

**OFFICE OF THE DISTRICT ATTORNEY**  
**THIRD JUDICIAL DISTRICT OF KANSAS**  
Chadwick J. Taylor, District Attorney

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To Whom It May Concern:

I am a prosecutor with the Shawnee County District Attorney's office. I am currently assigned to the major felony division where I charge and prosecute the majority of our sex crimes.

During my tenure, I have seen several cases where digital media containing suspected child pornography has been seized by law enforcement agencies and submitted for forensic analysis. In some cases, the child pornography consists of pictures found on the internet. Sadly, the victims portrayed in these images are victimized again and again as their images are copied, reproduced and downloaded all across the world. These images may be used by themselves to satisfy the sexual desires of a defendant or they may be used to groom a child who then becomes a victim of a sexual perpetrator. In some cases, the perpetrators have been the ones to take digital photographs of their victims – manufacturing child pornography as an end to itself or using these images to groom the child for future rape or sodomy. Of these victims, the majority have been children in our community. Once these digital photographs are taken, has found them on cell phones, thumb drives, laptops, and desktop computers – digital media that has ready access to the internet.

When law enforcement finds suspected child pornography, they ship the digital media on which the images are located to a federal facility, Heartland Area Regional Computer Forensic Laboratory (HARCFL), for further testing. The media is analyzed by federal agents and reports are generated detailing what was found and the location and nature of any suspect images. The media that is seized by local law enforcement is necessarily given to HARCFL where it remains in the possession of HARCFL for the testing process. Once analysis is complete, the media may or may not be returned to the local law enforcement agency that seized it.

HARCFL has strict protocols involving the reproduction of pornographic images and accessibility to such images. Among these protocols, there is a prohibition against distributing illegal images to anyone other than law enforcement. These protocols follow the requirements of the Adam Walsh Act. However, consistent with the Adam Walsh Act and the requirements of due process, HARCFL will allow defense experts to come on-site and perform independent testing of copies of seized hard drives. As a matter of fact, HARCFL will ship such copies to any secure government facility where their protocols against copying and distribution can be ensured.

## Case Example

On October 6, 2009, The State of Kansas filed a Complaint alleging one count of rape with a child less than 14 years of age and one count of sexual exploitation of a child. The sexual exploitation charge arises from images found on computers involving child pornography. The allegations of rape and sexual exploitation share a nexus allowing the charges to be brought in the same Complaint – namely, that pornography was used to facilitate the rape.

As part of the investigation into these allegations, the Topeka Police Department (TPD) seized several computers from the defendant. These computers were sent to HARCFL for testing. HARCFL began its examinations by making duplicate images of the hard drives. These duplicates were then used for testing and analysis. Once the testing was complete, HARCFL personnel reported their findings and the original hard drives were returned to TPD. HARCFL also sent TPD CDs containing images suspected to be child pornography as found on the hard drives.

On February 26, 2010, the defendant filed a motion requesting that the Court order the State to turn over copies of the CDs containing child pornography, copies of the hard drives on which the child pornography was found, and copies of the duplicate media HARCFL made in order to do its testing. These copies containing child pornography were to be turned over to a private computer examiner not bound by the protocols and oversight provided by the government facility to prevent distribution of child pornography.

On March 30, 2010, the State filed a response in opposition citing the applicability of the Adam Walsh Act to the government facilities and agents in possession of the materials requested as well as the criminal prohibition found in 18 U.S.C.A. 2252A.

On April 13, 2010, the court ordered that the government should make copies of the digital media containing child pornography and provide these copies to the Court. The Court designated the defendant's counsel, one associate, and one unnamed expert as parties authorized to possess the digital media and when the media was not in the authorized parties' possession it would remain in a locked cabinet accessible only to the Court.

TPD and the FBI refused to comply with the Court's Order maintaining that the Adam Walsh Act, 18 U.S.C.A. § 2552A, as well as public policy required that copies of child pornography should not be distributed outside of law enforcement facilities or within the strict confines of the Court's trial record.

Over the next nine months, the case of child rape and sexual exploitation of a child stalled. The Court held additional hearings where it denied the attempts by TPD to intervene, contemplated holding the State in contempt, and then finally ordered the State to issue subpoenas on behalf of the defendant so that TPD and the FBI could obtain standing to argue their positions before the Court.

I am hopeful that my case may be set for trial before the end of summer 2011. My five year old alleged rape victim was last allegedly raped in 2006. She is now 10 years old. If all goes well, she will be testifying about events that occurred at least five years ago. In the meantime, the defendant remains free.

## Conclusion

The bill currently being considered would provide certainty in case of child pornography and would relieve the tension between federal criminal discovery law and state criminal discovery law. Enacting these provisions would eliminate the possibility that law enforcement agencies would take part in distributing child pornography and help ensure that child pornography seized as part of a criminal investigation would not find its way back out to the public. While there are due process considerations, the Adam Walsh Act addresses such concerns by allowing the court to order discovery of this material under a strict protective order in circumstances where distribution is required.

Sincerely,

/s/ Todd Hiatt

J. Todd Hiatt  
Assistant District Attorney