



Office of the District Attorney
Eighteenth Judicial District of Kansas
at the Sedgwick County Courthouse
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Wichita, Kansas 67203

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March 4, 2010

**Testimony Regarding HB 2151
Submitted by Marc Bennett, Deputy District Attorney
On Behalf of Nola Tedesco Foulston, District Attorney
Eighteenth Judicial District
And the Kansas County and District Attorneys Association**

Honorable Chairman Owens and Members of the House Senate Judiciary Committee:

Thank you for the opportunity to address you regarding House Bill 2151. On behalf of the Kansas County and District Attorneys Association, I would like to bring to your attention issues related to the new Breach of Privacy statute (formerly Eavesdropping & Blackmail) now found at sections 64 and 171 of chapter 136 of the 2010 Session Laws of the State of Kansas.

The proposal contained in HB 2151 adds "disseminating or permitting the dissemination of any video tape, photograph, film or image obtained in violation of subsection(a)(6)" (page 2 lines 1-2) to the portion of the law formerly known as Eavesdropping and adding the same basic language to the portion containing the former Blackmail statute (page 2, lines 31-33). Additionally, felonies are suggested at various severity levels for violations of the statute.

The proposed legislation addresses a shortcoming in current law if the state were to encounter a situation akin to the Rutgers University case, wherein one student surreptitiously recorded his 18 yr old roommate engaged in a consensual sexual encounter then disseminated the recording onto the internet. Currently, we could only charge the recording as a class A misdemeanor under Eavesdropping while no crime specifically exists to address the dissemination of the recording onto the internet.

The proposal would make the acts already set forth in (a)(6) -- surreptitiously using devices to "videotape, film, photograph or record" someone (no matter the victim's age) "in a state of undress" -- severity level 8 person

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felonies. The proposal also suggests that the act of disseminating said material would be a severity level 5 person felony.

Additionally, there are situations – unrelated to the Rutgers University case – where Defendants surreptitiously record themselves in a sexual act with a victim then threaten to show the recording to others unless the victim agrees to engage in additional sexual acts, submit to additional photos, et cetera. In such a circumstance, current Kansas law would only criminalize such conduct as a class A misdemeanor under Blackmail (or the amended Breach of Privacy under subsection [b]). We propose this behavior be set as a severity level 4 person felony.

There is always the concern that a statute like this could criminalize “sexting” engaged in by age-mate teens. The language in the current statute, “. . . with the intent to invade the privacy of that other person,” has protected against this potentiality in the past and would continue to do so under the proposed revision(s).

One final note – HB 2151 passed the House 115-6-0-4. Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

Marc Bennett
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Eighteenth Judicial District