

IN PRACTICE

Understanding Sexual Grooming in Child Abuse Cases

by Daniel Pollack and Andrea MacIver

In many child sexual abuse cases, the abuse is preceded by sexual grooming.¹ Sexual grooming is a preparatory process in which a perpetrator gradually gains a person's or organization's trust with the intent to be sexually abusive. The victim is usually a child, teen, or vulnerable adult.

Understanding sexual grooming and common sexual grooming behaviors can help professionals prevent sexual abuse before it occurs.² Evidence of sexual grooming can be used to convict offenders—in those jurisdictions where sexual grooming is a crime³—and substantiate allegations of sexual abuse⁴ where a victim's testimony is unclear or misleading.

Sexual Grooming

Key elements

Aspects of sexual grooming may include:

- targeting the victim,
- securing access to and isolating the victim,
- gaining the victim's trust, and
- controlling and concealing the relationship.

Where it occurs

Grooming may take place in numerous settings:

- in-person,
- via the Internet,⁵ or
- in institutional settings.⁶

Definition

The U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) uses the following definition of grooming;⁷

Grooming is a method used by offenders that involves building trust with a child and the adults around a child in an effort to gain access to and time alone with her/him. In extreme cases, offenders may use threats and physical force to sexually assault or abuse a child. More common, though, are subtle approaches designed to build relationships with families.

The offender may assume a caring role, befriend the child or even exploit their position of trust and authority to groom the child and/or the child's family. These individuals intentionally build relationships with the adults around a child or seek out a child who is less supervised by adults in her/his life. This increases the likelihood that the offender's time

with the child is welcomed and encouraged.

The purpose of grooming is:

- to manipulate the perceptions of other adults around the child.
- to manipulate the child into becoming a co-operating participant which reduces the likelihood of a disclosure and increases the likelihood that the child will repeatedly return to the offender.
- to reduce the likelihood of the child being believed if they do disclose.

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- to reduce the likelihood of the abuse being detected.⁸

Grooming behaviors

Key to understanding the concept of sexual grooming is recognizing common behaviors that predators use while grooming victims for sexual abuse. Common sexual grooming behaviors are often subtle and may not appear inappropriate. These behaviors include:

- “An adult seems overly interested in a child.
- An adult frequently initiates or creates opportunities to be alone with a child (or multiple children).
- An adult becomes fixated on a child.
- An adult gives special privileges to a child (e.g., rides to and from practices, etc.).
- An adult befriends a family and shows more interest in building a relationship with the child than with the adults
- An adult displays favoritism towards one child within a family.
- An adult finds opportunities to buy a child gifts.
- An adult caters to the interests of the child, so a child or the parent may initiate contact with the offender.
- An adult who displays age and gender preferences.”⁹

Other behaviors predators may use during the grooming process are “[a]ctivities that can be sexually arousing to adults who have a sexual interest in children.”¹⁰ These behaviors include:

- “bathing a child.
- walking in on a child changing.
- deliberately walking in on a child toileting.
- asking a child to watch the adult toileting.
- tickling and “accidentally” touching genitalia.
- activities that involve removing

- clothes (massage, swimming).
- wrestling in underwear.
- playing games that include touching genitalia (playing doctor).
- telling a child sexually explicit jokes.
- teasing a child about breast and genital development.
- discussing sexually explicit information under the guise of education.
- showing the child sexually explicit images.
- taking pictures of children in underwear, bathing suits, dance wear, etc.”¹¹

While seen as a precursor to the criminal act of sexual abuse, in certain contexts sexual grooming is a standalone criminal offense.

Protecting Victims from Sexual Grooming

Understanding sexual grooming and pinpointing when it occurs is important from a psychological or sociological perspective to prevent sexual abuse. Its precise definition and scope is equally important from a legal perspective. While seen as a precursor to the criminal act of sexual abuse, in certain contexts sexual grooming is a standalone criminal offense.

Federal Enticement Statute

Under section § 2422 of the United States Criminal Code (the Code), commonly referred to as the federal enticement statute,¹² the government has made it a crime to use interstate commerce to attempt or to knowingly persuade, induce, entice, or coerce any individual under age 18 to engage in prostitution or any sexual activity for which any individual can be charged with a criminal offense.¹³

“[T]he statute targets the sexual grooming of minors as well as the actual sexual exploitation of them. The statute’s focus is on the intended effect

on the minor rather than the defendant’s intent to engage in sexual activity.”¹⁴ As such, section “2422(b), does not require a defendant to demonstrate an intent to actually engage in illegal sexual activity with a minor[;] [r]ather, a defendant violates § 2422(b) by merely attempting to persuade a minor to engage in illegal sexual activity.”¹⁵

To prove a violation of section 2422(b) of the Code, a prosecutor must show that an offender intended to complete the crime and took a “substantial step” toward its completion.¹⁶ With regard to intent, the government must prove that the defendant intended to cause assent on the part of the minor, not that he “acted with the specific intent to engage in sexual activity.”¹⁷ Although the term “substantial step” can be an elusive concept, it is described as more than mere preparation, but less than the last act before the crime is committed.¹⁸

Case example

In *United States v. Chambers*,¹⁹ defendant Chambers was convicted of violating the federal enticement statute. Chambers argued for reversal of his conviction because he neither intended to meet the minor child, who was actually an FBI agent, nor took a substantial step towards meeting her. This argument was based on the fact that he never actually met the minor, despite chatting online with her for months.

The Seventh Circuit Court of Appeals disagreed and, in affirming the jury’s finding that Chambers had the requisite intent and had taken a substantial step towards meeting the minor, noted “that child sexual abuse can be accomplished by several means and is often carried out through a period of grooming.”²⁰ The court recognized that grooming refers to deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is forming an emotional connection with the child and reducing the child’s inhibitions to prepare the child for sexual activity.

As a result, the court found sig-

nificant evidence of grooming, which was sufficient to establish a violation of section § 2422(b): Chambers spoke to the minor in sexually explicit terms, e-mailed her adult and child pornography, discussed sexual activities with her, instructed her on how to arouse herself, told her that he had sexual intercourse for years with his ex-girlfriend's 14-year-old daughter, and otherwise attempted to prepare her for a sexual encounter with him by discussing in graphic detail how the act would occur. Thus, under section § 2422(b), sexual grooming behaviors can be used to convict an offender of a crime when interstate commerce exists.

State Enticement Statutes

Several states have enacted statutes that mimic the federal enticement statute, without the requirement of interstate commerce activity.²¹ For example, Illinois' statute on grooming states:

A person commits grooming when he or she knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child's guardian, or another person believed by the person to be a child or a child's guardian, to commit any sex offense as defined in Section 2 of the Sex Offender Registration Act, to distribute photographs depicting the sex organs of the child, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.²²

Although relatively new, one author warns that while the statute is "well-intentioned and focuses on the protection of children, such laws have traditionally faced various challenges alleging unequal treatment and overly harsh punishments."²³ This is largely because the statute inevitably creates

tension between child welfare advocates and civil liberties advocates.²⁴ Nevertheless, Illinois' enticement statute remains in force, with a bill pending that seeks to expand the reach of the Illinois enticement statute (which now only criminalizes grooming via electronic sources²⁵) to also criminalize in-person grooming.²⁶

Expert Testimony

Because sexual grooming behaviors are often similar to normal adult behaviors—such as buying a gift for a child²⁷—courts have allowed experts to give testimony regarding the process of sexual grooming where such testimony can be said to assist the trier of fact in determining the alleged offender's intent, or *modus operandi*.²⁸ Proving an offender's intent to commit sexual abuse with evidence of sexual grooming behaviors can be used at trial to prove sexual grooming allegations in jurisdictions where such actions are criminalized.

In *United States v. Hitt*,²⁹ defendant Hitt was charged with attempting to entice a child across state lines for the purpose of engaging in illicit sexual activity in violation of §2422(b), evidence that Hitt took the child to dinner, ice skating, to the movies, and shopping, among other things, prior to bringing him across state lines and sexually abusing him was introduced at trial.

An expert testified about the grooming process to explain the relevance of Hitt's behavior. Hitt argued that the expert's testimony was improperly admitted because expert testimony was not necessary to determine whether his acts were "genuinely charitable or were consistent with an illicit purpose."³⁰ The government argued the expert's testimony "regarding the methods by which sexual abusers of children typically operate is testimony regarding *modus operandi* and was properly admitted expert testimony."³¹

The *Hitt* court recognized that several other circuits have allowed expert testimony to explain the *modus operandi* of sexual predators³² and

held "the admission of the testimony regarding typical behavior of child molesters [i.e. grooming] was not an abuse of discretion."³³

Grooming Evidence

Evidence of nonspecific sexual grooming behaviors is admissible at trial through expert testimony to substantiate allegations of sexual abuse,³⁴ especially where the victim's testimony is unclear, misleading, or contradictory.³⁵

In *Light v. Martel*,³⁶ the defendant was charged with child sexual abuse under the California Criminal Code. Testimony was admitted at trial showing Light engaged in certain behavior towards the young victims before the abuse: Light would give the girls sweets, show them cartoons, and engage in a consistent pattern of contact.

Expert testimony regarding grooming was offered at trial, although the expert did not testify on Light's specific behavior. Instead, the expert explained how general practices and behaviors by child abusers are designed to ingratiate them to their victims. The expert testified that grooming includes such behaviors as showing a child extra attention, complimenting them, giving gifts, making promises and increasing contact—behaviors that may seem innocent to the lay person. The court held that such expert testimony was admissible because it was relevant and useful in clarifying for the jury a complex pattern of seemingly innocuous behaviors. Such testimony helped explain the general *modus operandi* of child molesters.

Advocacy and Training

At its heart grooming is deception, and deception never waves a red flag. By learning the definitions and nuances of this behavior, the legal community can better detect grooming and intervene before sexual abuse occurs. Lawyers need relevant and timely literature and resources to become knowledgeable of sexual grooming and to guide advocacy and decision making when it occurs.

Conclusion

With each victim who is groomed and sexually abused, we question how it could have happened, how signs leading up the abuse were missed. Knowledge, training, and awareness are our best weapons, and our best chance to prevent abuse before it occurs.

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Endnotes

1. U.S. Dep't of Justice, National Sex Offender Public Website, SMART Program. <www.nsopw.gov/en-US/Education/CommonQuestions?AspxAutoDetectCookieSupport=1#answer-05> (“Although not all child sexual abuse involves grooming, it is a common process used by offenders.”)
2. Bennett, Natalie & William O’ Donohue. “The Construct of Grooming in Child Sexual Abuse: Conceptual and Measurement Issues,” *Journal of Sexual Abuse* 23:8, 2014, 957-58.
3. See *United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011).
4. Bennett & O’Donohue, 2014, 958.
5. Wachs, S., K. D. Wolf, & C. Pan. “Cybergrooming: Risk Factors, Coping Strategies and Associations with Cyberbullying.” *Psicothema* 24(4), 2012, 628-633. <www.unioviado.es/reunido/index.php/PST/article/viewFile/9714/9458>
6. McAlinden, Anne-Marie. ‘Grooming’ and the *Sexual Abuse of Children*, 2012, 11.
7. U.S. Dep’t of Justice, National Sex Offender Public Website, SMART Program. “Get Answers about Sexual Abuse and Associated Risks: Common Questions.” <www.nsopw.gov/en-US/Education/CommonQuestions?AspxAutoDetectCookieSupport=1#reference>
8. Adapted from the Canadian Centre for Child Protection Inc. *Child Sexual Abuse: It is Your Business*, 2014. <www.cybertip.ca/pdfs/C3P_ChildSexualAbuse_ItIsYourBusiness_en.pdf.>
9. U.S. Dep’t of Justice, National Sex Offender Public Website, SMART Program. “Get

Answers about Sexual Abuse and Associated Risks: Common Questions.” <http://www.nsopw.gov/en-US/Education/CommonQuestions?AspxAutoDetectCookieSupport=1#reference>

10. *Ibid.*

11. *Ibid.*

12. Herward, Julie A. “To Catch All Predators: Toward A Uniform Interpretation of “Sexual Activity” in the Federal Child Enticement Statute,” *American University Law Review* 63, 2014, 879, 879.

13. 18 U.S.C. § 2422 (2006) (“(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.”).

14. *United States v. Berg*, 640 F.3d 239, 252 (7th Cir. 2011); see also *United States v. Lee*, 603 F.3d 904, 914 (11th Cir. 2010) (quoting *United States v. Dwinells*, 508 F.3d at 71); *Yost*, 479 F.3d at 819 n. 3 (“[W]e are not required to find [defendant] acted with the specific intent to engage in sexual activity.”)

15. Pazuniak, Andriy. “A Better Way to Stop Online Predators: Encouraging a More Appealing Approach to § 2422(b),” *Seton Hall Law Review* 40, 2010, 691, 704.

16. *United States v. Gladish*, 536 F.3d 646, 648 (7th Cir.2008).

17. *United States v. Yost*, 479 F.3d at 819 n. 3; see also *Pierson*, 544 F.3d at 939; *United States v. Dwinells*, 508 F.3d 63, 71–72 (1st Cir.2007); *United States v. Thomas*, 410 F.3d 1235, 1244 (10th Cir.2005); *United States v. Bailey*, 228 F.3d 637, 639 (6th Cir. 2000).

18. *United States v. Rovetuso*, 768 F.2d 809, 821 (7th Cir.1985).

19. *United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011).

20. *Ibid.*; *United States v. Berg*, 640 F.3d 239, 252 (7th Cir.2011) (“[Section 2422(b)] targets the sexual grooming of minors as well as the actual sexual exploitation of them. The statute’s focus is on the intended effect on the minor rather than the defendant’s intent to engage in sexual activity.”).

21. 720 ILCS 5/ 11-25 (eff. Jan. 1, 2009) (Illinois); Alaska Stat. § 11.41.452 (eff. July 1, 2011) (Alaska); Cal. Penal Code § 272 (eff. Jan. 1, 2006) (California); Fla. Stat. Ann. § 847.0135(3) (eff. July 1, 2009) (Florida); Mich. Comp. Laws Ann. § 750.145 (Michigan); N.H. Rev. Stat. Ann. § 649-B:4 (eff. Jan. 1, 2009); N.C. Gen. Stat. Ann. § 14-202.3 (eff. Dec. 1, 2009).

22. 720 ILCS 5/11-25 (eff. Jan. 1, 2009).

23. Moorehouse, Jeremy. “New Illinois Internet Grooming Law: When Individual Rights Collide with Public Policy,” *Public Interest Law Reporter* 14, 2009, 184-85.

24. *United States v. Hitt*, 473 F.3d 146 (5th Cir. 2006).

25. 720 ILCS 5/11-25 (eff. Jan. 1, 2009).

26. 2015 Illinois House Bill No. 3247.

27. Bennett & O’Donohue, 2014, 963 (“Part of the difficulty in identifying and clarifying a useful definition of grooming is the fact that many behaviors used by perpetrators appear quite similar to behaviors seen in normal adult-child relationships.”).

28. *United States v. Hitt*, 473 F.3d 146 (5th Cir. 2006).

29. *Ibid.*

30. *Ibid.* at 158.

31. *Ibid.*

32. *United States v. Byrd*, 31 F.3d 1329, 1338–39 (5th Cir.1994); *United States v. Romero*, 189 F.3d 576, 585 (7th Cir.1999); *United States v. Hayward*, 359 F.3d 631, 636–37 (3d Cir.2004).

33. *United States v. Hitt*, 473 F.3d at 158.

34. Bennett & O’Donohue, 2014, at 958; see also Serrato, Veronica . Expert Testimony in Child Sexual Abuse Prosecutions: A Spectrum of Uses, 68 Boston University Law Review 155, 159 (1988) (“Corroborative physical evidence is often unavailable because the child sexual abuser may have used threats and intimidation, rather than actual violence, to induce the child victim’s submission.”).

35. Serrato, 1988, 155, 159 (“The child-victim is not an ideal witness; both developmentally and psychologically, she may be unable to give consistent, spontaneous, and detailed reports of her sexual abuse. At trial, therefore, a child-victim’s testimony may be inadequate, confusing, or misleading to jurors.”).

36. *Light v. Martel*, 2009 WL 4456385 (N.D. Cal. Nov. 30, 2009).