

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

Biographical Information:

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Ladies and Gentleman of the House Judiciary Committee. My name is Dean Brown, I am a detective with the Lawrence, Kansas Police Department where I have been a sworn officer since 1996. As part of my duties, I have been conducting forensic computer examinations for the Lawrence Police Department since 2000 and the Heart of America Regional Computer Forensic Laboratory (HARCFL) since 2003. Unfortunately, approximately 50% of the forensic computer examinations I conduct are related to the sexual exploitation of children.

During my career I have participated or been aware of several cases where offenders have covertly recorded children under the age of eighteen in various stages of undress without the child's permission or knowledge. In each of these cases, the suspect has admitted to recording the children for their own sexual desires or prurient interests or this fact was proved through other findings in the case. Due to a deficiency in the current Kansas State Statute addressing sexual exploitation of a child which describes possessing images of children engaged in exhibition in the nude, the State could not charge the offenders with possession and manufacturing of child pornography in violation of the sexual exploitation statute.

This deficiency was caused by the word **Exhibition** being included in the wording of the statute. In a Kansas Supreme Court ruling in *State v. Liebau*, the Supreme Court noted that a child who does not know they are being recorded, generally cannot be engaged in **exhibition** in the nude. Because of this ruling, the State has been forced to charge the offender with Breach of Privacy, a level 8 person felony which does not require registration as a sexual offender and is presumptive probation. This is the same statute that would be charged if the offender was covertly recording an adult in various stages of undress without their permission or knowledge.

The presence of the word exhibition seems to imply the child must be complicit in the exploitation for the statute to apply. The remedy for the deficiency is to replace the word exhibition with the word appearance as proposed in the amended statute. The intended consequence of this is to have the statute 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.

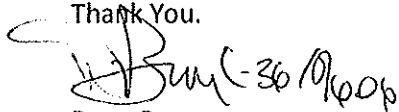
Some, including the Kansas Naturalists Society, may be concerned about the unintended consequences of the amendment. The concern may be that images containing nude children in innocent circumstances may be criminalized. The situation of a parent or grandparent who photographs or films their child at play in a bathtub is often brought up. It is important to realize the amended

statute does not criminalize this, nor does it criminalize what I believe the Naturalists want to preserve, which is the right to film nude children in non-sexual situations which are not for the sexual gratification of others. This protection is kept intact by the requirement that the possession of nude images of children must be for the sexual desire or prurient interest of the person whom the State wishes to charge with this crime. The removal of the exhibition requirement in no way diminishes the Government's burden to prove, beyond a reasonable doubt, that someone possessed nude images of children for their sexual gratification or the sexual gratification of another.

During countless examinations of child pornography cases, the presence of children engaged in exhibition in the nude has only been used to support the fact that the image was possessed for sexual gratification and not for its artistic or nostalgic value. In other words, in my experience exhibition in the nude by children was evidence of possession for sexual gratification, not an element of the crime which stood on its own. Because the amended statute does not decrease the burden of proving images of children in the nude must be possessed for the prurient interest of the offender or another person, the Naturalists should not object to the change in the statute since their activities would be no more criminalized after the change than before the change. The proposed amended statute would determine whether an image of a nude child possessed by the individual was criminal based on the intent of the person possessing the image, not the child depicted in the image.

In closing I urge you to move this bill forward so that the most vulnerable of our population are protected from those that would prey upon them.

Thank You.

A handwritten signature in black ink, appearing to read "Dean Brown", with a stylized flourish at the end.

Dean Brown

Detective

Lawrence, Kansas Police Department