EDUCATOR SEXUAL MISCONDUCT INVOLVING STUDENTS IN TENNESSEE SCHOOLS:

EXECUTIVE SUMMARY

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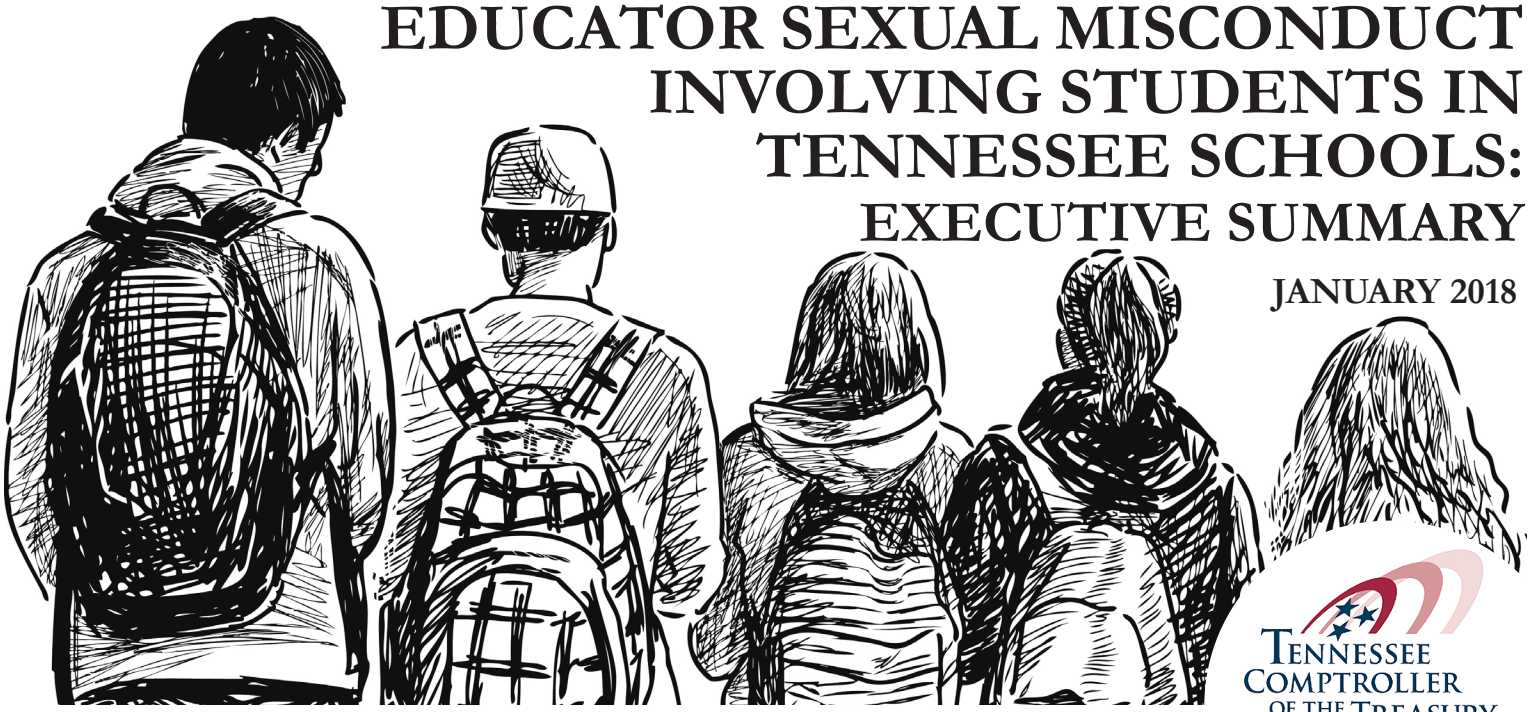

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In early 2016, *USA Today* published the results of a national investigation of educator sexual misconduct in schools, particularly looking at each state's efforts to reduce the chances that an employee with a history of sexual misconduct could move from one school to another without repercussions. The series graded states in four areas: background checks of teacher applicants, transparency in publicly sharing licensing and disciplinary information about sanctioned teachers, sharing this information with other states, and whether the state has laws mandating that educators, schools, and school districts report misconduct to the state. Only seven states received an A; Tennessee received an F.

In this report, "educator sexual misconduct" refers to a range of inappropriate behaviors, from sexual communications to intercourse, directed from an educator who works in a school serving grades preK through 12 toward a student or former student. Some of the behaviors are criminal, such as rape, but many others constitute a gray area of conduct that is inappropriate for persons working with or near children. Such conduct could include, for example, engaging students in conversations regarding their romantic or sexual activities or regularly meeting with a student behind closed doors. In some cases, this type of inappropriate behavior is a means that predators use to "groom" children – a way of gradually desensitizing children to inappropriate behavior to gain their trust. Such inappropriate behavior can also be directed toward students by other school personnel who work in close proximity to children, such as bus drivers, janitors, and cafeteria workers, or contracted individuals.

The report is organized in sections to reflect five areas of focus:

- *Safeguards and risks in hiring school personnel* – hiring practices for school personnel in Tennessee;
- *State recordkeeping of educator misconduct cases*– the processes followed by the State Board of Education and the Tennessee Department of Education's Office of Educator Licensure in cases of educator misconduct;
- *Federal requirements concerning the hiring of school personnel* – school personnel hiring practices and other relevant laws adopted in other states;
- *Clarity in law and policies* – relevant state laws and school district policies, particularly with regard to making school employees aware of expectations and responsibilities; and
- *Child sexual abuse prevention curriculums* – what children are taught in schools concerning personal safety.

Safeguards and Risks in Hiring School Personnel: Status in Tennessee

Tennessee has a standard baseline process for screening applicants – its success hinges on districts' consistently following it.

Tennessee relies heavily on background checks as a primary tool to screen new employees applying to work in schools. A school district makes an employment offer to an applicant, contingent on the results of a fingerprint criminal history background check; if the applicant accepts, the district initiates the check, which is then completed by the Tennessee Bureau of Investigation (TBI). In addition, districts must check three state databases to ensure an applicant's name doesn't appear on them. State law prevents districts from hiring any person whose name is on (1) the Department of Children's Services (DCS) registry of persons who have been substantiated as perpetrators of child abuse, severe child abuse, child sexual abuse, or child neglect; (2) the Department of Health's abuse of vulnerable persons registry; and (3) the TBI's sex offender registry.

An internal audit report from the Tennessee Department of Education (TDOE) in 2013-14 found that some districts reviewed were not fully in compliance in conducting all required background checks – in some instances, background checks had not been completed at the time of hire, though the law requires it.

States differ in the timing of criminal background checks for applicants for school employment, and on who is responsible for implementing them.

The *USA Today* series of articles about teacher misconduct graded Tennessee and six other states with an F, primarily because the state delegates to school districts the responsibility to initiate background checks on school personnel who are hired rather than having this responsibility initiated by the state. In Tennessee, as required by state law, background checks are completed by the Tennessee Bureau of Investigation, a state-level agency, at the directive of a school district at the time an educator, as well as any other school personnel, is offered a position. In states awarded a higher grade by *USA Today*, background checks are conducted at the state level when an individual seeks a license to teach.

In Tennessee, the onus of determining whether an applicant meets the baseline requirements for hiring (i.e., background check and abuse registries) is on the district. In many other states, applicants are responsible for completing these checks when they are seeking a license to teach, prior to applying for employment with a school district.

Both approaches to using background checks have risks. Requiring that school districts ensure that all of the steps required are completed at the time of hire means that some steps may not always be consistently followed and an individual could be hired for whom clearance has not been fully completed. Requiring that individuals seeking a teaching license initiate all background criminal checks with the proper state-level agencies

would free districts from this responsibility, but it might also mean a lag time between completion of the background check and the time a person is hired.

Some Tennessee districts, as well as some other states, have developed procedures to ensure more up-to-date information about existing school employees.

Because the information in a background check can change over time, some Tennessee school districts reserve the right in their policies to conduct periodic background checks on existing employees, including Shelby County Schools and Metro Nashville Public Schools. Similarly, some states require employees to be cleared through updated background checks periodically to continue working in schools. Pennsylvania requires any employee who works with children to renew their background checks every five years.

To address the concern that background checks only provide a "snapshot in time" picture of a person's criminal record, the education departments in some states have started using a "rap back" program to get continuous updates for employees who work in positions of trust with children. Developed from the FBI's Rap Back service, the Ohio Department of Education receives notifications of any criminal history reported to the FBI after an employee is hired. The department receives notifications from Rap Back about criminal arrests or convictions of licensed educators and pupil transportation workers, and notifies their employing school districts. The department also uses the information to inform investigations concerning an educator's license.

Tennessee's requirements for contractors working in schools and for school volunteers may contain potential risks, unless school districts are diligent.

Contractors: Tennessee law requires background checks on all individuals who work under contract through another company and who have direct contact with children or who are on school grounds when children are present. Currently, there is no process requiring districts to audit contractors and vendors to ensure that they are conducting background checks on all their employees working in schools.

Volunteers: Although state law requires school-administered child care centers and childcare programs to conduct background checks to exclude anyone from volunteering in a program if they have a criminal history or history of abuse or neglect, the same is not required for volunteers in K-12 public schools. Many school districts' policies concerning volunteers do not include background check requirements.

Tennessee contributes to and accesses information from other states in a national clearinghouse of actions taken against educator licenses.

Tennessee and 48 other states or jurisdictions have entered into an interstate agreement to share information in a national clearinghouse about individuals who have had actions taken against their professional educator

certificates or licenses. Administered by the National Association of State Directors of Teacher Education and Certification (NASDTEC), the clearinghouse allows states to upload information about educators who have had their licenses suspended, revoked, or otherwise invalidated; in turn, other states can look up the disciplinary actions taken against the licenses of out-of-state job applicants to determine if more information is necessary. The Office of Educator Licensure (OEL) routinely consults the clearinghouse when an out-of-state individual applies for a license to teach in Tennessee. The State Board of Education (SBE) has denied applications for those found, through information obtained initially through the clearinghouse and follow-up information with specific states, to have had their licenses revoked in other states for sexual misconduct involving students that did not result in criminal convictions.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should local boards of education be required to adopt policies mandating that school districts obtain personnel files from previous employers for job candidates?
- Should job applicants complete criminal background checks prior to applying for a position in a school district, rather than holding school districts responsible for initiating these checks?
- Should school districts be required to conduct periodic background checks of all school employees or adopt a "rap back" service that provides districts with ongoing reports of employees' criminal histories?
- Should the state require criminal background checks of educators during the license renewal process?
- Should school districts be required to notify the Office of Educator Licensure within TDOE if a licensed applicant is legally prohibited by Tennessee law from being hired?
- Should school districts be required to conduct periodic audits of all school district vendors that are responsible for initiating background checks of contracted employees to ensure that background checks are being properly conducted on all employees?
- Should school districts require that all vendors providing direct services to students use the district's identification number to ensure that districts receive the full rap sheet for potential contract employees?
- Should background checks be required for school volunteers?

State Recordkeeping of Educator Misconduct Cases

Because of inconsistencies in the recording of state records, it is difficult to determine the status of some pending cases of educator misconduct.

OREA reviewed the minutes from State Board of Education meetings to determine the actions taken against educators' licenses from 2011 to 2017. Staff then compared the board actions with those in TN Compass, the state's online database of teacher licenses, and a national clearinghouse maintained by the National Association of State Directors of Teacher Education and Certification (NASDTEC) to determine if the records were consistent among all three sources. The review found several issues, including:

- records in TN Compass that do not indicate a past revocation or suspension of an educator's license by the State Board;
- Tennessee records that have no corresponding record in the national clearinghouse;
- reports to the national clearinghouse for formal reprimands for some educators but not for others; and
- records that do not match between TN Compass and the national clearinghouse.

SBE does not currently publish a comprehensive list of final resolutions on educators' licenses brought before the board.

SBE's capacity to investigate cases of educator misconduct is limited compared to some other states' capacity.

Currently, SBE has one full-time staff attorney dedicated to reviewing educator misconduct cases; the general counsel also works with these cases, but has several other duties. Since spring 2017, SBE has reviewed approximately 200 cases from previous years. On average, SBE estimates that it receives approximately 30 new cases for review each month, not all of which concern sexual misconduct. As of fall 2017, SBE has a backlog of approximately six to eight months of outstanding cases from 2016-17 to review.

OREA's case review found that some flagged licenses have been under SBE Review status for multiple years. OREA was unable to determine whether SBE never received files from OEL on some cases to prompt a review or whether it received files for which it never initiated a review. It is also possible that actions were taken against some educators' licenses during past board meetings, but OEL did not receive the final order to update the license status in TN Compass.

The delayed ability to review misconduct cases could impact the accuracy and completeness of educators' records as well as the ability to communicate the current disposition of some licenses with districts or other states.

Some other states have boards or commissions with divisions that are responsible for the investigation of cases of educator misconduct, and some of these entities employ dedicated staff to investigate cases of educator misconduct.

The State Board of Education does not have a clear method for organizing files related to educator misconduct cases, which may negatively affect the accuracy of data in TN Compass, as well as in the national clearinghouse to which Tennessee reports.

OREA's review of SBE's files determined that the board does not have a clear method or system for organizing files related to educator misconduct. Little or no documentation exists in SBE's electronic records for approximately 400 of the 800 educators with licenses flagged for SBE Review. A lack of consistent recordkeeping over time has resulted in a scattering of files between OEL and SBE across several possible sources, both paper and electronic.

The electronic files for more recent years' cases are contained in individual folders by educator name within the board's network; however, not all cases have a dedicated folder, and some electronic files were saved only within the email archives of a previous SBE employee, making it difficult to determine if case files existed at all for some individuals. This lack of organized recordkeeping prevents the board from being able to maintain an efficient process for searching for records on individual educators, running reports, or maintaining accurate statistics on the cases it handles.

The spreadsheet used by SBE to track investigations and license dispositions has not been kept up to date; as a result, SBE cannot confirm the status for many cases still pending review. The general counsel and an additional staff attorney hired for this purpose are in the process of reviewing all outstanding cases to determine what action, if any, is necessary to take on these educators' licenses.

Administrative Recommendations

The State Board of Education should consider publishing the final dispositions for all actions taken by the board against educators' licenses. An online database of case histories outlining board actions would allow school districts, as well as out of state entities responsible for the licensing and hiring of Tennessee educators, access to information regarding the circumstances of an individual's license case.

The State Board of Education or the Office of Educator Licensure should notify local boards of education when a director of schools fails to report incidents of misconduct to TDOE within 30 days.

The State Board of Education should conduct further research into the best practices of other states' staffing, technology, and processes to determine how it may wish to address issues related to capacity. Currently, along with its general counsel, SBE has one full-time staff attorney solely responsible for reviewing cases of educator misconduct. By comparison, some other states have several staff members dedicated to investigating and reviewing cases concerning license actions. SBE receives, on average, 30 new cases of educator misconduct to review each month and is in the process of reviewing a backlog of approximately six to eight months of outstanding cases from 2016-17.

The State Board of Education should adopt a better process of file transmission and workflow process with OEL, possibly through the existing TN Compass interface. Currently, SBE and OEL manually transmit files via email, but TDOE is exploring options to enhance TN Compass to contain more workflow processes, including the secure transmission of files. Alongside its analysis of staffing and capacity, SBE should consider the adoption of a case management system to organize its internal files.

Federal Requirements Concerning the Hiring of School Personnel

Tennessee, like most states, has not yet addressed the federal ESSA provision that requires action by states or districts to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts.

In December 2015, Congress passed the Every Student Succeeds Act (ESSA), the newest version of the nation's primary K-12 federal education law, which contains a new provision meant to address a long-time problem

in the hiring of teachers: the unofficial practice of passing along employees who had committed some kind of sexual misconduct involving students from one district to another, thus continuing the risk of harm to students. The federal provision is intended to prevent school districts from entering into a confidentiality agreement with an employee who has committed an act of sexual misconduct with a student, which was not necessarily criminal in nature, to provide the employee a neutral or good recommendation.

The ESSA language is broad and leaves implementation decisions wholly to state policymakers, state departments of education, and local school districts. States do not necessarily have to pass *laws* or *rules* to fulfill the requirement: instead, districts can pass board policies that align with ESSA. States must decide how they want to comply with the provision, or determine whether they have existing laws or policies that may fulfill its intent.

Tennessee's state plan for implementing ESSA does not include any language addressing this particular federal provision nor has the General Assembly passed any laws in the past several years to explicitly address the issue. Some other states have passed legislation to more clearly address educator sexual misconduct, both before and after the federal requirements under ESSA.

Some elements of these states' laws include:

- a prohibition against school districts' suppressing of information about the investigation of reported suspected abuse, neglect, or sexual misconduct against a student by a current or former employee
- requirements for school districts to disclose information at the request of other school districts about a finding of abuse, neglect, or sexual misconduct regarding a former employee
- a release from liability for school districts and school district employees that may arise from the disclosure of information about current and former employees
- training requirements for teachers and other school personnel (and, in one state, through teacher preparation programs) that include the maintenance of professional and appropriate relationships with students
- requirements for school district policies concerning electronic communications between staff and students

Policy Option

The General Assembly may wish to consider the following question when examining the issue:

> How is Tennessee planning to meet the ESSA requirement to pass laws, rules, or state and /or local policies to prevent teachers who have committed sexual misconduct involving students from obtaining employment in other school districts?

Clarity in Law and Policies

The definition of educator misconduct in Tennessee law is broad compared to definitions in some other states.

Tennessee law contains no specific definition of educator misconduct, although it does use the phrase in both the criminal and education sections of law to refer to situations that require reporting of incidences of child sexual abuse to the Department of Children's Services. The State Board of Education, however, recently revised and adopted a new educator licensure rule (currently in place as an emergency rule) that provides definitions and examples for certain categories of inappropriate behaviors and actions, as well as revising disciplinary actions the board can take against educators' licenses.

Several other states have added definitions of educator misconduct to state education law to identify inappropriate behavior and actions that could lead to a disciplinary response, such as suspension, or to an educator's termination of employment.

Tennessee school district policies lack clarity about what constitutes educator sexual misconduct that involves students.

Although many Tennessee school districts have adopted a policy concerning staff-student relations, which includes the need to "avoid any appearance of impropriety," few of the policies provide specific examples of what constitutes inappropriate behavior.

Some districts have adopted policies related to employee use of personal communication devices, which include guidelines or directives about interacting with students through social media.

School district policies may not be clear concerning the statutory directive to report allegations of teacher misconduct involving students as child sexual abuse to DCS, law enforcement, or juvenile court officials.

Tennessee law lists school officials and personnel as mandatory reporters of child abuse, including child sexual abuse. Any allegation that such an offense has been committed is required by law to be reported to the Department of Children's Services (DCS), law enforcement, or a juvenile court. A separate section of the law requires all school personnel or local board of education members to notify DCS, law enforcement, or a juvenile court of any incident or investigation of "employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including . . . sexual abuse."

The two standard district policies concerning the reporting of incidents concerning child sexual abuse are (1) Child Abuse and Neglect and (2) Student Discrimination, Harassment, Bullying, Cyber-bullying, and Intimidation. In most districts, neither of the two policies referred to the part of criminal law quoted above

concerning employee misconduct in the context of child sexual abuse.

In addition, in most districts the two policies contain different reporting requirements based on state law. Most districts do not cross-reference these two policies although both may address some similar types of incidents concerning sexual abuse – an example might be an alleged relationship between a teacher and a student.

Finally, few districts' policies concerning child abuse and neglect refer to "child sexual abuse" at all, though state law requires school personnel to report such incidents. An OREA review of district policies concerning child abuse and neglect policies found that 118 districts' policies provide information on how to report child abuse and neglect but do not refer to child sexual abuse at all.

Tennessee's Teacher Code of Ethics does not refer to appropriate boundaries between educators and students.

Tennessee law contains the Teacher Code of Ethics, disregard of which can result in an educator's dismissal. The code, however, does not explicitly refer to inappropriate relationships between teachers and students. Some other states, including Georgia, Ohio, and Pennsylvania have adopted ethics codes for educators that are detailed and straightforward about teacher-student relationships.

Though some districts may conduct training for educators and/or other employees regarding appropriate boundaries between school personnel and students, Tennessee does not require it.

Some districts have indicated to OREA that they provide training to school personnel about appropriate relationships, boundaries, and communications between staff and students, but it is not clear what the training covers, and how often it is provided and to which employees.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should Tennessee define "educator sexual misconduct" more specifically in state law or rule?
- Should school districts adopt (or be required to adopt) board policies that address educators' and other school personnel's social media use and appropriate boundaries with students?
- Should local boards of education clarify existing policies related to reporting requirements for teachers and district officials concerning child sexual abuse and educator sexual misconduct?
- Should the statutory teacher code of ethics be revised to include more detailed expectations of teachers' conduct with students?
- Should local school districts be encouraged or required to provide periodic professional development training that focuses on appropriate boundaries between teachers and students?
- Should Tennessee develop online training concerning educator ethics?

Child Sexual Abuse Prevention Curriculums

According to health education experts, children should be taught about personal safety, appropriate relationships, and boundaries in a manner suitable to grade level and age. In 2014, Tennessee updated its law that required TDOE and DCS to enhance or adopt curriculum materials related to child sexual abuse prevention for students in K-6 to include information on sexual abuse that may occur in the home and to expand the grade band to K-12. Districts have the option, but are not required, to offer health education courses. Because health education is not included in the state's required tests, it is difficult to determine the extent to which it, and specifically the subject of sexual abuse prevention, is taught in schools.

Although the health education standards adopted by the State Board of Education include standards on personal safety and appropriate relationships, it is up to local school districts to select the curriculum and instructional materials they use to teach the standards.

Today, education materials related to personal safety, appropriate relationships, and boundaries – topics that would be most likely to coincide with discussions related to child sexual abuse – may be taught to Tennessee students through several different education standards or education programs. Districts can incorporate sexual abuse prevention in schools by offering health education courses in grades K-12, through various school counseling programs, or, if required by law, through family life education programming. They may choose to deliver targeted instruction on a certain topic using guest speakers or with the assistance of an outside professional agency.

School districts are not explicitly required to teach topics related to sexual abuse prevention. However, in 2014, the Tennessee General Assembly passed Erin's Law, encouraging schools to provide age-appropriate instruction to students in K-12 on personal body safety and how to report sexual abuse.

The original version of Tennessee's sexual abuse prevention law, passed in 1985, required the development of a state plan to address child sexual abuse. The law also required TDOE and SBE to develop ways to inform and instruct both students and appropriate school personnel in all public school districts about the detection, intervention, prevention, and treatment of child sexual abuse, as well as the proper action to take in a suspected case of abuse. TDOE and SBE were to create curriculum materials to assist instructional personnel in delivering the instruction.

In 2014, the Tennessee General Assembly updated the sexual abuse education law as Erin's Law, Public Chapter 706, named after a childhood sexual assault survivor who has advocated for states to pass laws addressing sexual abuse prevention. As of fall 2017, the law has passed in some form in 31 states. Tennessee's version of Erin's Law expands the instruction from K-6 to K-12 and includes instruction on sexual abuse that may occur in the home. While the law does not mandate districts to implement any kind of sexual abuse prevention curriculum, it does require TDOE, the Department of Children's Services (DCS), and SBE to work together to create a comprehensive plan and corresponding curriculum materials that would address the detection, intervention, prevention, and treatment of child sex abuse for grades K-12.

Topics related to sexual abuse prevention and reporting are not included on required state tests; therefore, it is difficult to determine how schools are addressing sexual abuse prevention and reporting in the standards.

Because health education is not a tested subject, it is difficult to determine the extent to which districts are using the recommended curriculums or addressing topics related to sexual abuse prevention and reporting. In general, TDOE does not collect information on curriculums used at the local level; however, should a district choose to implement a health education curriculum as a part of its coordinated school health programming, the district must identify the curriculum used for health education, and the curriculum must follow the state standards.

Policy Options

The General Assembly may wish to consider the following questions when examining the issue:

- Should school districts be required to include sexual abuse prevention instruction in their K-12 curriculums?
- Is there data that could be collected by the Department of Education that would better inform stakeholders if or how districts are addressing topics related to sexual abuse prevention?
- Could the Department of Education provide more support or make resources more readily available for districts to access when teaching students about issues related to sexual abuse prevention and reporting?

Report Conclusion

The General Assembly may wish to hold a series of hearings or convene a task force of stakeholders at the state and district level to consider the findings of this report in total, review the policy options, identify responsible parties, and determine whether any solutions should take the form of law, rules, or policies.

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