

To: Senate Judiciary Committee, Sen. Tim Owens, Chair
From: Melissa G. Johnson, Assistant Seward County Attorney/KCDAA President
Date: March 7, 2012

Re: *Testimony in support of HB 2468*

Chairman Owens and members of the Committee

Thank you for this opportunity to present testimony on behalf of HB 2468. My name is Melissa Johnson. I am an Assistant Seward County Attorney and currently serve as President of the Kansas County and District Attorneys Association. I am submitting written testimony in support of HB 2468 on behalf of the Kansas County and District Attorneys Association.

As an Assistant County Attorney, many of my cases involve victims of child sex crimes. From that perspective, I believe that HB 2468 seeks to remedy an ongoing problem that is occurring more and more frequently across Kansas. HB 2468 would require defense counsel in criminal cases to provide information concerning expert testimony at least thirty (30) days prior to trial, the names and addresses of prospective witnesses and evidence the defense intends to use at trial. None of these requirements would impose an undue burden on criminal defendants and all would seek to ensure that the State of Kansas and the defendant both receive a fair trial.

Currently, there is no requirement for expert witnesses to prepare a report. The only requirement is that if they have a scientific or medical report or document, they must allow the prosecution access to those documents. The common practice appears to have become not to obtain reports from expert witnesses or to obtain them so close to the time of trial, that disclosure is practically the same as non-disclosure. For example, in one prosecution for multiple offenses for sex crimes against two children, the "expert" witness was allowed to disclose a Curriculum Vitae and a report the day before the trial began. The State objected to the late disclosure and asked that the expert witness not be allowed to testify. The Court overruled the objection and allowed the witness to testify. During the questioning, the "expert" witness testified under oath that he had never been denied a license to practice. About an hour after the "expert" left the witness stand, I learned from another prosecutor in another part of the state, that not only had the witness been denied a license from another state, but that it had been a denial based on sexual misconduct with a previous patient. Clearly, such evidence would have been important to disclose to the Court in allowing it to evaluate whether the witness would qualify as an expert and to the jury if the witness had been allowed to testify. Instead, it resulted in a hung jury and a mistrial was declared.

If this had been an isolated case, it may not justify changing statutory language to fix a single problem. Unfortunately, such practice has become common place in order to zealously defend criminal defendants.

Additionally, providing the names and addresses of potential witnesses and exhibits that will be used will not create an undue burden on criminal defendants. It merely seeks to level the playing field so that the State and the Defendant may both receive a fair trial.

The KCDAAs respectfully requests the Senate Judiciary Committee to support HB 2468.

Thank you for this opportunity to submit this testimony in writing. If I may be of any further assistance regarding this matter, please feel free to contact me at your convenience.

Sincerely,

Melissa G. Johnson,
Assistant Seward County Attorney/KCDAAs President