

Testimony in Support of HB 2002: Amendment to sexual Exploitation Statute 21-5510

Biographical Information:

Name: David Garcia
Title: Juvenile Investigator
Department: Lawrence Police Department
Assignment: Investigations Division
Email: dgarcia@lkpd.org
Phone: (785) 764-4340

Good afternoon Ladies and Gentlemen of the House Judiciary Committee. My name is David Garcia, and I have been a sworn police officer since 2008. I currently work as a juvenile investigator with the Lawrence Police Department, I investigate crimes committed against children. The majority of the cases I work are sex crimes against children.

In 2014, I was assigned to work a case concerning an 11-year old female victim. The victim was home alone with her mother's boyfriend, an adult male. The victim informed the suspect she was going to shower. The suspect told the victim he needed to use the bathroom, before she went in to shower. The victim noted the suspect was in the bathroom for several minutes, while she waited outside the door. The victim stated the suspect exited the bathroom and she entered to shower. She advised she removed all her clothing. She stated she dropped her towel on the floor and as she was picking the towel up she noticed two cellphones hidden on the toilet's tank under a shelf. She advised it was obvious someone was trying to hide the phones and keep anyone from finding them. The victim stated both the phones were pointing towards the shower and recording video. The victim stopped one of the phones from recording, but did not stop the second one.

The victim proceeded to shower. After the shower, the victim rolled both phones in a towel and took them with her. The suspect entered the bathroom as soon as the victim stepped out. The suspect confronted the victim and asked her where his phones were. The victim secured both phones and left the house on her bicycle. The victim was able to ride her bicycle to a family friend's house down the street.

The police were immediately called and units responded. The suspect was later located and interviewed. During the interview, the suspect admitted to covertly videotaping the victim in the bathroom without her knowledge or consent. The suspect admitted to covertly videotaping the victim at least two other times, and had done so to see the victim nude and to fulfill his sexual desires.

After completing search warrants and forensic exams on the suspect's phones and computers, numerous videos of the victim being covertly recorded in the bathroom were located. Still images of the victim in various stages of undress in the bathroom were located on the suspect's computer. The still images appeared to focus on showing the victim's vagina and buttocks.

Due to a deficiency in the current Kansas State Statute addressing sexual exploitation of a child, the State could not charge the suspect with possession and manufacturing of child pornography in violation of the sexual exploitation statute. The State's only option was to charge the suspect with Breach of Privacy, a level 8 person felony which does not require registration as a sexual offender and is presumptive probation. Douglas County Assistant District Attorney Mark Simpson will later explain the State's decision.

Since the State was only able to charge Breach of Privacy, we reached out to the United States Attorney's Office in an attempt to use Federal law to appropriately charge the suspect. The suspect was later indicted in Federal Court for two counts of attempted production of child pornography

The deficiency was caused by the word "Exhibition" being included in the wording of the statute. In *State v. Liebau*, the Kansas Court Appeals noted that a child who does not know they are being recorded generally cannot be engaged in exhibition in the nude. The presence of the word exhibition seems to imply the child must be complicit in the exploitation for the statute to apply. Because of this decision, the State had been forced to only charge the offender with Breach of Privacy instead.

An appropriate way to fix this deficiency is to replace the word "exhibition" with the word "appearance," as proposed in the amended statute. That way, the statute would apply to those offenders who would covertly film children in various stages of undress and use the images from this covert recording for their own sexual gratification or the gratification of another. This is not intended to criminalize the possession of images of nude children in innocent circumstances, where a parent or grandparent photographs or films their child at play. The amended statute still holds the element proving the intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person. The proposed amendment would assist the prosecution in a situation where said pictures or films get into the wrong hands and become a tool for sexual gratification.

In closing, if the suspect in the case noted above would have been found guilty of the lesser charge of Breach of Privacy in State Court, he would not have been required to register as a sex offender and therefore would have had no restrictions after completion of probation. That would mean even though the suspect admitted to videotaping a juvenile victim in the nude to fulfill his sexual gratification and showed an interest in victimizing juveniles in vulnerable situations, he would not have any restrictions keeping him from working with or around children, allowing him to continue to prey on innocent victims. I urge you to move this bill forward and provide a valuable tool for law enforcement and the prosecution in protecting children and prosecuting these types of offenders.

Thank you,

David Garcia
Juvenile Investigator
Lawrence Police Department