

Joseph & Hollander LLC

Lawyers and Counselors

Reply To:
1508 SW Topeka Blvd.
Topeka, KS 66612-1887
Tel: (785) 234-3272
Fax: (785) 234-3610

Stephen M. Joseph
Ross A. Hollander
Julia A. Craft
Michelle K. Moe
Edward L. Robinson
Boyd R. McPherson
Bonnie M. Boryca

M. Kristine Savage
Christopher M. Joseph
Sonya L. Strickland
Bach T. Hang
Benjamin A. Reed
Casey Y. Meek
Jess W. Hoeme

Wichita Office:
500 North Market St.
Wichita, KS 67214-3514
Tel: (316) 262-9393

Lawrence Office:
123 West 8th St., Suite 204
Lawrence, KS 66044-2687
Tel: (785) 856-0143

TO: House Judiciary Committee
FROM: Christopher M. Joseph
DATE: January 30, 2012
RE: Opposition to HB 2464

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 HB 2464 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. I have regularly obtained quotes from forensic examiners for such services when state prosecutors object to providing the material and I am forced to file a motion to compel. Invariably the judge grants my motion because expense of making the expert go to a police station to conduct the examination is vastly higher. On average, the experts quote me an additional \$10,000 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.