

Approved: February 14, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 7, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Phill Kline - Excused
Representative Peggy Long - Excused
Representative Tony Powell - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused
Representative Clark Shultz - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Harry Cross, Crime Victims Restitution Fund Coordinator for Lincoln County
Robert Crangle, Lincoln County Attorney
Frank Muscato, National Special Investigator, Wal-Mart, Inc.

Hearing on **HB 2772 - Crime victims restitution; increasing amounts of compensation; allowing business and governmental entities to be compensated**, was opened.

Harry Cross, Crime Victims Restitution Fund Coordinator for Lincoln County, appeared before the committee as a proponent of the bill. They have turned down many business that have applied for restitution because they were not individuals. The original intent was to compensate individuals who have no other recourse. The proposed bill would require businesses who have insurance to reimburse the Fund if their insurance pays for the destruction. (Attachment 1)

Robert Crangle, Lincoln County Attorney, appeared in support to the bill. He didn't foresee any problems with businesses requesting funds, because Lincoln County is conservative when they grant funds to individuals and would continue to do that with both businesses & individuals.

All monies that go into the Fund come from diversion agreements and goes to the county treasurer for use by the Board. He also believed that increasing the amount that can be paid would benefit those seeking restitution. (Attachment 2)

Hearing on **HB 2772** was closed.

Hearing on **HB 2774 - Theft of property from three businesses as part of the same criminal transaction is a severity level 9, nonperson felony**, was opened.

Frank Muscato, National Special Investigator, Wal-Mart, Inc. informed that committee that retail theft has become low risk/high profit. This bill would allow investigators to arrest those who steal from three different establishments, within 72 hours of each other to be arrested and charged with a felony, regardless of the dollar amount that was stolen. Boosters (thieves) usually stay under the \$150 amount so they can't be charged with a felony. (Attachment 3) He provided the committee with an article about an Indiana man sentenced for running a theft ring, by stealing many items from Wal-Mart's, Kmart & Target stores. (Attachment 4)

Marlee Bertholf, Kansas Chamber of Commerce & Industry, did not appear before the committee but requested her written testimony be included in the minutes. (Attachment 5)

Hearing on **HB 2774** was closed.

CONTINUATION SHEET

Hearing on **HB 2805 - Theft detection shielding devices**, was opened.

Frank Muscato, National Special Investigator, Wal-Mart, Inc. appeared as a proponent of the bill. Using theft detection shielding devices has grown in frequency and sophistication. These devices override the electronic article surveillance systems. Companies are now enclosing a new electronic article surveillance system inside their products, which boosters cannot take off the packages. It is estimated that shoplifting costs retail stores \$26 billion each year. (Attachment 6)

Marlee Bertholf, Kansas Chamber of Commerce & Industry, did not appear before the committee but requested her written testimony be included in the minutes. (Attachment 7)

Hearing on **HB 2805** was closed.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for Tuesday, February 9, 2000.

CRIME VICTIMS RESTITUTION FUND
Relating to compensation — amending K.S.A. 19-4804

My name is Harry Cross, I am the pastor of The Lincoln and Beverly United Methodist Churches, in Lincoln County. In addition, I am the Crime Victims Restitution Fund Coordinator for Lincoln County. I am in support of Proposed Bill No. 2772.

Since becoming the Crime Victims Restitution Fund Coordinator, for Lincoln County, in October 1998, the Fund has grown by approximately \$8,880.00. We received, in 1999, ten applications and paid out \$1,227.00, to eight individual applicants. None of this money came from taxes. The funds come from agreements to divert prosecution in certain traffic and criminal cases.

Let me give you an example of one application we turned down. A small business, a locally owned convenience store, encountered damage in the amount of \$2,180.33. They applied for \$150.00 from the Fund. We had to turn them down because of their status as a business.

Also, let me share three other incidents with you briefly. Three organizations, not individual, suffered damage. The Lincoln United Methodist Church sustained damage in the amount of \$326.98. The church carries insurance. However, they absorbed the expenses due to their deductible. The Lincoln Library sustained damage in the amount of \$127.76. They, as the church, absorbed the expenses.

Finally, U.S.D. No. 298 suffered approximately \$2000.00, in damages caused by vandalism from November through December 1999. The school also carries insurance. However, with their deductible, out of pocket expenses becomes considerable.

In all three incidents no applications were made because these victims were not individuals. Yet, in some ways each of them encountered unnecessary expenses, for which no compensation could be made. No one wants the Crime Victims Restitution Fund to become anything more than a helping hand for people. However, we frequently find ourselves unable to help victims because of their organizational status.

Crime Victims Restitution is a good law and of great assistance to people in our county. On the other hand, in rural communities and counties of low population, the current law does not assist victims to its fullest potential.

The law, if changed, would benefit more victims if it enabled not only individuals, but also nonprofit, small businesses, farming operations, or the taxpayers themselves who have to pay for vandalism to public facilities — to name but a few — to apply and receive restitution for damages. Let's not penalize the individual, who owns a small business, or nonprofit organizations when they have also just become victims of a crime.

**Hearing on Proposed Amendments to the
Crime Victim Restitution Act, K.S.A. 19-4804**

Statement of Robert D. Crangle, Lincoln County Attorney
February 7, 2000

Under K.S.A. 19-4801 *et seq.* Lincoln County created a citizen-operated fund to compensate some crime victims for out-of-pocket property damage in crimes committed by unknown persons. Based on two years of actual experience we know we ought to be able to help more of them. That is why we are here.

Our fund comes from fees paid by accused defendants who are eligible to, and want to, sign an agreement to divert prosecution for a while on certain terms and conditions. Defendants not only must make restitution for their specific crime and pay other costs, fines and fees; they must also do community service work, conduct themselves as good citizens for a specified length of time, and pay \$50.00 into our Crime Victim Restitution fund. If the defendant does all of this, the original charge is dismissed.

Our fund really helps individuals in our small and relatively poor county of 3500 people. Unfortunately, under K.S.A. 19-4804, it leaves out a large group of local vandalism victims. They are doubly hurt: law enforcement and I have no case to prosecute, and there is no financial relief available. I would like that changed.

I urge the legislature to support House Bill No. 2772 so we can also compensate the small business and governmental organizations that are the lifeblood of Lincoln County and other small communities. These include the cafe, the Carnegie library, the family-run service station, the school, the local convenience store, the art center, the museum and all of our mom-and-pop businesses.

We do not use tax money, but this fund is maintained by the County Treasurer in accord with state law. When the Clerk of the District Court of Lincoln County receives diversion money earmarked for the Crime Victim Restitution Fund, she forwards it to the County Treasurer. As required by law, the Fund is administered by four Lincoln County residents.

Harry Cross, the Methodist minister, is the coordinator. Leon Kingan, Colleen Lovin and Wayne Wallace make up a three-person board to review and decide on the applications. Leon and Colleen are small business owners from the cities of Lincoln and Sylvan Grove. Wayne is a former county commissioner from Barnard. Within legal limits, the board has sole discretion in recommending awards.

To be eligible the victim must, of course, be a resident of Lincoln County. As required by law he or she must have reported the crime within 72 hours to law enforcement, applied to the fund within 60 days of the crime, and need the money. If a victim is later repaid from other sources (such as insurance), the fund is reimbursed.

We do not use tax money, but this fund is maintained by the County Treasurer in accord with state law. When the Clerk of the District Court of Lincoln County receives diversion money earmarked for the Crime Victim Restitution Fund, she forwards it to the County Treasurer. As required by law, the Fund is administered by four Lincoln County residents.

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In deference to the privacy of the victims, our board deliberations are not open to the public. However, the names of recipients and the amounts they receive are public records.

As mandated by law, our fund cannot cover large losses, or frequent claims by the same victim. Now the board can award up to \$150.00 in a misdemeanor case, or \$250.00 if the crime was a felony. The board often awards less than the limit, but it has from time to time been faced with losses from a deserving applicant far in excess of the limit. We do not ask for these or other safeguards to be removed.

I do not personally know of any other county that has through the hoops necessary to implement this law since you enacted it in 1990. In my opinion, one reason is that the law has been designed to sound good, but not do as much good as it should.

Lincoln County has jumped through the hoops. We have some experience. We want to make this law work. The proposals before you will go a long way toward making it work -- without tax dollars.

I ask for your support. Thank you. Attached are two documents that show in more detail how we operate the fund in Lincoln County.

/s/ ROBERT D. CRANGLE

Robert D. Crangle, Lincoln County Attorney

Attachments:

Lincoln County Policy and Procedures Statement for the Crime Victim Restitution Fund
Lincoln County crime victim application form

LINCOLN COUNTY CRIME VICTIM RESTITUTION FUND
Policy and Procedures

I. Establishment

There is hereby established by Resolution Number 97-49 of the Board of County Commissioners of Lincoln County, Kansas (Commissioner) a Lincoln County, Kansas, Crime Victim Restitution (CVR) Fund under the provisions of K.S.A. 19-4801 *et seq.* with the effective date of January 13, 1997.

II. Fund Administration

The CVR Fund is a special revenue fund administered by a board of three Lincoln County residents appointed by the Commission (Board) and assisted by the Lincoln County Attorney (LCA) and by the property crime compensation coordinator (Coordinator). The Board may apply for, receive or accept money from any source for the CVR Fund. Expenditure of Fund moneys shall be by warrant for purposes recommended by the Board and approved by the Commission.

III. Lincoln County Attorney

The LCA shall advise the Commission on Board membership, operations, and the terms of office for Board members. The LCA shall generally assess a CVR fee as part of each agreement reached with persons accused of violations of law where the agreement diverts such persons from further current prosecution (a diversion agreement), and request an order of restitution to reimburse the CVR fund in all cases where CVR funds have already been expended. The LCA shall appoint the Coordinator and be available to assist the Coordinator. It is the responsibility of the LCA to maintain this policy and procedures document in compliance with Kansas laws and orders of the Administrative Judge of the District Court.

IV. The Property Crime Compensation Coordinator

The Coordinator shall be appointed by the LCA to perform duties required or suggested in K.S.A. 19-4808 and 19-4810, and be generally available to assist the LCA and the Board in the operations of the CVR Fund.

V. Clerk of the District Court of Lincoln County

The Clerk of the Lincoln County District Court (Clerk) shall remit all funds specifically identified at the time of receipt as CVR moneys to a fund established for that purpose by the Lincoln County Treasurer. Such receipts may originate from diversion agreements in cases commenced within the Court; from restitution ordered by the Court as provided in K.S.A. 19-4807; from inmates as provided by K.S.A. 75-5211(b); or from any other source. The provisions of administrative order No. 180 of the Twelfth Judicial District, administrative order No. 41 of

the Kansas Supreme Court, K.S.A. 19-4807 and K.S.A. 19-4809, as amended, shall apply as appropriate. In general, this also includes cases where funds have been requested by the property crime compensation board or the Court orders restitution payments but neither the victim nor the victim's family cannot be located.

VI. Lincoln County Treasurer

The Lincoln County Treasurer shall establish and maintain the Lincoln County CVR Fund in accord with the policies of that office and the Resolution by the Commission. The Treasurer is permitted and directed to accept moneys identified for the CVR Fund from any source.

VIII. Application Procedures

Applications for compensation shall be made to the Board in accord with K.S.A. 19-4804, 19-4808, and 19-4810. The Coordinator and Board shall establish procedures, which shall be available to the public, for receiving, documenting, reviewing and making recommendations concerning all applications. Amounts awarded under this policy and procedure are subject to the sole discretion of the Board, without civil liability for any act or decision, in accord with K.S.A. 19-4805. The Board, in reviewing the applications received, shall take into account the factors listed in K.S.A. 74-7305 as well as K.S.A. 19-4804 through K.S.A. 19-4807.

IX. Edition Date

This document is last revised December 5, 1997.

Robert D. Crangle, Lincoln County Attorney

Application for Compensation
CRIME VICTIM RESTITUTION FUND BOARD
LINCOLN COUNTY, KS 67455

Applicant's Name and Address:

Home and Work Telephones:

Kansas law lets this board compensate you for property damage caused by the criminal acts of others if you report the crime within 72 hours to law enforcement, apply to us within 60 days of the crime, and genuinely need the money. If the crime was a misdemeanor or a traffic infraction we can pay up to \$150.00; or up to \$250.00 if the crime was a felony. *You must attach to this application a copy of the law enforcement report showing the date and nature of the crime, and the property damage you suffered. Without this report attached we cannot review your application.* Please mail your completed application to us in care of the Lincoln County Sheriff's Office, 116 N. 2nd, Lincoln, KS 67455; or hand-deliver it there at any time.

Was your loss insured?

If so, please name the insurance company and the amount of your deductible.

How much money are you requesting?

What, exactly, will you do with this money?

We have restrictions; for instance, we cannot make payments to the same person more than twice in twelve months. If we have questions, we will write you. By accepting payment, you agree to reimburse the fund if later on someone else (like insurance, or the person who caused the damage) pays for the same thing.

Please add any other statement you think would help us understand your request. If your statement is longer than fits on this page and the back of it, staple the additional pages to this application. Thank you.

Date application received:

Board Decision and Date:

Certification by Coordinator (signature):

Payment (amount, date and Lincoln Co. warrant number):

Payment made to:

Payment received by (signature and date) :

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2774

February 7, 2000

Testimony Before the
House Judiciary Committee

By

Frank Muscato

Honorable Chair and Members of the Committee:

My name is Frank Muscato and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well as federal, state, and local law enforcement officials across the country. My purpose here today is to give you some background on this issue and to express my concern with retail theft and its effects on consumers and retailers.

The proposed Theft From Three Separate Mercantile Establishments legislation deals with organized crime as it is related to the retail industry. Traveling boosters are becoming more sophisticated and aware of the types of crimes that can be committed to remain at a misdemeanor level.

There has been an increase in retail theft offenses committed in mercantile establishments. A large number of the individuals are involved in the use of illegal drugs and retail theft provides a low risk and high reward method to support their drug habits. An increasing number of the individuals involved in retail theft offenses are very sophisticated and are "professionals" who travel city-to-city and state-to-state

committing these crimes. These subjects are cognizant of the existing dollar value in the statutes required to commit a felony retail theft offense and have attempted to evade felony charges by committing these thefts from several establishments and taking less than the minimum felony amount from each.

This bill would change the existing law so that if an individual is apprehended with goods stolen from three separate mercantile establishments in a continuing criminal episode, then they may be charged with felony theft, regardless of the value of the merchandise.

This law would still allow a prosecutor to use his discretion in prosecuting a case of theft where an individual was taking a small item from several mercantile establishments, such as packages of bubble gum, a candy bar, etc.

The FBI Interstate Theft Task Force estimated that in 1997, external retail theft accounted for approximately \$26 Billion. The losses from these thefts are not absorbed by the retailer, but are passed on to the consumer through higher prices. Two to four cents of each dollar spent by a consumer at a retail establishment goes to cover theft.

Thank you for your time. I will be happy to answer any questions you may have.

Man sentenced in alleged theft ring including Indiana

Associated Press

BALTIMORE — A grocery store owner has been sentenced to five years and three months in prison for allegedly leading a ring of thieves who stole goods from stores in Indiana and several other states.

Albert Eugene Roberts, 37, of Baltimore, headed an organized ring that sent teams of shoplifters into Wal-Mart, Kmart and Target stores to steal health and beauty aids, federal prosecutors said. Some of the merchandise was later sold for bargain prices at Marge & Gene's, Roberts' store.

Roberts told the FBI that he sold the bulk of the stolen items, ranging

from pregnancy test kits to aspirin, to Russian businessmen in New York, according to a statement of facts presented in U.S. District Court in Baltimore.

The scheme ran from May 1996 to July 1999.

The thieves, or "boosters," were mostly Baltimore heroin addicts trained by Roberts, according to a statement presented in court by Assistant U.S. Attorney Bonnie S. Greenberg.

Once trained, boosters were sent to department stores in other states, including Indiana, Illinois, Missouri, Ohio, West Virginia and Pennsylvania. They allegedly shoplifted more than \$4 million in merchandise.

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HB 2774

February 7, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by

Marlee Bertholf
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Bertholf and I am providing written testimony on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. We are here today in support of HB 2774. This bill will change existing law so that if an individual is apprehended with goods stolen from three separate mercantile establishment in a continuing criminal episode, they may be charged with felony theft. The continuing criminal episode has been interpreted as 72 hours, or 3 days. We propose that the clarifying language be added as an amendment to HB 2774.

We thank you for your consideration of these changes to current law that will deter theft and shoplifting and benefit retailers throughout the State of Kansas

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These principles of the organization and translate into views such as those e

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HB 2805

February 7, 2000

Testimony Before the
House Judiciary Committee

By

Frank Muscato

Honorable Chair and Members of the Committee:

My name is Frank Muscato and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well as federal, state, and local law enforcement officials across the country. My purpose here today is to give you some background on this issue and to express my concern with retail theft and its effects on consumers and retailers.

The proposed Theft Detection Shielding Devices legislation deals with a type of fraud that is growing in frequency and sophistication. Retail theft offenses committed in mercantile establishments are increasing at an alarming rate. Many retailers are combating these increases in retail theft offenses by installing complex and expensive electronic article surveillance (EAS) systems. Manufacturers are spending millions of dollars through source tagging. That is where the EAS tag is placed inside the product container, invisible to the consumer.

A large number of individuals involved in retail theft crimes are very sophisticated and are organized "professionals" who travel city-to-city and state-to-state committing

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these offenses. This stolen merchandise is then being sold to property fences (persons who knowingly buy stolen property). A vast majority of the individuals committing retail theft are using the monies gained to support their involvement with illegal drugs. Retail theft has become a high profit low risk avenue of crime.

Many of these individuals wear special clothing or have home-made tools and devices for retail theft including metal or foil-lined shopping bags which override and evade these electronic article surveillance systems. When property is placed inside the shielding device, an individual is able to defeat the electronic article surveillance system. The individuals also have devices to remove security sensors and tags affixed to some expensive apparel and other products. They often steal large numbers of the same items.

The thought process behind this is that the person using the Theft Detection Shielding Device has *planned* the crime...rather than a person in a store as an *opportunist* for Theft. In other words, a person who is a *Sometimes Shoplifter*, and is in a Retail Store, *sees the opportunity to steal something* and he does. Versus...*premeditated theft*. When that person *leaves his house* with a Theft Detection Shielding Device, they are on the way to Commit a Theft. That person will not stop with just One Store and One Theft.

The FBI Interstate Theft Task Force estimated that in 1997, external retail theft accounted for approximately \$26 Billion. The losses from these thefts are not absorbed by the retailer, but are passed on to the consumer through higher prices. Two to four cents of each dollar spent by a consumer at a retail establishment goes to cover theft.

Thank you for your time. I will be happy to answer any questions you may have.





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HB 2805

February 7, 2000

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by

Marlee Bertholf
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Bertholf and I am providing written testimony on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. We are here today in support of HB 2805. This bill will create a new section and a new felony for the possession of retail theft tools.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Many retailers are combating increased retail theft offenses by installing electronic article surveillance systems. The subjects committing these crimes have very sophisticated tools and devices for retail theft including metal or foil-lined shopping bags which override and evade

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security devices and services to remove security sensors and tags affixed to security apparel and products.

We thank you for your consideration of these changes to current law that will deter theft and shoplifting and benefit retailers throughout the State of Kansas