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The Crime of Grooming

Dr. Limor Ezioni[*]

Table of Contents

I. INTRODUCTION

II. THE ACTUS REUS AND THE MENS REA OF CHILD GROOMING

III. THE SUBSTANTIVE OF CHILD GROOMING AS A FELONY

IV. GROOMING THE MINOR'S FAMILY

V. THE CHANGES IN MINORS SOCIAL BEHAVIOR

VI. THE OFFENDER

VII. THE DIFFICULTIES IN PROSECUTING THE OFFENSE

VIII. UNPUNISHABLE THOUGHT OR AN ATTEMPTED CRIME?

IX. A STAND-ALONE OFFENSE OR AN AGGRAVATING CIRCUMSTANCE?

X. A REVIEW OF WESTERN GROOMING LEGISLATION
- A. UNITED STATES
- B. UNITED KINGDOM
- C. AUSTRALIA
- D. CANADA
- E. ISRAEL

XI. CONCLUSION

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I. INTRODUCTION

This essay will examine the phenomenon of "child grooming and sexual exploitation"[1], the act of child grooming as a federal offense in the United States[2], and the changes in the present law in the United States, Israel, and other common law countries. This essay will explore the sources of the recent changes in the United States federal law that have made the act of child grooming a federal offense and will attempt to examine the possibility of adapting these changes and inserting these updated laws into the Israeli Penal Code.

The main idea behind child grooming is to build a stable and reliable relationship, which includes trust between an adult and a minor[3] (under the age of 18), in order to sexually assault the minor in the coming future in the way of contact,[4] or through other means such as introducing the said minor to pornography in order to lay the groundwork for sexual abuse.[5] The offender may be a family member, teacher, employer, or any other adult that may have easy access to the minor's life. Grooming can be attempted and achieved via the internet as an online relationship, or in person.[6]

Worldwide reports[7] have shown an increase in both physical and online grooming and have encouraged the need for effective legislation. The recent changes in the federal law of the United States have turned child grooming into a federal offense in order to prevent future sexual assaults on minors. Also, these changes carry a serious punishment of a minimum of fifteen years imprisonment

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[1]One of the first grooming crimes that was published is the story of Katherine Tarbox, who was a young thirteen years old girl who "fell in love" with her chat room partner who introduced himself as a 23-year-old when he was actually 41. When they arranged a meeting, he sexually assaulted Katherine. Katherine was the first victim to speak about the grooming process that the offender had done and wrote a book about it. See KATHERINE TARBOX, KATIE.COM: MY STORY (1st ed. 2000).

[2]18 U.S.C. § 2251(a) (2006).

[3]Alisdair A. Gillespie, Tackling grooming, 77 THE POLICE J. 239, 242 (2004)

[4]Sana Loue, Legal and Epidemiological Aspects of Child Maltreatment Toward an Integrated Approach, 19 J. OF LEGAL MED. 471 (1998).

[5]Limor Ezioni, Non-Contact Internet Sex Crimes against Minors: A Review through Comparative Law, 4 ATHENS J. OF L. 228 (2018).

[6]Daniel Pollack, Understanding Sexual Grooming in Child Abuse Cases, ABA CHILD LAW PRACTICE TODAY (November 1,2015), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/november-2015/understanding-sexual-grooming-in-child-abuse-cases/.

[7]U.S. Department of Justice, National Sex Offender Public Website, SMART Program. ("Although not all child sexual abuse involves grooming, it is a common process used by offenders.").

and up to thirty years in more severe cases. The federal legislation of child grooming enables someone to be punished for this crime without committing the *actus reus*[8] of the sexual assault. A person may be convicted solely for the act of grooming the minor.

In recent years, awareness of child grooming has increased due to several highly publicized cases which will be discussed in this essay. I will also examine the new legislation in the United States, Canada, England, Australia, and Israel and its effectiveness to protect our children.

II. THE ACTUS REUS AND THE MENS REA OF CHILD GROOMING

The meaning of the word "grooming"[9] is to nurture and take care of a person or an object. Although this meaning typically refers to normal regular acts, when seen in the criminal law perspective this meaning darkens. To groom a minor means to nurture in order to commit a sexual act in person or online in the upcoming future. It is laying out the groundwork for any sexual misconduct with a minor.[10]

According to federal law in the United States, the act of grooming and exploitation of a minor is classified as any form of communication including mailing, personal meetings, and other similar ways of connecting to a person.[11] In state court verdicts and in state legislation, it is possible to encounter acts such as buying gifts for a minor, sharing information, making social media connections, visual and online meetings, and more.[12] These acts were necessary in order to complete the offense. Although these forms of communication with minors are not a crime within themselves, when the offender's intention is to sexually assault the minor, it constitutes the illegal behavior of grooming.

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[8]The acts the offender must commit in order to complete the criminal offense.
[9]*See, Cambridge Advanced Learner's Dictionary*, Cambridge University Press, 2003, *at* http://dictionary.cambridge.org/us/dictionary/english/grooming*; OED Online,* Oxford University Press, Jun. 2017, *at* https://en.oxforddictionaries.com/definition/groom (last viewed on Aug. 5, 2018).
[10]Dan Reed, Leaving Neverland, HOME BOX OFFICE, INC. (March 3, 2019), https://www.hbo.com/documentaries/leaving-neverland.
[11]18 U.S.C. § 2251(a) (2006) ("Any person who employs, uses, persuades, induces, entices or coerces any minor to engage in . . . .")
[12]*United States v. Gonyer*, 761 F.3d 157 (1st Cir. 2014).

Furthermore, in order to charge a person with child grooming, certain criteria need to be met among these acts to constitute the actus reus versus the mens rea, which is the criminal intention of the offender. The offender must have an intention to sexually assault the minor, thus making it harder to prove. Any offender who committed these acts of grooming may claim that these actions are legal and harmless to the minor. Therefore, it is the prosecutor's obligation to prove that the offender's actions are indeed a crime and that the grooming of the minor was done for malicious purposes, even though the minor was not physically assaulted.

In the recent HBO documentary "Leaving Neverland", Michael Jackson had allegedly groomed many young boys and even used money and star power to influence the parents of these boys. Although there is no corroborating evidence that the alleged crime of sexual abuse actually happened, there are: recordings; messages; video footage; and faxes, to show that at the very least – grooming took place.[13]

III. THE SUBSTANTIVE OF CHILD GROOMING AS A FELONY

In the case of *United States v. Gonyer* [14] the Court stated: "In choosing to apply this enhancement, the district court quoted the language of 18 U.S.C. § 2251(a), which, in relevant part, provides for the punishment of "any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in… any sexually explicit conduct for the purpose of producing any visual depiction of such conduct."

It continued: "The trial evidence is that the defendant **befriended**[15] the victim when he was 15, bought him cigarettes, sneakers, a jacket, made trips . . . to shop with him, showed him pornographic movies, and spent about a year grooming the victim during which time he was sexually abusing him before the photographs were taken".

Therefore, it is evident that the act of grooming or befriending as described above, is the core issue in the crime. By taking advantage of a minor through acts that seem normal, it increases the trauma for the minor and often makes it harder for the minor to

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[13]Reed, *supra* note 10.
[14]United States, 761 F.3d.
[15]"Befriended" is one of the ways that described as the grooming process. For example, *United States v. Gonyer.*

realize that he or she has been groomed. In this case, the court described the grooming itself as the time before the defendant physically assaulted the victim as a felony on its own. The thought behind this was that the offender built their relationship with the minor over the course of an entire year and manipulated[16] the minor in order to sexually attack him in the near future. Therefore, the purpose of this legislation is to protect minors from grave harm[17] and emotional exploitation that can occur when a closely related or trusted adult is using the minor. In the case of Michael Jackson, two trials took place. The first one in 1993 and one more recently in 2004-2005[18], *The People of the State of California v. Michael Joe Jackson*.[19] Jackson was accused of several counts of the following felonies:[20] conspiracy,[21] child abduction,[22] false imprisonment,[23] extortion,[24] lewd act upon a child,[25] attempt to commit a lewd act upon a child,[26] administering an intoxicating agent to assist in the commission of a felony,[27] and child molestation.[28] In a 2003 documentary, "Living with Michael Jackson"[29], the audience has a front-row seat to what grooming looks like. Jackson himself highlights how he grooms his unsuspecting victims and their parents with his stardom.[30] Many pedophiles fail to see grooming as abuse, they do not understand that holding hands and discussing sleepovers

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[16] " A difficulty here is that sexual abuse and assault does not always, involve violence in the crude sense. Victims of such crimes are often manipulated, **groomed** and may truly believe they love their abusers and that they are loved in return by them" Kim Harrison, Time for Change, *New Law Journal*, Vol. 168 Issue 7785, p15.

[17] *See*, for example, victim of grooming who was under the age of 18, shared his feelings and damages from the crimes that the offender has done in the case, *Penton v. United States*, 2013 U.S. Dist.
https://archives.fbi.gov/archives/mobile/press-releases/2009/mo071509a.htm
(The Federal Bureau of Investigation, last viewed on Sep. 24, 2018).

[18] https://la.utexas.edu/users/jmciver/357L/Jackson/Michael%20Jackson%20indictment.pdf

[19] *Id.*

[20] *Id.*

[21] Violation of Penal Code § 182(a)(1).

[22] Violation of Penal Code § 278.

[23] Violation of Penal Code § 236.

[24] Violation of Penal Code § 518.

[25] Violation of Penal Code § 288(a).

[26] Violation of California Penal Code § 664 and § 288(a).

[27] Violation of Penal Code Section 222.

[28] Violation of Penal Code § 288(a).

[29] Shaw J. (Director). 2003. Living with Michael Jackson: A Tonight Special (Documentary film). United States: Technical Specs.

[30] *Id*.

with a minor is a crime.[31] Michael Jackson flaunted his love for children openly in documentaries which led to investigations but there were no indictments; partly because the law was not fully developed yet when it came to these types of crimes.[32]

IV. GROOMING THE MINOR'S FAMILY

Child grooming, a felony, refers to the manipulative process that he offender creates to commit a sexual assault of a minor. To do so, the offender must groom the minor and make the minor believe his intentions are genuine and in the best interest of the minor. One of the results of grooming is providing the offender with a calculated attack that may continue for a prolonged period. In some cases, in order to complete the grooming process and execute the assault, the offender may also groom the minor's family and manipulate them as well. In the case of *Perez v. State*,[33] the offender (who committed a sexual assault) was the victim's uncle, and by these means succeeded to groom her easily. The uncle took his niece on a vacation to Las Vegas, and due to his proximity to the victim's parents, her grooming process and that of her family seemed harmless and natural. The grooming process executed in this case, was done to gain the unsuspecting parents' trust, and in turn, the parents allowed the minor to go on vacation with her offender. When grooming of a family[34] is involved, it makes it harder to recognize that the offender is planning to assault the minor or may already be involved in nefarious behavior with the minor. By doing this, the offender tries to build a safe space to commit the crimes in a way that may seem harmless and innocent to the minor's guardians.

In "Leaving Neverland", we can hear about the alleged grooming of the entire family. We understand from the documentary that Michael Jackson mostly targeted lower-income families and offered them a better lifestyle and potential future careers for their

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[31] *Id.*

[32] Rolling Stone magazine January 29, 2019 McDonell-Parry A. https://www.rollingstone.com/culture/culture-features/michael-jackson-child-sexual-abuse-allegations-timeline-785746/

[33] *Perez v. State*, 129 Nev. 850, 313 P.3d 862 (2013).

[34] It has been pointed out that grooming is often more than this, and can involve the grooming of other family members, the child's parents and their physical environment." See, Alisdair A Gillespie, The Electronic Spanish Prisoner: Romance Frauds on the Internet, *Journal of Criminal Law UK,* Vol. 81 P217.

talented children.[35] Some may view this as done innocently with goodhearted intentions, while others may see it as a clear case of family grooming.[36] Since the accused is no longer alive and was never convicted, the truth will remain a mystery unless evidence arises in the future.

V. THE CHANGES IN MINORS SOCIAL BEHAVIOR

In the past two decades, there have been changes in the social behavior of minors. These changes are related to the increase in internet usage and social networking platforms, such as: Facebook, Instagram, Snapchat, online chat rooms, video games, and other media communication tools.[37] Minors today tend to get more involved in social media connections than face-to-face interactions. Thus, allowing them to meet new people and connect with their friends without leaving their homes. Almost every minor today is using a smartphone and is connected to social media.[38] This makes it very easy for a minor to get to know people worldwide, while decreasing social awareness to the potential dangers lurking behind every new connection they make. Research conducted in the United States has shown that minors tend to use the internet about seven and a half-hours a day.[39]

Minors today also demand their own privacy and independence more so than in the past. They can easily lock their cellphones and erase internet history to avoid their parents' watchful eye. As a result, they meet strangers online, befriend them and get their socializing needs met from social media, social networks, and anonymous people over the internet. They can build an entirely new online community, which gives them easy access to each other. But also, leaves them vulnerable to encounter potential predators that can disguise their true intentions.

While modern technology provides minors with easy access to an entirely new community, the same holds true for predators. For the offender, technology makes the act of grooming convenient and

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[35]Abraham N. (Producer), & Reed, D. (Director). 2019. Leaving Neverland (Documentary film). United States: Home Box Office.
[36]*Id.*
[37]Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review, The Int'l Ctr. for Missing & Exploited Child., 1, 2 (2017).
[38]*Id.*
[39]Victoria J. Rideout et al., Kaiser Family Foundation, *M2: Media in the Lives of 8- to 18-Years-Old 2*, Jan 1, 2010, https://www.kff.org/wp-content/uploads/2013/04/8010.pdf (last visited Sep. 5, 2018).

somewhat effortless by giving them direct access into a minor's world. Research has shown that people tend to act differently in person than they do online. During an online conversation, minors tend to freely share facts about themselves that they would not normally share in person.[40] A research conducted in the United Kingdom has shown that it takes less than eighteen minutes to sexually assault a minor online by manipulating and persuading the minor.[41]

The internet revolution has made a significant impact on minors, including the way they behave and the way they think. This makes it much easier for sex offenders to mark their targets, find the most vulnerable prospects, and abuse them. During the past two decades, many governments have established that a minor has his or her own needs and rights[42] and as such, new legislation was passed regarding child grooming and vicious, lewd, lascivious conduct. Today, minors have more physical and online independence thus making them easier targets than was seen in the past.

VI. THE OFFENDER

While the myth of random sexual attacks becomes more rampant than the premeditated ones, statistics provide us with a completely different picture. Most of the sexual assaults of minors seem to be committed by a person close to the minor.[43] The offender can be a family member, teacher, spiritual guide, neighbor, family friend, employer, or any adult that is connected to the victim in some way.[44]

According to the grooming offense, the offender must have the intention and the motive to sexually attack the minor in the future.

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[40]*See*, Neil Malamuth et al., *The Internet and Aggression: Motivation, Disinhibitory, and Opportunity Aspects*, in The Social Net: Understanding Our Online Behavior 163, 176 (Yair Amichai-Hamburger ed., 2013).

[41]David Finkelhor, Kimberly J. Mitchell & Janis Wolak, Nat'l Ctr. for Missing and Exploited Children, *Online Victimization: A Report on the Nation's Youth*, Jun.2000, http://www.unh.edu/ccrc/pdf/Victimization_Online_Survey.pdf (last visited Sep. 24, 2018).

[42]Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

[43]*See*, Annie Cossins, *Time Out for Longman: Myths, Science and the Common Law*, 34 Melbourne U. L. Rev. 69, 105 (2010).

[44]*See*, for example, *Perez v. State*, 129 Nev. 850 (2013) (an uncle); *United States v. Colbert*, 1997 CCA LEXIS 251 (a step father); *United States v. Gonver*, 761 F.3d 157 (1st Cir. 2014) (an employer); *Morris v. State*, 361 S.W.3d 649 (Tex. Crim. App. 2011) (father of boyfriend's victim).

The difference between a random sexual attack and an attack which involves grooming is that the latter may take place over an extended period and involve a variety of tactics. In this case, the offender is trying to set the stage for a prolonged assault.[45] The offender diligently manipulates the victim, convincing him that a solid bond exists between them.[46] The offender will wait patiently and take the time to build a strong connection and gain the victim's trust. Over time, they will manipulate the minor into believing they are in love or that their relationship is *special* for the sole purpose of breaking down the minor's resistance to future acts.[47] In many grooming cases, as noted earlier, the offender will also manipulate the victim's family. Thus, making it more difficult to discover impropriety and even more difficult for the victim to realize that the offender has groomed them.[48]

VII. THE DIFFICULTIES IN PROSECUTING THE OFFENSE

As the grooming offense pertains to a situation when the offender has the *intention* to commit a sexual assault of a minor, the subtext of the federal law[49] refers to the idea or thought.[50] When a *thought crime*[51] is the felony, it makes it more difficult in many ways to determine when the crime started – Was it when the offender met the minor? When physical contact began? During the grooming process prior to the assault?

From a constitutional perspective, the new law is trying to prevent the offender's intention from coming to fruition, but is it realistic to prosecute people for thinking of committing a crime? Are

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[45]Alisdair A. Gillespie, *Tackling Grooming*, 77 The Police J., 239, 248-249 (2004).
[46]LEAVING NEVERLAND (Home Box Office Jan. 25, 2019) (Jimmy Safechuck and Wade Robson to this day claim that they were in love with Jackson and their love was unique).
[47]Kim Harrison, *Time for Change*, 168 New L. J. 7885 15 (2018).
[48]Alisdair A. Gillespie, *The Electronic Spanish Prisoner: Romance Frauds on the Internet*, 81 J. Crim. L. 217 (2017) ("It has been pointed out that grooming is often more than this, and can involve the grooming of other family members, the child′s parents and their physical environment.").
[49]18 U.S.C. § 2251 (2006).
[50]Alisdair A. Gillespie, *Tackling Grooming*, 77 The Police J., 239, 248-49 (2004).
[51]*See*, Adam J. Kolber, *Two Views of First Amendment Thought Privacy*, 18 U. Pa. J. Const. L. 1381, 9 (2016) (definition of a thought crime: "crime defined in terms of mental states alone without reference to an action.").

thoughts punishable in the eyes of the law?[52] Researchers have questioned and have tried to analyze whether this offense is a stand-alone offense or must it be connected to the outcome of the assault.

VIII. UNPUNISHABLE THOUGHT OR AN ATTEMPTED CRIME?

There has been a great deal of legal research conducted and guidelines established that determine when the attempt of a committed crime can be criminalized.[53] In attempts, it is clear that the main act leads to the outcome in a particular case. [54] In grooming offenses, the outcome is not always as clear and predictable. In the offender's mind, the intention of completing the act is not always as predictable as in other offenses. In order for the grooming offense to be completed, the offender must make it to the final step that will lead to the result.[55]

In order to complete the grooming offense, the offender needs to manipulate the victim to attack them in the future. Sexual deviants are like patient predators willing to stalk their prey for years before the abuse commences.[56] However, if the execution of the sexual assault has not happened yet, is it possible to charge the offender for the thought?[57] The mens rea in the offender's mind exists, and the minor has been manipulated, opening the door for the offender to attack. However, if the outcome was not a direct assault, are we dealing with the attempt of a crime or an unpunishable thought? It is extremely difficult to determine the correct answer when it comes to the grooming offense.

One of the main rules in the principle of legality is that the law must be clear, and the prohibited act is to be known to the public.[58]

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[52]*See also*, for example, *Id.* at 10.
[53]*See*, Gideon Yaffe, *Criminal Attempts*, 124 Yale L. J., 92, 95 (2014) (arguing that an attempt can be criminalized under a few circumstances and theories such as: the transfer principle and more in trying to make the criminalized attempt more clear).
[54]*Id.*
[55]*Id* at 96.
[56]Alisdair A. Gillespie, *Tackling Grooming*, 77 The Police J., 239, 243 (2004).
[57]Identifying a felony as a thought crime raises the difficulties of charging someone for a crime that hasn't been committed yet, *id.* at 248.
[58]Heyward D. Armstrong, *Rogers v. Tennessee: An Assault on Legality and Due Process*, N.C. L. Rev. 317, 322 n.40-41 (Dec. 2002) (explaining Stanislaw Pomorski's description: the principle of legality is based on four independent, though strictly connected rules: the first one- "no crime without a law." By this well recognized principle many governments have set to their goal to set clear laws and prohibitions).

Grooming, as described in federal law, refers to acts which are prohibited when the intention of the offender is to commit one of the sex crimes against a child. However, is it possible to commit the act without any physical assault? The answer is yes.

The acts by themselves are not a crime and doing them without intent can cause no harm. In that case, how can a minor, his guardians, or the authorities realize that the minor is being groomed prior to the attack and how does the principle of legality become integrated with the grooming offense without violating basic human rights? These questions are the main legal issues that the grooming law is battling. By legislating this law, the governments who use it have set a goal to decrease optional sex crimes, particularly in cases involving children when grooming occurred prior to the abuse.[59]

A balance must be found between prohibiting seemingly natural behavior and the devastating outcome of a sexual attack on a child from these acts. It seems that protecting the minor from damage and preventing sex crimes by prohibition has gained traction in recent years.[60] When trying to categorize the acts that may prove that grooming has occurred, some suspicious signs may arise which include incessant touching by the adult, showing too much concern, trying to isolate the child, etc. These actions provide grounds to prove the act of grooming has been attempted.[61] In a way, both attempt crime and thought "crime" show intent. Therefore, it may be best to adopt a "better safe than sorry" attitude especially in ambiguous cases where history of sex crimes or abuse have prevailed in the family's past. For the sake of protecting minors, the law must prohibit acts that seem natural but could endanger a minor, and parents must be ever vigilant when allowing adults to get too close to them and especially their children.

IX. A STAND-ALONE OFFENSE OR AN AGGRAVATING CIRCUMSTANCE?

In United States federal law,[62] the grooming offense is described as a stand-alone offense that if completed, the offender

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[59]Austl. Leg., *Crimes Amendment (Sexual Procurement or Grooming of Children) Bill 2007*, 1, 1 (2007).
[60]*Id.* at 4.
[61]*See*, *Perez v. State*, 129 Nev. 850, 854-55 (2013) (Dr. John Paglini's testimony, which explains that these kinds of acts are part of a method of probing the minor's resistance to engage in sexual behavior).
[62]18 U.S.C. § 2251 (2006).

will be punished. The law provides Federal courts the opportunity to put on trial any offender that might be recognized as committing the act of grooming. In most of the verdicts where the offenders were charged for grooming, the outcome referred to the offense was different and not always constant.

Due to the difficulties in recognizing the grooming before the assault, all cases that were prosecuted in court were post-attack and after the sex crime was committed, forcing the judges to use different approaches to the cases. For example, in one case,[63] the Court referred to the offender as if the sexual assault began immediately after the offender approached the victim and started the grooming process.

In a different case, the court punished each crime separately.[64] The differences in the judges' view of the offense can be connected to the unclarity of the federal law. In each case, the court tried to optimize the law by using the offense differently to find which is best suited for each specific case. As such, jurisprudence elevates the offense to the status of an aggravated circumstance more than a stand-alone offense. Consequently, the difficulties that abound in charging someone and proving in court that grooming did indeed occur can be arduous and make it extremely challenging to prosecute as a stand-alone offense.

At present, it is still to each judge's official discretion to interpret each case, and custom fit the law to the situation. For example, acts that can occur that may seem like grooming include an adult who seems overly interested in a minor, an adult that may lie about their age, and someone who can testify about the adult's intention or past convictions that may lead to the idea that the adult in question has a sexual interest in minors.[65]

These examples, in accordance with the law and the criminal procedure, can lead to a conviction in the grooming offense due to the right of judicial interpretation of each case by itself. Allegedly, the grooming offense is a stand-alone offense and it is possible to prosecute someone of it alone. However, the most common way of applying it is as an aggravating circumstance where the main assault already occurred and not while the grooming is still in process.

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[63]*United States v. Gonyer*, 761 F.3d 157 (1st Cir. 2014).
[64]*Penton v. United States*, 2013 U.S. Dist. LEXIS 162325 (M.D. Ala. Sep. 19, 2013).
[65]11 Daniel Pollack & Andrea MacIver, *Understanding Sexual Grooming in Child Abuse Cases*, 34 ABA Child L. Prac. 161, 166 (Nov. 2015).

X. A REVIEW OF WESTERN GROOMING LEGISLATION

While the awareness of child grooming is growing, many governments have legislated anti-grooming laws[66] attempting to combat the phenomenon and prevent minors from being manipulated and assaulted. Moreover, it has come to light that much of the grooming process can be conducted even from a different country when the grooming happens online. This has forged a path for new legislative changes that reflect the new perils that shape our society today. I will explore four chosen countries that have made this legislative change: Australia; Canada; United Kingdom; and the United States. In addition, I will be writing about a country where that change is still in process, Israel.

A. THE UNITED STATES

As examined in this essay, the federal law in the United States[67] was legislated in December 2006, which lead many other countries to legislate a form of anti-grooming law.[68] Since this law came to pass, most of the verdicts which included grooming were in cases where a sexual attack had already been committed, and the judge's interpretation was different in each case. The awareness of the process of grooming in the United States has significantly increased and has become more widely known and discussed and has seeped into society's subconscious. Many childcare services and education centers are now guiding minors and supervisors on how to manage and prevent potential grooming.

B. THE UNITED KINGDOM

Section 15 of the Sex Offences Acts of 2003[69] states that any offender that tries to arrange a meeting with a minor for the purpose of sexually assaulting said minor could be charged a minimum term in prison of six months, and up to ten years in more extreme cases. The legal description of grooming is when the offender tries at least twice to arrange a meeting with a minor, provided that the offender

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[66]*Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review*, The Int'l Ctr. for Missing & Exploited Child., 1, 39-56 (2017).
[67]18 U.S.C. § 2251.
[68]*For example*, Ark. Code § 5-27-307 (2017).
[69]Sexual Offences Act of 2003 § 15 (U.K.).

is eighteen years of age or older. Moreover, the law refers to international offenses as well, for situations where the offender is not located in the United Kingdom during the grooming process for cases that may occur on the internet or social media via smartphones, chat rooms or any other communication tool.

The law determines that this kind of offense, one that can be committed from anywhere in the world, could be prosecuted as an offense under this law. Furthermore, the government tries to increase awareness of child grooming by using the education system and the internet as well.[70] "Stranger danger", which was taught decades ago in primary schools, is now taking center-stage once more because of the technological advances and the dangers that lurk behind screens thereof.

C. AUSTRALIA

Australia is a signatory to the 1989 convention on the rights of the child.[71] In December 2007, the Australian government legislated the anti-grooming law in their Crimes Amendment.[72] The law sets the prohibition and the punishment level, referring to the victim's age,[73] and grooming for unlawful sexual activity. The Australian law is clear and can provide anyone with perspective on the prohibition and situations that constitute grooming for unlawful sex crimes as well as the punishment for doing so.[74] In the bill, grooming is described as any activity or conduct that may prepare and encourage a child into sexual activity with an adult.

One interesting discussion about the evidential aspect of the grooming offense was discussed in the Victorian Supreme Court of Appeal, in an unreported judgment. In the appeal of two trials,[75] a man was accused of committing sexual assault on his niece and on his wife's cousin. The courts, in two jurisdiction levels, found him guilty for the sex offense that was referred to him. In the unreported judgment of the case, one of the judges raised the difficulties in

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[70]*Grooming*, NSPCC, https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/grooming. (lasted visited Sept. 24, 2018).
[71]Austl. Leg., *supra* note 59, at 3 (The sign of Australia created the obligation to protect children from "all forms of sexual exploitation and sexual abuse").
[72]*Crimes Act 2007* (N.S.W.) s 66EB(3) (Austl.).
[73]*Id.* (grooming a child under the age of fourteen - imprisonment of twelve years. Grooming a child under the age of 16- imprisonment of 10 years).
[74]*Id*.
[75]*CMG v. The Queen* (2013) 46 VR 728 (Austl.).

proving that in addition to the sexual assault, a child grooming and "inappropriate sexualized behavior was committed as well."[76]

Nevertheless, it is reasonable and makes sense that if a sexual assault was committed, this act was facilitated by the defendant developing a relationship with his victim before the assault. The court, who tried to simplify the grooming offenses, gave examples of the types of behaviors that typically indicate grooming: more frequent visits and spending more alone time with complainants. In this case, the defendant was convicted in two separate trials of several sex offenses and indecent acts but was not convicted under the child grooming offense due to the difficulties in proving it.[77]

D. CANADA

The Canadian Criminal Code, Law Section 172 .1. (1),[78] refers to luring a child by using a computer or any other telecommunication that could lead to an offense. The Canadian law pertains, in general, to the commission of a crime against a minor and covers more than sex crimes. The Canadian legislation encompasses a wider scope than the law in the United States, Australia and the United Kingdom. One of the purposes of the anti-grooming law is to compete with the new techniques and technologies used by predators to attack children, and it appears that the Canadian law provides a solution for these types of cases. Notwithstanding, it does lack in crimes which involve grooming victims in person.[79] The law was first legislated in 2002 and few changes were made to it since then. The law protects minors from online attackers or abuse by means of technological devices while ignoring the real and present dangers of child grooming in person.

The Canadian courts, through all the jurisdiction levels, discussed the child luring offense over thousands of cases since the law was first legislated. In the case of Craig Bartholomew Legare,[80] who was convicted of child luring by computer, then appealed to the Supreme Court of Canada, Legare attempted to commit a sexual offense on a minor who introduced herself as thirteen years old while being twelve years old. The Defendant approached her in a private online chatroom, and the two continued their conversation

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[76]*Id.* at 185.
[77]*Id.*
[78]Canada Criminal Code, R.S.C. 1985, c. C-46, s. 172.1.
[79]*Id.*
[80]*R. v. Legare*, [2009] 3 S.C.R. 551 (Can.).

outside the chatroom via E-mail and telephone. The conversations, as discussed in the case, had a sexual nature. During their conversations on the telephone, Legare asked the complainant to send him photos of herself. Additionally, he told her that he would like to engage in oral sex with her and the complainant hung up immediately. In Legare's case, two of the jurisdiction levels have found him guilty for the offense of child luring and convicted him for it.[81]

E. ISRAEL

The current Penal Code in Israel does not include references to any sort of grooming offense. The Israeli Criminal Code, Sex Crimes Chapter Article 350,[82] refers to a situation when any action has been done by or for the offender or has been done for someone in the sexual context while being facilitated by the accused in question. The purpose of this article extends to criminal liability that the offender can be accused of manipulating someone to commit the act for them or on their behest without physically doing anything themselves.[83] However, the prosecution must prove the actus reus and that the offender has *mens rea*. The law demands a necessary level of criminal intent for the offender to be prosecuted to the full extent of the law.[84] In furtherance, to prove grooming according to Article 350, the *mens rea* must be intent.[85]

Per contra, one difficulty with prosecuting this offense is that clear evidence must be presented that the process of grooming leads to the crime, specifically the sexual attack itself.

There is a great need for a specific anti-grooming law in Israel. One that reflects on a new world and the new dangers that arise that can harm and jeopardize children's well-being and safety. When a lawyer or a judge presents any alleged sex crime, there must be an investigation into the potential of the grooming process prior to the commission of the felony.[86] This will help understand the full nature of the offense and allow for a complete picture of the alleged

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[81] *Id.*
[82] Penal Code, 5737-1977 s. 350 (Isr.).
[83] Draft Bill Amending the Penal Code, 5737-1977, HH 1246 No. 22 (Isr.).
[84] Penal Code, 5737-1977 s. 19-20 (Isr.).
[85] Penal Code, 5737-1977 s. 20(a) (Isr.).
[86] *See, CMG v. The Queen* (2013) 46 VR 728 (Austl.). Discussing the fact that in order to commit a consist sexual assault, the offender must groom the minor. Unfortunately, it is not always possible to prove. In the Victorian Supreme Court of Appeal in Australia, the judges claimed that in order to commit such sexual assault, grooming must be involved.

damage and extent of the allegation. Until a specific law is legislated into the Israeli Penal Code, the use of the law Article 350 can provide a temporary alternative by using extended liability and imagination to appropriately interpret the acts that lead to the attack after the fact.

A recent case in Israel[87] involved an employer who employed two minors, ages fifteen and thirteen respectively. This case brought attention to the act of grooming with the intent to attack and sexually abuse. The employer used text messages regularly to communicate with his intended victims bought them expensive gifts, cigarettes, and food and manipulated them in order to gain their trust and abuse them thereafter. In this tragic case, he used the teenagers for unlawful sexual acts which included oral sex. The grooming process took place over several weeks until he was able to commit the heinous acts. He was convicted and the verdict[88] referred to the planning by the offender and the steps taken by him to reach the point of exploitation of the minors. Due to the grooming, the offender was sentenced to six years imprisonment, a penalty which is close to the maximum level that the law provides for these offenses in Israel.

XI. CONCLUSION

As analyzed in this essay, it is apparent that the grooming offense requires a set of laws that can effectively handle the complexity of sexually based crimes. These crimes continually transform and give rise to new threats with devastating consequences that emotionally and mentally harm children for their entire life. This new type of offense utilizes modern technology and can spread rapidly. In contrast, the laws for these heinous offenses cannot keep pace, let alone catch up. Predators are quick to take advantage of our rapidly evolving technology, coupled with the newfound freedom and independence minors have today and use it as a weapon to intentionally assault and harm them.

The grooming offense is still far from being perfect and it needs to be further implemented by lawyers, judges and the authorities. In the case of the grooming offense, much still needs to be understood and learned to fully use this law to protect children prior to the commission of the crime. For now, it is commonly used to raise

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[87]CrimC (TA) 25707-07-17 State of Israel v. Moshe Fisher, (2018) (Isr).
[88]*Id.* at 5-6.

awareness, and this is the first step of hopefully many more in the future.

By understanding the importance of such a law, it can be used worldwide as seen in multiple court cases in Israel which highlights how critical and instrumental such a law would be. Grooming is a crime that not only causes physical harm to a child, but this immoral act can stain a minor's soul for life; it is like a hungry beast that the law must fight. Legislation, coupled with awareness, can combat the phenomena of child grooming and pedophilia in Israel and worldwide.