

To: Chairman Tim Owens and the Senate Judiciary Committee
From: Keith Henderson, Assistant District Attorney Johnson County District Attorney's Office
Date: March 2, 2012

Re: **Testimony in support of HB 2464**

Chairman Owens and members of the Senate Judiciary Committee:

Thank you for this opportunity to present testimony on HB2464. My name is Keith Henderson; I am an Assistant District Attorney and member of the Sex Crimes and Child Abuse Unit in the Johnson County District Attorney's Office. I am here today testifying in support of HB 2464 on behalf of the Kansas County and District Attorneys Association.

In 2006 the United States Congress passed the Adam Walsh Child Protection and Safety Act, requiring images of child pornography to be kept in the control of the federal government and required courts to deny any defense request to copy or duplicate any material that constitutes child pornography. However, current Kansas law does not contain the same protections and fails to adequately safeguard the handling of illegal images and videos of child pornography. HB 2464 would remedy this error.

The passage of HB 2464 would require images of child pornography to remain in the care, custody and control of law enforcement, the prosecution or the courts. HB 2464 would require Kansas courts to deny defense requests to copy or reproduce any images of child pornography so long as the prosecution makes such images reasonably available for the defendant's review. Under current law, Kansas courts lack statutory authority to deny a defense request to copy illegal images and videos of child pornography and then ship those copies across the country to a defense expert.

I am personally familiar with the problems caused by the inadequacies of current law. During my time as an Assistant District Attorney with the Shawnee County District Attorney's Office I prosecuted a case where a defendant was charged with Sexual Exploitation of a Child for possessing child pornography on his computer. The defense filed a motion seeking to require the state to make a copy of the defendant's hard drive and to allow that copy, and the child pornography it contained, to be taken out of state by the defenses' expert and viewed at his office. Because current law fails to protect victims of child pornography, the presiding judge granted the defenses' motion. HB 2464 would prevent such a situation.

I am also familiar with a Johnson County case a colleague of mine prosecuted. The defense filed a motion requesting that the State provide a copy of its evidentiary hard drive containing illicit images and videos. The defendant specifically requested that the State be required to send this copy to the State of California for review by the defendant's expert. Although the State argued federal law contained in the Adam Walsh Act prohibited such an action, the presiding judge agreed with the defense and ordered that a copy of the hard drive be sent to California.

HB 2464 protects the State's interest in ensuring that illegal materials are securely kept while at the same time protecting a defendant's right to a fair trial. HB 2464 requires the state to provide ample opportunity for the defendant, his or her attorney and any expert the defense might employ to review the material at a law enforcement facility.

Images of child pornography are contraband and are illegal to possess. Such images should remain in the exclusive custody and control of law enforcement, the prosecution or the courts.

Thank you for this opportunity and I will stand for any questions.

Sincerely,

*Keith Henderson
Assistant District Attorney
Johnson County District Attorney's Office*