

Approved: August 25, 2011  
(Date)

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:30 A.M. on March 11, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was 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:

Representative Scott Schwab  
Major Bret Cortright, Office of Johnson County Sheriff  
Officer Kyle Shipps, Prairie Village Police Department

Others attending:

See attached list.

The Chairman opened the hearings on **HB 2227 -- Allowing for the issuance of arrest warrants based on DNA profiles.**

Jason Thompson, Staff Revisor, reviewed the bill.

Representative Scott Schwab testified in support of **HB 2227** (Attachment 1). He stated that the bill was similar to a bill he sponsored last year, but that it addressed a concern raised by Senator Vratil relating to stale evidence.

Senator Haley asked, "Do other states have similar laws?"

Representative Schwab responded, "Missouri and Nevada have similar statutes. In Wisconsin, there is a Court decision which supported the procedure."

Written testimony in support of **HB 2227** was submitted by Ed Klumpp, Kansas Assn. of Chiefs of Police, Kansas Sheriffs Assn. and Kansas Peace Officers Assn. (Attachment 2).

No testimony in opposition to **HB 2227** was submitted.

The Chairman called the committee's attention to the fiscal note for **HB 2227**.

The Chairman closed the hearings on **HB 2227**.

The Chairman opened the hearings on **HB 2104 -- Medical confidentiality exception for law enforcement at crime scenes.**

Jason Thompson, Staff Revisor, reviewed the bill.

The Chairman asked, "Does the bill violate the provisions of HIPPA?"

Mr. Thmopson replied, "The bill was drafted with the intent to not violate HIPPA."

Senator Pilcher-Cook asked, "Does the bill apply only to current patients?"

Mr. Thompson replied, "Yes."

Major Brett Cortright testified in support of **HB 2104** (Attachment 3). He stated that the bill would help a law enforcement officer when determining whether an individual should be taken

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on March 11, 2011, in Room 548-S of the Capitol.

to a jail or to a treatment facility. He added that it would provide additional safety for the officer at a crime scene.

Kyle Shipps testified in support of **HB 2104** (Attachment 4). He stated that currently law enforcement officers are stymied in their efforts to gather information regarding a person's mental health status.

Representative Pat Colloton rose to provide information relating to HIPPA. She stated that HIPPA contains an exception that allows disclosure of information for law enforcement purposes. She added that the current Kansas provision prohibiting disclosure of information is stricter than what is required under HIPPA.

Senator Bruce expressed concerns with the bill. He noted that on page 3, line 18 that there is no requirement that the individual be arrested.

Senator Kelly and the Chairman expressed concern that the wording in the bill would have broader application than the proponents realize.

The Chairman called the committee's attention to the fiscal note for **HB 2104**.

The Chairman closed the hearings on **HB 2104**.

### **Committee Action:**

The Chairman called the committee's attention to **SB 159 -- Parole and postrelease supervision for violent offenders and sex offenders**.

Senator Pilcher-Cook reviewed the balloon amendments that had been distributed to the committee at the meeting on March 10, 2011 [See minutes of March 10, 2011, Attachment 15.].

Senator Pilcher-Cook moved, Senator Lynn seconded, that the amendments as shown in the balloon be adopted. The motion was adopted.

Senator Pilcher-Cook moved, Senator Lynn seconded, that **SB 159** be passed as amended.

Senator Pilcher-Cook stated that the bill is necessary to allow for greater supervision, yet protect the Constitutional rights of these offenders.

Senator Haley asked, "Does the bill allow for the search of the person? If so, what is the scope of the search?"

Senator Pilcher-Cook stated, "It is the same scope as that allowed if the person had been arrested."

Senator Haley remained concerned that the consent to the search is obtained under duress.

Senator Bruce noted that these suspicion-less searches had been conducted for years—until the Supreme Court ruled that the Kansas statute did not authorize such searches.

The Chairman announced that work on **SB 159** would continue after the updated fiscal note is received.

The Chairman called the committee's attention to the cumulative bed impact report that had been prepared by Lauren Douglass and Robert Allison-Gallimore, Research Staff, (Attachment 5).

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 14, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Fri March 11, 2011

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
Leslie Moore	KBI
Janell Zeiler	KBI
Ed Kumpf	KACP/KPOA/KSA
David Clark	Intern - Vratil
Tim Dewese	Johnson County MHC
Kyle Shipp	Prairie Village Police Dept.
Rep Scott Schwartz	Dist. 49
Sen. Rob Olson	Dist 23
Bob Keller	JCSO
Bret Cortright	Jolo SO
Pat Colliston	State Rep.
Mark Gleeson	Judicial Branch
JEREMY S BARCLAY	KDOC
Jennifer Roth	KACDL
<del>SHANNON BELL LITTLE</del>	KCWS
Shannon Bell Little	Little Government Relations

STATE OF KANSAS

SCOTT SCHWAB  
REPRESENTATIVE, 49TH DISTRICT  
P.O. BOX 2672  
OLATHE, KANSAS 66063

CAPITOL BUILDING  
TOPEKA, KANSAS 66612  
(785) 296-7632



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: ELECTIONS

MEMBER: AGING AND LONG TERM CARE  
ASSESSMENT AND TAXATION  
COMMERCE AND LABOR

**House Bill 2227**

**Testimony**

**By Representative Scott Schwab**

**March 11, 2011**

Dear Chairman Owens and Committee Members,  
Thank you for the opportunity to testify in support of HB 2227.

This is my second attempt to allow law enforcement officials to issue warrants of arrest for DNA profiles. Last year the bill was lost due to Senator Vratil's concerns over stale evidence. This bill addresses that concern by being applicable only to crimes with no statute of limitations.

This bill had no opponents this year or last and was passed through the House via the consent calendar.

Thank you for your time, I will now stand for questions.

Sincerely,

Representative Scott Schwab

Senate Judiciary

3-11-11

Attachment 1



**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 HB 2227  
Arrest Warrants Using DNA Identification**

Sen. Owens and committee members,

The Kansas Association of Chiefs of Police, the Kansas Sheriffs Association and the Kansas Peace Officers Association support the amendments to K.S.A. 22-2304 as proposed in HB 2227. Today's use of DNA, coupled with the capability of computerized national DNA offender database comparisons, provides opportunities to bring previously unidentified offenders to justice. Sometimes the DNA database just doesn't contain the suspect's DNA profile yet. When those perpetrators are eventually arrested for the first time, the introduction of their DNA profile in the database will yield all of the other cases where DNA evidence was collected and a match can be made. These victims deserve to have their cases presented for prosecution and resolution. The ability to file DNA based warrants for otherwise unidentifiable perpetrators is critical in these cases.

These warrants will always be the option of last resort. Law enforcement and prosecutors will always use all available resources to identify the criminal by name. A warrant with a name is much more likely to be served and the perpetrator brought to justice more quickly. But that option is simply not always available to us in the timeframe necessary to issue a warrant to keep the case moving forward.

DNA evidence provides methods to positively and uniquely identify the perpetrator even without knowing the name or other common identifiers. In 2008, the Kansas Supreme Court ruled DNA identifiers meet the constitutional and statutory tests for identification purposes in arrest affidavits and warrants. In *State v. Belt* the court states that "an arrest warrant's or a supporting affidavit's inclusion of a unique DNA profile can qualify as a description by which a defendant can be identified with reasonable certainty; mere listing of DNA loci in the warrant or in a supporting affidavit cannot." While specifying the DNA loci was insufficient, the court did not specify what had to be present in the DNA descriptor to be "a unique DNA profile." The court does state that a complete description was available but not used in the *Belt* case which offers insight into what the court requires. The court's terminology is not foreign to DNA scientists and practitioners who believe the proposed language captures the level of identification required by the court in the *Belt* case.

Senate Judiciary

3-11-11

Attachment 2

The proposed amendment will not only help law enforcement and prosecutors to assure the proper information is included in the affidavit and arrest warrant, but it will also help the courts in determining if an acceptable standard is met. More importantly, this bill will do no harm. While it establishes a standard that appears to meet the level of identification the court required in Belt, we may not know for sure until another case reaches appellate courts. However, it will not have caused any harm and may support a positive appellate court outcome since it sets a standard above that used in the Belt case.

This is an important issue for law enforcement and for public safety. The public and the victims deserve to see the accused tried in court on the factual merits of the evidence. They do not deserve to have a potentially dangerous felon turned loose on society due to a technical shortfall. We cannot afford to replicate this outcome. The Belt case represents exactly what we believe the legislature intended to prevent when passing the current language of K.S.A. 21-2304. This bill will reinforce that legislative intent while providing further guidance and clarity to law enforcement, prosecutors and the courts.

We encourage you to recommend this bill favorably for passage to the full House.

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

FRANK P. DENNING  
SHERIFF

913-791-5805



KEVIN D. CAVANAUGH  
UNDERSHERIFF

913-715-5500

DUTY HONOR SERVICE

125 N. CHERRY  
OLATHE, KANSAS 66061  
WWW.JOCOSHERIFF.ORG

Date: March 11, 2011

To: Chairperson Owens, Vice Chairperson King, and distinguished members of the Senate Judiciary Committee:

Chairperson Owens,

My name is Bret Cortright, and I am a Major with the Johnson County Sheriff's Office. I appear today in support of HB 2104 as it allows the law enforcement community exemption from the privileges detailed in KSA 65-5602 which protects the confidentiality of information as it pertains to mental health patients and their treatments.

With the information available through this exemption, law enforcement officers will be better prepared to pursue avenues of evaluation and treatment for subjects exhibiting signs of mental illness rather than that of incarceration in adult and/or juvenile detention facilities if appropriate. This exemption becomes more critical to the increasing numbers of officers who are becoming certified in Crisis Intervention Training (CIT). This exemption coupled with CIT certification is not only beneficial to those with mental illness who encounter law enforcement, but with this added information can provide additional officer safety.

In Johnson County, the average daily population of the Adult Detention Center for 2010 was 801. Approximately 17 percent of that population was diagnosed with some type of mental illness. With the information available through this exemption, it is quite probable that some of those individuals incarcerated may have been diverted to treatment rather than being booked into jail.

Thank you for your time and consideration in this matter.

Major Bret Cortright  
Johnson County Sheriff's Office

Senate Judiciary

3-11-11

Attachment 3



## PRAIRIE VILLAGE POLICE DEPARTMENT

WES JORDAN, CHIEF OF POLICE

7710 Mission Road • Prairie Village, Kansas 66208  
Phone: 913/642-6868 ext. 4615 • Fax: 913/385-7710

OFFICER KYLE SHIPPS #76  
TECHNICAL OPERATIONS



Date: March 11, 2011

To: Chairman Owens, Vice Chairman King, and distinguished members of the Senate Judiciary Committee

Chairman Owens,

My name is Kyle Shipps, and I am a Police Officer with the Prairie Village Police Department. I appear before you today in support of HB 2104, which allows law enforcement officers access to certain mental health records.

Law enforcement officers such as myself, whether in a field assignment or a correctional setting, face the daily challenge of providing equal opportunity policing services to our mentally ill citizens, while also not violating the privacies afforded each of us. Often times, the officers are stymied in their efforts to gather information regarding a person's mental health status, which could ultimately aid the officer in getting the person the care and treatment required, because of rules and provisions governing the release of such information. An example of the information that could aid the officer is whether or not the person is, or has been, a client of the local mental center, or is, or has been, a patient in state mental health hospital.

HB 2104 seeks to allow law enforcement officers access to these vital pieces of information in order to ensure a process in which, if an involuntary mental health committal is required, that the officer has all pertinent information in hand. Having this information will aid the officer, and any mental health workers or health care providers involved in the process, in making the most accurate and informed decision regarding the care and treatment of the citizen.

HB 2104 also continues to take patients' privacy rights into consideration, by ensuring that they are notified of the release of their records to the requesting law enforcement entity.

Passage of HB 2104 will be a mutually beneficial act for both law enforcement officer and the citizens they are sworn to protect and serve.

Thank you for your time and consideration in this matter.

Officer Kyle Shipps  
Prairie Village Police Department

Senate Judiciary

3-11-11

Attachment 4



**CUMULATIVE BED SPACE IMPACT**  
**BILLS REPORTED FAVORABLY BY SENATE COMMITTEES**  
**THROUGH MARCH 10, 2011**

	<b>FY 2012</b>			<b>FY 2021</b>		
	<i>Low</i>	<i>Medium</i>	<i>High</i>	<i>Low</i>	<i>Medium</i>	<i>High</i>
SB 135	0	0	0	9	18	27
HB 2023	2	5	7	6	11	17
HB 2151	1	1	1	4	4	4
Sen. Sub. for HB 2049*	3	8	12	5	16	24
HB 2044**	3	3	3	15	15	15
<b>TOTAL</b>	<b>9</b>	<b>17</b>	<b>23</b>	<b>39</b>	<b>64</b>	<b>87</b>

\* Sen. Sub. for HB 2049 adds synthetic cannabinoid groups and "bath salts" to the list of schedule I controlled substances. The bill was amended and recommended by the Senate Committee on Public Health & Welfare.

\*\* HB 2044 amends provisions related to required action and notification in a motor vehicle accident. The bill was amended and recommended by the Senate Committee on Transportation.

Prepared by Robert Allison-Gallimore and Lauren Douglass, KLRD, based on information provided by the Kansas Sentencing Commission.

TESTIMONY OF PHILLIP COSBY  
AMERICAN FAMILY ASSOCIATION OF KANSAS AND MISSOURI  
KANSAS SENATE JUDICIARY COMMITTEE  
**HB 2042** March 2011

Chairman Owens and honorable members of the Judiciary Committee, my name is Phillip Cosby. I am a native of Kansas and currently the American Family Association State Director for Kansas and Missouri. I am honored to have the privilege to speak to you in support of **HB 2042** regarding the reporting of pornographic materials during investigations of sexual crimes.

**HB 2042** to my knowledge, for the first time, will provide for collection of data to quantify and connect the dots between pornographic materials and criminal behavior. Such data will either affirm or refute the anecdotal observations, debates and speculations that range from "pornography is just harmless fun" to "pornography is the fuel that acts as a catalyst for fantasy driven criminal behavior".

These past eight years I have spoken to thousands of Kansans citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOBs) in communities. The evidence of harm is not anecdotal; the lawful regulation of the sex industry is based on measurable toxic effects on communities. The right of communities to regulate SOBs has been constitutionally upheld for over thirty years. The documented effects are primarily increased crime, increased STD's, blight, property devaluation, prostitution, human trafficking and drug trafficking. One judge recently commented "it is not just the evidence of negative effects, it is common sense."

The KC Star story put forth a piercing question asking how Kelsey Smiths killer went from juvenile delinquent to rapist and murderer. *Motive May Never Be Known, Questions Remain* KC Star Sep. 15<sup>th</sup> The article turned a blind eye to the obvious. Not one time in this story and question was the elephant in the room of cause and effect of an addiction to sexualized materials weighted.

I asked the Johnson County prosecutor, during their investigations, as to what they found in the way of sexualized materials that could have contributed to fuel the impulse to act out such a criminal fantasy. The prosecutor was genuinely interested in the question but stated that it was not in their rubric to look for and document such corroborative evidence. In my conversations with most experienced law enforcement personnel and convicted sex offenders they generally agree that the influence of pornography is a major factor in deviant behavior.

*"Pornography is the fuel that acts as a catalyst for fantasy-driven criminal behavior."* Vernon J. Geberth, retired Lt. Commander of the NYPD

The abduction, sexual assault and murder of Kelsey Smith of Johnson County , Jodi Sanderhold of Arkansas City, Alicia DeBolt of Great Bend...motives unknown? The toxic effects of highly sexualized materials is striking in it comparisons with the tobacco debates in denial and effects. According to the KBI sexual crimes increased 40% from 2003 (553) to 2009 (912).

It is cause and effect: garbage in, garbage out. We can't afford to be indifferent, in denial or dismiss as harmless fun the pervasive flood of highly sexualized materials now exacerbated by emerging handheld communication technologies. The pornification of America has changed everything.

We all sense it. Every day the news relays the latest heartbreaking story of abductions, child molestations, human trafficking, solicitations, and sexual misconduct at the highest levels of sacred and secular trust, urban blight, rising STD rates, fantasy driven sexual assaults, rape and murder. Our sense of safety, wholesomeness and innocence is evaporating. When you and I were in grade school we played freely with our friends on Saturdays in our neighborhoods and beyond. Our parents did not have to be unduly fraught with concerns for our personal safety. For us, the general rule was, when those street lights flicker on you better be home. Those days of experiencing such freedom and safety are long since gone for today's children. Outside of organized and supervised sports, where are those groups of playful youngsters today?

Legislative bodies on many levels are behind the curve in recognizing and reacting to the cause and effect relationship of the sex industry on individual lives. The ease of accessibility to highly sexualized images by emerging technologies is exacerbating this growing public safety and health crisis.

This is a real pocketbook issue. In Kansas prisons one third of the inmates are incarcerated for sexual crimes at a cost of \$30,000 annually per prisoner. As a matter of good common sense KDOC policy inmates are not allowed access to pornographic materials. You can't raise enough taxes, build enough prisons and buy enough ankle bracelets for this toxic tsunami. Ladies and gentlemen what we have is an epidemic and we must act. At the very least we can quantify the question. **HB 2042** is a compelling governmental interest.

Phillip Cosby

Executive Director, Kansas City Office, NCPC&F

11936 W. 119<sup>th</sup> St. # 193

Overland Park, Kansas 66213 Cell# 913-787-0075 [pcosby@nationalcoalition.org](mailto:pcosby@nationalcoalition.org)

Supporting Documents:

CD of the 214 page report "*Adult Pornography and Child Sexual Exploitation*" Robert Peters Booklet. "*Social Costs of Pornography*" Witherspoon Institute

# **How Adult Pornography Contributes To Sexual Exploitation of Children**

By Robert Peters,  
President of Morality in Media  
September 2009

## **Table of Contents:**

Part I: Perpetrators use adult pornography to groom their victims – page 4

Part II: For many perpetrators there is a progression from viewing adult pornography to viewing child pornography – page 10

Part III: Johns act out what they view in adult pornography with child prostitutes and pimps use adult pornography to instruct child prostitutes – page 17

Part IV: Children act out what they view in adult pornography with other children – page 20

Part V: Perpetrators use adult pornography to sexually arouse themselves – page 26

Part VI: Addiction to adult pornography destroys marriages and children raised in one-parent households are more likely to be sexually exploited – page 35

Concluding thoughts – page 36

Appendices – pages 41-215

A – page 41 B – page 46 C – page 159 D – page 162 E – page 168

F – page 178 G – page 187 H – page 191 I – page 209 J – page 213

## **Introduction**

Federal and state law enforcement agencies and prosecutors, Internet service providers, credit card companies, banks, and nonprofits are finally working together to curb sexual exploitation of children on the Internet. They are to be commended for doing so.

For the most part, however, these same government and private entities have turned a blind eye towards the explosion of hardcore adult pornography on the Internet and elsewhere. The latter does not depict actual children but does include hardcore depictions of sex with persons who look like children and with “teens.” Hardcore adult pornography also encompasses depictions of sex with animals, other family members, multiple partners (“gangbangs”), and prostitutes. It also depicts excretory activities and sexual violence against women, including rape and torture.

The explosion of hardcore adult pornography on the Internet and elsewhere is contributing to sexual exploitation of children in a variety of ways, including the following:

- Perpetrators use adult pornography to groom their victims.
- For many perpetrators there is a progression from viewing adult pornography to viewing child pornography.
- Johns act out what they view in adult pornography with child prostitutes and pimps
- use adult pornography to instruct child prostitutes.
- Children imitate behavior they view in adult pornography with other children.
- Perpetrators use adult pornography to sexually arouse themselves.
- Addiction to adult pornography destroys marriages, and children raised in one-parent households are more likely to be sexually exploited.
- Furthermore, while protecting children from sexual exploitation (abuse) should be top priority, it is by no means the only concern. In *Paris Adult Theater I v. Slaton*, 413 U.S. 49, at 57 (1973), the Supreme Court recognized that there are several "legitimate state interests at stake in stemming the tide of commercialized obscenity." These include:
  - Protecting children from *exposure to* pornography (at 57)
  - Protecting the quality of life and total community environment (at 58)
  - Protecting public safety (at 58)
  - Maintaining a decent society (at 59-60)
  - Protecting the social interest in order and morality (at 61)
  - Protecting family life (at 63)

The display of pornography is also a frequent component in workplace sexual harassment cases, and the time wasted viewing Internet pornography reduces worker productivity. See, e.g., "Increased Visits to Porn Sites At Work," *Industry News*, Wavecrest Computing, 2/24/09, available at <http://www.wavecrest.net/editorial/issues.html#pr27>, where we read:

According to a study by Nielson Online in October 2008, visits to porn sites at work is up 23 percent from the previous year. This means that almost one quarter of employees are visiting porn sites during the workday. "Hits to porn sites are highest during office hours than at any other time of day," according to M.J. McMahon, publisher of *AVN Online* magazine, which tracks the adult video industry...Regardless, porn surfing at work poses a major legal liability risk for businesses. This type of activity puts the employer at serious risk of being sued by *other* workers who are offended or upset by being exposed to pornographic images. Such suits usually take the form of 'sexual harassment' or 'hostile workplace' litigation and can be very costly...In addition to the legal costs, businesses also have to be concerned about costs due to loss of productivity... According to Salary.com, the average employee wastes 2.09 hours a day on the Internet...Furthermore, as Roger Young, Special Agent, FBI retired, points out: It was my own experience from working obscenity cases as a Special Agent of the FBI

(1975 - 2001), as well as my understanding from speaking to other Agents who investigated these cases, that there is no such thing as *just* an obscenity case. Crimes associated with obscenity crimes include arson, bribery, conspiracy, domestic terrorism, drugs, extortion, involuntary servitude, jury tampering, kidnapping, mail fraud, money laundering, murder, obstruction of justice, prostitution, public corruption, racketeering, rape, robbery, sexual assault, sexual exploitation of children, tax evasion, and witness intimidation. In addition to these governmental interests, our nation's role in polluting the world with adult pornography is also making the war against religiously based terrorism more difficult [See, e.g., 3R. Burkholder, "Iraq and the West: How Wide is the Morality Gap," *GALLUP*, 11/25/03 ("Gallup's Poll of Baghdad asked a representative sample of adults to describe -- in their own words -- what, if anything, they most resent about the West... More than a third (36%) of Baghdad residents said they believe Western culture has undermined moral standards by spreading sexually indecent influences ['pornography' and 'fornication']." Available at <http://www.gallup.com/poll/9763/Iraq-West-How-Wide-Morality-Gap.aspx>)

But, some will say, unlike individuals that sexually abuse children or that view, possess or distribute child pornography, businesses that distribute adult pornography online are not breaking any laws. Perhaps ignorance of the law does explain why some who fight sexual exploitation of children turn a blind eye to the problem of hardcore adult pornography.

The truth of the matter is, however, that in 1996 Congress amended two sections of the federal criminal obscenity laws (18 USC 1462 & 1465) to clarify that distribution of obscene matter is prohibited on the Internet. In *Miller v. California*, 413 U.S. 15, 23 (1973), the U.S. Supreme Court has also stated: "This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment." The *Miller* Court (413 U.S. at 29) went on to define the term "obscene" in a manner intended to restrict the reach of federal and state obscenity laws to "'hard-core' pornography." Today, most adult pornography distributed commercially, whether online or off line, is "hardcore." Typical "hardcore pornography" (e.g., a Web site, DVD or magazine) consists of little if anything more than one depiction of hardcore sex after the other (i.e., it's "wall-to-wall" hardcore sex). But, some will say, the porn business is thriving, which is an indication either that "everyone" is viewing it or that the average American no longer deems hardcore pornography unacceptable.

Pornography defenders overlook at least three factors. First, much if not most hardcore adult pornography is consumed by a relatively small percentage of individuals who are addicted to it. Second, just because a person experiments with hardcore adult pornography for a period of time or on occasion succumbs to the temptation to view it does not mean he or she approves of what is viewed, especially when hardcore adult pornographers promote their products aggressively and often deceptively. Third, many visitors to "adult websites" are minors. In recent years, Morality in Media has commissioned Harris Interactive to ask questions about pornography in three different national opinion polls. The results of those polls are as follows:

- In 2005, more than three out of four (77%) adult Americans said they supported the
- Justice Department's then new effort to enforce federal obscenity laws,
- In 2006, almost three in four (73%) adult Americans said they did *not* consider it morally acceptable to view pornographic websites and videos.
- In 2008, three out of four (75%) adult Americans said they would support the next
- President were he to do all in his or constitutional power to ensure that federal obscenity laws are enforced vigorously.

According to a survey conducted by Pew Research Center ("Trends in Political Values and Core Attitudes: 1987-2007"), 70% of adult Americans *disagreed with* the statement, "nude pictures and X-rated videos on the Internet provide harmless entertainment for those who enjoy it." But, some will say, because of limited resources federal and state law prosecutors and law enforcement agencies are right to focus their energies almost exclusively on child molesters and child pornography. There are a number of problems with this particular "justification" for doing next to nothing to curb distribution of hardcore adult pornography.

In the first place, as elaborated on in this report, the explosion of hardcore adult pornography is contributing to sexual exploitation of children in various ways.

In the second place, children are not just harmed by predators; they are also harmed by exposure to hardcore adult pornography.

In the third place, a frequent result of a successful federal obscenity prosecution is a significant fine or forfeiture of property, which can offset in whole or part the cost of these cases.

In the fourth place, it isn't just children who are harmed by hardcore adult pornography. The remainder of this report explores six ways that the explosion of adult pornography on the Internet and elsewhere is contributing to sexual exploitation of children.

**I researched and wrote the report because I am convinced that those who fight sexual exploitation of children but who turn their backs to the adult pornography problem are making a tragic mistake.**





# CRIMINAL INVESTIGATION RECORD / NOT AN OPEN PUBLIC RECORD

AGENCY ORI NUMBER		CASE NUMBER		DATE OF REPORT (MMDDCCYY)		PAGE      OF	
-------------------	--	-------------	--	---------------------------	--	--------------	--

  

M E T H O D  O F  O P E R A T I O N	INSTRUMENT USED FOR ENTRY			POINT OF ENTRY		POINT OF EXIT		PREMISE NEIGHBORHOOD		
	1. <input type="checkbox"/> KEY      5. <input type="checkbox"/> BOLT CUTTER      9. <input type="checkbox"/> THROWN OBJECT 2. <input type="checkbox"/> PRY TOOL      6. <input type="checkbox"/> CHOPPING TOOL      10. <input type="checkbox"/> OTHER 3. <input type="checkbox"/> SAW/DRILL      7. <input type="checkbox"/> VISE GRIPS      11. <input type="checkbox"/> NOT APPLICABLE 4. <input type="checkbox"/> HAMMER      8. <input type="checkbox"/> PHYSICAL FORCE			9. <input type="checkbox"/> NOT APPLICABLE 1. <input type="checkbox"/> FRONT      2. <input type="checkbox"/> REAR 3. <input type="checkbox"/> SIDE      4. <input type="checkbox"/> ROOF		9. <input type="checkbox"/> NOT APPLICABLE 1. <input type="checkbox"/> FRONT      2. <input type="checkbox"/> REAR 3. <input type="checkbox"/> SIDE      4. <input type="checkbox"/> ROOF		R. <input type="checkbox"/> RURAL / FARM / AGRICULTURE S. <input type="checkbox"/> SUBURBAN / RESIDENCE B. <input type="checkbox"/> URBAN / BUSINESS / COMMERCIAL U. <input type="checkbox"/> UNINHABITED N. <input type="checkbox"/> NOT APPLICABLE		
	SAFE ENTERED 1. <input type="checkbox"/> YES      3. <input type="checkbox"/> ATTEMPTED      5. <input type="checkbox"/> PEELED      7. <input type="checkbox"/> COMBINATION KNOWN 2. <input type="checkbox"/> NO      4. <input type="checkbox"/> REMOVED      6. <input type="checkbox"/> EXPLODED      9. <input type="checkbox"/> NOT APPLICABLE				INCIDENT ACTIVITY C. <input type="checkbox"/> DOMESTIC VIOLENCE CHILDREN PRESENT      J. <input type="checkbox"/> CAR JACKING D. <input type="checkbox"/> DOMESTIC VIOLENCE      N. <input type="checkbox"/> NOT APPLICABLE					

  

S U S P E C T  #	NAME      LAST      FIRST      MIDDLE												
	ADDRESS      STREET      CITY      STATE      ZIP												
	TELEPHONE NUMBER (HOME)			RACE	SEX	ETHNICITY	RES / N-RES	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES
	EMPLOYER/SCHOOL					ADDRESS				TELEPHONE NUMBER (WORK/SCHOOL)			
	MONIKERS / ALIAS												
	ADDITIONAL SUSPECT DESCRIPTORS												
	SUSPECT VEHICLE      MAKE			YEAR	MODEL			COLOR		VEHICLE STYLE			
	LICENSE NUMBER		YEAR	STATE	VEHICLE IDENTIFICATION NUMBER			OTHER					
	NAME      LAST      FIRST      MIDDLE												
	ADDRESS      STREET      CITY      STATE      ZIP												
TELEPHONE NUMBER (HOME)			RACE	SEX	ETHNICITY	RES / N-RES	AGE	DATE OF BIRTH (MMDDCCYY)	HEIGHT	WEIGHT	HAIR	EYES	
EMPLOYER/SCHOOL					ADDRESS				TELEPHONE NUMBER (WORK/SCHOOL)				
MONIKERS / ALIAS													
ADDITIONAL SUSPECT DESCRIPTORS													
SUSPECT VEHICLE      MAKE			YEAR	MODEL			COLOR		VEHICLE STYLE				
LICENSE NUMBER		YEAR	STATE	VEHICLE IDENTIFICATION NUMBER			OTHER						

  

EVIDENCE INFORMATION									
<input type="checkbox"/> NONE <input type="checkbox"/> SUBMITTED <input type="checkbox"/> RETAINED BY VICTIM <input type="checkbox"/> RETAINED BY OFFICER <input type="checkbox"/> RETAINED BY INVESTIGATIVE AGENCY <input type="checkbox"/> TRANSFER TO OTHER AGENCY <input type="checkbox"/> OTHER _See narrative attached.									

  

EVIDENCE OBTAINED									
<input type="checkbox"/> LATENT PRINTS <input type="checkbox"/> WEAPONS / TOOLS <input type="checkbox"/> SEXUAL ASSAULT KIT <input type="checkbox"/> STAINS <input type="checkbox"/> SEMEN <input type="checkbox"/> DRUGS <input type="checkbox"/> OTHER PRINTS <input type="checkbox"/> PHOTO-S <input type="checkbox"/> HAIR <input type="checkbox"/> BLOOD <input type="checkbox"/> DOCUMENTS <input type="checkbox"/> ALCOHOL <input type="checkbox"/> OTHER See narrative attached									

  

EVIDENCE COLLECTOR					LOCATION STORED				
--------------------	--	--	--	--	-----------------	--	--	--	--

  

DESCRIBE BRIEFLY HOW OFFENSE WAS COMMITTED									

68