

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2464**

As Agreed to March 27, 2012

Brief*

HB 2464 would amend current law concerning the obligation of a prosecutor to permit the defendant to inspect, copy, and photograph certain materials. It would provide that any property or material that constitutes a visual depiction, as defined in the crime of sexual exploitation of a child, remain in the care, custody, and control of either the prosecution, law enforcement, or the court. Further, if the state makes the visual depiction reasonably available to the defendant, the court would deny the defendant's request to copy, photograph, duplicate, or otherwise reproduce it. The visual depiction would be deemed "reasonably available to the defendant" if the prosecution provides ample and liberal opportunity for inspection, viewing, and examination of the visual depiction at a government facility, whether in state or out of state, by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to furnish expert testimony at trial.

Additionally, the bill would amend the crime of interference with the judicial process to include knowingly or intentionally, in any criminal proceeding or investigation:

- Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document, or thing;

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- Withholding or unreasonably delaying in producing any testimony, information, document, or thing after a court orders its production;
- Altering, damaging, removing, or destroying any record, document, or thing, with the intent to prevent it from being produced or used as evidence; or
- Making, presenting, or using a false record, document, or thing with the intent that the record, document, or thing, material to a criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master, or law enforcement officer.

Such an act would be a severity level 8, nonperson felony, if the matter or case involves a felony, or a class A, nonperson misdemeanor, if the matter or case involves a misdemeanor.

Conference Committee Action

The House acceded to the Senate's amendments to HB 2464, and the Conference Committee agreed to add the contents of HB 2655 as amended by the Senate.

Background

In the House Committee on Judiciary, representatives of the Kansas Attorney General, the Kansas Bureau of Investigation, the Kansas County and District Attorneys Association, the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association offered testimony in support of HB 2464. A representative of the Kansas Association of Criminal Defense Lawyers appeared as an opponent. The Committee amended the bill to clarify that "reasonably available" requires liberal

opportunity for inspection, viewing, and examination, and the law enforcement facility where this occurs may be located inside or outside of Kansas.

In the Senate Committee on Judiciary, representatives of the Attorney General and the Shawnee County District Attorney's Office appeared in support of HB 2464. A representative of the Kansas Association of Criminal Defense Lawyers appeared as an opponent. The Committee amended the bill to change "law enforcement facility" to "government facility."

In the House Committee on Judiciary, Representative John Rubin, Steve Howe, Johnson County District Attorney, and two concerned citizens appeared in support of HB 2655. No opponents offered testimony. The Committee amended the bill by replacing the proposed language with similar language based on an Indiana statute.

In the Senate Committee on Judiciary, Representative John Rubin again appeared in support of HB 2655. No opponents offered testimony. The Committee amended the bill by removing references to "official" criminal proceedings.

The fiscal note for HB 2464, as introduced, indicates its passage would have no fiscal effect on the Judicial Branch.

The fiscal note indicates passage of HB 2655, as introduced, has the potential for increasing caseloads, however, the impact could be accommodated within existing resources.

Evidence—Defendant's access to certain materials; interference with the judicial process

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