



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M HOWE, DISTRICT ATTORNEY

March 11, 2021

Senate Judiciary Committee
Attention: Senator Warren, Chairwoman
State Capitol, Room 166W
Topeka, Kansas 66612

Re: House Bill 2071

Dear Chairwoman Warren and members of the Senate Judiciary Committee,

Thank you for the opportunity to submit our written response in support of HB 2071.

I appreciate the opportunity to come before you and discuss the need for changes in the Kansas stalking statute found at K.S.A. 21-5427. Prosecutors, law enforcement and the Kansas Legislature have worked very hard to protect the most vulnerable members of our community, including our children. Despite our best efforts, there have been times when a factual scenario occurs that demonstrates a loophole in our criminal statutes. My County was recently faced with this situation. In March of 2020, we became aware of a school teacher covertly taking pictures of a student. These acts were sexually motivated.

This behavior is repugnant to our society. However, prosecutors must apply the facts to our criminal statutes to determine if any charges can be filed. The defendant was charged with recklessly stalking his student pursuant to K.S.A. 21-5427, which is a class A misdemeanor. Despite the filing of these charges, there was a clear need to prepare a legislative fix. Two significant changes are needed to protect minors from this type of conduct.

First, the current statute does not clearly spell out whether a victim needs to be aware of the stalking at the time of the acts in order to be in violation of the law. The defendant has in fact filed a motion to dismiss on these grounds. While we have argued and won that argument at the District Court level, there are no guarantees that we can win this argument at the appellate

courts. It is therefore essential that we close this potential loophole to ensure the protection of our children from this type of criminal behavior. There have been several different approaches used by states across the country to address this type of conduct. It is the view of my office that this proposal is the most effective means of achieving our goal of strengthening Kansas laws. It will also provide us the best opportunity to legally defend the statute throughout the court system. The proposed changes solidify the intent of the law, that *knowledge at the time of the criminal acts is not required*. The "reasonable person" standard used in this proposed legislation has been well established and vetted through the Kansas court system.

A second needed change is to create an enhancement provision when individuals target children. Children are typically unaware that this behavior is going on or that it is wrong and therefore, they cannot protect themselves. Penalty enhancements help us in protecting the most vulnerable in our society and hold offenders accountable. The "under the age of 14" language was used because this age has been previously used to distinguish the penalties for crimes against children. This is based on the belief that children under the age of 14 are the most vulnerable to sexual offenders. This is why Kansas strengthened its laws prohibiting sexual acts with children many years ago. Another suggestion would be to use the age of consent, which is 16 years of age. Either option will provide the needed protections for children from the stalkers that target them.

I would ask that you pass HB 2071 to ensure we provide the needed protections for our children.

Thank you for your time and would be happy to answer any questions you may have regarding the proposed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Howe". The signature is fluid and cursive, written over a light blue horizontal line.

Stephen M. Howe
Johnson County District Attorney