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Amos N. Guiora

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SEA OF *DESTRUCTION*¹: LEGAL AND SOCIAL FORCES ENABLING SEXUAL ABUSE OF CHILDREN

Amos N. Guiora²

*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 destruction³*

I. INTRODUCTION

For survivors of sexual assault, protecting perpetrators and institutions casts survivors into a sea of destruction. The anger P.F. Sloan articulated when penning the *Eve of Destruction* and that Barry McGuire brilliantly conveyed when singing, echoed what survivor after survivor shared when recounting their pain.

The words, “truth,” “regulation,” “legislation,” “human respect,” and “too frustratin’” reverberate throughout this article. To speak the truth and then be

¹ This phrase is a play on the iconic song *EVE OF DESTRUCTION* (Dunhill Records 1965); see Barry McGuire - Topic, *Eve of Destruction*, YOUTUBE (Aug. 5, 2018), https://youtu.be/_38SWIIKITE, words by P.J. Sloan, <https://www.theguardian.com/music/2015/nov/17/pf-sloan-1960s-eve-of-destruction-secret-agent-man-bob-dylan-jimmy-webb>.

² Professor of Law, S.J. Quinney College of Law, University of Utah and member of the S.E.S.A.M.E. Board of Advisors (https://www.sesamenet.org/about_us). I owe many thanks to many people, some who can be named, others who cannot. No bigger thank you is due than to my research assistant, Ashlin Gates (JD expected May 2023) for her contribution, dedication, and commitment to this undertaking were of the utmost importance. Ms. Gates was a recipient of the College of Law’s “Quinney Research Fellowship,” a most prestigious award, under the guidance of my colleagues, Professor Ross McPhail and Professor Kerry Lohmeier. My thanks to Professor Kerry Lohmeier for her research assistance. I am deeply indebted to S.E.S.A.M.E. (<https://www.sesamenet.org>) and its remarkable President, Ms. Terri Miller, who encouraged survivors to contact me. Dr. Billie-Jo Grant generously and graciously shared data she painstakingly gathered over the years; her collegiality was essential to this undertaking. In addition, Dr. Grant shared with us letters written on behalf of perpetrators which are included in the article. Also, my thanks to Mr. James Faluszczak (<http://childsexassaultjustice.com/our-consultant/>) for his invaluable insights regarding the Catholic Church. Many thanks to Dimple Gupta for her insights and generously sharing very relevant material. A special thanks to Rebecca Bodington for her invaluable editing.

³ *Eve of Destruction*, GENIUS, <https://genius.com/Barry-mcguire-eve-of-destruction-lyrics> (last visited Nov. 27, 2021). This song was written by P.F. Sloan and performed by Barry McGuire.

dismissed by those positioned to protect generates the sea of destruction. The voices of survivors reveal the terrible consequences of mobile molesters and their enablers whose actions pave the way for continued assaults. The survivors' voices convey pain and abandonment, and while not an easy read, demand attention and action.

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—mobile because they move from child to child and school to school, all with the blessing of adults who are supposed to be protecting the child. According to news reports, in 2015, at least 498 teachers and other school workers were arrested for sexual misconduct with children.⁴ That is almost three per school day.⁵ Even worse, in addition to the initial attack by the molester, the child is subsequently re-attacked by others whose aim is to protect the perpetrator and institution: bystanders, teachers, principals, special interest groups, government bureaucrats and politicians.

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

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

This article intertwines survivor voices with data on school molesters to inform legislation to criminalize enablement. These three elements carry through the following Sections:

- I. Introduction;
- II. Enablers and Molesters;
- III. Literature Survey;
- IV. Schools in the US and Canada;
- V. The Voices of Survivors;
- VI. Letters in Support of Molesters;
- VII. Review of Existing “Pass the Trash” Legislation;
- VIII. Proposed Legislation;
- IX. Next Steps; and
- X. Final Thoughts.

⁴ Molly M. Henschel & Billie-Jo Grant, *Exposing School Employee Sexual Abuse and Misconduct: Shedding Light on a Sensitive Issue*, 28 J. OF CHILD SEXUAL ABUSE 26 (2019).

⁵ *Id.*

II. ENABLERS AND MOLESTERS

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

Enablers protect the teachers, coaches and administrators who assault vulnerable school children, children who are mandated by state law to attend school. Focusing on the enablers holds them accountable for their actions and significantly curtails molesters’ ability to harm. To protect these children, this article proposes creating mechanisms to criminalize enabling behavior.

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

Different suggestions have been proffered for this recurring failure. Teacher unions and political interests have played an important role in this failure.⁶ According to this theory, teacher unions prioritize protecting teachers rather than vulnerable children and have been able to successfully lobby politicians accordingly.⁷

As documented in Section VII, legislators have sought to protect vulnerable school children. While those efforts reflect commendable legislative intent, harm continues unabated. 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 children through the age of 16 to attend school. School is not a voluntary activity.

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

⁶ 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/>; SB 1456 opposition letter from Toni Trigueiro, Legis. Advoc., Cal. Tchrs. Assoc. 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>.

⁷ See *id.*

perpetrator and institution wield significant authority over the victims. The crimes are committed by those responsible for the safety and well-being of the victims. In fact, as discussed in Section VII, children are owed special duties of care in these environments. 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.

This article proposes a way forward, by criminalizing enabling actions that ensure the molester continues unabated. Hearing the voices of the survivors casts a harsh spotlight on the enablers. This article includes their voices for one primary reason: to galvanize society to act on behalf of the survivors and to ensure punishment of the enablers.

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.⁸

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

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

The cases discussed in the pages ahead are not the stereotypical (and less frequent) stranger rapist in the back alley. In this (more common) predation scenario, molesters knew their victims. They groomed them. Then they raped, assaulted and abused them in their offices, in classrooms, and at their homes. These places should have been safe. The lack of safety was a direct result of enablers determined to protect the institution, thereby ensuring the continued and unremitting vulnerability of minors. In protecting the institution, the enablers protected the molesters. In doing

⁸ Email from survivor in my notes.

so, they ensured the molester could slither away, only to re-appear at a different institution where the pattern would repeat itself.

The survivors in this article were largely in their teens, vulnerable to predatory charms, advances, soothing words and comforts. While there must be no doubt regarding the criminal actions of those who raped, assaulted and abused children, they are not the focus of this article. That is left to others, primarily police, prosecutors, and the courts. The need to penalize and sanction child rapists is codified in the law and is beyond the scope herein. What demands attention is the behaviors that allow and embolden the molesters: an institutionalized system that operates akin to a finely tuned machine. This relationship, perhaps symbiotic, defines the interaction between enablers and molesters and is the rationale for recommending acting decisively against the enablers.

Enablers are school principals, teachers, coaches, nurses and other senior officials. In other words, the very people whose primary—if not exclusive—obligation was to protect the vulnerable minor. Individually and collectively, they failed.

Adjectives such as nefarious and devious are appropriate when discussing both actors. Fifteen-year-olds were forced unaware into a boxing ring against a coordinated team of molester and enabler who knew exactly what they were doing. Their bob and weave, jabs and feints, were a well-practiced, smooth routine. A 10th grade child was helpless in the face of these four fists, oozing “love” and “care.” It is for that reason this article seeks to convince the reader that society must demand change by institutionalizing accountability and ensuring its implementation. 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 voices that would not be otherwise heard. *This is essential to convince that tolerance of the intolerable—the actions of the enabler—demands decisive action.* It is for that reason, then, that survivors were contacted, and their permission requested to include their stories. I am deeply grateful to them for their patience in answering endless questions and a willingness to share their painful experiences. The decision was left to each survivor the decision whether to be identified by their name or anonymously; in both cases all conversations were documented.

Their honesty and refusal to flinch from terrible truths is extraordinary.

While writing this article, other survivors with similar experiences, in environments other than academia, reached out to the author. The primary reason was to identify the enablers who they believe are equally responsible for the abuse, to demand accountability. Individuals and society must acknowledge the ubiquity of the enablers, whose reach can be global and must therefore be addressed accordingly. For that reason, before diving into those who enabled crimes in American and Canadian schools, this article begins with Reggie Dadarino.⁹

⁹ Reggie Dadarino is a pseudonym.

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.¹⁰ However, Mr. Dadarino's deeper anger is directed at a system that enabled the assaults over the course of several years. The word "system" was a constant in our conversation;¹¹ Mr. Dadarino used it in describing the relationship between the Catholic diocese and the police department in his hometown.

While his mother and a neighbor acted on his behalf, that did not extend to the authorities mandated to protect him and other vulnerable children. In response to the question whether he was "victim number one or victim number seven million," the response was immediate: "seven million." As shall be made apparent, that number (albeit metaphorical) is not a significant exaggeration. Mr. Dadarino made one additional, relevant point when he (rhetorically) asked, "why the fuck did this happen to me."¹² The answer was in the question: because of vulnerable family circumstances, he was easy prey and therefore particularly vulnerable. This fact was known to the perpetrators and enablers alike whose sole interest was protecting the institution.

Mr. Dadarino was interviewed for the Royal Commission into Institutional Responses to Child Sexual Abuse.¹³ Before turning our attention to the core issue addressed in this article, of the Commission's many recommendations, this 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 rights of the child as a primary consideration.¹⁴

¹⁰ The Catholic Church will be addressed in a separate forthcoming project. See Jamie Ross, *Ex-Pope Benedict Knew About Four Child Sex Abuse Cases but Did Nothing, Lawyers Find*, THE DAILY BEAST (Jan. 20, 2022, 9:01 AM), <https://www.thedailybeast.com/pope-benedict-knew-about-four-child-sex-abuse-cases-but-did-nothing-lawyers-find>.

¹¹ Zoom call, December 19, 2021 with Mr. Dadarino, his son, Ashlin Gates, and the author; Ms. Gates has notes of the meeting. Mr. Dadarino's son recorded the meeting via his mobile phone.

¹² The question is asked in full rather than censored to convey the emotion expressed by Mr. Dadarino.

¹³ See *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017); see also *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Information Update, December 2017).

¹⁴ *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report: Recommendations, December 2017) vol 6, 4. Although the United Nations Convention on the Rights of the Child has not been ratified by the United States, it is nonetheless relevant in the context of protecting the child.

Protecting children means preventing enabling. Molesters cannot be allowed to move and repeat crimes. 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.¹⁵ 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 Section IV.

Several commentators have called for reform in the tort law sphere to encourage schools to better protect students.¹⁶ For example, Dr. Todd A. DeMitchell has called for *respondeat superior* liability to be extended,¹⁷ and Dr. Richard Fossey has argued that school districts should always bear liability for teacher sexual abuse.¹⁸

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.¹⁹ 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.²⁰ These laws will be further discussed in Section VII.

IV. SCHOOLS IN THE US 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. The failure to do so is well documented and in fact points to

¹⁵ See, e.g., Mia J. Abboud et al., *Educator Sexual Misconduct: A Statutory Analysis*, 31 CRIM. JUST. POL’Y REV. 133 (2020).

¹⁶ See articles cited *infra* notes 17–18.

¹⁷ See Todd A. DeMitchell, *The Inadequacy of Legal Protections for the Sexual Abuse of Students: A Two-Track System*, 215 EDUC. L. REP. 505 (2007).

¹⁸ See Richard Fossey, *Should a School District Always Be Liable When a Teacher Sexually Assaults a Student?*, TCHRS. COLL. REC. (Mar. 03, 2010), <https://www.tcrecord.org/Content.asp?ContentId=15927>.

¹⁹ See 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. OF CHILD SEXUAL ABUSE 84 (2019).

²⁰ See *id.*

significant enabling behavior. The data, as made clear by Dr. Billie-Jo Grant's research, speaks for itself.

Dr. Grant compiled data on the prevalence of educator sexual misconduct. 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.

Survey of Students' Experiences with Educator Sexual Misconduct

Study	Perpetrators Included	% of Students Experiencing Contact Sexual Abuse	% of Students Experiencing All Types of Sexual Misconduct	Study Overview
Shakeshaft (2003) ²¹	Teachers and other school employees	6.7%	9.6%	Secondary analysis of AAUW nationwide survey of 2,064 8th to 11th grade students

Educator and School Employee Sexual Misconduct: The Numbers

Years	Source	Data
2014–2021	S.E.S.A.M.E. & the Office of Senator Toomey ²²	4,132 Google alerts for teachers arrested for sexual misconduct between January 2014 and September 2021
2015–2019	Arizona Republic & KJZZ ²³	181 AZ teachers disciplined or surrendered teaching certificates after allegations of sexual misconduct between 2015 and mid-2019
2013–2019	Jimenez ²⁴	1,397 misconduct cases opened against CA teachers for sexual crimes against children between 2013 and 2018
2012–2018	U.S. Department of Education, Office for Civil Rights ²⁵	280 complaints of adult-on-student sexual harassment in Chicago Public Schools between 2012 and 2018

²¹ Charol Shakeshaft, *Educator Sexual Abuse*, 2003 HOFSTRA HORIZONS (SPRING ISSUE) 10 (2003).

²² Data compiled by S.E.S.A.M.E. and the Office of Senator Toomey.

²³ *Search for Teachers Investigated for Sexual Misconduct Since 2015*, ARIZ. REPUBLIC, <https://www.azcentral.com/pages/interactives/news/local/arizona-data/teacher-allegations-sexual-misconduct/>.

²⁴ 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/>.

²⁵ U.S. Dep't of Educ., Off. of C.R., Opinion Letter on OCR Case #05-15-1178 and 05-17-1062 (Sept. 12, 2019).

1997–2017	Canadian Centre for Child Protection ²⁶	750 cases of child sexual abuse involving 714 school employees against 1,272 students in Canada between 1997 and 2017
2009–2017	Bradshaw ²⁷	1,503 investigations opened against TX teachers for sexual contact with students between 2010 and 2017
2008–2016	Robert & Thompson ²⁸	1,415 TX teachers sanctioned for educator sexual misconduct between 2008 and 2016
2005–2016	New Haven Register ²⁹	58 school employees charged with sexual crimes against students between June 2005 and February 2016
2001–2005	Irvine & Tanner ³⁰	1,467 teaching licenses revoked, surrendered, suspended, or denied nationwide for sexual misconduct against students between 2001 and 2005

The above clearly demonstrates the prevalence of known offenses. Furthermore, even when offenses are reported, many are not adequately addressed by school officials.³¹ Research in this area, although limited,³² suggests that the actions, or in many cases, inactions, of enablers allow perpetrators to re-offend. For example, in a study of 225 known cases of educator sexual abuse, none of the perpetrators were reported to authorities by school officials and only 1% lost their teaching licenses despite all admitting to physical sexual abuse of a student.³³ And only 54% were terminated or voluntarily left their districts, with 16% going on to

²⁶ Canadian Centre for Child Protection Inc., *The Prevalence of Sexual Abuse by K-12 Personnel in Canada, 1997–2017*, 28 J. OF CHILD SEXUAL ABUSE 46, 62 (2019).

²⁷ Kelsey Bradshaw, *TEA Investigations into Improper Student-Teacher Relationships Jumped 36 Percent in Past Year*, SAN ANTONIO EXPRESS-NEWS (Sept.13, 2017, 4:24 PM), <https://www.mysanantonio.com/news/local/article/TEA-investigated-most-ever-improper-12176715.php>.

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

²⁹ *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>.

³⁰ 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>.

³¹ Shakeshaft, *supra* note 21, at 13.

³² 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.

³³ Shakeshaft, *supra* note 21, at 13.

teach at other schools.³⁴ And this only represents the tip of the iceberg: most cases of educator sexual abuse go unreported altogether.³⁵

Notwithstanding legitimate pedagogical and ideological disputes, safety must not be a matter of discretion, subject to nuance and tweaking. School attendance in the U.S. and Canada is mandatory through at least the age of 16, therefore the government assumes responsibility for the welfare of children. Government is required to ensure the safety of those who are mandated, by the state, to attend.³⁶ That obligation necessarily extends to those over 16 years old who choose to continue their education, past the mandatory age.³⁷

Most readers are familiar with similar, disturbing sexual assault cases enabled by powerful institutions: Boy Scouts,³⁸ Catholic Church,³⁹ USA Gymnastics,⁴⁰ Ohio State University,⁴¹ University of Michigan,⁴² Penn State University.⁴³ Each institution failed to adequately protect those under its care, arguably violating duties

³⁴ *Id.*

³⁵ *Id.* at 12.

³⁶ *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. CODE REGS. § 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*, CCSM 2021, c P250, s 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.”).

³⁷ See constitutional provisions and statutes cited *supra* note 36.

³⁸ 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>.

³⁹ *The Global Scale of Child Sexual Abuse in the Catholic Church*, AL JAZEERA (Oct. 5, 2021), <https://www.aljazeera.com/news/2021/10/5/awful-truth-child-sex-abuse-in-the-catholic-church>.

⁴⁰ 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>.

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

⁴² Billy Witz, *Michigan Ignored Warnings about Doctor Abusing Athletes, a Report Says*, N.Y. TIMES (June 10, 2021), <https://www.nytimes.com/2021/05/11/sports/michigan-sexual-abuse-anderson.html>.

⁴³ Joe Drape, *Penn State to Pay Nearly \$60 Million to 26 Abuse Victim*, N.Y. TIMES (Oct. 28, 2013), <https://www.nytimes.com/2013/10/29/sports/ncaafball/penn-state-to-pay-59-7-million-to-26-sandusky-victims.html>.

of care expected by medical and childcare providers. The school cases described in Section V add to this already egregious failure because these children are required to attend. They are there because the state requires their presence. Mandated attendance places an additional burden and obligation on school officials for the children roaming the hallways, attending class, meeting with teachers, and participating in extracurricular activities. The State obligation children to attend school bears significantly on how shuffling of teachers must be addressed.

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. It is for that reason, without in any way minimizing the harm suffered by victims in non-mandatory settings that the issue addressed in this article is distinct from institutions addressed elsewhere.⁴⁴

An increasing number of schools have guards, public safety officials, scanning devices, and other measures intended to protect children, whether from other students or outsiders.⁴⁵ Hall monitors, passes issued by teachers, screening procedures at the entrance to schools, are all indicators of the school’s assumption of responsibility for student safety and acknowledgement that threats exist. Otherwise, these measures, which have become a mainstay of the educational system, would not be so readily visible and apparent.

The school assumes responsibility for the welfare, security, and safety of students. On its face, an armed guard signals safety. However, the armed guard does not protect the student from teachers who molest or from principals, colleagues, and school boards who protect the molesting teacher. While the guard stands ready to protect, administrators repeatedly fail in that critical mission. 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 the children from harm, is a significant safety measure. It is a deterrent. 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.

This article’s intent is not to cast aspersions on all teachers, principals, coaches, nurses, and school boards. It is, however, critical to demonstrate that failure to protect is pervasive. That failure reflects institutional complicity and an enabling

⁴⁴ See, e.g., AMOS N. GUIORA, *ARMIES OF ENABLERS: SURVIVOR STORIES OF COMPLICITY AND BETRAYAL IN SEXUAL ASSAULTS* (2020).

⁴⁵ See Institute of Education Sciences, *Report of Indicators of School Crime and Safety: 2020 20* (2021).

In 2019, of all students ages 12–18 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. These percentages—with the exception of that for visitor sign-in requirements, for which no data is available—represent increases from 2009.

culture that protects the institution while leaving the student—mandated to attend school—unprotected and vulnerable.

This 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 is the consequences of their action—or rather inaction. While legislation will be the focus of Sections 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.

Including survivors voices helps convey the consequences of enablers' actions. The accounts below are difficult to read; the pain is palpable, the language raw. With the survivor's consent, the writing was lightly edited while preserving the message. The goal, and hence a willingness to participate in this project is three-fold: to share their stories; a hope that having their voices heard, the children of today will be spared what they were not; to compel legislators to handle enablers accountable given their understanding that the shuffling of teachers is dependent on the enablers.

The section below should be read with that understanding.

V. THE VOICES OF SURVIVORS

SV1

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.⁴⁶

Katie Pappageorge

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 12-15 at the time.

During the time he was abusing me, another student, who had since graduated, reported abuse by the teacher to the principal. Eight girls were 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 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 15 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, as 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

⁴⁶ This story was provided by SV1.

they sympathized with him and felt that this was a sad situation that should not affect his future career. They seem to have little empathy for his student victims even now.

The school district was found in the investigation to have had 30 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.⁴⁷

Jason F.

I was sexually abused by my seventh-grade science teacher for four years, beginning when I was 12. 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 school grounds and off, school days and weekend days. 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 or her apartment or 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 had 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

⁴⁷ This story was provided by Katie Pappageorge.

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 40, I reflected back on those 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 and/or my healing started decades sooner and, perhaps, collateral damage might have never occurred.⁴⁸

Peter

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, but 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

⁴⁸ This story was provided by Jason F.

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.

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.⁴⁹

Lindsay

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.

⁴⁹ This story was provided by Peter.

Comments echoed through social media that my abuser deserved another teaching opportunity and that it was such a shame that other 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.⁵⁰

VI. LETTERS IN SUPPORT OF MOLESTERS

Below are letters written by friends, family and other community members on behalf of convicted child molesters.⁵¹ While the authors of these letters may not be enablers in the criminal context, the descriptions help demonstrate the context of enablement. Their words simultaneously express the justification of criminal behavior and the defense of its perpetrator at the cost of his victims. 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. Regardless, these letters repeat the theme of abandonment from the survivor's perspective, and grasping that concept is crucial for understanding the dynamics of abuse when committed within a child-serving institution.

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 12 and 13 on school outings and at his home.⁵² These character reference letters were sent to the sentencing judge to ask for leniency in Williams's sentencing.

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

⁵⁰ This story was provided by Lindsay.

⁵¹ Many thanks to Dr. Grant for wisely suggesting and graciously providing for inclusion these examples.

⁵² *Ex-Teacher Admits Molesting Students*, RICHMOND TIMES-DISPATCH, Jan. 15, 2003, at B-2.

the boys are to blame, but that they are *as* responsible for their actions as Michael is.)

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 shakey [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!

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.

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 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.⁵³

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.⁵⁴ And 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.⁵⁵ 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.”⁵⁶ 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.”⁵⁷

The mindset depicted above demonstrates how molestation is justified and allowed to flourish. This is the fertile ground for enabling and predatory behaviors. 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 school discovers that one of its teachers is a molester, it quietly passes that teacher on to another school instead of taking disciplinary action or informing law enforcement. In exchange for a molester-teacher’s resignation, a school promises to keep the teacher’s abuse confidential and may even supply recommendation for said teacher as part of a separation agreement.

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

⁵³ Character reference letters for Michael Anthony Williams to James W. Haley, Jr., Hon. J., Va. 15th Jud. Cir. (Apr. 16, 2003) (on file with author).

⁵⁴ Perry Chiamonte, *New York Public School Parents Demand Names of Teachers Who Backed Pedophile Colleague*, FOX NEWS (Nov. 23, 2015), <https://www.foxnews.com/us/new-york-public-school-parents-demand-names-of-teachers-who-backed-pedophile-colleague>.

⁵⁵ 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/>.

⁵⁶ 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-familys-anguish-and-his-outrage-toward-teachers-who-supported-the-pedophile/>.

⁵⁷ *Id.*

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this Act 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.⁵⁸

But while states are federally mandated to have “pass the trash” laws in place, less than half have any such law on their books. States have been able to defy this mandate with seemingly no consequence, and existing legislation has not done what it was intended to do—protect the vulnerable child. 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.

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

Overview of State “Pass the Trash” Laws

State	Overview of Law
Colorado ⁵⁹	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; immunity from civil liability for disclosures to a prospective employer unless made with reckless disregard for veracity; any agreements suppressing such info are prohibited
Connecticut ⁶⁰	Past employers must disclose sexual misconduct to a prospective employer; immunity from civil and criminal liability for disclosures unless knowingly false; any agreements suppressing such info are prohibited
Indiana ⁶¹	Past employers must disclose sexual misconduct to a prospective employer; any agreements suppressing such info are prohibited
Maryland ⁶²	Past employers must disclose sexual misconduct to a prospective employer; immunity from liability for good faith disclosures; willful failure may result in civil penalties and professional discipline; any agreements suppressing such info are prohibited

⁵⁸ 20 U.S.C. § 7926.

⁵⁹ Colo. Rev. Stat. §§ 22-30.5-110.5, 22-32-109.7.

⁶⁰ Conn. Gen. Stat. § 10-222c.

⁶¹ Ind. Code § 20-26-5-11.5.

⁶² Md. Code. Ann., Educ. § 6-113.2.

Missouri ⁶³	Past employers must disclose sexual misconduct to a prospective employer; immunity from civil liability for good faith disclosures; if failure to disclose a dismissal or resignation due to allegations of sexual misconduct, a district shall be directly liable to any student or subsequent employer for sexual misconduct by former employee and shall bear third-party liability to the employing district
Montana ⁶⁴	A school employee may not assist another school employee in obtaining a new job if probable cause to believe that person engaged in sexual misconduct with a student; violations are a misdemeanor
Nevada ⁶⁵	A school employee may not assist another school employee in obtaining a new job if actual or constructive knowledge that person engaged in sexual misconduct with a student; Past employers must disclose sexual misconduct to a prospective employer; immunity from civil and criminal liability for disclosures unless knowingly false; willful failure may result in civil penalties and professional discipline; any agreements suppressing such info are prohibited
New Jersey ⁶⁶	Past employers must disclose sexual misconduct to a prospective employer; immunity from civil and criminal liability for disclosures unless knowingly false; any agreements suppressing such info are prohibited
North Dakota ⁶⁷	A school employee may not assist another school employee in obtaining a new job if knowledge that person engaged in sexual misconduct with a student or an investigation is underway; violations are a class B misdemeanor
Oregon ⁶⁸	A school employee may not assist another school employee in obtaining a new job if reasonable cause to believe that person engaged in sexual misconduct; violations may result in license revocation/suspension; any agreements suppressing such info are prohibited
Pennsylvania ⁶⁹	Past employers must disclose sexual misconduct to a prospective employer; willful failure may result in civil penalties and professional discipline; immunity from civil and criminal liability for disclosures unless knowingly false; any agreements suppressing such info are prohibited
Texas ⁷⁰	A school employee may not assist another school employee in obtaining a new job if knowledge that person engaged in sexual misconduct with a student; violations may result in license

⁶³ Mo. Rev. Stat. § 162.068.

⁶⁴ Mont. Code Ann. §§ 20-7-1321, 20-7-1322.

⁶⁵ Nev. Rev. Stat. §§ 391.875, 391.890, 391.920.

⁶⁶ N.J. Stat. Ann. §§ 18A:6-7.7, 18A:6-7.9, 18A:6-7.11, 18A:6-7.12.

⁶⁷ N.D. Cent. Code §§ 15.1-19-26, 15.1-19-27.

⁶⁸ Or. Rev. Stat. §§ 339.378, 339.392.

⁶⁹ 24 Pa. Cons. Stat. § 1-111.1.

⁷⁰ Tex. Educ. Code Ann. §§ 21.006, 21.0581.

	revocation; a principal must notify superintendent if an educator is terminated or resigns following allegation of sexual misconduct with a student, and a 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 ⁷¹	Past employers must disclose sexual misconduct to a prospective employer; immunity from civil and criminal liability for good faith disclosures; any agreements suppressing such info are prohibited
Virginia ⁷²	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 probable cause to believe that person engaged in sexual misconduct with a student
Washington ⁷³	Past employers must disclose sexual misconduct to a prospective employer; immunity from civil liability for good faith disclosures; any agreements suppressing such info are prohibited
Washington, D.C. ⁷⁴	Past employers must disclose sexual misconduct to a prospective employer
West Virginia ⁷⁵	A school employee may not assist another school employee in obtaining a new job if probable cause to believe that person engaged in sexual misconduct with a student
Wisconsin ⁷⁶	A school employee may not assist another school employee in obtaining a new job if reasonable suspicion to believe that 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 and/or imprisoned for up to 6 months

Notwithstanding the plethora of legislation, the pattern of assaults on students by adults continues unabated. It is for that reason that this article now turns its attention to how to address this disturbing reality that endangers children mandated by the state to attend schools.

VIII. PROPOSED LEGISLATION

Our focus in this section, building on the preceding discussion, is criminalizing the enabler, an undertaking that legislatures and law enforcement have yet to satisfactorily address. That said, the failure to consistently prosecute molesters

⁷¹ Vt. Stat. Ann. tit. 13, § 1386, tit. 16, § 253, tit. 21, § 306.

⁷² Va. Code Ann. § 22.1-79.8.

⁷³ Wash. Rev. Code § 28A.400.301.

⁷⁴ D.C. Code § 38-951.03.

⁷⁵ W. Va. Code § 18A-4-22.

⁷⁶ Wis. Stat. §§ 115.31, 118.07.,

similarly demands attention and resolution. The phrase, “you can’t have one, without the other” is particularly apt.⁷⁷

There is a need for a 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-abettor is a “stretch” that criminal law statutes would be hard-pressed to tolerate because it does not meet the test according to criminal codes. To view harm through the narrow lens of commission, rather than through combination of omission and commission, benefits the perpetrator (directly) and the enabler (indirectly); the former because they are unencumbered in committing their crime, the latter because they will not be held responsible for their decision.

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

A. Mandatory Reporting

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

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 must report. Aside from overlooking the tragic universality of assault and abuse, this also ignores the well-acknowledged effects which sexual assault can have on an individual’s ability to protect him/herself. While the desire to protect the most vulnerable 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.

⁷⁷ The phrase is used by Mr. Carl Grapentine, the voice of the University of Michigan Marching Band, <https://www.youtube.com/watch?v=uapjU7izgoA>.

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.

Degrees of punishment vary, but failure to comply with mandatory reporting is usually punishable as a class B misdemeanor. This typically entails six months in prison. By analyzing all these factors, a “refined” mandatory reporting law can be defined as one that 1) requires all adults to report; 2) protects all individuals, regardless of age or disability; 3) requires immediate reporting; 4) punishes failure to report as a misdemeanor requiring at least 6 months in prison.

B. Criminal Negligence

Criminal negligence is described as “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.” It is important to note that “criminal negligence” may refer either to an independent crime or to the *mens rea* element of the model penal code.

On the surface, this seems sufficient to address enabling behaviors because the conduct—even omissions—represent 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 which all human beings owe each other. Unfortunately, most states interpret criminal negligence statutes only in terms of commission, especially as related to homicide. This renders criminal negligence useless for holding enablers accountable. However, broad criminal negligence statutes do exist or can be expanded. 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. For example, the US code criminalizes an individual who “receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.” 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 involving overt, physical actions, avoiding application to crimes of omission.

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 only appropriate to examine this proposed legislation with a critical eye. With that in mind, below are listed some of the most common 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.

In that same vein, there are many, especially in employment situations, who may fear retaliation from the hands of the institution for their actions in preventing abuse. Here, again, a relatively simple solution is to expand or reinforce whistleblower protections. 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 protect whistleblowers.

Some argue such legislation will result in discriminatory prosecution practices against minorities. This is indeed a valid concern which needs to be addressed on multiple fronts. Prosecution review boards, along with other efforts, can be effective at counteracting this concern.

IX. NEXT STEPS

The ten recommendations below,⁷⁸ are a road-map that would address 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 a victim of child sexual abuse comes forward is 42. Current statutes of limitations benefit the perpetrator and not the victim.

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.

⁷⁸ The author is indebted to Ms. Terri Miller (S.E.S.A.M.E., President) for suggesting these recommendations.

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

Require Office of Civil Rights to collect data in the Civil Rights Data Collection project on adult-to-student sexual harassment/sexual misconduct and to track and trace the enablers that have previously enabled teachers who engage in sexual misconduct.

FOUR: Criminalize administrators, school districts, teachers' unions and anyone/any organization that enables mobile molesters.

FIVE: Mandate all school personnel, ancillary staff, contracted employees and volunteers to be mandated reporters of child abuse and neglect and school employee sexual misconduct/grooming and to be punished when failing to act.

SIX: Establish National Database to flag offenders and prevent hiring in schools and to 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.

EIGHT: Repeat fitness examinations and background checks every 5 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, establish 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 as facilitators of trafficking can receive up to a life sentence for trafficking of minors.

X. FINAL THOUGHTS

Mr. Sloan's "Eve of Destruction" is, for the survivors, truly a "sea of destruction." That is clear from their voices, the recounting filled with pain. The harm caused by the enablers, those who knew of the wrongs committed by teachers and others, yet chose to protect institution and perpetrator, demands attention. While there is no gainsaying the consequences of the molester's actions, it must be acknowledged that criminalizing the enabler is a necessity. Otherwise, the lack of accountability and consequences will continue unabated.

The efforts laid out in Section VII have proven insufficient, if not ineffective. As explained in Sections VIII and IX there are means for developing the required legislative tools. 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. With this focus, it must not be forgotten that children—the victims of teachers and their enablers—are at school because they have been mandated by the state to attend. In other words, the vulnerable child is in school because the state so ordered.

It is an extraordinary failure to not prosecute enablers; it is inexcusable.

However, it is important to consider alternative voices which 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 who I interviewed for my book, *Armies of Enablers*⁷⁹ and from who I have learned a great deal. Mr. Pollard was also prominent in the Pulitzer Prize winning book, *Betrayal: Crisis in the Catholic Church*,⁸⁰ which served as the inspiration for the film, *Spotlight*.⁸¹ 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 result in criminalizing the enabler, Mr. Pollard eloquently suggests alternatives, namely restorative justice approaches. His suggestion reflects, perhaps, a more holistic approach rather than one that imposes significant costs resulting from a criminal prosecution. 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 in order to begin the process of protecting vulnerable children mandated to attend schools. Prosecuting the molesters is a step—and as documented in this article—happens far less than it should. The reason for that, primarily but not exclusively, is because of the enabler's decision to abandon the vulnerable child.

The proposed measures in the pages above provide a clear road map how to effectively do so. 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.

Now.

⁷⁹ See Guiora, *supra* note 44.

⁸⁰ See THE INVESTIGATIVE STAFF OF THE BOSTON GLOBE, *BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH* (2002).

⁸¹ See *SPOTLIGHT* (Participant Media, First Look Media, Anonymous Content, & Rocklin/Faust 2015).