



**Senate Judiciary Committee
March 4, 2025**

**House Bill 2183
Testimony of the BIDS Legislative Committee
Presented by Emily Brandt
Opponent**

Chairperson Warren and Members of the Committee:

The BIDS Legislative Committee wants to start by acknowledging the work of the House Judiciary Committee in its attempt to amend HB 2183 to survive constitutional muster. That said, the BIDS Legislative Committee still has serious reservations about HB 2183.

Section 1 of HB 2183 Fails to Criminalize Obscenity

Section 1 of HB 2183 amends K.S.A. 21-5510 sexual exploitation of a child. The House Judiciary Committee amended K.S.A. 21-5510 to criminalize “possessing any artificially generated visual depiction with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.”¹ HB 2183 later defines an “artificially generated visual depiction” to include depictions that are “obscene and indistinguishable from a real child, morphed from a real child's image or generated without any actual child involvement.”² Obscene is also now defined.³

Relevant to this bill, we know two things are not protected by the first amendment: (1) child pornography and (2) obscenity. The current law criminalizes child pornography.⁴ The House Judiciary Committee’s amendment creating (a)(2)(B) is an attempt to criminalize obscenity. It does not achieve that goal.

The Kansas appellate courts have made it clear that the elements of sexual exploitation of a child do not include its many definitions.⁵ The only material elements under proposed (a)(2)(B) are:

1. Possessing any artificially generated visual depiction; and
2. With intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender

A jury would then be required to apply the definitions from proposed (d)(5) “obscenity” and (d)(B) “artificially generated visual depiction” to the material elements of the offense. As written, obscenity is not a material element of sexual exploitation of a child. Assuming jurors could apply a multi-layered non-elemental definition to the material elements of sexual exploitation of a child, the proposed definition of “artificially generated visual depiction” does not **require** an obscenity finding. It merely **includes** obscenity.

¹ HB 2183, p. 1, lines 30–32.

² HB 2183, p. 3, lines 14–21.

³ HB 2183, p. 3, lines 9–13.

⁴ K.S.A. 2024 Supp. K.S.A. 21-5510(a)(2).

⁵ *State v. Johnson*, 56 Kan. App. 2d 1293, 1310–12 (2019).

If obscenity is not being directly criminalized, then the material possessed is protected by the First Amendment. We would respectfully refer this Committee to our written opposition testimony presented to the House Judiciary Committee for that analysis.

Section 2 of HB 2183 Will Have Unintended Consequences for Young Offenders

K.S.A. 21-5610, unlawful possession of a visual depiction of a child, and K.S.A. 21-5611, unlawful transmission of a visual depiction of a child, are “Romeo and Juliet” laws. The intent of these laws is to criminalize conduct between peers less severely than conduct between an adult and a child. We start by noting that because the two statutes exist in tandem, it does not make sense to amend K.S.A. 21-5611 from “a child” to “an identifiable child” but not amend K.S.A. 21-5610 to match.⁶

Our bigger concern, though, is that the amendment from “a child” to “an identifiable child” will result in young offenders being charged under K.S.A. 21-5510(a)(2)(B) when prosecutors cannot identify the child in the visual depiction. This would defeat the purpose of the Romeo and Juliet laws.⁷ What would have been a misdemeanor conviction could now be a felony conviction that exposes the young offender to lifetime postrelease and registration under the Kansas Offender Registration Act.

HB 2183 Solves a Non-Existent Problem

Finally, the BIDS Legislative Committee suggests that HB 2183 is unnecessary legislation. When testifying in front of the House Judiciary Committee, the Shawnee County District Attorney testified that the lack of definitions regarding artificial intelligence in Kansas statutes had not prevented him from prosecuting any child sex crimes or breach of privacy offenses. We also respectfully submit that existing law criminalizes the conduct seeking to be punished by HB 2183. Both the sexual exploitation of a child statute and the unlawful transmission of a visual depiction of a child statute already define “visual depiction” to include digital or computer-generated images.⁸ HB 2183 complicates this definition without a foreseeable benefit. And the Kansas appellate courts have already held that simulated, morphed, or modified images of an actual child are not protected speech.⁹ The State can already prosecute the kinds of conduct it is seeking to criminalize under HB 2183.

And it is not obvious to the BIDS Legislative Committee why HB 2183 amends K.S.A. 21-6101 breach of privacy in the same way it amends K.S.A. 21-5611 unlawful transmission of a visual depiction of a child.¹⁰ In the breach of privacy statute, the victim must have had a reasonable expectation of privacy. This sort of contemporaneous need for a right to exist to trigger criminal culpability makes it different from both sexual exploitation of a child and unlawful transmission of a visual depiction of a child. The victim in a breach of privacy prosecution necessarily must be involved in the creation of the original image.

For all of these reasons, we respectfully request this Committee not pass HB 2183.

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⁶ K.S.A. 2024 Supp. 21-5611(g) (definition section of 21-5611 applies to the terms in 21-5610).

⁷ See, e.g., *State v. Grant*, No. 126,491, 2024 WL 4182299, at *4 (Kan. App. 2024), *petition for review granted* February 21, 2025 (Romeo and Juliet defenses in 21-5610 and 21-5611 do not apply to 21-5510); see also proponent testimony in S.B. 391, 2015–2016 Gen. Sess. Kan. Leg. (creating the crimes of unlawful transmission of a visual depiction of a child and unlawful possession of a visual depiction of a child).

⁸ K.S.A. 2024 Supp. 21-5510(d)(5); K.S.A. 2024 Supp. 21-5511(g)(4).

⁹ *State v. Coburn*, 38 Kan. App. 2d 1036, 1063–65 (2008).

¹⁰ Compare HB 2183, p. 5, lines 1–10; with HB 2183, p.6, lines 6–16.