



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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**Testimony Regarding SB 63**  
**Submitted by Marc Bennett, Deputy District Attorney**  
**On Behalf of the Kansas County and District Attorneys Association**

Honorable Chair Owens and Members of the Senate Committee on Judiciary:

Thank you for the opportunity to address you regarding Senate Bill 63. On behalf of the Kansas County and District Attorneys Association, I would like to bring to your attention issues related to K.S.A. 21-3516/ section 74 of chapter 136 of the 2010 Session Laws of Kansas.

The proposal set forth in SB 63 proposes to add the language "or a person whom the offender believes to be a child under 18 years of age," to subsections (1) and (4) of K.S.A. 21-3516, Sexual Exploitation of child.

The legislature has taken steps in recent years to protect the children of Kansas from sexual predators operating on the internet by creating the crime of Electronic Solicitation under K.S.A. 21-3523, to cover defendants who entice or solicit children to commit an "unlawful sex act" as that term is defined by K.S.A. 21-3501(4).

Last fall, an online-suspect tested the waters by asking what he thought was an underage girl to send nude photos of herself before moving on to request that they actually meet for sex. This act could not be charged as Electronic Solicitation because asking for the photo (sexual exploitation) is not among the enumerated list of sex crimes set forth as "unlawful sexual act[s]." The most that could be charged in this situation was a severity level 5 person felony under K.S.A. 21-3516(a)(1) Sexual Exploitation of a Child, "... inducing, enticing or coercing ..." the child to provide the photo. In this case, because the "child" was actually an undercover officer, the only crime that could be charged was a severity level 7, Attempted Sexual Exploitation of a Child, because no "real" child existed.

Senate Judiciary

2-8-11

Attachment 4

The KCDA had initially suggested making a change to either K.S.A. 21-3501(4) or to Electronic Solicitation, however, after consulting with the Reviser's Office, who raised a McAdams-type concern, and further considering the possibility that such changes could be misapplied to underage "sexting" between age-mates, the KCDA proposes the fairly modest changes set forth in SB 63.

As proposed, the change would simply allow the situation set forth above to be charged as Sexual Exploitation of a Child, a Severity level 5 person felony. While that is a lower severity level than electronic solicitation, it would still allow the State to keep such acts at a level where the suspect would face no better than a border box, without opening the specter of concerns often raised about teen "sexting." Those who actually solicit specific sex acts listed as "unlawful sex act[s]" would still face the enhanced penalties available via Electronic Solicitation, while allowing the State to place even those who take the first, tentative steps toward the more serious act in a border box/ presumptive prison category.

Respectfully submitted,

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