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**Testimony in Support of House Bill 2002
Sexual exploitation of a child; definition of “sexually explicit conduct”**

**Presented to the House Committee on Judiciary
By Assistant Solicitor General Natalie Chalmers**

January 29, 2015

Chairman Barker and Members of the Committee:

The Attorney General conceptually supports House Bill 2002, but would offer two amendments to ensure innocent activity is not criminalized and to ensure the bill would not undermine existing case law. For several reasons set forth below, the Attorney General proposes the following bolded amendments to House Bill 2002:

(a) Sexual exploitation of a child is ***engaging in any of the following with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person:***

- (1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;
- (2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct ~~with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;~~
- (3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or
- (4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.

...

(d) As used in this section:

- (1) “Sexually explicit conduct” means actual or simulated: ***Appearance Exhibition*** in the nude ***or visual depiction in the nude***, with or without the knowledge of the ~~victim~~ ***child***; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person; ...

First, the added language in subsection (a) would ensure innocent activity, such as a parent taking a picture of a child bathing, without any sexual or exploitative intent, would not be punished.

Second, retaining the phrase “exhibition in the nude” would allow prosecutors and defense attorneys to continue following the currently established law as it relates to those terms, but also embraces the clarification that the child need not be aware of the exhibition in order for a person to violate the statute.

Third, using the already defined term of “visual depiction in the nude” will allow for a more explicit understanding of what the legislature intends to criminalize.

Finally, the use of the word “child” instead of “victim” merely parallels the name of the crime and the frequent use of the term “child” throughout the statute.

The Attorney General believes the above draft of the statute aligns with the intent behind the proposed change to the bill, would further clarify the legislature’s intent, and would prevent the statute from punishing innocent activity.

The Attorney General encourages you to enact this bill with the proposed amendment.

Thank you for your consideration. I will stand for questions.

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