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14th District

TO: Committee on Judiciary and Public Safety
FROM: Senator Luther Olsen and Representative John Jagler
DATE: Monday, February 1, 2016
SUBJECT: Testimony for Senate Bill 614

Thank you Senator Wanggaard and members of the Senate Committee on Judiciary and Public Safety for holding a hearing and allowing us to testify in support of Senate Bill 614. This is an important piece of legislation, which was drafted with input from the Department of Justice (DOJ) it would close a loophole in current law to prohibit pictures taken of minors for sexual gratification.

Under current law, a person who takes a picture or videotape of a nude person without their consent or who obtains it after the fact knowing that image was taken without the person's consent, is guilty of a Class I felony. Currently, parents or guardians of a child who have photos for noncommercial purposes are generally exempt from this law. This bill will limit the exception so that it excludes parents or guardians who are distributing an image for the purpose of sexual arousal or gratification. The exception in current law exists to protect parents who are taking pictures of their young children in the bath or other innocent events that are being taken for memories sake.

Unfortunately, some people are taking advantage of this exemption and using it for sexual gratification, which is why we are proposing this bill to narrow the parental exemption. This bill will allow authorities to charge a parent who captures, possesses, distributes a nude photo of a child for the purpose of sexual arousal or gratification with a Class I felony, even if the activity does not amount to the level of sexual exploitation or child pornography. By limiting this exemption, parents that participate in those activities which are clearly sexually abusive, will no longer be afforded extra protection under the law.

Thank you members, we ask for your support on Senate Bill 614 and would be more than happy to answer any questions.

First I would like to thank you for allowing me the opportunity to speak regarding Bill 614 and why it needs to change. My name is Tamara Tabbert and I am the mother of a child that was victimized over and over again from the age of 10 to 13. Her predator didn't live next door; he wasn't an acquaintance nor was he a stranger. Her predator lived under the very same roof that she did; he was her step father. My child was stalked, degraded, groomed, and as to her right to privacy; well she had none. The images and videos that this man secretly took of her were used for his own sexual gratification. My courageous beautiful daughter did what she was supposed to do and on August 23rd, 2011 she told me that she had caught him videotaping her in the bathroom when I was at work. The police were called and that's where our nightmare began. The things this 50 year old animal did to my little girl as she slept, changed, and took a shower in her home are absolutely deplorable. When he couldn't hide a video camera to catch her taking a shower, he would wait until she came out of the bathroom wearing her robe. He would demand that she get on her hands and knees and clean the kitchen floor because she spilled something on it. All the while he was videotaping up her robe and using our 2 year old daughter to keep her distracted. When she was done he would tell her that it wasn't clean enough and she needed to do it again. Being a child she did as she was told because he was the adult. This sick individual moved the videos and images from phone to phone, downloaded them on his computer that had a concealed hard drive on his computer. It took over 8 months to charge my ex husband. There were numerous images and videos of my child but in the end he was only charged with 4 counts of 942.09 (2)(am)3 Possess/Distribute Recording of Nudity and 1 count, yes 1 count of 929.08(a) Invade Privacy – Use Surveillance Device. On May 25th, 2012 I sat in the court room as his Defense Attorney requested that all charges be dismissed due to the fact that he was his victims step father therefore he fell under (bm). We allow parents, guardians and legal custodians to videotape or take pictures at any age anyway they see fit and they can't be prosecuted for it! You have to be kidding me! Because of this loop hole the judge ordered a continuance for a later date. I will never forget when the Asst. DA leaned in and said that the case will most likely be dismissed due to loop hole within the law. We teach our children in school about predators and how they should tell someone if they are being hurt but when it's their parent, guardian, or legal custodian they can do these horrible things and not be prosecuted for them. These children are being victimized over and over again by the very people who are to protect them and our state allows it. Fortunately my daughter's case was not dismissed because being her step father didn't fall under the State Statute (bm). He was finally convicted on 11-01-12 on 4 Class I Felonies. He received a 4 year sentence and will be released from his cage in Aug. of this year. However, due to the State Statute that he was convicted on he will NOT have to register as a sex offender. Why? It's not included on the Sex Offender Registry List! Perhaps someone needs to find out why it's not included on the List because it should be especially if the predator is using it for sexual gratification. I have a daughter with this man and this is why this law needs to be changed. I will do everything in my power to protect her from him. However, she will be 10 years old when he is released from his extended supervision and mark my words she will be his next easy victim. Only this time if this law is not changed his case will be dismissed because he's her parent. It's time to wake up. Technology is rapidly evolving and so should our laws regarding our children. Children should have the right to privacy in their own homes; they should not be preyed upon by their parent, guardian, or legal custodian and if they are then they need to be prosecuted to the fullest. DNA or legal documents shouldn't give you the right to victimize your child! Enough is enough and this is why I am say Yes to this Bill changing. Thank you for giving me this opportunity to voice my opinion and share our nightmare.