

SEA OF DESTRUCTION:* LEGAL AND SOCIAL FORCES ENABLING SEXUAL ABUSE OF CHILDREN

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* This phrase is a play on the iconic song *Eve of Destruction*. BARRY MCGUIRE, *EVE OF DESTRUCTION* (Dunhill Records 1965).

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I. INTRODUCTION

*“Yeah, my blood’s so mad, feels like coagulin’
 I’m sittin’ here just contemplatin’
 I can’t twist the truth, it knows no regulation
 Handful of senators don’t pass legislation
 And marches alone can’t bring integration
 When human respect is disintegratin’
 This whole crazy world is just too frustratin’
 And you tell me over and over and over again, my friend
 Ah, you don’t believe we’re on the eve of destruction”*¹

Protecting perpetrators and institutions at the expense of survivors of sexual assault casts survivors into a sea of destruction. The anger that P.F. Sloan articulated when penning *Eve of Destruction* and Barry McGuire brilliantly conveyed when singing echoes what survivor after survivor has shared when recounting their pain.²

The words “truth,” “regulation,” “legislation,” “human respect,” and “too frustrating” reverberate throughout this Article. To speak the truth and to have those positioned to protect then dismiss the truth generates a sea of destruction.³ The voices of survivors reveal the terrible consequences of mobile molesters and their enablers whose actions pave the way for continued assaults.⁴ The survivors’ voices convey pain and abandonment and, while not easy to read, demand attention and action.⁵

This Article seeks to expose the truth of how our schools, laws, and powerful groups in our society actively work to aid mobile molesters in our schools—they are mobile because they move from child to child and school to school, all with the blessing of adults who are supposed to protect children.⁶ According to news reports, in 2015, at least 498 teachers and other school workers were arrested for sexual misconduct with children.⁷ That is almost three per school day.⁸ Even worse, in addition to the initial attack by the molester, the child is subsequently re-attacked by others whose aim is to

1. BARRY MCGUIRE, *EVE OF DESTRUCTION* (Dunhill Records 1965).

2. See *infra* Part V (providing letters from survivors of sexual assault).

3. See Myka Held, *A Constitutional Remedy for Sexual Assault Survivors*, 16 *GEO. J. GENDER & L.* 445, 445 (2015) (discussing institutional processes that discourage survivors of sexual assault).

4. See *infra* Part V (telling stories of sexual assault from survivors’ perspectives).

5. See *infra* Part V (discussing the consequences of enablers through stories of sexual abuse victims).

6. See *infra* Part II (discussing the relationship between mobile molesters and enablers).

7. Molly M. Henschel & Billie-Jo Grant, *Exposing School Employee Sexual Abuse and Misconduct: Shedding Light on a Sensitive Issue*, 28 *J. CHILD SEXUAL ABUSE* 26, 26 (2019).

8. See *id.*

protect the perpetrator and institution: bystanders, teachers, principals, special interest groups, government bureaucrats, and politicians.⁹

It is a sea of laws and social forces that work to rebrutalize survivors of childhood sexual assault.¹⁰ For the child, it is a sea of destruction.

The decision to fail the vulnerable cannot be excused—we must not tolerate it. That decision—perhaps *decisions* is a more accurate reflection—is the primary focus of this Article. The goal is to propose measures aimed at untangling the web of molesters, institutions, and enablers that ensnares the vulnerable in a vice-like grip with nowhere to run or hide.¹¹

This Article intertwines survivor voices with data on school molesters to inform legislation to criminalize enablement. These three elements carry throughout the following Parts of this Article.

II. ENABLERS AND MOLESTERS

The mobile molester is a known predator who is “shuffled” rather than penalized, disciplined, terminated, or prosecuted.¹² The failure to address the predation despite complaints and knowledge is the essential contribution of the enabler.¹³ When faced with the dilemma of whom to protect, the enabler invariably chooses to protect the perpetrator–molester and the institution.¹⁴

Enablers protect the teachers, coaches, and administrators who assault vulnerable school children—children mandated by state law to attend school.¹⁵ Focusing on the enablers holds them accountable for their actions and significantly curtails molesters’ ability to harm children.¹⁶ To protect

9. Anna Rossi, *Armies of Enablers: Survivor Stories of Complicity and Betrayal in Sexual Assaults*, by Amos Guiora, 34 UTAH BAR. J. 42, 43 (2021) (“[M]any survivors make it through the initial abuse only to be forced through a second wave of suffering at the hands of the enabler when the people to whom they report . . . dismiss their complaints in an effort to protect the institution.”).

10. See *infra* Parts IV, VII (examining mandatory school attendance and “Pass-the-Trash” laws).

11. See *infra* Part VIII (proposing legislation).

12. Martha Irvine & Robert Tanner, *AP: Sexual Misconduct Plagues US Schools*, WASH. POST (Oct. 21, 2007, 7:18 AM), <https://www.washingtonpost.com/wp-dyn/content/article/2007/10/21/AR200710210144.html> (discussing internal investigation practices that allow teachers accused of sexual assault to move from school district to school district).

13. See Amos N. Guiora, *Failing to Protect the Vulnerable: The Dangers of Institutional Complicity and Enablers*, U. ILL. L. REV. 139, 149 (2022) (“The enabler . . . is not present when the harm is caused but fails to act when information regarding harm is brought to their attention.”).

14. See *id.* at 143 (“[E]nablers understand their primary obligation is to protect the institution rather than the individual in peril.”).

15. See *id.* at 157 (discussing “enabler[s] whose actions protected the institution and harmed the vulnerable”).

16. See AMOS N. GUIORA, SEXUAL ASSAULT ENABLERS, INSTITUTIONAL COMPLICITY, AND THE CRIME OF OMISSION, at 4 (2021), <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1310&context=scholarship>.

these children, this Article proposes creating mechanisms to criminalize enabling behavior.¹⁷

In that vein, this Article does not focus on the molesters and their crimes but rather on those who created the infrastructure that enables perpetrators.¹⁸ This does not minimize the actions of the molester but rather expands the focus to an additional key actor in the crime.¹⁹ Rather than focusing on perpetrators, this Article proposes legislation that criminalizes the enabler.²⁰ The intent is not to recreate the wheel by examining the molester but to suggest that breaking the wheel demands acknowledging the impactful role of the enabler and aggressive accountability.²¹ The enabler is in a position of power and authority and is responsible for the continued sea of destruction.²² Despite some efforts, enablers are not sufficiently held accountable for the harm they cause.²³ Mobile molesters continue to cause extraordinary harm, largely due to enablers.

Different suggestions have been proffered for this recurring failure, including the notion that teacher unions and political interests have played an important role in this failure.²⁴ According to this theory, teacher unions prioritize protecting teachers rather than vulnerable children and have successfully lobbied politicians accordingly.²⁵

As documented in Part VII, legislators have sought to protect vulnerable school children.²⁶ While those efforts reflect commendable legislative intent, harm continues unabated.²⁷ The data presented in this Article regarding crimes committed against children in a location ostensibly presumed to be safe is a damning indictment. More than that, states mandate that children

17. See *infra* Part VIII (articulating mechanisms to criminalize enabling behavior).

18. See *infra* Part VII (reviewing Pass-the-Trash legislation and its consequences).

19. See Guiora, *supra* note 13, at 153–54 (describing the prominent role of enablers).

20. See *infra* Section VIII.D (proposing the criminalization of enabling actions).

21. See *infra* Part IX (delineating the suggested steps).

22. See GUIORA, *supra* note 16, at 3 (noting the power and consequences of enablers).

23. See *id.* at 10 (noting that mere educational efforts are insufficient).

24. See John Woolfolk, *Should California Force Schools to Reveal When Teachers Are Accused of Sexual Misconduct?*, MERCURY NEWS (Apr. 16, 2018, 3:23 PM), <https://www.mercurynews.com/2018/04/16/should-california-force-schools-to-reveal-when-teachers-are-accused-of-sexual-misconduct/>; Letter from Toni Trigueiro, Legis. Advoc., Cal. Tchrs. Ass’n, to Hon. Hannah-Beth Jackson, Chair, Cal. S. Comm. on Judiciary (Apr. 12, 2018), <https://www.voiceofsandiego.org/wp-content/uploads/2018/05/CTAOpposition-SB1456.pdf> (noting opposition to S.B. 1456).

25. See Woolfolk, *supra* note 24; Letter from Toni Trigueiro, to Hon. Hannah-Beth Jackson, *supra* note 24.

26. See *infra* Part VII (examining legislators’ intent to protect children).

27. See Guiora, *supra* note 13, at 174 (indicating that children continue to suffer harm despite legislation).

through the age of sixteen must attend school.²⁸ School is not a voluntary activity.²⁹

The distinction between mandated and voluntary activities is important. While all sexual violence is abhorrent, this Article is particularly concerned with the subset of crimes committed within a framework of significant differences in power: the perpetrator and institution wield significant authority over the victims.³⁰ The crimes are committed by those responsible for the safety and well-being of the victims.³¹ In fact, as discussed in Part VII, children are owed special duties of care in these environments.³² Enablers allow and even tacitly encourage perpetrators because the enablers prioritize protecting the institution and, by extension, the primary actor rather than the people most deserving.³³

This Article proposes a way forward by criminalizing enabling actions that ensure the molester continues unabated.³⁴ Hearing the voices of the survivors casts a harsh spotlight on enablers.³⁵ This Article includes their voices for two primary reasons: (1) to galvanize society to act on behalf of the survivors and (2) to ensure punishment of the enablers.³⁶ One such survivor wrote the following:

For a school system to not abandon the victim, the people in power would need to remove the predator, take any necessary steps to warn the public with proper reporting, and support the victim while maintaining his/her privacy. When those things do not happen—when the abuse and misconduct are “handled internally” to protect the institution—the victim is left to suffer alone.

People think of schools as a community, but they don’t realize that when a single soul is ignored and left to suffer, that victim loses the entire community. The ignorant or complicit other members continue to enjoy its benefits, but we lose it all, including the good parts that we formerly enjoyed along with them.³⁷

28. See Table 1.2 *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, NAT’L CTR. FOR EDUC. STAT. [hereinafter *Table 1.2*], https://nces.ed.gov/programs/statereform/tab1_2-2020.asp (last visited Sept. 13, 2022).

29. See *id.*

30. See *infra* Part IV (noting that mandatory attendance enables the institution and leaves children vulnerable).

31. See *infra* Part V (detailing survivor stories implicating teachers as the abusers).

32. See *infra* Part VII (discussing special duties of care owed to children).

33. See Guiora, *supra* note 13, at 141–42 (noting that enablers increase the harm to victims by protecting institutions).

34. See *infra* Part VIII (articulating mechanisms to criminalize enabling behavior).

35. See *infra* Part V (detailing survivor stories that implicate enablers).

36. See *infra* Part V (bringing awareness to the role of enablers and explaining why enabling should be criminalized).

37. E-mail from Anonymous Survivor to Author (Jan. 1, 2022, 10:38 PM) (on file with Author).

Absent the enabler, molesters could not maintain unfettered access to vulnerable individuals, many of whom revered, idolized, worshipped, and trusted their molesters.³⁸ Some thought they were in a healthy relationship with their teachers, coaches, and mentors.³⁹ Some even used the words “love,” “affair,” and “consensual sexual relationship.”⁴⁰

Only decades later, many realized they were raped by adults who took relentless and merciless advantage of their innocence.⁴¹ For many, the harm caused is insurmountable; some have great difficulties moving ahead with their lives.⁴² A fortunate few overcome the terrible, multiple harms and pain that perpetrators and enablers forced on them.⁴³

The cases discussed in the pages ahead are not the stereotypical (and less frequent) stranger-rapist in the back alley. In these more common predation scenarios, molesters knew their victims.⁴⁴ They groomed them.⁴⁵ Then they raped, assaulted, and abused them in their offices, classrooms, and homes.⁴⁶ These places should have been safe, but the lack of safety was a direct result of enablers determined to protect the institution, thereby ensuring the continued and unremitting vulnerability of minors.⁴⁷ By protecting the institution, the enablers protected the molesters.⁴⁸ In doing so, they ensured the molester could slither away only to reappear at a different institution where the pattern would repeat itself.⁴⁹

Most survivors in this Article were in their teens, vulnerable to predatory charms, advances, soothing words, and comforts.⁵⁰ While there must be no doubt regarding the criminal actions of those who rape, assault, and abuse children, they are not the focus of this Article.⁵¹ Those actions are left to others: primarily police, prosecutors, and the courts. The need to

38. See *infra* Part V (highlighting how enablers allowed vulnerable victims to be within reach of their molesters).

39. See *infra* Part V (showing how victims trusted their molesters because they were in a position of authority).

40. See *infra* Part V (emphasizing that victims believed their situations were consensual and genuine).

41. See *infra* Part V (describing how victims registered their abuse as adults).

42. See *infra* Part V (showing how several victims struggle to overcome their adolescent abuse).

43. See *infra* Part V (telling how very few victims are able to surpass the terrors of their past abuse).

44. See *infra* Part V (highlighting stories where victims were closely affiliated to their molesters).

45. See *infra* Part V (emphasizing stories where victims were manipulated into trusting their molesters).

46. See *infra* Part V (describing the multiple intimate locations where molesters took advantage of their victims).

47. See *infra* Part V (telling how enablers perpetuated abusive behaviors by protecting the institution over the victims).

48. See *infra* Part V (explaining how enablers protected the molesters by ignoring or covering up their behaviors).

49. See *infra* Part VII (highlighting the common practice of moving molesters instead of disciplining or prosecuting them).

50. See *infra* Part V (bringing awareness to the tactics that molesters use to lure young victims).

51. See *supra* Part I (explaining the primary purpose of this Article).

penalize and sanction child rapists is codified in the law and is beyond the scope herein. What demands attention are the behaviors that allow and embolden the molesters: an institutionalized system that operates akin to a finely tuned machine.⁵² This relationship, perhaps symbiotic, defines the interaction between enablers and molesters and is the rationale for recommending decisive action against enablers.⁵³

Enablers are school principals, teachers, coaches, nurses, and other senior officials.⁵⁴ In other words, enablers are the very people whose primary—if not exclusive—obligation is to protect vulnerable minors.⁵⁵ Individually and collectively, they have failed.⁵⁶

Adjectives such as “nefarious” and “devious” are appropriate when discussing both actors. Fifteen-year-olds were unwittingly forced into a boxing ring against a coordinated team of molesters and enablers who knew exactly what they were doing.⁵⁷ The molester’s bobs, weaves, jabs, and feints were a well-practiced, smooth routine.⁵⁸ A tenth-grade child was helpless in the face of these four fists, oozing “love” and “care.”⁵⁹ For that reason, this Article seeks to convince the reader that society must demand change by institutionalizing accountability and ensuring its implementation.⁶⁰ That is the most effective response to the never-ending sea of destruction faced by school-age children.

It is important to note that the intent is not to focus on survivor voices, for this is not an as-told-to undertaking. This Article shares with readers the voices that they would otherwise not hear.⁶¹ This is essential to convince others that tolerance of the intolerable—the actions of the enabler—demands decisive action.⁶² It is for that reason, then, that I contacted survivors and requested their permission to include their stories.⁶³ I am deeply grateful to them for their patience in answering endless questions and their willingness to share their painful experiences. I left the decision whether to be identified by their name or anonymously to each survivor; in both cases, all

52. *See infra* Part IV (emphasizing victims’ experiences with educator sexual misconduct).

53. *See infra* Section VIII.D (articulating the need for legislation against enablers).

54. *See infra* Part V (highlighting stories in which molesters were enabled by their coworkers and superiors).

55. *See infra* Part IV (describing the primary purpose of senior officials and administrators within the school system).

56. *See infra* Part V (discussing instances in which enablers have failed to protect vulnerable minors).

57. *See infra* Part V (discussing Katie Pappageorge’s survival story).

58. *See infra* Part V (illustrating the habitual practices of molesters and enablers).

59. *See infra* Part V (discussing Lindsay’s survival story).

60. *See infra* Parts VIII, IX (explaining proposed legislation to criminalize enabling and proposing additional steps to more effectively protect vulnerable children).

61. *See infra* Part V (sharing the voices of survivors).

62. *See infra* Part VI (showing the viewpoints of enablers to aid in the understanding of how to convince enablers that society needs decisive action).

63. *See infra* Part V (sharing the voices of survivors with their permission).

conversations were documented.⁶⁴ Their honesty and refusal to flinch from the terrible truths are extraordinary.

While writing this Article, other survivors with similar experiences in environments other than academia reached out. The primary reason was to identify the enablers whom they believed were equally responsible for the abuse and to demand accountability. Individuals and society must acknowledge the ubiquity of the enablers whose reach can be global and must therefore be addressed accordingly.⁶⁵ For that reason, before diving into those who enabled crimes in American and Canadian schools, this Article begins with Reggie Dadarino.⁶⁶

Mr. Dadarino, who is in his 70s and lives in Australia, contacted me expressing a willingness to discuss the crimes committed against him when he was a small child. The sexual assaults to which he was subjected by priests and nuns, beginning when he was under four years old, deserve the loudest condemnation.⁶⁷ However, Mr. Dadarino's deeper anger is directed at the system that enabled the assaults over the course of several years.⁶⁸ The word "system" was a constant in our conversation.⁶⁹ Mr. Dadarino used that word to describe the relationship between the Catholic diocese and the police department in his hometown.⁷⁰

While his mother and neighbor acted on his behalf, that effort did not extend to the authorities mandated to protect him and other vulnerable children. When asked whether he was "victim number one or victim number seven million," the response was immediate: "seven million."⁷¹ As shall be made apparent, that number—albeit metaphorical—is not a significant exaggeration.⁷² Mr. Dadarino made one additional relevant point when he asked rhetorically: "Why the fuck did this happen to me?"⁷³ The answer was in the question: because of vulnerable family circumstances, he was easy prey

64. See *infra* Part V (showing either the real names or pseudonyms of survivors).

65. See *infra* Part V (illustrating the global reach of enablers).

66. Reggie Dadarino is a pseudonym.

67. I address the Catholic Church in a separate forthcoming project. See *Former Pope Benedict Failed to Act Over Abuse, New Report Finds*, BBC NEWS (Jan. 20, 2022) [hereinafter *Former Pope Inaction*], <https://www.bbc.com/news/world-europe-60070132>.

68. *Id.*; Interview with Reggie Dadarino (Dec. 19, 2021).

69. Interview with Reggie Dadarino, *supra* note 68.

70. *Id.*

71. *Id.*

72. See *Former Pope Inaction*, *supra* note 67 (showing the prevalence of sexual abuse within the Catholic Church).

73. Interview with Reggie Dadarino, *supra* note 68. The question is transcribed in full rather than censored to convey the emotion expressed by Mr. Dadarino.

and, therefore, particularly vulnerable.⁷⁴ Perpetrators and enablers knew this fact, and their sole interest was protecting the institution.⁷⁵

The Royal Commission into Institutional Responses to Child Sexual Abuse interviewed Mr. Dadarino.⁷⁶ Before turning our attention to the core issue addressed in this Article, of the commission's many recommendations, one is of relevance: "All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration."⁷⁷

Protecting children means preventing enabling.⁷⁸ Molesters cannot be allowed to move and repeat crimes.⁷⁹ Institutions must address incidents of predation by choosing to protect children at the cost of would-be enablers and perpetrator-molesters.

III. LITERATURE SURVEY

Scholarship addressing K-12 sexual assaults has primarily focused on the perpetrator rather than the enabler.⁸⁰ Dr. Charol Shakeshaft and Dr. Billie-Jo Grant have written widely on educator sexual misconduct and abuse, including scholarship focused on the enabler; their work is incorporated in Part IV.

Several commentators have called for reform in tort law to encourage schools to better protect students.⁸¹ For example, Dr. Todd A. DeMitchell has called for the extension of respondeat superior liability,⁸² and Dr. Richard

74. See *supra* note 50 and accompanying text (explaining that survivors whose stories appear in this Article were teenagers and particularly vulnerable to predators).

75. See, e.g., *Former Pope Inaction*, *supra* note 67 (inferring that the Pope knew about allegations of sexual abuse and denied having knowledge to protect the Church).

76. See ROYAL COMM'N INTO INST. RESPONSES TO CHILD SEXUAL ABUSE, FINAL REPORT: IMPACTS (2017), https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_3_impacts.pdf; ROYAL COMM'N INTO INST. RESPONSES TO CHILD SEXUAL ABUSE, FINAL INFORMATION UPDATE (2017), https://learn.livingwell.org.au/pluginfile.php/358/mod_page/content/3/final_information_update.pdf (providing statistics taken from interviews with survivors of child sexual abuse).

77. ROYAL COMM'N INTO INST. RESPONSES TO CHILD SEXUAL ABUSE, FINAL REPORT: MAKING INSTITUTIONS CHILD SAFE, at 24 (2017), https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf.

78. See *infra* text accompanying notes 101–06 (suggesting that the actions of enablers allow perpetrators to reoffend).

79. See *infra* text accompanying notes 101–06 (providing statistics on perpetrators who are not reported and could reoffend).

80. See, e.g., Mia J. Abboud et al., *Educator Sexual Misconduct: A Statutory Analysis*, 31 CRIM. JUST. POL'Y REV. 133 (2020) (focusing on statutes related to perpetrators).

81. See sources cited *infra* notes 84, 91 (referencing articles written by Dr. Grant and Dr. Shakeshaft).

82. Todd A. DeMitchell, *The Inadequacy of Legal Protections for the Sexual Abuse of Students: A Two-Track System*, 215 EDUC. L. REP. 505, 529 (2007).

Fossey has argued that school districts should always bear liability for sexual abuse committed by teachers.⁸³

Dr. Billie-Jo Grant has called for states to enact statutes that explicitly prevent school employees from aiding and abetting molester-teachers in gaining new employment (Pass-the-Trash legislation).⁸⁴ Dr. Grant has highlighted the lack of Pass-the-Trash laws and the inadequacies of many of those already in existence and has argued that unless such laws are enacted and enforced, schools will continue to pass known predators to new schools where they will be free to abuse again.⁸⁵ These laws will be further discussed in Part VII.

IV. SCHOOLS IN THE UNITED STATES AND CANADA

Schools should be safe places with the primary purpose of educating children in an environment conducive to learning, developing social skills, interacting with peers, and gaining tools to become productive members of society. While pedagogical practices and curriculum are open to debate, student safety should not be. Schools should be held to the highest standard possible to protect students.

This Article focuses on a particular aspect of school safety: how administrators and other school employees fail to protect students from teachers and others who are known molesters.⁸⁶ The failure to do so is well documented and, in fact, points to significant enabling behavior.⁸⁷ The data, as made clear by Dr. Billie-Jo Grant's research, speaks for itself.⁸⁸

Dr. Grant compiled data on the prevalence of educator sexual misconduct.⁸⁹ This data includes surveys that asked students about experiences with educator and school employee sexual misconduct and abuse, along with reports quantifying disciplinary and criminal actions taken against teachers in various jurisdictions.⁹⁰

83. See Richard Fossey, *Should a School District Always Be Liable When a Teacher Sexually Assaults a Student?*, TCHRS. COLL. REC. (Mar. 3, 2010), <https://www.tcrecord.org/Content.asp?ContentId=15927>.

84. Billie-Jo Grant et al., *Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees*, 28 J. CHILD SEXUAL ABUSE 84, 92 (2019).

85. *Id.* at 98.

86. See sources cited *infra* notes 91-100 (providing data on the prevalence of known offenses of sexual misconduct in schools).

87. See sources cited *infra* notes 91-100 (providing data on the prevalence of known offenses of sexual misconduct in schools).

88. See Grant et al., *supra* note 84.

89. See *id.*

90. See *id.*

Survey of Students' Experiences with Educator Sexual Misconduct

Study	Perpetrators Included	Percent of Students Experiencing Contact Sexual Abuse	Percent of Students Experiencing All Types of Sexual Misconduct	Study Overview
Shakeshaft (2003) ⁹¹	Teachers and other school employees	6.7%	9.6%	Secondary analysis of American Association of University Women (AAUW) nationwide survey of 2,064 eighth- to eleventh-grade students.

Educator and School Employee Sexual Misconduct: The Numbers

Years	Source	Data
2014–2021	S.E.S.A.M.E. and the Office of Senator Toomey ⁹²	4,132 Google alerts for teachers arrested for sexual misconduct between January 2014 and September 2021.
2015–2019	Arizona Republic and Phoenix public radio station KJZZ 91.5 FM ⁹³	181 Arizona teachers disciplined or forced to surrender teaching certificates after allegations of sexual misconduct between 2015 and mid-2019.
2013–2019	Jimenez ⁹⁴	1,397 misconduct cases opened against California teachers for sexual crimes against children between 2013 and 2018.
2012–2018	U.S. Department of Education, Office for Civil Rights ⁹⁵	280 complaints of adult-on-student sexual harassment in Chicago public schools between 2012 and 2018.
1997–2017	Canadian Centre for Child Protection ⁹⁶	750 cases of child sexual abuse involving 714 school employees against 1,272 students in Canada between 1997 and 2017.

91. Carol Shakeshaft, *Educator Sexual Abuse*, HOFSTRA HORIZONS 10, 11 (2003), https://www.hofstra.edu/pdf/orsp_shakeshaft_spring03.pdf.

92. E-mail from Billy-Jo Grant to Author (Sept. 23, 2021, 5:29 PM) (on file with Author) (providing data compiled by S.E.S.A.M.E. and the office of Senator Toomey).

93. Lily Altavena & Mariana Dale, *Search for Teachers Investigated for Sexual Misconduct Since 2015*, AZCENTRAL. (Aug. 26, 2019), <https://www.azcentral.com/pages/interactives/news/local/arizona-data/teacher-allegations-sexual-misconduct/>.

94. Kayla Jimenez, *California Is Juggling More Teacher Misconduct Cases than Ever*, VOICE OF SAN DIEGO (Feb. 14, 2019), <https://www.voiceofsandiego.org/topics/education/california-is-juggling-more-teacher-misconduct-cases-than-ever/>.

95. U.S. Dep't of Educ., Off. for Civ. Rts., Opinion Letter on OCR Case #05-15-1178 and 05-17-1062 (Sept. 12, 2019).

96. Canadian Ctr. for Child Prot. Inc., *The Prevalence of Sexual Abuse by K-12 Personnel in Canada, 1997–2017*, 28 J. CHILD SEXUAL ABUSE 46, 62 (2019).

Years	Source	Data
2009–2017	Bradshaw ⁹⁷	1,503 investigations opened against Texas teachers for sexual contact with students between 2010 and 2017.
2008–2016	Robert & Thompson ⁹⁸	1,415 Texas teachers sanctioned for educator sexual misconduct between 2008 and 2016.
2005–2016	New Haven Register ⁹⁹	Fifty-eight school employees charged with sexual crimes against students between June 2005 and February 2016.
2001–2005	Tanner & Irvine ¹⁰⁰	1,467 teaching licenses revoked, surrendered, suspended, or denied nationwide for sexual misconduct against students between 2001 and 2005.

The above data clearly demonstrates the prevalence of known offenses. Furthermore, even when offenses are reported, many are not adequately addressed by school officials.¹⁰¹ Research in this area, although limited,¹⁰² suggests that the actions—or in many cases, inactions—of enablers allow perpetrators to reoffend.¹⁰³ For example, in a study of 225 known cases of educator sexual abuse, none of the school officials reported the perpetrators to the authorities, and only 1% lost their teaching license despite all admitting to physical sexual abuse of a student.¹⁰⁴ Only 54% were terminated or voluntarily left their districts, with 16% going on to teach at other schools.¹⁰⁵ This only represents the tip of the iceberg: most cases of educator sexual abuse go unreported altogether.¹⁰⁶

Notwithstanding legitimate pedagogical and ideological disputes, safety must not be a matter of discretion, subject to nuance and tweaking. In the United States and Canada, through at least the age of sixteen, the government

97. Kelsey Bradshaw, *TEA Investigations into Improper Student-Teacher Relationships Jumped 36 Percent in Past Year*, MYSA (Sept. 13, 2017, 4:24 PM), <https://www.mysanantonio.com/news/local/article/TEA-investigated-most-ever-improper-12176715.php>.

98. Catherine E. Robert & David P. Thompson, *Educator Sexual Misconduct and Texas Educator Discipline Database Construction*, 28 J. CHILD SEXUAL ABUSE 7, 14 (2019).

99. Esteban L. Hernandez, *Nearly 60 Connecticut Teachers Arrested, Charged with Sexual Misconduct Since 2005, Data Show*, NEW HAVEN REG. (Apr. 2, 2016), <https://www.nhregister.com/connecticut/article/Nearly-60-Connecticut-teachers-arrested-charged-11338115.php>.

100. Robert Tanner & Martha Irvine, *Sex Abuse a Shadow over U.S. Schools*, EDUC. WK. (Oct. 21, 2007), <https://www.edweek.org/leadership/sex-abuse-a-shadow-over-u-s-schools/2007/10>.

101. Shakeshaft, *supra* note 91, at 13.

102. In light of this Article and the Author's association with S.E.S.A.M.E., the next research project will involve tracking molesters and enablers and their networks from state to state.

103. See Sarah Taddeo et al., *Look the Other Way: The Reason for Persistent Sexual Harassment Is a Support System*, DEMOCRAT & CHRON. (May 17, 2021, 8:43 AM), <https://www.democratandchronicle.com/story/news/2021/05/17/enablers-allow-sexual-harassment-persist-experts-say/5045666001/> (explaining the enabler's role and how they can be active or passive).

104. Shakeshaft, *supra* note 91, at 13.

105. *Id.*

106. *Id.* at 12.

assumes responsibility for the welfare of children.¹⁰⁷ The government is required to ensure the safety of those the state requires to attend school.¹⁰⁸ That obligation necessarily extends to those over sixteen years old who choose to continue their education past the mandatory age.¹⁰⁹

Most readers are familiar with similarly disturbing sexual assault cases enabled by powerful institutions: Boy Scouts,¹¹⁰ the Catholic Church,¹¹¹ USA Gymnastics,¹¹² Ohio State University,¹¹³ University of Michigan,¹¹⁴ and Penn State University.¹¹⁵ Each institution failed to adequately protect those under its care, arguably violating duties of care expected of medical and childcare providers.¹¹⁶ The school cases described in Part V add to this already egregious failure because these children are required to attend.¹¹⁷ They are

107. See, e.g., CAL. EDUC. CODE § 48200 (West, Westlaw through 2022 Reg. Sess.) (requiring full-time compulsory education for children ages six to eighteen); COLO. REV. STAT. ANN. § 22-33-104(1)(a) (West, Westlaw through 2022 2d Reg. Sess.) (requiring mandatory school attendance for children ages six to seventeen); FLA. STAT. ANN. § 1003.21(1)(a) (West, Westlaw through 2022 2d Reg. Sess. and Special C and D Sess. of the 27th Leg.) (mandating school attendance for children ages six to sixteen); Public Schools Act, C.C.S.M. 2021, c P250, § 1.1 (Can. Man.) (stating compulsory school age is six to eighteen years of age).

108. E.g., CAL. CONST. art. I, § 28(f)(1) (“Right to Safe Schools. All students and staff of public primary, elementary, junior high, and senior high schools . . . have the inalienable right to attend campuses which are safe, secure[,] and peaceful.”); COLO. REV. STAT. § 22-1-130(1)(a)(III) (2021) (“Ensuring the safety of school children is one of the primary responsibilities of state and local government, law enforcement, and school communities. . . .”); FLA. CONST. art. IX, § 1(a) (“Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools. . . .”); Public Schools Act, C.C.S.M. 2021, c P250, § 41(1)(b.1) (Can. Man.) (“Every school board shall . . . ensure that each pupil enrolled in a school within the jurisdiction of the school board is provided with a safe and caring school environment that fosters and maintains respectful and responsible behaviours. . . .”); NEB. REV. STAT. § 79-2701(1) (2021) (“Our public school children, faculty, and staff are entitled to be safe in schools when they attend school and study or work. . . .”).

109. See CAL. CONST. art. I, § 28(f)(1); FLA. CONST. art. IX, § 1(a); COLO. REV. STAT. § 22-1-130(1)(a)(III) (2021); Public Schools Act, C.C.S.M. 2021, c P250, § 41(1)(b.1) (Can. Man.); NEB. REV. STAT. § 79-2701(1) (2021).

110. Jacey Fortin & Isabella Grullon Paz, *Boy Scouts Agree to \$850 Million Settlement Over Abuse Claims*, N.Y. TIMES (July 2, 2021), <https://www.nytimes.com/2021/07/02/us/boy-scouts-of-america-sexual-abuse-settlement.html>.

111. *The Global Scale of Child Sexual Abuse in the Catholic Church*, ALJAZEERA (Oct. 5, 2021), <https://www.aljazeera.com/news/2021/10/5/awful-truth-child-sex-abuse-in-the-catholic-church>.

112. Juliet Macur, *Nassar Abuse Survivors Reach a \$380 Million Settlement*, N.Y. TIMES (Dec. 13, 2021), <https://www.nytimes.com/2021/12/13/sports/olympics/nassar-abuse-gymnasts-settlement.html>.

113. Billy Witz, *Ohio State Pays \$41 Million to Settle Claims from Doctor’s Abuse*, N.Y. TIMES (May 8, 2020) [hereinafter *Ohio State Settlement*], <https://www.nytimes.com/2020/05/08/sports/ohio-state-strauss-settlement.html>.

114. Billy Witz, *Michigan Ignored Warnings About Doctor Abusing Athletes, a Report Says*, N.Y. TIMES (June 10, 2021) [hereinafter *University of Michigan Abuse*], <https://www.nytimes.com/2021/05/11/sports/michigan-sexual-abuse-anderson.html>.

115. Joe Drape, *Penn State to Pay Nearly \$60 Million to 26 Abuse Victims*, N.Y. TIMES (Oct. 28, 2013), <https://www.nytimes.com/2013/10/29/sports/ncaafootball/penn-state-to-pay-59-7-million-to-26-sandusky-victims.html>.

116. See *id.*; *Ohio State Settlement*, *supra* note 113; *University of Michigan Abuse*, *supra* note 114.

117. See *infra* Part V (recalling experiences of survivors).

there because the state requires their presence.¹¹⁸ Mandated attendance places an additional burden and obligation on school officials to protect children roaming the hallways, attending class, meeting with teachers, and participating in extracurricular activities.¹¹⁹ The state obligation requiring children to attend school bears significantly on why we must address the shuffling of teachers.

The critical words when examining enabler accountability in the school context are “child,” “mandatory,” and “obligation.” While “obligation” and “child” exist in the other settings, “mandatory” does not.¹²⁰ It is for that reason, without in any way minimizing the harm suffered by victims in nonmandatory settings, that the issue addressed in this Article is distinct from articles addressing different institutions elsewhere.¹²¹

An increasing number of schools use guards, public safety officials, scanning devices, and other measures intended to protect children from other students or even outsiders.¹²² Hall monitors, passes issued by teachers, and screening procedures at school entrances are all indicators of the school’s assumption of responsibility for student safety and its acknowledgment that threats do exist.¹²³ Otherwise, these measures, which have become a mainstay of the education system, would not be so readily visible and apparent.

The school assumes responsibility for the welfare, security, and safety of students.¹²⁴ On its face, an armed guard signals safety. However, the armed guard does not protect the students from teachers who molest or from principals, colleagues, and school boards who protect the molesting teacher.

118. *E.g.*, CAL. EDUC. CODE § 48200 (West, Westlaw through 2022 Reg. Sess.) (requiring full-time compulsory education for children ages six to eighteen); COLO. REV. STAT. § 22-33-104(1)(a) (West, Westlaw through 2022 2d Reg. Sess.) (requiring mandatory school attendance for children ages six to seventeen); FLA. STAT. § 1003.21(1)(a) (2022) (requiring school attendance for children ages six to sixteen).

119. *See* Iwona Kowalska, *The Standard of Education Costs Within the Allocative Function of Public Finances Sector*, WARSAW AGRIC. UNIV., 345, 346–47, <https://www.ur.edu.pl/files/ur/import/Zeszyty/zeszyt-11/24.pdf> (last visited Sept. 12, 2022).

120. *E.g.*, LA. CIV. CODE ANN. art. 228 (2016) (addressing a child’s obedience to their parents as an obligation).

121. *See, e.g.*, AMOS N. GUIORA, *ARMIES OF ENABLERS: SURVIVOR STORIES OF COMPLICITY AND BETRAYAL IN SEXUAL ASSAULTS* (2020).

122. *See* INST. OF EDUC. SCIS., *REPORT OF INDICATORS OF SCHOOL CRIME AND SAFETY: 2020*, at 20 (2021). In 2019, of all the students ages twelve to eighteen who participated in the School Crime Supplement to the National Crime Victimization Survey, 90.4% reported a requirement that visitors sign in and wear visitor badges at their schools, 86.0% reported the presence of one or more security cameras, 84.6% reported locked entrance doors during the day, 75.4% reported the presence of security guards or assigned police officers, and 11.9% reported the use of metal detectors. *Id.* These percentages—with the exception of that for visitor sign-in requirements for which no data is available—represent increases from 2009. *Id.*

123. *See* *Florence v. Goldberg*, 375 N.E.2d 763, 766 (N.Y. 1978) (holding that a municipality has a duty to provide adequate care for safety responsibilities it voluntarily assumes).

124. *E.g.*, COLO. REV. STAT. § 22-1-130(1)(a)(III) (2021) (requiring the government and school community to ensure the safety of children at school).

While the guard stands ready to protect, administrators repeatedly fail in that critical mission.¹²⁵ The failure to protect the vulnerable casts a pall over the way educators understand—or at least perform—their most important twin responsibilities of educating and protecting children.

The posting of guards, ostensibly to protect children from harm, is a significant safety measure.¹²⁶ It is a deterrent.¹²⁷ However, while guards—armed or not—can fulfill a critical role, the job requirement does not extend to protecting children from enablers and molesting teachers.¹²⁸

This Article’s intent is not to cast aspersions on all teachers, principals, coaches, nurses, and school boards.¹²⁹ It is, however, critical to demonstrate that failure to protect is pervasive.¹³⁰ That failure reflects institutional complicity and an enabling culture that protects the institution while leaving the student—mandated to attend school—unprotected and vulnerable.¹³¹

V. THE VOICES OF SURVIVORS

The institutional failure to protect children demands attention and justifies the legislative proposals at the core of this Article. From the perspective of the victim, the motivation of the enabler is irrelevant; what is relevant are the consequences of their actions—or rather inaction.¹³² While legislation will be the focus of Parts VII and VIII, to fully appreciate the power of the survivors’ voices, the enablers’ motivations are of no import; what is important is the harm caused to the survivors by the enablers.¹³³

Including survivors’ voices helps convey the consequences of enablers’ actions. The accounts below are difficult to read; the pain is palpable; the language is raw.¹³⁴ With the survivors’ consent, their writing was lightly edited while preserving the message.¹³⁵ The goal, and hence a willingness to participate in this project, is threefold: to share their stories, a hope that by having their voices heard the children of today will be spared what they were not, and to compel legislators to hold enablers accountable given their

125. See Shakecraft, *supra* note 91, at 11.

126. U.S. DEP’T OF JUST., MEMORANDUM OF UNDERSTANDING FACT SHEET, at 3 (2015), https://cops.usdoj.gov/pdf/2015AwardDocs/chp/CHP_MOU_Fact_Sheet.pdf (stating a school officer’s safety role).

127. See *Sunrise Vill. Assocs. v. Borough of Roselle Park*, 438 A.2d 944, 945 (N.J. Super. Ct. App. Div. 1981) (recognizing a uniformed guard would deter criminal conduct).

128. See MEMORANDUM OF UNDERSTANDING FACT SHEET, *supra* note 126, at 3 (excluding from a school officer’s potential roles the protection of children from enablers and molesting teachers).

129. See *supra* text accompanying note 8 (explaining that this Article’s intent is to expose the truth regarding enablers).

130. See Shakeshaft, *supra* note 91, at 11.

131. See *id.*

132. See SV1’s story *infra* Part V (explaining that other people could have helped him but did not).

133. See Lindsay’s story *infra* Part V (describing the feelings of betrayal and abandonment caused by the enablers of her abuser).

134. See *infra* Part V (remembering survivors’ experiences honestly and bluntly).

135. See *infra* Part V (telling the stories of survivors).

understanding that the shuffling of teachers is dependent on the enablers.¹³⁶
The stories below should be read with that understanding.

SV1's Story¹³⁷

When I was a junior in high school, my science teacher groomed, abused, and assaulted me. Years later, I decided to make a delayed outcry to police because I worried he could abuse again. After he pleaded guilty in court, I filed a FOIA request to get the police case file. Reading that file was the worst point in the whole process for me because I realized that other people could have helped but didn't.

My abuse could have been prevented if the other employees at my school recognized and reported the warning signs they saw. Unfortunately, there is very little public awareness of how prevalent sexual abuse is, so when those teachers heard rumors, they dismissed them. When they heard lewd comments about students, they failed to respond appropriately. When a few heard that he said he was in a relationship with me, they investigated internally instead of reporting to authorities. The result was that I had to leave my abuser of my own volition with no outside help, and it took me four years to do so.

So many people feel outrage when they hear about sexual abuse in the news, but they feel safe, thinking that it would never happen to their family or in their school. And this false sense of security allows them to dismiss warning signs, not because they don't care, but because they don't realize how prevalent abuse is. My goal in sharing my story is not to publicly humiliate those who acted in ignorance but to expose the problem so that it can be fixed. Most teachers care for their students, but they cannot help them if they don't understand the dynamics used by perpetrators. We need to enforce professional boundaries so that schools are safe and perpetrators are removed.

Katie Pappageorge's Story¹³⁸

I was victimized by my drama teacher. From 1991 to 1998, he sexually abused at least six students. He groomed and sexually abused me from when I started high school in 1995 until the day he left in 1998. I was twelve to fifteen at the time.

During the time he was abusing me, another student, who had since graduated, reported to the principal abuse by the teacher. Eight girls were

136. See, e.g., SV1's story *infra* Part V (stating that he is telling his story in hopes of exposing these problems so that they can be fixed).

137. E-mail from SV1 to Author (Oct. 13, 2021, 2:59 PM) (on file with Author).

138. E-mail from Katie Pappageorge to Author (Oct. 24, 2021, 7:48 PM) (on file with Author).

interviewed by the principal over Christmas break, and four of them reported sexual abuse.

The school board accepted the teacher's resignation in January 1998. He admitted in writing to some of the abuse. The agreement the school district reached with the teacher stipulated that no hearing would occur, that he would surrender his teaching license without any charges being attached to his file, that police would not be contacted, and that the school investigation would cease.

At some point after the teacher's resignation, it came to the attention of the new drama instructor that I had often been meeting privately with the teacher. I was very distressed at his absence. The drama instructor had me immediately speak to the head of the art department, who in turn had me speak to the principal.

There was no one else present when the principal interviewed me (except the head of the art department for part of the time). No counselors or police were present. My parents were never contacted. I was fifteen years old. I was autistic and very shy and found social situations confusing. The principal said that the teacher had been "involved" with a student who had already graduated. He did not give details, and I got the impression he was embarrassed about it. He said something quickly about how they had to make sure that nothing happened with me, and, because I found the principal very intimidating and thought I was in trouble (and I loved the teacher very much), I said that it did not. I think I only shook my head without even speaking. The principal moved on from the subject quickly and offered to help me find my place again in drama.

Until I graduated, I felt that I was given special treatment by the principal, the head of the art department, and the new drama instructor. No one had taken that much of an interest in my education before. I had the sense that, because I was an unusually young student and it was clear that something had happened with the teacher, I represented a liability and a problem to them.

In February 2019, I reported the teacher to the police. Two other victims reported him with me. More details of what exactly transpired have since come out in both an investigation commissioned by the school and in the criminal proceedings. It is clear to me that several people colluded in this cover-up and that administrators were strongly inclined to make exceptions for the teacher because they sympathized with him and felt that this was a sad situation that should not affect his future career. Even now, they seem to have little empathy for his student victims.

In the investigation, the school district was found to have had thirty alleged perpetrators of sexual abuse from 1970–2020. The version of the report available to the public only gave details of my abuser's case but stated that it was typical of the district's response to abuse.

Jason F.'s Story¹³⁹

I was sexually abused by my seventh-grade science teacher for four years, beginning when I was twelve. She had chosen me to be one of her teacher aides. I would stay in her classroom after school for increasingly longer periods of time to tidy up the classroom and to prepare laboratory set-ups for class. It made me feel privileged and special. But she was grooming me for what was to come—a childhood taken.

She said she was in love with me. I believed her. Such a preposterous notion! When I look at photographs of me at that age, I shudder. I was a physically immature boy, hardly a specimen that one would expect a grown woman to desire. We spent hours alone together, on and off school grounds, on school days and weekends. After sundown she would drive us to a city park along what was known as “lovers’ lane” where we would kiss, fondle, and arouse and then satisfy one another with our hands and mouths.

During the eighth grade, I became interested in a girl in my class. That, and my desire to be free of guilt, led me to “break up” with the teacher. She was deeply hurt, and one day, her female colleague and friend, who taught science in the adjacent classroom, pulled me aside and sternly instructed me to stay away from the science wing of the building. Until then, I did not know that she was aware of the “relationship.” I was mortified and traumatized. From that point forward, that wing was like kryptonite to me.

That separation lasted through the end of the ninth grade, at which point the “relationship” resumed and went into a higher gear. I was a bit more physically mature, and soon we were having sexual intercourse in her car, her apartment, and in public places. Eventually, I traveled with her to Washington D.C. to visit the sites and museums. Later, we went to Great Britain where we spent several weeks touring and having sex in increasingly more risky environments.

I came to appreciate her for having exposed me to the fine arts, American and British history, general social graces and etiquette, and the like. I thought we were in love, and that I was “her man.” How preposterous!

Some time passed, and at some point I went to visit her at her new home. She was in the middle of serving a meal to a boy who appeared to be in his early teens, younger than myself. That broke the spell between my teacher and me. Our affair had come to a close.

While it was a tremendous relief to have rejoined my peer group without ever having been caught, it was just the beginning of a much longer road of wreckage, healing, and ongoing recovery.

I ignored what had happened as I moved on through school, college, law school, and my legal career until, at the age of forty, I reflected back on those

139. E-mail from Jason F. to Author (Jan. 1, 2022, 10:42 PM) (on file with Author).

experiences. With the help of my wife, I accepted the reality that I had been sexually molested and exploited each and every time that I had intimate physical and emotional contact with her. For the first time I experienced deep anger and resentment—*not just towards the teacher but also, intensely, towards her teacher colleague.*

The fact that a woman, a certified school teacher, chose to protect her co-worker rather than me, a child, was unconscionable. At the very least she should have explained to me that it is not appropriate for a student to voluntarily spend so much time after school (or some other veiled way of making the point). Instead, turning on me sternly with a warning to stay away was the polar opposite of the tack she was legally, ethically, and morally responsible to take.

If only that teacher colleague had stopped it. If only me and my teacher had been caught by someone with integrity, professional responsibility, and moral virtue, not only would the teacher have likely be held accountable but so too would have her confidante. If only any number of interventions had happened, perhaps justice would have been served, my healing would have started decades sooner, and the collateral damage might have never occurred.

Peter's Story¹⁴⁰

In eleventh grade, I dropped out of band to escape sexual abuse perpetrated by my music teacher. By the time I started twelfth grade, I needed to get what had happened to me off my chest, so I decided to talk to my co-op teacher. I told him what the music teacher had done to me over the past few years. He told me I had to tell the principal. I panicked. I was afraid that despite this teacher believing me no one else would. But my brother was set to start high school the next year, and I was worried that something could happen to him too. I hoped that the principal would at least talk to the music teacher and tell him not to do this type of thing again.

My co-op teacher arranged the meeting between me and the principal. I arrived at the school office at the scheduled time and waited for what felt like an eternity, which was likely no more than a minute or two, to be called into the principal's office. I remember the room being poorly lit, with the principal, an imposing man, sitting behind a large wooden desk. I was afraid; my hands were shaking, and thoughts were swirling in my head. I began to tell him what had happened over the last few years with the music teacher. The hugs, the attempts to get me to give him oral sex, him stripping naked in front of me, his inappropriate comments, and his sexual advances. I told him about the music teacher asking to photograph me nude.

140. E-mail from Peter to Author (Oct. 26, 2021, 11:21 AM) (on file with Author).

The principal asked me what I wanted to be done about the teacher. I just told him that I did not want him at the school anymore. I did not want him to be my brother's music teacher the next year. The principal said he would take care of it. No one from the school ever contacted my parents.

At the start of the next school year, my music teacher was gone. He had been quietly transferred to another high school over the summer. The teacher that replaced him would also go on to sexually abuse students.

Lindsay's Story¹⁴¹

From tenth to twelfth grade, I was groomed and abused by my high school English teacher. The abuser was more than just well-known at the school; he essentially walked on water. He had received teacher-of-the-year awards and, in his own words, was "untouchable" in the school system. I envied the respect that I thought he had, but now as an adult, I am disgusted by how the high school I gave my all to protected abusers. The grooming that took place was slow and calculated—staying hours after school, walking me to my parking spot, invitations to dinners, late-night phone calls. Teachers and administrators watched this all occur and never once stepped in to ensure that this educator was not crossing boundaries. I was informed by my abuser that the head of the English department was aware of what was taking place and took no action, which confirmed to me that if the adults who were supposed to stop bad things from happening saw no issue, then the abuse that I was suffering was not that bad.

I can vividly remember the day that my mother and I went to the principal's office to report what had taken place. The principal appeared aware of what I was about to share and shamed me into explaining my actions over the actions of my abuser. While giving my statement, the principal said he needed to make a call, and within minutes, there my abuser was, standing outside the glass wall behind my principal. My abuser paced outside the window and then entered the doorway of the principal's office, just staring in an attempt to silence me. It worked, as I could not continue speaking until my mother demanded that the principal do something. He reluctantly called security to hold my abuser until I safely left the school. It was at that moment that I understood that the administrators would protect him over me.

Shortly after my abuser was released, he made an extensive social media post claiming that all of the allegations were false, and he was only trying to be the best teacher he knew how to be. I watched in horror as hundreds of teachers I knew shared, liked, and praised my abuser to keep fighting for so-called justice. Comments echoed through social media that my abuser deserved another teaching opportunity and that it was such a shame that other

141. E-mail from Lindsay to Author (Oct. 23, 2021, 4:37 PM) (on file with Author).

students could not experience his greatness. Even after surviving the abuse by this educator, nothing could have prepared me for the betrayal, abandonment, and isolation that was placed on me by the education system that should have been protecting me and others.

If I could get one thing across to the enablers in my school system, I would say this: I was someone's daughter, someone's friend, someone's classmate, but most importantly, I was your student, and your lack of accountability and failure to report what was happening was just as traumatic as the abuse. Almost seven years later, I can finally take off the weight of the guilt and shame that was placed on me as a child and give it to the enablers that should have protected me.

VI. LETTERS IN SUPPORT OF MOLESTERS

Below are letters written by friends, family, and other community members on behalf of convicted child molesters.¹⁴² While the authors of these letters may not be enablers in the criminal context, the descriptions help demonstrate the context of enablement.¹⁴³ Their words simultaneously express the justification of criminal behavior and the defense of the perpetrator at the cost of their victims.¹⁴⁴ The letters may show motivation to preserve social relationships or may simply reflect a lack of understanding of the power differentials involved in sexual abuse.¹⁴⁵ Regardless, these letters repeat the theme of abandonment from the survivors' perspectives—grasping this concept is crucial for understanding the dynamics of abuse when committed within a child-serving institution.¹⁴⁶

The following are excerpts of letters written in support of Michael Anthony Williams, a former Virginia elementary school teacher who, in 2003, pled guilty to molesting four male students between the ages of twelve and thirteen at school outings and his home.¹⁴⁷ These character reference letters were sent to the sentencing judge to ask for leniency in Williams's sentencing.¹⁴⁸

142. See *infra* text accompanying notes 149–56 (containing letters written on behalf of convicted child molesters).

143. See *supra* Part II (describing the roles and actions of enablers).

144. See *infra* notes 149–52 and accompanying text (describing the behavior of the abuser as a justified mistake).

145. See *infra* text accompanying notes 155–56 (justifying egregious acts to protect a colleague's reputation and placing blame upon the victims).

146. See *supra* text accompanying note 32 (noting the steps a school must take to not abandon a victim); *supra* text accompanying note 141 (describing the feeling of abandonment by a survivor's school system); *infra* text accompanying note 152 (offering character testimony as a fellow teacher supporting a molester and colleague); *infra* Section VII.B (defining criminal negligence and the culpability of enablers within a child-serving institution).

147. *Ex-Teacher Admits Molesting Students*, RICHMOND TIMES-DISPATCH, Jan. 15, 2003, at B-2.

148. See *infra* text accompanying notes 149–52.

A neighbor wrote:

Another neighbor told me that the boys with whom Michael interacted were not young children, but boys of eleven or twelve, well past the so-called “age of reason.” Boys of that age do have the ability to say “no”, and, as a judge, I would want to know *why* they didn’t, especially if Michael did nothing to force the boys to participate. (I am not saying that the boys are to blame, but that they are *as* responsible for their actions as Michael is.)¹⁴⁹

A fellow congregant of his church wrote:

I spent a lot of time talking to both Michael, and his attorney, and I believe there are VERY reasonable explanations for the circumstances leading to the accusations against him. If Michael is actually guilty of anything, I suspect it is of naivete. For an adult to sleep on the floor, among his students, sardine style, was shaky [sic] judgement, at best . . . especially for a “sleep walker,” which he and a number of members of his family admit to being. As a married man, I have often awakened at night, feeling “horny,” and groped my wife, groggily hoping to stimulate some desire in her. I can easily imagine Michael partially awakening (or still asleep, in the case of a sleep walker) and, believing himself to be lying next to his wife, groping “her,” when in reality, he was groping the young boy lying next to him!¹⁵⁰

Another fellow congregant wrote:

I saw his character as unblemished, and I observed his behaviors as exemplary. I would be glad to testify anywhere and any time as to the inherent decency of this young man. Please consider the quality of this good human being and contribution he has made to his church, to his family, and to his work. Please do all that you can do to help Michael Anthony Williams to regain his life and his integrity that he so richly deserves.¹⁵¹

A friend from college wrote:

Michael’s current state is extremely distressing, especially as a fellow teacher who has never thought twice about the way I interact with my students. The very scary reality is that ANY teacher who cares about his or her students and goes beyond the ‘status quo’ could find themselves in a potentially questionable situation when the verbal “he-said-she-said” game begins. It is situations such as this one that sheds a very harsh light on one of the reasons it’s so hard to find and retain great teachers. When you

149. Letter from Anonymous Neighbor to A. Lewis Lowery, Jr. (Apr. 3, 2003) (on file with Author).

150. Letter from Anonymous Church Congregant #1 to James Haley, Hon. J., Va. 15th Jud. Cir. (on file with Author).

151. Letter from Anonymous Church Congregant #2 to James Haley, Jr., Hon. J., Va. 15th Jud. Cir. (Feb. 17, 2003) (on file with Author).

involve yourself in the lives of your students, hoping to make a difference and to help mold and guide them, you have to go beyond the expected 8AM-3PM day and that is putting everything you have, your personal life, your reputation, your career into jeopardy. Michael routinely chose to do this because he believes so firmly and strongly in the higher purpose of education. Anyone who knows anything about Michael Williams will tell you what a fantastic teacher he is. And I do not believe that Michael ever once thought about the potential risk he was taking by being such a great teacher to his many students.¹⁵²

Fellow teachers have also written in support of their molester-colleagues. For example, twenty-two teachers sent character-support letters to a judge on behalf of New York gym teacher Matthew LoMaglio, who was convicted in 2013 of sexually abusing an eight-year-old student.¹⁵³ Seven teachers wrote letters of support for Neal Erickson, a Michigan middle school teacher who sexually abused a student in his early teens and posted images and videos of the assaults online.¹⁵⁴ One teacher wrote: “Neal has pled guilty for his one criminal offense but he is not a predator. This was an isolated incident. He understands the severity of his action and is sincere in his desire to make amends.”¹⁵⁵ And another wrote: “Neal made a mistake. He allowed a mutual friendship to develop into much more. He realized his mistake and ended it years before someone anonymously sent something in to the authorities which began this legal process.”¹⁵⁶

The mindset depicted above demonstrates how some justify molestation and allow it to flourish.¹⁵⁷ This is the fertile ground for enabling and predatory behaviors.¹⁵⁸ This risk to student safety makes legislation vitally important.

VII. A REVIEW OF EXISTING PASS-THE-TRASH LEGISLATION

Passing the trash, as it is commonly referred to in the field of education, is an unfortunately ubiquitous practice. After a school discovers that one of its teachers is a molester, it quietly passes that teacher on to another school

152. Letters from Anonymous College Friend to James W. Haley, Jr., Hon. J., Va. 15th Jud. Cir. (Apr. 16, 2003) (on file with Author).

153. Perry Chiramonte, *New York Public School Parents Demand Names of Teachers Who Backed Pedophile Colleague*, FOX NEWS (Nov. 23, 2015, 9:48 AM), <https://www.foxnews.com/us/new-york-public-school-parents-demand-names-of-teachers-who-backed-pedophile-colleague>.

154. Larry Sand, *Michigan Teachers and Their Union Support Child Rapist*, CAL. POL'Y CTR. (Dec. 15, 2013), <https://californiapolicycenter.org/michigan-teachers-and-their-union-support-child-rapist/>.

155. Victor Skinner, *Father of Molested Student Talks About His Outrage Toward Seven Teachers Who Supported the Rapist*, EAG NEWS (Aug. 13, 2013), <https://www.eagnews.org/2013/08/father-of-molested-student-talks-about-his-family-anguish-and-his-outrage-toward-teachers-who-supported-the-pedophile/>.

156. *Id.*

157. See Guiora, *supra* note 13, at 144–45.

158. See *generally id.* (discussing the implications and effects of this type of molestation).

instead of taking disciplinary action or informing law enforcement.¹⁵⁹ In exchange for a molester-teacher's resignation, a school promises to keep the teacher's abuse confidential and may even supply a recommendation for said teacher as part of a separation agreement.¹⁶⁰

In 2015, Congress decided to take action against this practice with the enactment of the Prohibition on Aiding and Abetting Sexual Abuse.¹⁶¹ Under this provision:

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.¹⁶²

But while states are federally mandated to have Pass-the-Trash laws in place, less than half have enacted such laws.¹⁶³ States have defied this mandate with seemingly no consequence, and existing legislation has not done what it was intended to do—protect the vulnerable child.¹⁶⁴ Many states seem to have passed these laws not out of a sense of obligation to protect students and a commitment to enforcement but simply as a hollow promise to the federal government so that funds are not lost.¹⁶⁵

Furthermore, only four states have imposed criminal liability for passing the trash: Montana, North Dakota, Texas, and Wisconsin.¹⁶⁶ The rest provide for only civil liability or professional discipline, but this is not enough to deter the enabler.¹⁶⁷

159. *Id.*

160. *Id.*

161. 20 U.S.C. § 7926.

162. *Id.*

163. See U.S. DEP'T OF EDUC., STUDY OF STATE POLICIES TO PROHIBIT AIDING AND ABETTING SEXUAL MISCONDUCT IN SCHOOLS, at 10 (2022), <https://oese.ed.gov/files/2022/06/Study-of-State-Policies-to-Prohibit-Aiding-and-Abetting-Sexual-Misconduct-in-Schools.pdf>.

164. See Billie-Jo Grant et al., *supra* note 84, at 84–85 (discussing various state statutes and their effects).

165. See *generally id.* (discussing federal funds associated with this legislation).

166. See MONT. CODE ANN. §§ 20-7-1321 to -1322 (West, Westlaw through 2021 Sess.); N.D. CENT. CODE ANN. §§ 15.1-19-26 to -27 (West, Westlaw through 2021 Sess.); TEX. EDUC. CODE ANN. §§ 21.006, .0581 (West, Westlaw through 2021 Reg. Sess.); WIS. STAT. ANN. §§ 115.31, 118.07 (West, Westlaw through 2021).

167. See, e.g., COLO. REV. STAT. ANN. §§ 22-30.5-110.5 to -32-109.7 (West, Westlaw through 2022 2d Reg. Sess.); CONN. GEN. STAT. ANN. § 10-222c (West, Westlaw through 2022 Reg. Sess.); MD. CODE

Overview of State Pass-the-Trash Laws

State	Overview of Law
Colorado ¹⁶⁸	If a school employee is dismissed or resigns due to an allegation of a sexual act with a student, the school must notify the department of education; the school enjoys immunity from civil liability for disclosures to a prospective employer of the teacher unless made with reckless disregard for veracity; any agreements suppressing such info are prohibited.
Connecticut ¹⁶⁹	Past employers must disclose sexual misconduct to a prospective employer; the past employer enjoys immunity from civil and criminal liability for disclosures unless they are knowingly false; any agreements suppressing such info are prohibited.
Indiana ¹⁷⁰	Past employers must disclose sexual misconduct to a prospective employer; any agreements suppressing such info are prohibited.
Maryland ¹⁷¹	Past employers must disclose sexual misconduct to a prospective employer; the past employer enjoys immunity from liability for good faith disclosures; willful failure to disclose may result in civil penalties and professional discipline; any agreements suppressing such info are prohibited.
Missouri ¹⁷²	Past employers must disclose sexual misconduct to a prospective employer; the past employer enjoys immunity from civil liability for good faith disclosures; if a district fails to disclose a dismissal or resignation due to allegations of sexual misconduct, the district shall be directly liable to any student or subsequent employer for sexual misconduct by a former employee and "shall bear third-party liability to the employing district."
Montana ¹⁷³	A school employee may not assist another school employee in obtaining a new job if they have probable cause to believe that person engaged in sexual misconduct with a student; violations are a misdemeanor.
Nevada ¹⁷⁴	A school employee may not assist another school employee in obtaining a new job if they have actual or constructive knowledge that the person engaged in sexual misconduct with a student; past employers must disclose sexual misconduct to a prospective employer; past employers enjoy immunity from civil and criminal liability for disclosures unless they are knowingly false; willful failure to disclose may result in civil penalties and professional discipline; any agreements suppressing such info are prohibited.
New Jersey ¹⁷⁵	Past employers must disclose sexual misconduct to a prospective employer; past employers enjoy immunity from civil and criminal liability for disclosures unless they are knowingly false; any agreements suppressing such info are prohibited.

ANN., EDUC. § 6-113.2 (West, Westlaw through 2022 Reg. Sess.); MO. ANN. STAT. § 102.068 (West, Westlaw through 2022 2d Reg. Sess.).

168. COLO. REV. STAT. ANN. §§ 22-30.5-110.5 to -32-109.7 (West, Westlaw through 2022 2d Reg. Sess.).

169. CONN. GEN. STAT. ANN. § 10-222c (West, Westlaw through 2022 Reg. Sess.).

170. IND. CODE ANN. § 20-26-5-11.5 (West, Westlaw through 2022 2d Reg. Sess.).

171. MD. CODE ANN., EDUC. § 6-113.2 (West, Westlaw through 2022 Reg. Sess.).

172. MO. ANN. STAT. § 162.068 (West, Westlaw through 2022 2d Reg. Sess.).

173. MONT. CODE ANN. §§ 20-7-1321 to -1322 (West, Westlaw through 2021 Sess.).

174. NEV. REV. STAT. ANN. §§ 391.875, .890, .920 (West, Westlaw through 33d Spec. Sess.).

175. N.J. STAT. ANN. §§ 18A:6-7.7, .9, .11, .12 (West, Westlaw through 2022).

State	Overview of Law
North Dakota ¹⁷⁶	A school employee may not assist another school employee in obtaining a new job if they have knowledge that the person engaged in sexual misconduct with a student or if an investigation is underway; violations are a Class B misdemeanor.
Oregon ¹⁷⁷	A school employee may not assist another school employee in obtaining a new job if there is reasonable cause to believe that the person engaged in sexual misconduct; violations may result in license revocation or suspension; any agreements suppressing such info are prohibited.
Pennsylvania ¹⁷⁸	Past employers must disclose sexual misconduct to a prospective employer; willful failure to disclose may result in civil penalties and professional discipline; past employers enjoy immunity from civil and criminal liability for disclosures unless they are knowingly false; any agreements suppressing such info are prohibited.
Texas ¹⁷⁹	A school employee may not assist another school employee in obtaining a new job if they have knowledge that the person engaged in sexual misconduct with a student; violations may result in license revocation; a principal must notify the superintendent if an educator is terminated or resigns following an allegation of sexual misconduct with a student, and the superintendent must notify the State Board of Educator Certification of this; failure of a principal or superintendent to do so with intent to conceal is a felony.
Vermont ¹⁸⁰	Past employers must disclose sexual misconduct to a prospective employer; past employers enjoy immunity from civil and criminal liability for good faith disclosures; any agreements suppressing such info are prohibited.
Virginia ¹⁸¹	“The Department of Education and local school boards shall adopt policies” prohibiting a school employee from assisting another school employee in obtaining a new job if there is probable cause to believe that the person engaged in sexual misconduct with a student.
Washington ¹⁸²	Past employers must disclose sexual misconduct to a prospective employer; past employers enjoy immunity from civil liability for good faith disclosures; any agreements suppressing such info are prohibited.
Washington, D.C. ¹⁸³	Past employers must disclose sexual misconduct to a prospective employer.
West Virginia ¹⁸⁴	A school employee may not assist another school employee in obtaining a new job if that agent has probable cause to believe that the person engaged in sexual misconduct with a student.

176. N.D. CENT. CODE ANN. §§ 15.1-19-26 to -27 (West, Westlaw through 2021 Sess.).

177. OR. REV. STAT. ANN. §§ 339.378, .392 (West, Westlaw through 2022 Reg. Sess.).

178. 24 PA. STAT. AND CONS. STAT. ANN. § 1-111.1 (West, Westlaw through 2022 Reg. Sess.).

179. TEX. EDUC. CODE ANN. §§ 21.006, .0581.

180. VT. STAT. ANN. tit. 13, § 1386, tit. 16, § 253, tit. 21, § 306 (West, Westlaw through 2022 Sess.).

181. VA. CODE ANN. § 22.1-79.8 (West, Westlaw through 2022 Reg. Sess.).

182. WASH. REV. CODE ANN. § 28A.400.301 (West, Westlaw through 2022 Reg. Sess.).

183. D.C. CODE ANN. § 38-951.03 (West, Westlaw through June 30, 2022).

184. W. VA. CODE ANN. § 18A-4-22 (West, Westlaw through 2022).

State	Overview of Law
Wisconsin ¹⁸⁵	A school employee may not assist another school employee in obtaining a new job if the individual has reasonable suspicion to believe that the person committed a sex offense against a student; violations may result in license revocation; an administrator who intentionally fails to report an offending teacher to the state superintendent may be fined \$1,000, imprisoned for up to six months, or both.

Notwithstanding the plethora of legislation, the pattern of assaults on students by adults continues unabated.¹⁸⁶ It is for that reason that this Article now turns its attention toward how to address this disturbing reality that endangers the children the state mandates to attend school.¹⁸⁷

VIII. PROPOSED LEGISLATION

Our focus in this Part, building on the preceding discussion, is criminalizing the enabler—an undertaking that legislatures and law enforcement have yet to satisfactorily address.¹⁸⁸ That said, the failure to consistently prosecute molesters similarly demands attention and resolution.¹⁸⁹ The phrase “you can’t have one without the other” is particularly apt.¹⁹⁰

There is a need for legislative response to address the sea of destruction. Legislatures must adopt language clearly incorporating the word “enabler” when discussing mobile molesters. The suggestion that the enabler is a co-conspirator or an aider and abettor is a stretch—criminal law statutes would be hard-pressed to tolerate this because it would not meet the test according to criminal codes.¹⁹¹

To view harm through the narrow lens of commission, rather than through [a] combination of omission and commission, benefits . . . the perpetrator (directly) and the enabler (indirectly); the former because they are

185. WIS. STAT. ANN. §§ 115.31, 118.07 (West, Westlaw through 2021).

186. See Guiora, *supra* note 13, at 174 (stating that harm is still continuing).

187. See *infra* Part VIII (discussing steps the legislature can take to address the issue).

188. See *infra* Part VIII (discussing various states’ approaches and criminalizing enablers).

189. See STEPHANIE D. BLOCK & LINDA M. WILLIAMS, NAT’L CRIM. JUST. REFERENCE SERV., THE PROSECUTION OF CHILD SEXUAL ABUSE: A PARTNERSHIP TO IMPROVE OUTCOMES, at 5 (2019), <https://www.ojp.gov/pdffiles1/nij/grants/252768.pdf>.

190. The phrase is used by Mr. Carl Grapentine, the voice of the University of Michigan Marching Band. Momnach, *Temptation and Hawaiian War Chant - University of Michigan Snare Line - Post Game Show - 8/30/13*, YOUTUBE (Sept. 2, 2013), <https://www.youtube.com/watch?v=uapjU7izgoA>.

191. See CHARLES DOYLE, CONG. RSCH. SERV., R43769, ACCOMPLICES, AIDING AND ABETTING AND THE LIKE: AN OVERVIEW OF 18 U.S.C. § 2, at 1–4 (2020) (defining “aiding” and “abetting” as well as “conspiracy”).

unencumbered in committing their crime, [and] the latter because they will not be held responsible for their decision.¹⁹²

In short, existing legislation is insufficient.

The purpose in reviewing these forms of legislation is twofold. First, . . . existing legislation [already] embraces the idea of criminalizing omission and holding individuals responsible for harms they did not instigate. Second, . . . criminalization of enablers may simply require a different interpretation of current legislation as opposed to a new law.¹⁹³

Existing laws fall into three categories: mandatory reporting, criminal negligence, and accessory after the fact.¹⁹⁴ For the reasons detailed below, each of these categories, as currently executed, is insufficient to curtail enabling behavior; yet, as also discussed below, there are valid criticisms and challenges to criminalizing enablers.¹⁹⁵

A. Mandatory Reporting

Every state in the United States has adopted some type of duty-to-report or mandatory-reporting law.¹⁹⁶ These laws generally require adults in specified positions to report child abuse to law enforcement as soon as they suspect its occurrence.¹⁹⁷ A few states extend liability for mandatory reporting to all individuals regardless of their position or status.¹⁹⁸ However, most states limit those who may be held liable to specific individuals and professions.¹⁹⁹ “While mandatory reporting laws are undeniably a step in the right direction, . . . [they] lack the necessary elements to [be] truly effective.”²⁰⁰ Unfortunately, “sexual assault can occur anywhere and by anyone. . . . Nowhere is exempt, and thus, no one should be exempt.”²⁰¹

“Almost every state restricts mandatory reporting protections to . . . the assault of children. Only a handful of outliers require reporting for all victims when rape [or] abuse is suspected, and even then, only medical practitioners

192. Guiora, *supra* note 13, at 164.

193. *See id.* at 167 (discussing current state laws).

194. *See id.* at 164–68 (explaining the laws and punishments in each state).

195. *See infra* Sections VIII.A–D (discussing the categories of penalties for enablers).

196. *See* CHILDREN’S BUREAU, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT *passim* (2022), <https://www.childwelfare.gov/pubPDFs/manda.pdf>.

197. *Id.*

198. *Id.*

199. *Id.*

200. *See* Guiora, *supra* note 13, at 164.

201. *Id.* at 165.

[must] report.”²⁰² Aside from overlooking the tragic universality of assault and abuse,

[t]his also ignores the well-acknowledged effects that sexual assault can have on an individual’s ability to protect themselves. . . . While the desire to protect the most vulnerable first is understandable, such a restriction simply provides a window for enablers to [disregard abuse of adults]. All states should extend reporting protections to all individuals.

Virtually every state requires immediate reporting to a law enforcement agency or abuse hotline. A few states allow a buffer zone of several days before a report must be made. Given the seriousness of abuse and the continuing danger to the victim, immediate reporting is ideal.²⁰³

Degrees of punishment vary, but failure to comply with mandatory reporting is usually punishable as a Class B misdemeanor.²⁰⁴ This typically entails at least six months in prison.²⁰⁵ Analyzing these factors, perfect mandatory reporting laws would be those that (1) require every adult to report, (2) protect all individuals regardless of age or disability, (3) mandate immediate reporting, and (4) criminalize the failure to report as a misdemeanor with a minimum punishment of at least six months in prison.²⁰⁶

B. Criminal Negligence

“Criminal negligence” is defined as “a material forsaking of expected concern, vital abandonment of required care, or real divergence of appropriate concern” as well as “aggravated, culpable, gross, or reckless conduct that is such a departure from that of the ordinarily prudent or careful person . . . as to be incompatible with a proper regard for human life.”²⁰⁷ Importantly, “criminal negligence” may refer to an independent crime or to *mens rea*—an element of a crime.²⁰⁸

On the surface, this seems sufficient to address enabling behaviors because the conduct—even omissions—“represent[s] a substantial and unjustifiable deviance from the ordinary standard of care each human being owes to each other. Moreover, the crime of negligence is tied to the tort of negligence, which clearly enumerates a general duty of care” that each human being owes to each other.²⁰⁹ Unfortunately, “most states characterize their

202. *Id.*

203. *Id.* at 165–66.

204. *See, e.g.*, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, *supra* note 196, at 26 (noting that institutional failure to report is a Class B misdemeanor in Kansas).

205. *See id.*

206. Guiora, *supra* note 13, at 166.

207. 21 AM. JUR. 2D *Criminal Law* § 121 (2021).

208. MODEL PENAL CODE § 2.02(d) (AM. L. INST. 2020).

209. Guiora, *supra* note 13, at 167 (citing AM. JUR. 2D, *supra* note 207).

criminal negligence statutes [only] in terms of commission, especially as related to homicide.”²¹⁰ This renders criminal negligence useless for holding enablers accountable.²¹¹ However, broad criminal negligence statutes do exist or can be expanded.²¹² Explicitly expanding the definition to include activity that enables molesters would greatly aid prosecution.

C. Accessory After the Fact

“Many jurisdictions criminalize accessories ‘after the fact.’ In general terms, this means aiding or otherwise assisting one who has committed a crime, especially when helping them to avoid punishment.”²¹³ For example, federal law criminalizes an individual who “receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, [a]s an accessory after the fact.”²¹⁴ “On the surface, this seems to describe the enablers . . . who could be said to have assisted those guilty of sexual abuse. Yet again, in application courts have restricted interpretation to actions which involve more overt, physical actions, avoiding . . . application to crimes of omission.”²¹⁵

D. Criminalize Enablers

Given the inadequacy of existing laws and the collective failure to effectively address the enabler, the most effective solution in a determined effort to protect the vulnerable is to update criminal codes by specifically criminalizing enabling actions. It is appropriate to examine the proposed legislation critically. Listed below are some of the arguments against criminalizing enablers and the counterarguments.

Some survivors argue this legislation is potentially harmful to those suffering from abuse. For example, a secretary being abused by her boss may be less likely to report instances of her boss abusing others out of fear of retaliation in the form of more abuse. There is a simple solution to this valid concern: provide immunity to those who are being abused or who are in reasonable fear of abuse by the same abuser. Such a provision would protect victims while continuing to punish individuals like Cardinal Law who were under no reasonable fear of abuse to themselves.²¹⁶

210. *Id.* at 167 (citing ALA. CODE §13A-6-4(a) (2021)).

211. *See* Otto Kirchheimer, *Criminal Omissions*, 55 HARV. L. REV. 615, 637–40 (1942) (explaining how negligence does not work properly in the enabler-liability setting).

212. *See* Guiora, *supra* note 13, at 167.

213. *Id.* at 168.

214. 18 U.S.C. § 3.

215. Guiora, *supra* note 13, at 168–69.

216. *Id.* at 170–71.

Additionally, many individuals, especially those who are employed, may fear institutional retaliation for preventing abuse.²¹⁷ Again, expanding or reinforcing whistleblower protections is a relatively simple solution. “While many such laws already exist, legislators ought to ensure they work effectively and ensure that the public knows they are in place. Institutions themselves also ought to create internal policies to ensure their own protections for whistleblowers.”²¹⁸

Such legislation, some argue, will result in discriminatory prosecution practices.²¹⁹ Indeed, this is a valid concern that needs to be addressed. Prosecution review boards and other efforts can counteract this concern.²²⁰

IX. NEXT STEPS

The ten recommendations below²²¹ are a roadmap that addresses many of the loopholes that currently prevent criminalizing the enabler; implementing these measures would make a significant contribution in more effectively protecting vulnerable children.

ONE: Extend the statutes of limitations on child sexual abuse and sexual assault. The average age at which a victim of child sexual abuse comes forward is fifty-two.²²² Current statutes of limitations benefit the perpetrator and not the victim.²²³

TWO: Enforce Title IX policies by requiring all K-12 schools, school districts, and state departments of education to document compliance and to note the enablers who facilitated criminal conduct.

THREE: Mandate training annually so all school personnel, students, and parents are empowered with prevention education and proper reporting procedures applied to molesters and enablers alike.

Require the Office of Civil Rights to collect data in the Civil Rights Data Collection Project on adult-to-student sexual harassment and sexual

217. Lilia M. Cortina & Vicki J. Magley, *Raising Voice, Risking Retaliation: Events Following Interpersonal Mistreatment in Workplace*, 8 J. OCCUPATIONAL HEALTH PSYCH. 247, 260–61 (2003).

218. Guiora, *supra* note 13, at 171.

219. Mical Raz, *Unintended Consequences of Expanded Mandatory Reporting Laws*, 139 PEDIATRICS PERSPS. 1, 2 (2017).

220. See, e.g., Joyce White Vance, *Want to Reform the Criminal Justice System? Focus on Prosecutors*, TIME (July 7, 2020, 3:55 PM), <https://time.com/5863783/prosecutors-criminal-justice-reform/>.

221. The Author is indebted to Ms. Terri Miller, the president of S.E.S.A.M.E., for suggesting these recommendations.

222. *Child Sex Abuse Statute of Limitations Reform*, CHILD USA, <https://childusa.org/sol/> (last visited Sept. 13, 2022).

223. See *generally id.* (explaining the need for statute of limitation reform).

misconduct and track and trace the enablers that have previously enabled teachers to engage in sexual misconduct.

FOUR: Criminalize administrators, school districts, teacher unions, and any person or organization that enables mobile molesters.

FIVE: Mandate all school personnel, ancillary staff, contracted employees, and volunteers to report child abuse, neglect, and school employee sexual misconduct or grooming and mandate punishment for failure to act.

SIX: Establish a national database to flag offenders, prevent their hiring in schools, and identify those who enabled their criminal conduct.

SEVEN: Mandate states to enact the S.E.S.A.M.E. Act language to mandate thorough employment history reviews of applicants to public, private, charter, and parochial schools of molesters and enablers alike.²²⁴

EIGHT: Repeat fitness examinations and background checks every five years for all certificated, non-certificated, and contracted employees.

NINE: Establish a student protection and prevention act that includes all of the above. Include training mandates, response protocols, victim services, task forces, and district compliance.

TEN: Consider equating enablers of sexual assaults in schools to child sex trafficking; this is particularly relevant given that minors are better protected from being exploited under the Trafficking Victim Protection Act than they are in school because facilitators of trafficking can receive up to a life sentence for trafficking of minors.²²⁵

X. FINAL THOUGHTS

Mr. Sloan's *Eve of Destruction* is, for the survivors, truly a sea of destruction. That is clear from their voices and their recounting, which is filled with pain.²²⁶ The harm caused by the enablers—those who knew of the wrongs committed by teachers and others yet chose to protect institutions and perpetrators—demands attention.²²⁷ While there is no gainsaying the

224. See *Legislation*, S.E.S.A.M.E., <https://www.sesamenet.org/legislation> (last visited Sept. 13, 2022).

225. See 18 U.S.C. § 1591.

226. See *supra* Part V (describing the agony survivors experienced).

227. See *supra* Part V (detailing the harms inflicted on survivors).

consequences of the molester's actions, we must acknowledge that criminalizing the enabler is a necessity.²²⁸ Otherwise, the lack of accountability and consequences will continue unabated.²²⁹

The efforts laid out in Part VII have proven insufficient, if not ineffective.²³⁰ As explained in Parts VIII and IX, there are means for developing the required legislative tools.²³¹ However, it is not enough to legislate. Prosecutors and law enforcement must devote resources to implement criminal codes aimed at those who enable criminal behavior targeting the young and vulnerable.²³² With this focus, it must not be forgotten that children—the victims of teachers and their enablers—are at school because the state mandates their attendance.²³³ In other words, the vulnerable child is in school because the state so orders.²³⁴ It is an extraordinary failure not to prosecute enablers; it is inexcusable.

However, it is important to consider alternative voices that are worthy of our attention even if we disagree with them. While writing this Article, I reached out to survivors from previous writing projects. Amongst the most thoughtful is Peter Pollard, whom I interviewed for my book *Armies of Enablers*²³⁵ and from whom I have learned a great deal. Mr. Pollard was also prominent in the Pulitzer Prize-winning book *Betrayal: Crisis in the Catholic Church*,²³⁶ which served as the inspiration for the film *Spotlight*.²³⁷ While Mr. Pollard and I agree that addressing enablers is important, if not essential, we disagree regarding the means.

Whereas I advocate for legislation intended to criminalize the enabler, Mr. Pollard eloquently suggests alternatives, namely restorative justice approaches.²³⁸ His suggestion reflects, perhaps, a more holistic approach rather than one that imposes significant costs resulting from a criminal prosecution.²³⁹ While I understand the rationale, I respectfully disagree. As discussed at length and in depth in this Article, imposing accountability on the enabler is essential to begin the process of protecting vulnerable children

228. See *supra* Parts V, VIII (discussing consequences and necessary solutions).

229. See SV1's story *supra* Part V (describing the lack of accountability and consequences for their abuser).

230. See *supra* Part VII (explaining how these laws are insufficient and ineffective).

231. See *supra* Parts VIII, IX (explaining the means for developing the required legislative tools).

232. See *supra* Section VIII.D (explaining how prosecutors and law enforcement must devote resources to implement criminal codes).

233. See *Table 1.2, supra* note 28.

234. *Id.*

235. See GUIORA, *supra* note 121.

236. See THE INVESTIGATIVE STAFF OF THE BOS. GLOBE, *BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH* (2002).

237. See *SPOTLIGHT* (Participant Media, First Look Media, Anonymous Content, & Rocklin/Faust 2015).

238. See GUIORA, *supra* note 121.

239. *Id.*

mandated to attend schools.²⁴⁰ Prosecuting the molesters is a step and, as documented in this Article, happens far less than it should.²⁴¹ The reason for that is primarily, but not exclusively, the enabler's decision to abandon the vulnerable child.²⁴²

The proposed measures above provide a clear roadmap of how to do so effectively.²⁴³ Failure to do so ensures that the sea of destruction continues and continues and continues. In the meantime, another child is molested because of an enabler who protected the institution and the perpetrator. Listen to the survivors, and you will realize we need to end this.²⁴⁴

Now.

240. *See supra* Part IX (explaining how imposing accountability on the enabler is essential to protecting vulnerable children).

241. *See supra* Part II (discussing how prosecuting molesters happens far less than it should).

242. *See supra* Part VI (explaining the theme of abandonment).

243. *See supra* Part IX (explaining ten recommendations that would more effectively protect vulnerable children).

244. *See supra* Part II (detailing stories from survivors).