

Joseph & Hollander LLC

Lawyers and Counselors

1508 SW Topeka Blvd.
Topeka, KS 66612
Tel: (785) 234-3272
Fax: (785) 234-3610

Stephen M. Joseph
Ross A. Hollander
Michael A. Priddle
Edward L. Robinson
Bach T. Hang
Benjamin A. Reed
Bonnie M. Boryca

Christopher M. Joseph
M. Kristine Savage
Boyd R. McPherson
Sonya L. Strickland
Michelle K. Moe
Casey Y. Meek

Wichita Office:
500 North Market Street
Wichita, KS 67214-3514
Tel: (316) 262-9393
Fax: (316) 262-9006

TO: Senate Judiciary Committee

FROM: Christopher M. Joseph

DATE: February 14, 2011

RE: Opposition to SB 73

Good afternoon Chairman and members of the Committee, my name is Chris Joseph and I am a criminal defense attorney. I am submitting this testimony in opposition of SB 73 both personally and on behalf of the Kansas Association of Criminal Defense Lawyers.

The change will be expensive for Kansas: I deal with the issue of defense expert review of child pornography regularly in federal court, and occasionally in state court. As recently as last month, I obtained a quote from a forensic examiner for two scenarios – one price for an examination at his lab and another for traveling to the local police department to conduct the examination. The price was triple for the later. Specifically, it was \$10,000 more to travel to Kansas for the examination.

Why should the legislature care? Because experts are necessary to defend a child pornography case even when the client is indigent. Consider adding roughly \$10,000 in expense to the state for every indigent defendant prosecuted for this crime. Consider also that a significant number of defendants who can now pay for private counsel could not if they have to also pay an additional \$10,000 in expert costs.

There is no need for the change: The forensic experts who we hire are certified professionals. Many are former law enforcement. There is no more of a chance that they would do something nefarious with this material than someone at the local police department.

Conducting an examination at a police department does little to prevent a forensic expert from doing something nefarious with the material. Courts have ruled that experts must be allowed access to the internet for research and that police may not search the experts' computers upon leaving the facility. In other words, if the expert wants to upload images to the internet or sneak them out of the police department, he can. You can not legislate away the extremely slim risk of this happening.

The bottom line is this – the proposed bill would be expensive and does little to prevent the professional, often former law enforcement, forensic experts from committing horrific felony crimes if they decide to risk their careers and life in prison to do so.

Senate Judiciary
2-14-11
Attachment 5