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Senate Judiciary Committee
Testimony of Amy Hanley, Assistant Attorney General
Office of Attorney General Derek Schmidt
In Support of HB 2464
March 5, 2012

Chairman Owens and Members of the Committee,

I am a prosecutor with the Kansas Attorney General's Office, currently prosecuting high-level crimes throughout the state of Kansas, including capital murder, sexual abuse of children, and possession and distribution of child pornography. I appear today on behalf of Attorney General Derek Schmidt in support of passage of HB 2464 which would prevent copying and dissemination of child pornography in Kansas prosecutions.

Transfer, Reproduction, or Distribution of Images Violates Federal Law.

Currently, federal law 18 USC 3509(m) prohibits dissemination of sexually explicit images of children to defendants and their counsel and requires these images to remain in the care, custody, and control of either the Government or the court. This subsection further requires the Government to provide the defendant and his expert ample opportunity for inspection, viewing, and examination at a Government facility. HB 2464 incorporates these provisions into Kansas law

Child Pornography is Contraband.

Child pornography is contraband, analogous to cocaine or any other controlled substance. When contraband is collected as evidence in a case, it remains in the control of law enforcement for obvious reasons. Just as it's unreasonable to allow a baggie of cocaine to be turned over to a defendant, child pornography should not be transferred to a defendant's control.

Providing the Defendant Access to Images for Viewing, Inspection, and Examination Satisfies Kansas Discovery Requirements.

HB 2464 is consistent with discovery provisions already in effect. Under K.S.A. 22-3212(e), courts have discretion to order discovery or inspection denied, restricted, or deferred. Further, K.S.A. 22-3212(b)(1) provides that prosecuting attorneys shall permit the defendant to inspect and copy items related to the case in their custody which "will not place an unreasonable burden upon the prosecution." Requiring law enforcement or prosecutors to violate federal law by producing copies of child pornography images is unreasonable.

I would be happy to answer any questions.