

Creating Crimes Regarding Visual Depiction of a Child; Amending Crimes of Breach of Privacy and Blackmail; Amending the Definition of a Crime Committed with an Electronic Monitoring Device; HB 2501

HB 2501 creates crimes of unlawful transmission of a visual depiction of a child, aggravated unlawful transmission of a visual depiction of a child, and unlawful possession of a visual depiction of a child. The bill also amends the crimes of breach of privacy and blackmail. Finally, the bill amends the definition of a crime committed with an electronic monitoring device.

Unlawful Transmission or Possession of a Visual Depiction of a Child

Unlawful transmission of a visual depiction of a child is defined as knowingly transmitting a visual depiction of a child at least 12 years of age but less than 18 years of age in a state of nudity when the offender is less than 19 years of age. Aggravated transmission of a visual depiction of a child requires the same elements and adds the requirement that the transmitting occur with the intent to harass, embarrass, intimidate, defame, or otherwise inflict emotional, psychological, or physical harm. There is a rebuttable presumption the offender had this intent if the offender transmitted such visual depiction to more than one person. It also constitutes aggravated transmission if the transmission was made for pecuniary or tangible gain or with the intent to exhibit or transmit the depiction to more than one person.

Unlawful transmission is a class A, person misdemeanor for a first conviction and a severity level 10, person felony for a subsequent conviction. Aggravated unlawful transmission is a severity level 9, person felony for a first conviction and a severity level 7, person felony for a subsequent conviction.

These crimes do not apply to the transmission of a depiction of a child in a state of nudity by the child who is the subject of the depiction. The crimes do not apply to a visual depiction of a child engaged in sexually explicit conduct or a depiction that constitutes obscenity. The bill specifies that it is not unlawful for a person under the age of 19 to possess a visual depiction of a child in a state of nudity who is 16 years of age or older.

Unlawful possession of a visual depiction of a child is defined as the knowing possession of a visual depiction of a child at least 12 years of age but less than 16 years of age in a state of nudity, if the possessor is less than 19 years of age and received the depiction directly and exclusively from the child who is the subject of the depiction. This crime is a class B, person misdemeanor. It is a defense to the crime that the recipient of a depiction received it without requesting, coercing, or otherwise attempting to obtain the depiction; did not transmit, exhibit, or disseminate the depiction; and made a good faith effort to erase, delete, or destroy the depiction. The crime does not apply to the possession of a depiction of a child in a state of nudity by the child who is the subject of the depiction or to a visual depiction of a child engaged in sexually explicit conduct or a depiction that constitutes obscenity.

The bill defines “sexually explicit conduct,” “state of nudity,” “transmission,” and “visual depiction” for the purposes of the new crimes. “Transmission” includes, among other communications, a request to receive a transmission of a visual depiction if the request results in such a transmission.

The crime of sexual exploitation of a child is amended to add “except the circumstances covered by the crimes created by the bill” and to add a provision stating sexual exploitation of a child shall not apply to possession of a depiction of a child in a state of nudity by the child who is the subject of the depiction.

The bill also amends the Kansas Offender Registration Act to specify the definition of “offender” does not include persons convicted or adjudicated of these newly created crimes. Further, notwithstanding any other provision of law, the bill prohibits a court from ordering a person to register under the Act for these offenses.

Breach of Privacy

The bill amends the crime of breach of privacy to include disseminating or permitting the dissemination of any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which the other person had a reasonable expectation of privacy, with the intent to harass, threaten, or intimidate the other person, and the other person did not consent to its dissemination. This offense is a severity level 8, person felony or a level 5, person felony upon a second or subsequent conviction within the previous five years.

The breach of privacy provisions of this bill do not apply to interactive computer service providers for content provided by another person, radio common carriers, and local exchange carriers. The provisions also do not apply to persons acting with a *bona fide* and lawful scientific, educational, governmental, news, or other similar public purpose.

Blackmail

The bill amends the crime of blackmail to include disseminating any videotape, photograph, film, or image obtained in violation of these new provisions, which is a level 4, person felony.

Crime Committed with an Electronic Device

The bill amends the definition of a crime committed with an electronic device to add the words “including but not limited to” before the list of crimes in the statute, making the list non-exhaustive. The crimes currently listed in the statute are criminal use of a financial card, unlawful acts concerning computers, identity theft and identity fraud, and electronic solicitation.