

March 7, 2022

Testimony in Support of Senate Bill 385

Dear Kansas Legislatures:

My name is Jason Covington and I support Senate Bill 385. I am a resident of Johnson County, Kansas and I am engaged in the private practice of law. Previously, I served as an assistant district attorney with the Johnson County District Attorney's Office between 2006 and 2021.

While at the district attorney's office I prosecuted sexual-motivated crimes for over 10 years. The prevalence of Breach of Privacy (formerly eavesdropping) crimes rose year after year. This was due in large part to the proliferation of smaller high quality inexpensive cameras easily obtained in the marketplace.

This crime can and did occur in virtually any setting. I prosecuted offenses that occurred at schools, workplaces, retail establishments, bathrooms, dressing rooms, grocery stores, gas stations, and private residences. No location remains safe from this abhorrent behavior.

The targets of this offense are as varied as the locations it occurs in. Typically, it involved a male perpetrator targeting adult females. However, this was not always the case. We often saw individuals engaging in this criminal activity with the express goal of capturing nude footage of minor children. It should be noted that due to legal precedent prosecutors can no longer utilize the child pornography statutes to pursue these offenders. This is because the appellate courts have determined the act of secretly filming a child does not constitute a performance as contemplated by the child pornography statute. Finally, this crime is not isolated to women or children. There has also been a rise in the secret recording of couples engaging in sex acts in the bedroom. By way of example, this week a Texas AIRBNB owner was found to have recorded more than 2000 couples renting his cabin.

The typical perpetrator was often serial in nature. It was common to find countless victims on their electronic devices spanning many different time periods at many different locations. It is also important to be mindful of the predatory nature of these acts. These are individuals who: (1) purchase a tool or camera, (2) form a strategy, (3) execute the plan, (4) collect trophies, and (5) repeat. This active hunting is behaviorally different and apart from individuals who passively view similar content on the internet.

These incidents have a profound effect on the individuals who are targeted. Fear in public places and of other individuals is an all too common result. Embarrassment and anger over being targeted can last many years. Of even greater concern is the never-ending worry that the images are on the internet.

The fact that an individual was apprehended and put through the criminal justice system provides little solace. Offenders can easily make copies of the videos on flash drives or even in the cloud that likely will never be located or intercepted by law enforcement. If a video does make it to the internet, we know all too well that getting it off is nearly impossible. Therefore, victims of these

crimes never really know whether these images are still publicly available years after the crime occurred.

Bearing all this in mind, citizens are often very surprised to learn that a conviction for breach of privacy does not automatically result in placement on the sex offender registry. To obtain sex offender registry a prosecutor must jump through multiple complicated hoops involving findings made as to sexual motivation. This is even the case with breach of privacy convictions that specifically target children.

Senate Bill 385 will make the process more straightforward for all involved. If an offender is convicted of this conduct, they will automatically be required to register in the same way an offender does for crimes explicitly listed under K.S.A. 22-4902 such as sexual exploitation of a child or sexual battery.

Victims will no longer have to worry whether the predator who targeted them will be properly held accountable and labeled for the protection of potential future victims. Individuals who are contemplating committing this crime should be greatly deterred by the high costs of ending up on a sex offender registry.

I support the proposed changes to K.S.A. 22-4902 as introduced by Senate Bill 385.

Thank you,

Jason Covington