

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:36 A.M. on February 14, 2011, in Room 548-S of the Capitol.

All members were present, except: Senators Bruce and Donovan, who were excused.

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Tamera Lawrence, Office of Revisor of Statutes  
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Helen Pedigo, Special Counsel to the Chief Justice of the Kansas Supreme Court  
Kyle Smith, Office of the Attorney General  
Todd Hiatt, Office of the Shawnee County District Attorney  
Christopher Joseph, Kansas Association of Criminal Defense Lawyers  
Scott Schultz, Office of the Securities Commissioner, Associate General Counsel

Others attending:

See attached list.

The Chairman opened the hearings on **SB 46 -- Amending civil procedure code general provisions relating to electronic filing.**

Jason Thompson, Staff Revisor, reviewed the bill.

Helen Pedigo testified in support of **SB 46 (Attachment 1)**. She stated that the bill clarifies that the Supreme Court would issue an order stating when records and information would be maintained in a computer information storage and retrieval system. The bill also deletes the requirement that the court clerk keep papers that are filed in a wrapper or folder and to initial time and date stamps. She stated that the bill would facilitate the Judicial Branch's movement toward e-filing, which would allow easier access to the courts. E-filing will increase efficiency, allow around-the-clock web access and has the potential to provide savings to anyone who files documents with a Kansas court.

No testimony in opposition to **SB 46** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 46**.

The Chairman closed the hearings on **SB 46**.

The Chairman opened the hearings on **SB 73 -- Amending criminal discovery statute to prohibit release of child pornography evidence to the defense.**

Jason Thompson, Staff Revisor, reviewed the bill.

Todd Hiatt testified in support of **SB 73 (Attachment 2)**. He stated the bill would prohibit the reproduction of pornographic images of children during criminal discovery. The bill would eliminate the inconsistency that exists between the Kansas criminal discovery law and the federal discovery law.

Senator King asked Mr. Hiatt if he would support a provision that would require local law enforcement to follow the protocols in the Adam Walsh Act relating to the reproduction and accessibility of pornographic images of children.

Mr. Hiatt said he would but that is not necessary.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on February 14, 2011, in Room 548-S of the Capitol.

Kyle Smith, presented testimony in support of **SB 73** on behalf of Attorney General Derek Schmidt (Attachments 3 and 4). He stated the bill was proposed to strengthen the state's ability to combat sexual exploitation of children. He noted that the committee had recommended legislation prohibiting reproduction of pornographic images of children during civil discovery.

Mr. Smith suggested that the bill be amended, as follows: On page 4, in line 1, before "law enforcement facility" by inserting, "appropriately secured"

Christopher Joseph testified in opposition to **SB 73** (Attachment 5). He stated that the proposed change in law would result in high costs. He stated that expert testimony is necessary to defend a child pornography case the, cost of which is approximately \$10,000. The state will have to pay those costs if the defendant is indigent.

Senator Kelly raised concerns with the fiscal note, which stated there was no cost to the judiciary. She wondered if the State Board of Indigent Defenses Services had been contacted in the preparation of the fiscal note.

Written testimony in support to **SB 73** was submitted by Patrick Vogelsberg, Kansas County and District Attorneys Association (Attachment 6).

The Chairman opened the hearings on **SB 74 -- Civil procedure; forfeiture; electronic solicitation; sexual exploitation.**

Kyle Smith, presented testimony in support of **SB 74** on behalf of Attorney General Derek Schmidt (Attachments 7 and 8). He stated that the bill would add convictions for certain child sex crimes to the Kansas forfeiture statute.

Scott Schultz testified in support of **SB 74** (Attachment 9). He stated the bill would provide law enforcement necessary tools to better deter child sex crimes. Mr. Schultz proposed an amendment, which would add violations of the Kansas Uniform Securities Act to the list of covered forfeiture offenses.

Written testimony in support of **SB 74** was submitted by: Ed Klumpp, KS Assn. of Chiefs of Police, KS Sheriffs Assn., KS Peace Officers Assn. (Attachment 10) and Patrick Vogelsberg, Kansas County and District Attorneys Association (Attachment 11).

No testimony in opposition to **SB 74** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 74**.

The Chairman closed the hearings on **SB 74**.

**Committee Action:**

The Chairman turned the committee's attention to **SB 46 -- Amending civil procedure code general provisions relating to electronic filing.**

Senator King moved, Senator Lynn seconded, that **SB 46** be passed. The motion was adopted.

The Chairman turned the committee's attention to **SB 52 -- Concerning grandparent's custody of children.**

Senator Vratil moved, Senator Schodorf seconded, that **SB 52** be passed. The motion was adopted.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for February 15, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

## SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 14, 2011

[illegible]



## **SUPREME COURT OF KANSAS**

KANSAS JUDICIAL CENTER

301 SW 10TH AVE.

TOPEKA, KANSAS 66612-1507

PHONE: (785) 368-6327

FAX: (785) 291-3274

HELEN PEDIGO  
SPECIAL COUNSEL  
TO CHIEF JUSTICE

### **SENATE JUDICIARY COMMITTEE**

**Honorable Senator Tim Owens, Chair**

**Testimony in Support of SB 46 – E-filing**

**February 14, 2011**

Mr. Chairman, and committee members, thank you for the opportunity to testify in support of this bill.

The Judicial Branch is moving toward e-filing capability, to allow easier access to the court. This legislation would clarify that the Supreme Court, rather than the chief judge of a judicial district, would issue an order stating when records and information would be maintained in a computer information storage and retrieval system, rather than in dockets and journals. It is anticipated that the statewide rollout of e-filing will be staggered with judicial districts coming online at different times and in phases by different case types. The roll out requires statewide planning and coordination. While individual districts will be consulted about the schedule, this legislative change facilitates the statewide coordination that will be required for successful implementation.

The legislation also deletes language that refers to the clerk keeping papers filed in each case carefully enveloped in a wrapper or folder and that requires to clerk to initial time and date stamps. Under the amendment, clerks would record the date and time of receipt of all filings. Both amendments should be included in one bill.

Moving to electronic filing and a paper-on-demand-only court system will increase efficiency for those who file documents with the court, allowing around the clock web access without the costs of creating, mailing, or delivering a paper document. Once fully implemented, this program has the potential to save costs for law enforcement agencies, state agencies, county and district attorneys, and anyone else who files documents with Kansas courts. The court system itself will be able to function more efficiently, reducing retrieval, storage, and data entry costs. Once information is entered about a document, the information will populate other data points, the paper will be electronically routed and stored, and those involved in a court case will automatically receive relevant notifications.

I ask that you consider this bill favorably. Thank you for your time and I'd be happy to answer questions that you may have.

Senate Judiciary

2-14-11

Attachment 1

## **What is E-Filing?**

Electronic filing, or E-Filing, is the process of submitting court documents over the Internet, rather than on paper, and receiving an electronic response from the court as to the status of the filing. It also allows filers to pay filing fees, notify other parties, receive court notices, and retrieve court information electronically.

Today, most court documents are prepared electronically with word-processing software. A paper filing process requires that these documents be printed out and delivered to the courthouse with the appropriate court fees and instructions. At the courthouse, staff reviews the paper documents, process payment, make entries into the court's case management system, and place the paper documents in the file jacket for the case. Paper case files are then routed to the appropriate judge or staff for processing. Eventually, the paper documents may be routed to an appeals court or to archives.

With E-Filing, the document is prepared in the same way by filers, but sent electronically via the Internet. Court documents and related case information is electronically exchanged with the court. The electronic information is retained, organized, and routed to court staff, but all of the work is done directly on computer screens, rather than by referring to paper documents.

## **Advantages to the Courts**

The filing, tracking, and processing of paper court documents creates inefficiencies, redundant activities, and higher costs to the courts throughout Kansas. By way of illustration, the first four cases on the Kansas Supreme Court's October 2009 docket created 9,774 pages of pleadings, briefs, and other documents (counting numbers of copies necessary for service and assuming all parties had copies of the record on appeal). In yet another case on that docket (a civil case appealed after a trial), more than 21,400 pages were created. In one of the more voluminous cases currently on appeal, the record on appeal is approximately 20,000 pages and the briefs already filed (with more to come) total approximately 800 pages. Assuming the parties have duplicate copies of the record on appeal, the standard number of briefs are filed with the court and served on the opposing party, and the responding party files briefs of approximately the same length, this case alone will create approximately 88,800 pieces of paper. If one assumes an extremely conservative cost of 10 cents per page for photocopying, printing, and postage expense, these six cases account for almost \$11,000 in expenses. In FY 2008, there were 491,596 cases filed in Kansas state courts. E-Filing provides courts with the ability to electronically receive and process documents submitted for filing. Since filing and payment procedures will be automated with an E-Filing system, operational efficiency is improved.

## **Advantages to the Filers**

E-Filing enables filers to submit their court documents electronically online and receive responses from the court on the status of their filings without leaving their office or home. Filers no longer need to incur costs related to the delivery and processing of their court documents. Documents can be submitted electronically 24 hours a day, 7 days a week, and 365 days a year, eliminating racing the clock to the courthouse. In addition, E-Filing is cheaper and faster than mail and delivery services. Status information returned electronically by the court ensures filers that their documents were received at the courthouse and allows filers to track action taken on their documents. E-Filing is convenient, saves times, and reduces paperwork.

## **Preparing the Courts for E-Filing**

Approximately 8 years ago, the Kansas Supreme Court and the Office of Judicial Administration adopted a long-term goal of having a fully integrated electronic court system in all 31 Kansas Judicial Districts and the appellate courts. Electronic filing is the next and final step in achieving that goal. Previous steps have included:

### **Implementation of software driven case management systems (CMS's) used in every district court.**

A CMS manages the receipt, processing, storage, and retrieval of data associated with a case and performs actions on the data. For example, statistical information regarding case types and financial information regarding each case are handled through the CMS. In addition, the CMS allows for the creation of an electronic register of action (ROA), which is an electronic docket sheet that itemizes each document filed in a case; the setting of events, such as hearings or trials; and all judicial actions. A CMS—FullCourt—was selected by a previous study committee for implementation in the district courts. Grant funding led to the installation of the FullCourt CMS in 29 judicial districts (103 counties), with counties paying any associated hardware costs. At the time of implementation, two judicial districts—the 3rd (Shawnee County) and 10th (Johnson County)—had a CMS written by the information technology staff in each of those courts or counties; both of those counties continue to maintain their systems. As a result, 29 of the 31 judicial districts utilize the same CMS, allowing for uniform reporting and accounting to OJA. In addition, the district courts are able to transfer data to other entities, such as to the Department of Revenue regarding matters that impacts the suspension of drivers' licenses. The two judicial districts that do not use Full Court are responsible for writing programs that permit the data transfer in a manner that allows integration of the information with that of the other 29 judicial districts. A portion of case filing fees are paid into a technology fund that pays the maintenance costs for the Full Court software system. The Kansas appellate courts utilize a CMS developed by OJA. Costs of this system are also funded by the technology fund.

### **Implementation of document imaging and management systems**

A document imaging system is a process of scanning paper documents to create an electronic image, and a document management system (DMS) manages the receipt, indexing, storage, and retrieval of those electronic documents by associating them with a case and creating electronic information about the document. Most Kansas judicial districts use the FullCourt document management module; three judicial districts use other software packages—18th (Sedgwick County, using FileNet), 7th (Douglas County, using OnBase), and most counties in the 22nd (Brown, Doniphan, and Marshall Counties, using LaserFiche) (Nemaha County, which is in the 22nd Judicial District, uses the FullCourt DMS). The appellate courts also use LaserFiche document imaging and management system.

### **Implementation of electronic methods for fee and fine payments through CitePay USA.**

Currently online payments for traffic fines and fees are available statewide. In August of 2011 online payments will be available for all types of fines and fees including restitution. Over the counter credit card payments will also be made available then.

**OFFICE OF THE DISTRICT ATTORNEY**  
**THIRD JUDICIAL DISTRICT OF KANSAS**  
Chadwick J. Taylor, District Attorney

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J. Todd Hiatt, Assistant District Attorney  
Shawnee County Courthouse  
200 SE 7th Street, Suite 214  
Topeka, Kansas 66603

February 11, 2011

To Whom It May Concern:

I am a prosecutor with the Shawnee County District Attorney's office. I am currently assigned to the major felony division where I charge and prosecute the majority of our sex crimes.

During my tenure, I have seen several cases where digital media containing suspected child pornography has been seized by law enforcement agencies and submitted for forensic analysis. In some cases, the child pornography consists of pictures found on the internet. Sadly, the victims portrayed in these images are victimized again and again as their images are copied, reproduced and downloaded all across the world. These images may be used by themselves to satisfy the sexual desires of a defendant or they may be used to groom a child who then becomes a victim of a sexual perpetrator. In some cases, the perpetrators have been the ones to take digital photographs of their victims – manufacturing child pornography as an end to itself or using these images to groom the child for future rape or sodomy. Of these victims, the majority have been children in our community. Once these digital photographs are taken, has found them on cell phones, thumb drives, laptops, and desktop computers – digital media that has ready access to the internet.

When law enforcement finds suspected child pornography, they ship the digital media on which the images are located to a federal facility, Heartland Area Regional Computer Forensic Laboratory (HARCFL), for further testing. The media is analyzed by federal agents and reports are generated detailing what was found and the location and nature of any suspect images. The media that is seized by local law enforcement is necessarily given to HARCFL where it remains in the possession of HARCFL for the testing process. Once analysis is complete, the media may or may not be returned to the local law enforcement agency that seized it.

HARCFL has strict protocols involving the reproduction of pornographic images and accessibility to such images. Among these protocols, there is a prohibition against distributing illegal images to anyone other than law enforcement. These protocols follow the requirements of the Adam Walsh Act. However, consistent with the Adam Walsh Act and the requirements of due process, HARCFL will allow defense experts to come on-site and perform independent testing of copies of seized hard drives. As a matter of fact, HARCFL will ship such copies to any secure government facility where their protocols against copying and distribution can be ensured.

### Case Example

On October 6, 2009, The State of Kansas filed a Complaint alleging one count of rape with a child less than 14 years of age and one count of sexual exploitation of a child. The sexual exploitation charge arises from images found on computers involving child pornography. The allegations of rape and sexual exploitation share a nexus allowing the charges to be brought in the same Complaint – namely, that pornography was used to facilitate the rape.

As part of the investigation into these allegations, the Topeka Police Department (TPD) seized several computers from the defendant. These computers were sent to HARCFL for testing. HARCFL began its examinations by making duplicate images of the hard drives. These duplicates were then used for testing and analysis. Once the testing was complete, HARCFL personnel reported their findings and the original hard drives were returned to TPD. HARCFL also sent TPD CDs containing images suspected to be child pornography as found on the hard drives.

On February 26, 2010, the defendant filed a motion requesting that the Court order the State to turn over copies of the CDs containing child pornography, copies of the hard drives on which the child pornography was found, and copies of the duplicate media HARCFL made in order to do its testing. These copies containing child pornography were to be turned over to a private computer examiner not bound by the protocols and oversight provided by the government facility to prevent distribution of child pornography.

On March 30, 2010, the State filed a response in opposition citing the applicability of the Adam Walsh Act to the government facilities and agents in possession of the materials requested as well as the criminal prohibition found in 18 U.S.C.A. 2252A.

On April 13, 2010, the court ordered that the government should make copies of the digital media containing child pornography and provide these copies to the Court. The Court designated the defendant's counsel, one associate, and one unnamed expert as parties authorized to possess the digital media and when the media was not in the authorized parties' possession it would remain in a locked cabinet accessible only to the Court.

TPD and the FBI refused to comply with the Court's Order maintaining that the Adam Walsh Act, 18 U.S.C.A. § 2552A, as well as public policy required that copies of child pornography should not be distributed outside of law enforcement facilities or within the strict confines of the Court's trial record.

Over the next nine months, the case of child rape and sexual exploitation of a child stalled. The Court held additional hearings where it denied the attempts by TPD to intervene, contemplated holding the State in contempt, and then finally ordered the State to issue subpoenas on behalf of the defendant so that TPD and the FBI could obtain standing to argue their positions before the Court.

I am hopeful that my case may be set for trial before the end of summer 2011. My five year old alleged rape victim was last allegedly raped in 2006. She is now 10 years old. If all goes well, she will be testifying about events that occurred at least five years ago. In the meantime, the defendant remains free.



## Conclusion

The bill currently being considered would provide certainty in case of child pornography and would relieve the tension between federal criminal discovery law and state criminal discovery law. Enacting these provisions would eliminate the possibility that law enforcement agencies would take part in distributing child pornography and help ensure that child pornography seized as part of a criminal investigation would not find its way back out to the public. While there are due process considerations, the Adam Walsh Act addresses such concerns by allowing the court to order discovery of this material under a strict protective order in circumstances where distribution is required.

Sincerely,

/s/ Todd Hiatt

J. Todd Hiatt  
Assistant District Attorney



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

Testimony in Support of Senate Bill 73  
Presented to the Senate Judiciary Committee  
by Attorney General Derek Schmidt  
February 14, 2011

Mr. Chairman, members of the Committee, thank you for conducting this hearing today on Senate Bill 73.

This legislation is one of four bills I have proposed this year intended to strengthen our state's ability to combat sexual exploitation of children. Senate Bill 73 would contribute to that purpose by altering the procedure by which pornographic images of children are handled during discovery in criminal cases.

The basic policy proposed by Senate Bill 73 is to prohibit the reproduction of pornographic images of children during criminal discovery. Each time such an image is reproduced, the child is victimized once again. The public policy of Kansas should be to oppose the reproduction of such images at every opportunity.

Last year, this committee recommended legislation that applies a similar non-reproduction policy in civil discovery. Federal law, through the Adam Walsh Act, provides a similar non-reproduction rule in federal criminal cases. Adoption of Senate Bill 73 would bring put a similar policy in place within our state criminal system.

As the federal government has demonstrated, there are other procedures, short of reproducing these images, by which a defendant charged with a crime where such images are evidence may obtain access to these images without reproducing them. A defendant's rights can be protected without further victimizing the child victim.

Thank you for your consideration. I would be happy to stand for questions.

Senate Judiciary  
2-14-11  
Attachment 3



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

**Senate Judiciary Committee**  
Testimony of Kyle Smith, Assistant Attorney General  
Office of Attorney General Derek Schmidt

In Support of SB 73  
February 14, 2011

Chairman Owens and Members of the Committee,

I appear today in support of passage of SB 73 which would help control the spread of contraband and reconcile a serious problem in criminal discovery.

The problem is that sometimes evidence is contraband – items that the very possession of which is a crime. Typically this involves illegal drugs but, tragically and more frequently, the evidence is graphic video, audio and pictures of young children being molested. In this digital age, the duplication and spread of such images is easy, quick and almost uncontrollable.

While defendants are absolutely and constitutionally entitled to see, and have their experts examine, the evidence being presented against them, they are not entitled to revictimize the children. Replicating contraband, giving it to defendants and risking it being spread further is not only irresponsible, it is transmitting child pornography, a crime under state and federal law. Unfortunately some judges think that statutes do not apply to them and have ordered more contraband be created and given to defendants. Sometimes a department is faced with a horrible dilemma of disobeying a court order or a federal law.

Fortunately, balancing the need of defendants and protecting the victims and avoiding the creation and trafficking in child pornography has been worked out in the federal system. 18 USC Sec. 3509 (m), attached, sets out a tested, practical and legal way for defendants' experts to examine the evidence without compromising the evidence or risking dissemination. SB 73 adopts this same procedure for use in Kansas courts. Essentially the contraband stays in the possession of the law enforcement agency but the defendant is given ample opportunity for inspection, viewing, and examination at a Government facility. The KBI Cyber Crime unit has utilized such a procedure in the past - we will now have it codified for use throughout the state.

I would be happy to answer any questions.

Senate Judiciary

2-14-11

Attachment 4

## Federal Prohibition against reproducing child porn for discovery

### TITLE 18 , PART II CHAPTER 223 § 3509

#### **(m) Prohibition on Reproduction of Child Pornography.—**

**(1)** In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

**(2)**

**(A)** Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

**(B)** For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial

*Session of 2011*

### SENATE BILL No. 73

By Committee on Judiciary

1-31

AN ACT concerning criminal procedure; relating to discovery; certain visual depictions; amending K.S.A. 2010 Supp. 22-3212 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

K.S.A. 2010 Supp. 22-3212 is Section 1. hereby amended to read as follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph the following, if relevant: (1) Written or recorded statements or confessions made by the defendant, or copies thereof, which are or have been in the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (2) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (3) recorded testimony of the defendant before a grand jury or at an inquisition; and (4) memoranda of any oral confession made by the defendant and a list of the witnesses to such confession, the existence of which is known, or by the exercise of due diligence may become known to the prosecuting attorney.

(b) (1) *Except as provided in subsection (j)*, upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution.

Except as provided in (2) subsections (a)(2) and (a)(4), this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant, except as may be provided by law.

Except as provided in subsection (3) (e), this section does not require the prosecuting attorney to provide unredacted vehicle identification numbers or personal identifiers of persons mentioned in such books, papers or documents.

As used in this subsection, (4) personal identifiers include, but are not limited to, birthdates, social security numbers, taxpayer identification numbers, drivers license numbers, account numbers of active financial accounts, home addresses and personal telephone numbers of any victims or material witnesses.

If the prosecuting attorney does (5) provide the defendant's counsel with unredacted vehicle identification numbers or personal identifiers, the defendant's counsel shall not further disclose the unredacted numbers or identifiers to the defendant or any other person, directly or indirectly, except as authorized by order of the court.

If the prosecuting attorney (6) provides books, papers or documents to the defendant's counsel with vehicle identification numbers or personal identifiers redacted by the prosecuting attorney, the prosecuting attorney shall provide notice to the defendant's counsel that such books, papers or documents had such numbers or identifiers redacted by the prosecuting attorney.

Any redaction of vehicle (7) identification numbers or personal identifiers by the prosecuting attorney shall be by alteration or truncation of such numbers or identifiers and shall not be by removal.

If the defendant seeks discovery (c) and inspection under subsection (a)(2) or subsection (b), the defendant shall permit the attorney for the prosecution to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at any hearing, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

The prosecuting attorney and the (d) defendant shall cooperate in discovery and reach agreement on the time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for court intervention.

Upon a sufficient showing the (e) court may at any time order that the discovery or inspection be denied, restricted, enlarged or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

Discovery under this section must (f) be completed no later than 20 days after arraignment or at such reasonable later time as the court may permit.

If, subsequent to compliance with (g) an order issued pursuant to this section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this section, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this section or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

For crimes committed on or after (h) July 1, 1993, the prosecuting attorney shall provide all prior convictions of the defendant known to the prosecuting attorney that would affect the determination of the defendant's criminal history for purposes of sentencing under a presumptive sentencing guidelines system as provided in K.S.A. 21-4701 et seq., and amendments thereto.

The prosecuting attorney and (i) defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovering and verifying the criminal history of the defendant.

*In any (j) (1) criminal proceeding, any property or material that constitutes a visual depiction, as defined in subsection (a)(2) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall remain in the care, custody and control of either the prosecution, law enforcement or the court.*

*Notwithstanding (2) subsection (b), if the state makes property or material described in this subsection reasonably available to the defendant, the court shall deny any request by the defendant to copy, photograph, duplicate or otherwise reproduce any such property or material submitted as evidence.*

*For the (3) purpose of this subsection, property or material described in this subsection shall be deemed to be reasonably available to the defendant if the prosecution provides ample opportunity for inspection, viewing and examination of such property or material at a law enforcement facility by the defendant, the defendant's attorney and any individual the defendant may seek to qualify to furnish expert testimony at trial.*

K.S.A. 2010 Supp. 22-3212 Sec. 2. is hereby repealed.

# 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



**Kansas County & District Attorneys Association**

1200 SW 10th Avenue  
Topeka, KS 66604  
(785) 232-5822 Fax: (785) 234-2433  
www.kcdaa.org

February 14, 2011

**Testimony Regarding SB 73  
Submitted by Patrick Vogelsberg  
On Behalf of the Kansas County and District Attorneys Association**

Mr. Chair and members of the Senate Judiciary committee:


The Kansas County and District Attorney Association (KCDA) is in support of SB 73. This bill confines a defendant's access to the illegal materials described in subsection (a)(2) of section 74 of chapter 136 of the 2010 Session Laws to a manner that is appropriate considering illicit nature of the material.

Subsection (a)(2) of section 74 of chapter 136 of the 2010 Session Laws provides that this materials is a, "[...] visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person."

It would be bad policy to freely hand these materials back to the defendant with no restrictions on use and SB 73 prevents that policy. Further, SB 73 addresses concerns regarding a defendant's access to evidence by making the materials reasonably available for viewing and examination at a secure location.

The KCDA stands with the Attorney General in supporting SB 73 and asks that the committee pass the bill out favorably.

Respectfully submitted,

  
Patrick Vogelsberg  
KCDA

Senate Judiciary  
2-14-11  
Attachment 6



**STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL**

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

Testimony in Support of Senate Bill 74  
Presented to the Senate Judiciary Committee  
by Attorney General Derek Schmidt  
February 14, 2011

Mr. Chairman, members of the committee, thank you for conducting this hearing today on Senate Bill 74.

Senate Bill 74 is another one of the four bills I have proposed this year to strengthen our state's efforts against the sexual exploitation of children. This bill would add convictions for certain child sex crimes to the Kansas forfeiture statute.

As you know, the forfeiture statute provides an additional civil tool that the state can use to seize property used by lawbreakers in the commission of their crimes. In this case, the idea would be to allow the state to bring forfeiture actions against the property of those who exploit children through trafficking in child pornography.

In some cases, the principal effect of this approach would be to deny the pornographer the tools of the trade. In some cases, particularly for larger criminal operations that engage in these crimes on a large scale, sufficient assets may be involved to provide additional revenue to law enforcement agencies, pursuant to the forfeiture act.

This proposal is straightforward. Thank you for your consideration. I would stand for questions.

Senate Judiciary  
2-14-11  
Attachment 7





STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

**Senate Judiciary Committee**  
Testimony of Kyle Smith, Assistant Attorney General  
Office of Attorney General Derek Schmidt

In Support of SB 74  
February 14, 2011

Chairman Owens and Members of the Committee,

I appear today in support of passage of SB 74. The Kansas Asset Seizure and Forfeiture Act (KASFA) was adopted in 1994, based on the work of Attorney General Robert T. Stephan's "Task Force on Asset Forfeiture". I was the chair of that task force and worked with the legislature in 1993 and 1994 on passage of the act. We identified four main reasons to utilize forfeiture as an effective law enforcement tool:

Asset forfeiture is an effective tool as it has multiple remedial benefits: (1) it removes the offending property be it guns or cash, so that it can't be used to commit future crimes; (2) it serves as a deterrent not only to the criminal who loses his ill-gotten gains, but to the youth who also see that drug dealing is not an easy way to riches; (3) it destroys the ability of an illegal enterprise to compete against or corrupt legitimate commerce; and (4) it turns illegal profits and equipment into badly needed resources for law enforcement agencies.

Attorney General Robert Stephan's Task Force on Asset Forfeiture, 1993 final report

While most child molesters and pornographers are not financially motivated, the first purpose, removing the tools of this nefarious trade, is still an important reason to adopt SB 73. The computers, cameras and other electronic equipment should not be returned to the offenders. And occasionally more substantial assets are involved: One case in Jefferson County involved a van from out of state that was equipped and utilized as a 'rolling studio' by a defendant that was arrested for soliciting children for production of sexual movies and photographs. And of course, there are commercial profiteers on the internet trading in these materials and if ever caught in Kansas such operations should be stripped of their profits.

But criminals who prey upon our children and the horrific crimes they commit should be fought with every weapon at our disposal, including asset forfeiture.

I would be happy to answer any questions.

Senate Judiciary

2-14-11  
Attachment 8



**TESTIMONY IN SUPPORT OF SENATE BILL 74**  
**Covered Offenses and Conduct Giving Rise to Forfeiture**  
Judiciary Committee      Kansas Senate

**Scott Schultz**  
**Office of the Securities Commissioner**  
**Associate General Counsel**  
February 14, 2011

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of Senate Bill 74 which would add electronic solicitation and sexual exploitation of a child to the list of those offenses eligible for forfeiture under K.S.A. 60-4104.

Inclusion of these offenses will provide law enforcement with the necessary tools to better deter these crimes throughout the state. The office supports this bill and further proposes additional amendments to K.S.A. 60-4104 and K.S.A. 60-4117 to include violations of the Kansas Uniform Securities act, such as securities fraud, in the list of covered forfeiture offenses.

Most of the committee is probably aware that the Securities Commissioner's office employs law enforcement officers in its enforcement division and staff attorneys in its legal division to investigate and prosecute securities crimes that occur throughout the state. We are a one-stop shop for securities inquiries, which enables complaints to be efficiently investigated and referred for prosecution by our attorneys. These attorneys then prosecute the offenses by means of administrative, civil, or criminal state and federal court prosecutions. They serve as special assistant attorneys general while prosecuting in state court.

In order to accommodate our office in this legislation, it is further proposed that amendments be made to K.S.A. 60-4117 that would create a securities fraud prosecution revolving fund for our office for investigation and prosecution and provide for the remainder of the forfeiture funds to be distributed to victims of securities violations with the securities enforcement restitution fund. The addition is restrictive in that they would enable this office to prosecute forfeiture cases that involve only securities violations. This amendment has been attached to this written testimony for your review. Attorney General Derek Schmidt and Johnson County District Attorney Steve Howe are supportive of these proposed amendments.

Adoption of these amendments would give the agency an additional legal remedy to combat securities fraud in our communities and enable it to better retrieve ill-gotten gains from the perpetrators, similar to that in the other financial crimes that are proposed today. This office has subpoena authority of business records. We routinely subpoena bank records and are able to

track the flow of funds into a target's account, thereby proving use of proceeds. The attached photo is a luxury home built with investor money. The defendant, Scott Kaye, was prosecuted by this office in Sedgwick County District Court and sent to prison for convictions of securities fraud. The restitution ordered was \$1.67 million. With forfeiture authority this home, worth several hundred thousand dollars, may have been sold and the proceeds used to repay Kaye's victims. Restitution to victims of securities crimes would be our priority in utilizing forfeiture authority.

I will be glad to answer any questions and thank you for your consideration.

Attachments: 1. Proposed Amendments to SB 74; and  
2. Photo of Scott Kaye's home in Wichita

**Proposed Amendments to SB 74**  
**Requested by the Office of the Securities Commissioner**

AN ACT concerning civil procedure; relating to covered offenses and conduct giving rise to forfeiture; amending K.S.A. 2010 Supp. 60-4104, **K.S.A. 2010 Supp. 60-4117**, and repealing the existing ~~section~~ **sections**.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2010 Supp. 60-4104 is hereby amended to read as follows: 60-4104. Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

(a) All offenses which statutorily and specifically authorize forfeiture;

(b) violations of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto;

(c) ~~theft which is classified as a felony violation pursuant to K.S.A. 21-3701, section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, in which the property taken was livestock;~~

(d) ~~unlawful criminal~~ discharge of a firearm, ~~K.S.A. 21-4219 as defined in subsections (a)(1) and (a)(2) of section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(e) violations of K.S.A. 2010 Supp. 21-36a16, and amendments thereto;

(f) gambling, ~~K.S.A. 21-4303~~ *section 215 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto, and commercial gambling, ~~K.S.A. 21-4304 as defined in subsection (a)(1) of section 217 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(g) counterfeiting, ~~K.S.A. 21-3763~~ *section 111 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(h) violations of ~~K.S.A. 21-4019~~ *section 178 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(i) medicaid fraud, ~~K.S.A. 21-3844 et seq.~~ *sections 150 through 161 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto;

(j) an act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state;

(k) an act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission;

(l) any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission;

(m) ~~furtherance of terrorism or illegal use of weapons of mass destruction, K.S.A. 21-3451~~ *violations of section 58 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;*

(n) ~~unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, K.S.A. 21-4315 as defined in subsections (a) and (b) of section 225 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(o) ~~unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, K.S.A. 21-4319 as defined in subsections (a) and (b) of section 228 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;~~

(p) ~~prostitution, K.S.A. 21-3512 section 229 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, promoting prostitution, K.S.A. 21-3513 section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and patronizing a prostitute, K.S.A. 21-3515 section 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

(q) ~~human trafficking, K.S.A. 21-3446, and amendments thereto, and aggravated human trafficking, K.S.A. 21-3447 section 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; ;~~

(r) ~~electronic solicitation, section 73 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

(s) ~~sexual exploitation of a child, section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and~~

**(t) violations of the Kansas uniform securities act, K.S.A. 17-12a101 et. seq.**

**Sec. 2. K.S.A. 2010 Supp. 60-4117 is hereby amended to read as follows: Except as provided in K.S.A. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:**

**(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;**

**(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;**

**(3) sell property which is not required by law to be destroyed and which is not harmful to the public:**

**(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.**

**(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.**

**(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or**

**(4) salvage the property, subject to any lien preserved by the court.**

**(b) When firearms are forfeited under this act, the firearms in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another law enforcement agency for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.**

**(c) The proceeds of any sale shall be distributed in the following order of priority:**

**(1) For satisfaction of any court preserved security interest or lien, or in the case of a violation, as defined by subsection (h) of K.S.A. 60-4104, and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;**

**(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;**

**(3) reasonable attorney fees:**

**(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget;**

**(B) if the plaintiff's attorney is the attorney general and the conduct and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund. Moneys paid into the medicaid fraud prosecution revolving fund pursuant to this subsection shall be**

appropriated to the attorney general for use by the attorney general in the investigation and prosecution of medicaid fraud and abuse; or

(C) if the conduct and offense giving rise to forfeiture is pursuant to subsection (t) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the securities fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys paid into the securities fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the office of the securities commissioner for use by the commissioner in the investigation and prosecution of violations of the Kansas uniform securities act. Expenditures from the securities fraud prosecution revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the securities commissioner or by a person or persons designated by the securities commissioner; or

(D) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency.

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If Except as provided in paragraph (d)(5), if the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas attorney general's state medicaid fraud forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas attorney general's state medicaid fraud forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the



legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

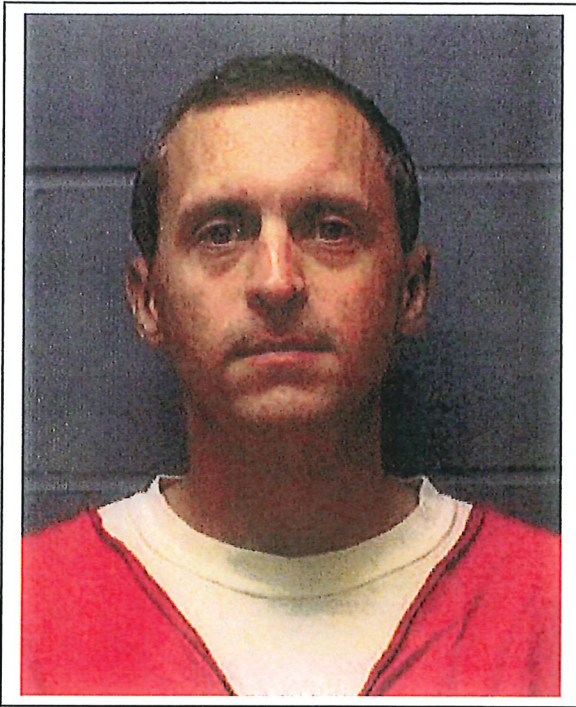
(4) Moneys in the Kansas attorney general's medicaid fraud forfeiture fund shall defray costs of the attorney general in connection with the duties of investigating and prosecuting medicaid fraud and abuse.

(5) If the conduct and offense giving rise to forfeiture is pursuant to subsection (t) of K.S.A. 60-4104, and amendments thereto, the entire amount shall be deposited into the securities enforcement restitution fund and shall be used by the securities commissioner to pay restitution to victims as approved by the court.

Sec. 3. K.S.A. 2010 Supp. 60-4104 is and K.S.A. 2010 Supp. 60-4117 are hereby repealed.

Sec. ~~3~~ 4. This act shall take effect and be in force from and after its publication in the statute book.





**Scott Kaye**

- Hedge Fund Ponzi Scheme
- Used proceeds to build house
- Restitution: \$1,676,414.38





**Kansas Association of  
Chiefs of Police**

PO Box 780603  
Wichita, KS 67278  
(316)733-7301



**Kansas Sheriffs  
Association**

PO Box 1853  
Salina, KS 67402  
(785)827-2222



**Kansas Peace Officers  
Association**

PO Box 2592  
Wichita, KS 67201  
(316)722-8433

**Testimony to the Senate Judiciary Committee  
In Support of SB74  
February 14, 2011**

Chairman Owens and Committee Members,

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association and the Kansas Peace Officers Association supports SB74. Adding the crimes of electronic solicitation of a child and sexual exploitation of a child to the forfeiture laws will help law enforcement strike an additional blow to the perpetrators of these crimes on our children. The provision will be especially helpful when the perpetrator is profiting from the crimes or engage in the crimes utilizing high tech equipment.

Law enforcement needs every tool available to us to discourage sexual victimization of our children. This is a good addition without creating any greater demand on bed space or state tax dollars.

Ed Klumpp  
Kansas Association of Chiefs of Police, Legislative Committee Chair  
Kansas Sheriffs Association, Legislative Liaison  
Kansas Peace Officers Association, Legislative Liaison  
E-mail: eklumpp@cox.net  
Phone: (785) 235-5619  
Cell: (785) 640-1102

Senate Judiciary

2-14-11  
Attachment 10



Kansas County & District Attorneys Association

1200 SW 10th Avenue  
Topeka, KS 66604  
(785) 232-5822 Fax: (785) 234-2433  
www.kcdaa.org

February 14, 2011

**Testimony Regarding SB 74  
Submitted by Patrick Vogelsberg  
On Behalf of the Kansas County and District Attorneys Association**

Mr. Chair and members of the Senate Judiciary committee:


The Kansas County and District Attorney Association (KCDAA) is in support of SB 74, initiated by the Attorney General's Office. Adding electronic solicitation and sexual exploitation of a child to the offenses that give rise to forfeiture are appropriate additions to the statute.

The KCDAA respectfully request that when the committee works this bill that it considers adding the following offenses by amendment:

1. Rape, K.S.A. 21-3502;
2. Indecent liberties with a child, K.S.A. 21-3503;
3. Aggravated indecent liberties with a child, K.S.A. 21-3504;
4. Criminal sodomy as defined in K.S.A. 21-3505(a)(2) and (a)(3);
5. Aggravated criminal sodomy, K.S.A. 21-3506;
6. Indecent solicitation of a child, K.S.A. 21-3510;
7. Aggravated indecent liberties with a child, K.S.A. 21-3511;
8. Unlawful voluntary sexual relations, K.S.A. 21-3522.

Again, the KCDAA supports the underlying bill, but request that these additional offenses be added. These crimes may also be facilitated through the use of vehicles, computers, video cameras, other electronic equipment or devices that should properly be forfeited because of their use in committing the crimes.

Respectfully submitted,

  
Patrick Vogelsberg  
KCDAA

Senate Judiciary

2-14-11

Attachment 11