitimacy is solidified in its use by journalists and the public, and in publications of peer reviewed books and articles, where by 2016, published writings of the term had risen to an annual frequency of 533 (Dietz, 2018). Now widely accepted, “grooming” will continue to remain an understood term to represent child seduction (Dietz, 2018).

Child Grooming Behaviors Misapplied

A clear understanding of child grooming behaviors versus other forms of child sexual assault, or normal affectionate behaviors, need to be considered when addressing child grooming policy. To assure the most appropriate criminal investigation practices, and to avoid wrongful conviction, it is extremely important to understand what child grooming behaviors **are not**, just as much as we understand what they are. This section discusses the different child sex offender typologies, and whether the typologies are understood to use child grooming techniques to sexually abuse a child victim.

Forensic and clinical typology studies of pedophilic offenders show distinct characteristics that differ between the motives of child sex offenders (Lanning,1987; Miller, 2013). *Situational* child sex offenders are offenders who do not necessarily prefer children, but will sexually engage with a child if no other sexual outlets are available (Lanning,1987; Miller, 2013). Situational offenders will target the child victim through situations of opportunity, and will also likely target other vulnerable populations such as the elderly and disabled (Lanning,1987; Miller, 2013). These circumstantial offenses do not usually comprise of child grooming behaviors. *Preferential* child sex offenders, on the other hand, are likely to groom their child victims, as these offenders have a clear sexual preference for children (Lanning,1987; Miller, 2013). However, there is a distinction in the techniques used by *acquaintance* and *stranger* preferential child sex offenders, where acquaintance offenders are likely to display grooming behaviors, and stranger offenders are not (Lanning, 2018).

A known typology encompassing the behaviors of a preferential stranger pedophile is the *sadistic pedophile*. The sadistic pedophile is the most violently dangerous type of child sex offender (Miller, 2013). Sadistic pedophiles gain sexual gratification through the torture, mutilation, fear, pain, suffering, and terror of their child victims (Lanning,1987; Miller, 2013). This type of child sex offender will typically stalk, abduct, and torment the child, and will likely murder or disfigure the child during or after the sexual assault (Lanning,1987; Miller, 2013). Even though these sudden, violent, and sometimes ritualistic behaviors may be methodically planned out, they are generally incompatible with grooming behaviors (Lanning, 2018).

Finally, child grooming is not a normal show of affection by an adult to a child. Normal affectionate behaviors derive from a place of genuine love, and do not run along-side illegal preparatory behaviors, such as providing drugs and alcohol to a child so that they will “hang out” with the adult socially (Williams, 2015). These types of behaviors are aimed at recruiting and breaking down the sexual boundaries of a child victim (Appendix 1). This differentiation between normal and predatory affection is

crucial to balancing the line in child grooming laws, as this can be the difference between a law being grounds for convicting child sex offenders, or a platform for wrongful conviction.

4. Background

4.1 A “Post-Assault” State

For over 40 years, the terms child sexual abuse, child sexual assault, and child sexual molestation have been used by professionals interchangeably to describe the act of forced sexual contact by an adult against a child (Burgess and Hartman, 2018). These descriptors encompass a “post-assault” act of predatory behavior, where the occurrence of a physical sexual assault has already taken place. Penalties in Washington State for “post-assault” child sex offenses range from a lesser conviction of a Gross Misdemeanor to the strictest conviction of a Class A Felony¹². These laws apply to child sex crimes *after* the offender has physically violated a child through sexual contact such as oral, vaginal, and/or anal penetration or touching. They are useful in convicting and punishing an offender *after* a child has been sexually assaulted, but are not useful in preventing sexual assault on a child from occurring.

4.2 A “Pre-Assault” State

Child grooming behaviors are well understood to be indicators of intent to commit child sexual assault (Burgess and Hartman, 2018; Dietz, 2018; Lanning, 2018). These behaviors are recognized through international laws¹³, United States federal law¹⁴, and in many other state laws throughout the nation. For example, The State of Missouri has a law called “Enticement of a Child”¹⁵ that specifically addresses child grooming. The law states that “A person... 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

¹² “RCW 9A.20.021: Maximum Sentences for Crimes Committed July 1, 1984, and after.”

¹³ Participation, Expert. “Sexual Offences Act 2003.” Legislation.gov.uk, Queen’s Printer of Acts of Parliament, www.legislation.gov.uk/ukpga/2003/42/section/15.

¹⁴ “18 U.S. Code § 2422 - Coercion and Enticement.”

¹⁵ MO Rev Stat § 566.151 (2012)

internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct”. The language in Missouri’s law addresses child grooming behaviors through actions taken in a breadth of potential scenarios, and are not conditional upon strict limitations, as Washington State’s approach to child grooming laws are.

In the case scenario, George displayed a pattern of behaviors which led Detective Davis to believe that he was taking steps to “groom” James to engage in sexual contact with him. Despite his suspicion, limitations to the law would not allow the Detective to address the behaviors. Had George not knowingly masturbated with the door open and in clear sight of James, according to Washington State law Detective Davis would not have been able to arrest George at all. Even with the charge and arrest that Detective Davis made, George was not held accountable for the behaviors and actions he took to “groom” James prior to the act of masturbation.

4.3 Classification of Child Sex Crimes in Washington State

To understand how child grooming plays a role in child sex crimes, it is important to understand how they are classified under Washington State law.

Sex Offenses: Title 9A. Chapter 9A.44

Washington State Law recognizes child sex offenses through the definition and punishable classification and designation of sex offenses under Title 9A. Chapter 9A.44¹⁶. Sex offenses pertaining to children under this chapter include Rape of a Child in the 1st, 2nd, and 3rd, degrees; Child Molestation in the 1st, 2nd, and 3rd, degrees; and Sexual Misconduct with a Minor in the 1st and 2nd degrees. Other criminal offenses against children fall under Title 9A. as well, and are relevant to statutes for registration of sex offenders or kidnapping offenders, and Criminal Trespass Against a Child. These laws, like the other “post-assault” laws, are not useful in preventing CSA, as conditions under these crimes indicate that a physical sexual assault against a child has already occurred.

¹⁶ “RCW 9A.44.010: Definitions.”

There are also laws that fall under Title 9A., such as “Criminal Attempt” and Luring, that are “pre-assault” crimes, as the offender was discovered before a physical sexual assault against a child could be committed. However, the language within these statutes is vague and does not directly address child grooming behaviors. For example, for the crime of “Criminal Attempt”, the statute states “A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime”. The phrase “substantial step” is largely open to interpretation, and there is no language that specifically addresses child grooming behaviors.

Sexual Exploitation of Children: Title 9. Chapter 9.68A.

Washington State law recognizes the sexual exploitation of children through the definition¹⁷ and punishment under Title 9 of the RCW Crimes and Punishments¹⁸. Child sex offenses under this chapter largely encompass crimes involving photography, film and live performance, commercial sexual abuse of a minor, and communication with a minor for immoral purposes¹⁹. Many of these laws include various levels of child grooming language. However, they also include conditional limitations along with the grooming language. For example, a person can be convicted of “Commercial Sexual Abuse of a Minor”²⁰ if “he or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value”. In this statute, there is a conditional limitation to the child grooming behaviors that the process must include an exchange for something of value.

“Aggravating Circumstances” Title 9. Chapter 9.94A.537

There are statutes called “Aggravating Circumstances”²¹ in Washington State that can be used to address child grooming behaviors indirectly. These statutes are found within the “Departures from the Guidelines”²² and allow the court to “impose a sentence outside the standard sentence range for an

¹⁷ “RCW 9.68A.011: Definitions.”

¹⁸ “Title 9 RCW: Crimes and Punishments.”

¹⁹ “Chapter 9.68A RCW: Sexual Exploitation of Children.”

²⁰ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties- Consent of minor does not constitute defense.”

²¹ “RCW 9.94A.537: Aggravating Circumstances-Sentences Above Standard Range.”

²² “RCW 9.94A.535: Departures from the Guidelines.”

offense if it finds...that there are substantial and compelling reasons justifying an exceptional sentence”²³. These statutes can hold offenders accountable in cases where the punishment for the initial charge does not fit the heinousness of the crime. For example, the Detective in the case scenario could not arrest the offender for the grooming behaviors alone. However, if the crime could have been investigated through the special unit that investigates and prosecutes child sex crimes, the prosecutor could have argued that the offender’s behaviors “included a finding of sexual motivation pursuant to RCW 9.94A.835”²⁴. If a jury found the offender guilty of the charge and the aggravating circumstance, the judge could have imposed a stricter penalty onto the offender. However, when it comes to child grooming, the challenge is that the statutes cannot be used by law enforcement as a cause for arrest, are restricted to the practice of the prosecution, and can only be considered and decided on by a jury. This means that the grooming behaviors can only be recognized in addition to a different crime, and must be decided on by non-experts.

4.4 Probable Cause Beyond a Reasonable Doubt

Before law enforcement can make an arrest, conduct a search, or receive a warrant, they must believe, by the information that they’ve been given about the crime, that there is fair probability that an investigation of the crime would result in evidence that the crime occurred (Busby, 2017). This is commonly referred to as “probable cause”. Prosecuting Attorneys, on the other hand, must prove in a criminal prosecution that there are no reasonable doubts as to the defendant’s guilt in committing the crime²⁵. This is commonly referred to as “beyond a reasonable doubt”.

4.5 Legal Jurisdiction and Discrepancies within the Law

The way that a crime is investigated and processed through the court can differ depending on the legal jurisdiction for which the crime was committed²⁶. This means that, even though the laws are the same for the entire state of Washington, both the investigation and court procedures can differ from jurisdiction to

²³ “RCW 9.94A.535: Departures from the Guidelines.”

²⁴ “RCW 9.94A.835: Special allegation—Sexual motivation—Procedures.”

²⁵ “Beyond a Reasonable Doubt.” The Free Dictionary, Farlex, legal-dictionary.thefreedictionary.com/beyond a reasonable doubt.

²⁶ “Washington State Courts - Resources.” Welcome to Washington State Courts, www.courts.wa.gov/newsinfo/resources/

jurisdiction. Because of this, child sex offenders and their supporters can manipulate discrepancies found within child sex crime statutes to their advantage. For example, a local law firm, Newton and Hall, advertise their defense attorney services to child sex offenders on their website²⁷ by exposing the differentiation between jurisdictions and a discrepancy within the statute of “Communication with Minor for Immoral Purposes”:

“...this crime, which can be prosecuted as either a gross misdemeanor or a felony... creates some strange and illogical situations... but prosecutors and judges in different jurisdictions may view this law differently. In areas of unsettled law, it is best to act conservatively, so as to avoid becoming the test case... However, for those accused of this crime, this area of law holds promise, due to its lack of clarity...”

The law firm’s approach to defense shows how child sex offenders and their supporters can use the combination of discrepancies in the laws and a lack of judicial standardization to defend their behaviors.

5. Methodology

5.1 Case Study

The Case Study discussed in the introduction is based on a scenario provided through an informal interview with a law enforcement expert. To protect confidentiality, all identifiable information regarding the case has been changed, altered, or not included in the study. Case details provided in the study such as names, time and place of the occurrences, and relationships are fabricated to further protect the identity of the parties involved. Furthermore, case numbers and any identifiable information has not been recorded by the study to further protect the subjects’ identities.

²⁷ “Communicating with a Minor for Immoral Purposes | Defense Attorney | Seattle | Kent | WA.” Newton & Hall, Attorneys at Law, PLLC | 610 Central Ave South Kent WA 98032 | (253) 867-2675, www.newtonandhall.com/communication-with-a-minor-for-immoral-purposes.

5.2 Database

Using IBM SPSS 24, I compiled a database of child sex crime statutes for Washington State. The data was collected from the Washington State Legislature’s Revised Code of Washington (RCW) online resource.

The RCW is a “compilation of all permanent laws now in force”²⁸ as of May 2018. The statutes are limited to laws concerning adult offenders, and do not include laws concerning juvenile offenders.

The variables are four measures of limitations embodied within the language of the statutes, including the presence of child grooming language, if the law is “direct” or “indirect”, if the law is “post-assault” or “pre-assault”, and whether the laws containing child grooming language have conditional limitations (these terms are defined more clearly below). I coded each statute for the presence (yes=1) or absence (no=0) of child grooming language, whether the law was direct (=1) or indirect (=0), and was post-assault (=1) or pre-assault (=0). For statutes where it was determined that child grooming language was present, I coded for the presence (yes=1) or absence (no=0) of conditional limitations corresponding with the child grooming language.

5.3 Coding the Statutes

Child Grooming Language

Statutes were determined to include child grooming language if they included language such as: *invites*, *employs*, *authorizes*, *offers*, or *requests*, as it pertains to sexual contact with a child. Statutes were also determined to include child grooming language in circumstances where the law acknowledges: 1) that the offender showed they “*used a position of trust or authority*” to facilitate the crime, 2) there was a “*high degree of planning*”, 3) a finding of “*sexual motivation*” as reason for committing the crime, 4) the offender “*provides or agrees to provide anything of value to a minor*” under the condition that the minor

²⁸ “Revised Code of Washington (RCW).” RCW 26.44.030: Reports-Duty and Authority to Make-Duty of Receiving Agency-Duty to Notify-Case Planning and Consultation-Penalty for Unauthorized Exchange of Information-Filing Dependency Petitions-Investigations-Interviews of Children-Records-Risk Assessment Process. (Effective until July 1, 2018.), apps.leg.wa.gov/RCW/default.aspx.

engage in sexual contact with the adult, or 5) “*communicates with a minor...for the purposes of*” engaging in a sexual relationship with a child.

Direct and Indirect Laws

Statutes are considered “direct” laws if the crime is an offense that can justify an arrest. Such crimes include “Indecent Exposure.”²⁹ Statutes are considered “indirect” if the statute can only be decided on and enforced through the prosecution process by a Jury and/or the Court, as an additional condition to a current offense. For example, the condition that “The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835”³⁰ pursuant to the “Aggravating Circumstances”³¹ statute, can be attached to a direct crime such as “Communication with Minor for Immoral Purposes”³² if it is found “beyond a reasonable doubt”³³ that the communication was sexually motivated. “Indirect” statutes cannot be considered by law enforcement as cause for arrest.

Post-assault and Pre-assault

Post-assault crimes were determined by language used in the law indicating that the crime against a child had resulted in a physical sexual assault or other sex offense. Language indicating “post-assault” includes: “*engaged in*”, “*sexually molested*”, “*raped*”, “*pattern of sexual abuse*”, “*incest*”, and “*traffic*”. Statutes that indicate that the offense is pursuant to offenders who have been previously convicted of a sex offense are also considered “post-assault”. This is because the law has not taken measures to protect children on a community-wide scale, and is only now attempting to protect a child after at least one assault has occurred on a child. In either scenario, a child has been physically sexually assaulted. Statutes were determined to be “pre-assault” when the offense did not indicate the use of “post-assault” language *and* the offender had not previously been convicted of a sex offense. For example, “Communication with a minor for immoral purposes (1)”³⁴ is a Gross Misdemeanor for first-time offenders, and does not indicate

²⁹ “RCW 9A.88.010: Indecent Exposure.”

³⁰ “RCW 9.94A.535: Departures from the Guidelines.”

³¹ “RCW 9.94A.537: Aggravating Circumstances-Sentences above Standard Range.”

³² “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

³³ “RCW 9.94A.537: Aggravating Circumstances-Sentences above Standard Range.”

³⁴ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

the action of physical sexual assault on a child victim. However, “Communication with a minor for immoral purposes (2)”³⁵ is a Class C Felony, and the language included in the statute indicates that at least one condition for this conviction is that the offender had been convicted of a prior sex offense. For this study, I coded the first offense (1) as “pre-assault” and the latter offense (2) as “post-assault”.

Conditional Limitations

Statutes were determined to have conditional limitation associated with child grooming language when the child grooming language within a statute was recognized only when a specific condition(s) applied. For example, the crime of “Sexual Exploitation of a Minor” includes child grooming language but only under the condition that the offender knows that “such conduct will be photographed or part of a live performance”³⁶.

5.4 Analysis Strategy

I tabulate frequencies of statutes containing child grooming language. Next, I use the crosstab procedure to compute descriptive statistics as combined calculated totals for the statutes containing conditional limitations with statutes containing child grooming language to determine how many of the child grooming laws have conditional limitations. I then use the crosstab procedure to compute descriptive statistics as combined calculated totals for limitations of whether the laws are direct or indirect, and whether the laws are post-assault or pre-assault. Finally, I use the crosstab procedure to determine which statutes are both direct laws and pre-assault laws (Appendix 2).

Using the results of all four variables, I determine whether a modification to the language in the law would have an impact on law enforcement’s ability to identify and address child grooming behaviors (Appendix 2, Table 2.5). I then compare the results to determine which laws are most suitable for supporting law enforcement in addressing child grooming behaviors occurring in situations of direct

³⁵ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

³⁶ “RCW 9.68A.040: Sexual Exploitation of a Minor-Elements of Crime-Penalty.”

contact between an offender and a child victim, where no conditional limitations (electronic communication, exploitation, trafficking, or commercial sex trade) are present (Appendix 2, Table 2.6).

6. Results

Among all 24 statutes included in the study, only nine contain child grooming language (Appendix 2, Table 1). For the nine statutes containing child grooming language, four statutes have conditional limitations and five statutes do not have conditional limitations (Appendix 2, Table 2). Among all 24 statutes, 17 statutes are direct laws and 7 statutes are indirect laws, 15 statutes are post-assault offenses and nine statutes are pre-assault offenses, and five statutes are both a direct law and a pre-assault offense (Appendix 2, Table 3.2). Cross-examination of results for all four variables reveal that there are four potential statutes that can be examined as laws for supporting law enforcement in addressing child grooming behaviors occurring in situations of direct contact between an offender and a child victim (Appendix 2, Table 4). Among the four potential statutes, I determine that modification to the language of one statute, “Communication with Minor for Immoral Purposes”³⁷ could help law enforcement better identify and address child grooming behaviors occurring in situations of direct contact between an offender and a child victim (Appendix 2, Table 5).

All child sex crimes falling under Title 9A. Chapter 9A.44: “Sex Offenses” are “post-assault” child sex crimes, and therefore do not benefit from policy change that would include additional child grooming language into the law. Most child sex crimes falling under Title 9. Chapter 9.68A “Sexual Exploitation of Children” are primarily “post-assault” offenses as well, with the exception of “Communication with Minor for Immoral Purposes” part (1)³⁸ of the statute. “Aggravating Circumstances” falling under Title 9. Chapter 9.94A.537, are “indirect” statutes. A policy change on an indirect statute will not affect law

³⁷ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

³⁸ “RCW 9.68A.100: Commercial Sexual Abuse of a Minor-Penalties-Consent of Minor Does Not Constitute Defense.”

enforcement investigations, therefore, these statutes do not benefit from policy change that would include additional child grooming language into the law.

Results of the analysis provide evidence that very few Washington State statutes contain child grooming language. Of the statutes that do, they either have conditional limitations, are indirect, and/or are post-offense crimes. This means that, the statutes are of limited use to law enforcement in addressing child sex offender behaviors before a sexual assault on a child occurs.

7. Suggested Policy Change

Based on the Case Scenario and the results of this study, I determine that the language modification for “Communication with Minor for Immoral Purposes” would be most effective if included in part (2) of the statute. The modification states, “including to persuade, solicit, coax, entice, seduce, or lure whether by words or action for the purposes of engaging in sexual conduct”. Additionally, a definition for “sexual conduct” needs to be included in the policy change. Therefore, a new section (4) has been added to the statute and states, “For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW”. For purposes of the study, I highlighted the policy change in bold (Table 1).

Table 1. Language Modification for the Statute “Communication with a Minor for Immoral Purposes”.

RCW 9.68A.090 Communication with minor for immoral purposes—Penalties.	
	(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.
Policy Change	(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 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 to persuade, solicit, coax, entice, seduce, or lure whether by words or action for the purposes of engaging in sexual conduct , or including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.
	(3) For the purposes of this section, "electronic communication" has the same meaning as defined in RCW 9.61.260
Policy Change	(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

8. Conclusion

This study suggests that a modification to the language of the Washington State statute “Communication with Minor for Immoral Purposes” might better support law enforcement in addressing child grooming behaviors. The analysis of the statutes show that no direct law exists in Washington State that addresses child grooming behaviors without the conditional limitations (electronic communication, exploitation, trafficking, or commercial sex trade) associated with these factors.

Additionally, the indirect statutes that prosecutors may attempt to attach to a crime are only useful if an offender commits a direct crime and there is evidence that they did so under the specifications stated in the language within the indirect crime. Furthermore, the indirect statutes are limited in that they can only be considered by a jury.³⁹ This indicates that although the court can recognize that the offender’s

³⁹ “RCW 9.94A.537: Aggravating Circumstances-Sentences above Standard Range.”

behaviors are criminal, law enforcement are unable to make an initial arrest on these behaviors. This leaves a large discrepancy in the law that child sex offenders and their supporters may easily take advantage of.

The language modification for the statute of “Communication with Minor for Immoral Purposes” has the potential to be a useful aid for law enforcement to secure more efficient and effective investigations for child sex crimes. Returning to the case scenario, if this policy change were implemented, Detective Davis could have considered the *pattern of behaviors* displayed by George in their entirety, and made an arrest on charges that would have allowed the investigation to be properly placed in the Sexual Assault Unit of the Detective’s jurisdiction. This may have prevented George from being allowed back into the community without supervision or accountability for his behaviors, allowed George to qualify for mandatory sex offender treatment alternatives,⁴⁰ and may have prevented George from having unmonitored access to the 10-year-old boy still living in the residence. The policy change may also help to decrease post-assault child sex crimes, sparing thousands of children from the painful and terrifying experience of child rape.

Continued Research

Further research should examine whether the suggested policy solutions are an appropriate fit to the Washington State Legislative Revised Code of Washington (RCW). Additionally, further research should be conducted to understand how the policy change would affect law enforcement response to child grooming behaviors and child sex crimes for all jurisdictions in Washington State, as an assurance to state-wide community safety. Furthermore, a complete analysis of similar laws to “Communication with Minor for Immoral Purposes” and other laws that may include child grooming behaviors should be examined within all 50 of the United States. An in-depth understanding of these laws might help to strengthen Washington State child grooming behavior laws.

⁴⁰ “RCW 9.94A.670: Special Sex Offender Sentencing Alternative.”

References

- Burgess, Ann Wolbert, and Carol R Hartman. "On the Origins of Grooming." *Journal of Interpersonal Violence*, vol. 33, no. 1, 2018, pp. 17-23.
- Busby, John C. "Probable Cause." *LII / Legal Information Institute*, 15 June 2017, www.law.cornell.edu/wex/probable_cause.
- Dietz, Park. "Grooming and Seduction." *Journal of Interpersonal Violence*, vol. 33, no. 1, 2018, pp. 28-36.
- Lanning, Kenneth. "The Evolution of Grooming: Concept and Term." *Journal of Interpersonal Violence*, vol. 33, no. 1, 2018, pp. 5-16.
- Lanning, Kenneth V. "Child Molesters: A Behavioral Analysis. For Law-Enforcement Officers Investigation Cases of Child Exploitation." (1987).
- Miller, Laurence. "Sexual offenses Against Children: Patterns and Motives." *Aggression and Violent Behavior*, vol. 18, no. 5, 2013, pp. 506-519.
- Williams, Andy. "Child Sexual Victimization: Ethnographic Stories of Stranger and Acquaintance Grooming." *The Journal of Sexual Aggression*, vol. 21, no. 1, 2015, pp. 28-42.
- Winters, Georgia M., and Elizabeth L. Jeglic. "Stages of sexual grooming: recognizing potentially predatory behaviors of child molesters." *Deviant behavior* 38.6 (2017): 724-733.

Appendix 1. Child Grooming Behaviors and Examples.

Steps of Child Grooming	Behaviors associated with Child Grooming	Case Scenario Example
Targeting the Victim	Offenders may target their victim for any reason, but some reasons may include attraction, ease of access, or perceived vulnerabilities of the child (Winters and Jeglic, 2017).	George's victim is a 10-year-old boy who is a friend of his Stepson's.
Gaining Access	Befriend parents, loiter in places children frequent, befriend children, become a caretaker, take jobs or participate in event that are child friendly ⁴¹ .	George is aware that the child victim will be staying overnight at the residence.
Recruiting	Establishing trust, befriending the child, offering gifts and attention, sharing secrets with the child (Winters and Jeglic, 2017).	George is very friendly with the child victim and pays him a lot of attention. He also offers "beer" to the child victim.
Isolation	The offender will find ways to be alone with the child victim. They may offer to babysit for free, offer transportation, or do other favors that would allow for them to be alone with the child ⁴² .	While at the park, George takes the child victim to an isolated area to urinate, instead of the public restroom facilities.
Non-sexual Physical Contact	The offender will increase physical contact to prepare and desensitize the child victim for sexual contact (Winters and Jeglic, 2017).	George cuddles with the children at night and "spoons" the child victim. George also hugs and kisses James on his forehead and head.
Maintaining Control	The offender may use different tactics to maintain control and secrecy around the relationship such as guilt, threats, manipulation, or by normalizing the behaviors ^{43,44} .	When James urinates in front of George, George explains to the child victim that it is "okay to show him his penis" as "guys go pee together all the time".

Appendix 2. Washington State Statute Analyses, Results, and Tables.

Table 2.1 Frequency for Presence of Grooming Language.

Presence of Grooming Language					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	NO	15	62.5	62.5	62.5
	YES	9	37.5	37.5	100.0
	Total	24	100.0	100.0	

Table 2.2. Crosstabulation for Presence of Grooming Language and Conditional Limitations by Definition of Crime.

Description * Grooming Language with No Additional Conditions * Presence of Grooming Language Crosstabulation						
Count						
Presence of Grooming Language			Grooming Language with No Additional Conditions			
NO	Description		NO	YES	N/A	Total
		Child Molestation in the 1st Degree				1
		Child Molestation in the 2nd Degree				1
		Child Molestation in the 3rd Degree				1

⁴¹ "A Profile of the Child Molester and Grooming Techniques." Child Lures® Prevention, childluresprevention.com/resources/molester-profile/.

⁴² "Behaviors of Sexual Predators: Grooming." Maryland Coalition Against Sexual Assault, <http://www.icmec.org/wp-content/uploads/2016/05/Behaviors-of-Sexual-Predators-Grooming.pdf>.

⁴³ "Behaviors of Sexual Predators: Grooming." Maryland Coalition Against Sexual Assault, <http://www.icmec.org/wp-content/uploads/2016/05/Behaviors-of-Sexual-Predators-Grooming.pdf>.

⁴⁴ "Victim Grooming: Protect Your Child from Sexual Predators." Boys Town, www.boystown.org/parenting/article/Pages/victim-grooming-protect-your-child-from-sexual-predators.aspx.

		Communication with a Minor for Immoral Purposes (1)			1	1
		Criminal Attempt			1	1
		Departures from the Guidelines (pregnancy of child victim)			1	1
		Departures from the Guidelines (trafficking a minor)			1	1
		Incest			1	1
		Indecent Exposure			1	1
		Luring			1	1
		Rape of a Child in the 1st Degree			1	1
		Rape of a Child in the 2nd Degree			1	1
		Rape of a Child in the 3rd Degree			1	1
		Sexual Misconduct with a Minor in the 1st Degree			1	1
		Sexual Misconduct with a Minor in the 2nd Degree			1	1
	Total				15	15
YES	Description	Commercial Sex Abuse of a Minor	0	1		1
		Communication with a Minor for Immoral Purposes (2)	0	1		1
		Departures from the Guidelines (use position of trust to facilitate crime)	1	0		1
		Departures from the Guidelines (high degree of planning)	1	0		1
		Departures from the Guidelines (pattern of sexual abuse)	1	0		1
		Departures from the Guidelines (sexual motivation)	1	0		1
		Departures from the Guidelines (youth not residing with guardian)	1	0		1
		Sexual Exploitation of a Minor	0	1		1
		Trafficking	0	1		1
	Total		5	4		9
	Total		5	4	15	24

Table 2.3. Case Summary for Direct or Indirect crimes and Offense Type by Definition of Crime.

Case Processing Summary						
	Cases					
	Valid		Missing		Total	
	N	Percent	N	Percent	N	Percent
Description * Direct/Indirect * Offense Type	24	100.0%	0	0.0%	24	100.0%

Table 2.4. Crosstabulation for Direct or Indirect crimes and Offense Type by Definition of Crime.

Description * Direct/Indirect * Offense Type Crosstabulation					
Count					
POST	Description		Direct/Indirect		Total
			INDIRECT	DIRECT	
		Child Molestation in the 1st Degree	0	1	1
		Child Molestation in the 2nd Degree	0	1	1
		Child Molestation in the 3rd Degree	0	1	1
		Commercial Sex Abuse of a Minor	0	1	1
		Departures from the Guidelines (pattern of sexual abuse)	1	0	1
		Departures from the Guidelines (pregnancy of child victim)	1	0	1
		Departures from the Guidelines (trafficking a minor)	1	0	1
		Incest	0	1	1
		Rape of a Child in the 1st Degree	0	1	1
		Rape of a Child in the 2nd Degree	0	1	1
		Rape of a Child in the 3rd Degree	0	1	1
		Sexual Exploitation of a Minor	0	1	1
		Sexual Misconduct with a Minor in the 1st Degree	0	1	1

		Sexual Misconduct with a Minor in the 2nd Degree	0	1	1
		Trafficking	0	1	1
	Total		3	12	15
PRE	Description	Communication with a Minor for Immoral Purposes (1)	0	1	1
		Communication with a Minor for Immoral Purposes (2)	0	1	1
		Criminal Attempt	0	1	1
		Departures from the Guidelines (use position of trust to facilitate crime)	1	0	1
		Departures from the Guidelines (high degree of planning)	1	0	1
		Departures from the Guidelines (sexual motivation)	1	0	1
		Departures from the Guidelines (youth not residing with guardian)	1	0	1
		Indecent Exposure	0	1	1
		Luring	0	1	1
	Total		4	5	9
Total		7	17	24	

Table 2.5. Presence of Grooming Language and Conditional Limitations with Direct or Indirect crimes and Offense Type by Definition of Crime.

Presence of Child Grooming Language	Conditional Limitations	Direct Law and a Pre-Assault Offense
Commercial Sex Abuse of a Minor	Commercial Sex Abuse of a Minor	
		Communication with a Minor for Immoral Purposes (1)
Communication with a Minor for Immoral Purposes (2)	Communication with a Minor for Immoral Purposes (2)	Communication with a Minor for Immoral Purposes (2)
		Criminal Attempt
Departures from the Guidelines (use position of trust to facilitate crime)		
Departures from the Guidelines (high degree of planning)		
Departures from the Guidelines (pattern of sexual abuse)		
Departures from the Guidelines (sexual motivation)		
Departures from the Guidelines (youth not residing with guardian)		
		Indecent Exposure
		Luring
Sexual Exploitation of a Minor	Sexual Exploitation of a Minor	
Trafficking	Trafficking	

Table 2.6. Impact of Language Modification for Suitable Laws.

Statute	Impact of Modification	Why
Communication with a Minor for Immoral Purposes (2)	Useful	Modification would likely support law enforcement.
Criminal Attempt	Not Useful	Modification would not be well supported by the statute.
Indecent Exposure	Not Useful	Modification would only support law under the conditional limitation that the adult exposes themselves.
Luring	Not Useful	Modification would not address most scenarios of child grooming.