

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 18, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Ward Loyd - Excused
Representative Judy Morrison - Excused
Representative Dean Newton - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Autumn Fox, Attorney, Abilene
Marlee Carpenter, Kansas Chamber of Commerce & Industry
Mike Davis, JC Penny Company
Representative Peggy Long
Mike Pfannensteil, Johnson County Sheriff's Office
Ron Gaches, Consumer Data Information Association
Representative Clark Shultz
Theresa Weigel, International Board Certified Lactation Consultant
Aimee Gross, Nurse Practitioner
Margaret DeVoss
Kathy Porter, Office of Judicial Administration

Hearings on **HB 2366 - common law marriages; parties must be 18 years or older or have parental or judicial consent**, were opened.

Autumn Fox, Attorney, Abilene, appeared before the committee in support of the bill. She stated that common law marriages are inconsistent with today's criminal laws. She does not support abolishing common law marriages and suggested that the proposed bill is a half way point. ([Attachment 1](#))

Hearings on **HB 2366** were closed.

Hearings on **HB 2751 - identity theft, identity of fictitious person and defrauding for any benefit**, were opened.

Representative Peggy Long appeared before the committee as the sponsor of the bill which would close the loophole that there must be the "intent" to deprive someone of an economic loss. Hopefully, the proposed bill will prevent people from suffering great economic loss by early intervention. ([Attachment 2](#))

Mike Pfannensteil, Johnson County Sheriff's Office, supported the proposed bill stating that it would strengthen the identity theft statute so "any" benefit would be a cause for a crime. ([Attachment 3](#))

Ron Gaches, Consumer Data Information Association, also supported broadening the definition to those who lose more than "economic losses". ([Attachment 4](#))

Hearings on **HB 2751** were closed.

Hearings on **HB 2078 -if a minor shoplifts, the parents are liable for a civil penalty up to \$500**, were opened.

Marlee Carpenter, Kansas Chamber of Commerce & Industry, informed the committee that this bill was passed out of committee but was not worked on the House floor and therefore was re-referred back to committee. ([Attachment 5](#))

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 18, 2002 in Room 313-S of the Capitol.

Mike Davis, JC Penny Company commented that juvenile shoplifting is costing millions of dollars to the retailers of Kansas. Forty-nine states have statutes authorizing the victims of shoplifters to recover civil damages but twelve of those states do not allow civil recovery from juveniles. Kansas is one of those twelve. The proposed bill is about personal responsibility by forcing teenagers to realize that their parents will be held responsible for their actions. Shoplifting to juveniles is considered a status symbol and is considered no big deal. ([Attachment 6](#))

Frances Kastner, Kansas Food Dealers Association, did not appear before the committee but requested her written testimony in support of the bill be included in the minutes. ([Attachment 7](#))

Hearings on **HB 2789 - jury service; parents taking care of children**, were opened.

Representative Clark Shultz explained the proposed bill would allow certain parents who do not work full time outside the home and provides care for a child to be excused from being called to serve on a jury. ([Attachment 8](#))

Theresa Weigel, International Board Certified Lactation Consultant, stated that there are ages when separation from parents is stressful to children and judges may not understand child development. ([Attachment 9](#))

Aimee Gross, Nurse Practitioner, supported the bill because of the financial costs to parents who are breast feeding their child. ([Attachment 10](#))

Margaret DeVoss relayed her story that she tried to get dismissed from jury duty because she needed to provide care for her children but was threatened with a contempt of court if she did not show up. ([Attachment 11](#))

Kathy Porter, Office of Judicial Administration, commented that the courts have no objection to the proposed bill and that it is the legislatures duty to decide if there should be exemptions from jury duty. ([Attachment 12](#))

The committee meeting adjourned at 6:30 p.m. The next meeting was scheduled for February 19, 2002.

THE LAW OFFICE OF AUTUMN L. FOX, P.A.

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January 29, 2002

House Judiciary Committee
Kansas State Legislature
Capitol Building
Room 313-S
Topeka, KS 66612-1504

RE: HB 2366

Dear Judiciary Committee Members:

This letter is in regards to the above referenced bill. It is my understanding that the Committee will meet on Thursday, January 31, 2002, to hear testimony regarding this proposed bill. The purpose of the bill is to increase the age of consent for common-law marriages to 18. This letter constitutes the text of my testimony which I will present at the hearing.

In the past several years I became increasingly concerned regarding the state of the law in Kansas as it applied to common-law marriages. In Kansas, the elements of a common-law marriage are (1) capacity; (2) a present marriage agreement; and (3) a holding out as husband and wife. Capacity requires that the parties not be too closely related to one and other by blood, that the parties be of the opposite sex, and that the girl be at least 12-years-old and the boy at least 14-years old. A present marriage agreement simply means that the parties "agree" that they are married. The element of "holding out" as husband and wife can be met by the parties telling friends and family that they are married, filing joint tax returns, having joint checking accounts and many other factual scenarios.

The difficulties with this law are twofold. First, 12 and 14-year old children cannot-by law-consent to a sexual act or enter into a contract. But, pursuant to this law they can consent to be married. Additionally, if the children are both 16-years-old when they are "married," a parent cannot challenge the alleged marriage. This is true because a child who is 16-years-old and "married" is automatically emancipated. *In re Pace*, 26 An. App. 2d 538, 989 P.2d 297 (1999). A parent of such a child cannot, therefore, file a Child in Need of Care proceeding, a guardianship proceeding, or any other proceeding to challenge the marriage in an attempt to bring the child home.

Of more concern, is the fact that pedophiles appear to have learned that this is the state of the law in Kansas. In *McKinney v. McKinney*, an unpublished case heard by the Kansas Court of

Appeals, a 34-year-old man began a relationship with a 14-year-old girl while they were both living in Arizona. When the girl's parents objected to the relationship, the man researched common-law marriages and determined that he could "marry" the girl in Kansas or Colorado. He arranged to have the girl take a taxi from Arizona to Colorado, where he made her sign a document entitled "Certificate of Marriage." He then began a sexual relationship with the girl.

After further researching Colorado law, however, the man determined that the girl's parents could have the marriage annulled. He then brought the girl to Kansas—insisting that she drive across the border to protect himself from federal prosecution—and entered into a common-law marriage here. They remained "married" for a few weeks before returning to Arizona. The man later filed for divorce in Kansas and the girl counter sued for an annulment. The district court granted the annulment—thereby making the man susceptible to criminal prosecution for his sexual relationship with the girl—and the man appealed. The Court of Appeals affirmed the district court's decision.

The facts of this case clearly indicate that the man's actions were an attempt—a successful one—to avoid prosecution for indecent liberties with a child. In essence, in Kansas a pedophile could have sex with a child, claim to "marry" the child, and avoid prosecution for sex crimes against children.

Efforts have been made in the past to legislatively change the age of consent for common-law marriages. Those efforts have proven unsuccessful. It is unclear, however, whether the legislature is aware of the unintended effects of this law. Surely Kansas has no desire to attract—or to harbor—pedophiles by upholding an antiquated belief that 12 and 14-year-old children can consent to marriage.

One of the greatest ironies of this law is that while no ceremony and no formalities are required to be common-law husband and wife, the parties must follow all requirements of the law in order to obtain a divorce. On this basis, a child could be married and divorced by the time that he or she is 12, 13 or 14-years-old.

Finally, I also know of circumstances where a lawyer has drafted an "affirmation of common-law marriage" for children alleging a common-law marriage. The lawyer drafts this document for \$50. These same children—who are in high school—then take turns calling in and excusing one and other from attending classes. Therefore, not only are the children's day to day lives affected, their education may also be affected.

For these reasons, I join the voices of those who seek to protect the children of this State by supporting the passage of House Bill 2366.

Respectfully yours,

Autumn L. Fox | ma

Autumn L. Fox



TOPEKA

HOUSE OF
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VICE-CHAIR: BUSINESS, COMMERCE & LABOR
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JUDICIARY

TESTIMONY ON HB 2751

HOUSE JUDICIARY COMMITTEE

FEBRUARY 18, 2002

Thank you Chairman O'Neal and fellow members of the House Judiciary Committee. I really appreciate the time that you are giving me to present to you a problem that is currently affecting the lives of many of our Kansas citizens as well as a possible resolution. As a matter of fact, to quote from the Kansas Insurance Letter January 30, 2002, "43 percent of the consumer fraud complaints received by the Federal Trade Commission are from people victimized by identity theft. Observers say the actual number could be as high as 750,000 a year."

As many of you know, I have been employed in a staffing agency for the past several years when I am not up here serving in the legislature and this past summer a problem came to my attention that really needs to be addressed. I was approached by Officer Jim Pritchard of the Emporia Police Department about a case that he was working on that pertained to someone going under false identification. As we worked together to help address the case, Jim explained to me that they currently can not attempt to prosecute the offender until economic loss has been suffered although they often are able to make the arrest under a separate violation. HB 2751 simply allows the law enforcement of our state to intervene and seek prosecution of identify theft before someone has found out the hard way their good name and social security number is being abused.

Passing this legislation may prevent many from suffering great economic loss and perhaps complications in many other areas of life by earlier intervention. I regret that officer Pritchard or another official of the Emporia Police Department could not be here to testify, but they have faxed information up here to be used as testimony and I have attached the letter that was written to me from Officer Pritchard initially.

With that, I will stand for questions.



THE CITY OF
EMPORIA

POLICE DEPARTMENT

515 Mechanic PO Box 928
Emporia, KS 66801
620-342-1766 Fax 620-343-4228

Michael J. Heffron, Chief of Police

Michael Lopez, Deputy Chief of Police

Michael Williams, Deputy Chief of Police

February 14, 2002

Congresswoman Peggy Long
Capital Building
Topeka, Kansas

Dear Congresswoman Long,

Thank you for notifying me regarding House Bill 2751. Due to court proceedings and other scheduling conflicts, I am unable to attend the hearing on Monday. However, I would like to send some written testimony to the House Judiciary Committee.

I appreciate all your efforts and hard work trying to improve the Identity Theft Statute. Enclosed is written testimony. If you would be able to deliver it to the committee, I would greatly appreciate it. Again, I apologize for not being able to attend. Any assistance you may require in the future in getting HB2751 passed, please do not hesitate to call.

Sincerely,

Jim Pritchard, Emporia Police Dept.
Patrol Division
Emporia Police Department



THE CITY OF
EMPORIA

POLICE DEPARTMENT

518 Mechanic PO Box 928
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620-342-1766 Fax 620-343-4228

Michael J. Heffron, Chief of Police

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Michael Williams, Deputy Chief of Police

Chairperson and Members of the House Judiciary Committee
Capital Building
Topeka, Kansas

My name is Jim Pritchard and I am a police officer for the Emporia Police Department. Please accept my written testimony in support of House Bill 2751. It has come to my attention that at times the current statute concerning Identity Theft is not as inclusive as it should be. The current statute reads: "Identity Theft is knowingly and with intent to defraud for *economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor." The proposed change would include the "Intent to defraud for *any benefit, including but not limited to economic benefit*, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or person identification number of another person, *either real or fictitious*, other than that issued lawfully for the use of the possessor." Based on individual calls I have responded to, I believe that this change is badly needed.

One example concerned an illegal alien who had purchased a social security card. With this social security card and other identification, this person was able to obtain a Missouri Identification card with his photo on it but under the false name. Once this person had a *valid* state issued identification card, it was not difficult to obtain employment and begin obtaining credit cards under the assumed name. I believe at least nine credit cards under the assumed name were seized.

Additionally, it became difficult to know whether the name which was assumed was a real person or whether it was a fictitious name that was legitimized by false documentation. Since the current statute does not include fictitious persons, there was a lack of evidence to show that a real person suffered any loss which is required under the current statute

A second example came to my attention just this month. A lady reported that her husband was having difficulty with finding a job. She advised that someone had used her husbands' social security number and had obtained a driver's license in two different states. For whatever reason, the driver's licenses had been suspended. She said her husband had his Texas identification card but could not get a Kansas driver's license because the computer system showed license suspensions.

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620-342-1766 Fax 620-343-4228*Michael J. Heffron, Chief of Police**Michael Lopez, Deputy Chief of Police**Michael Williams, Deputy Chief of Police*

This lady has also shown me letters from the Internal Revenue Service stating that her husband owed almost \$11,000.00 in taxes. She told me that someone had used her husband's social security number and name to gain employment. This had apparently occurred at several different locations. The Internal Revenue Service was notifying her husband that he had failed to file tax returns and pay his taxes.

This lady further told me that they had been turned down for a car loan because someone using her husband's name and social security number had given them a bad credit rating. This lady said one item involved a loan for \$15,000.00 that had been defaulted on. The lady told me that she was going to need an attorney to try and get the matters cleared up. This will no doubt take a good deal of time and money to accomplish this. Obviously there is a victim of an injustice here. It would be hard to prove a crime was committed under the current statute 21-4018.

Several weeks ago, I was in the process of bonding out a prisoner for domestic violence and realized he had accidentally signed two different names. During the course of determining who he was, I found a Missouri identification card with his name and someone else's name on it. There was also a phone card under the assumed name. He had been working at a business and had assumed someone else's name and social security number. Once again, it was difficult to determine whether the documents such as the social security card was valid or counterfeited. Therefore, it was difficult to know whether there was a real person involved or if the identity which was purchased was made up with the use of correlating false documentation. This person was also an illegal alien. Another concern with this case is that this person was developing criminal history under someone else's name.

Based upon the examples cited above, I would certainly appreciate any and all consideration for the passage of HB 2751.

Thank you:

Officer Jim Pritchard
Emporia Police Department

Testimony of Detective Michael Pfannenstiel
Johnson County Sheriff's Office
Concerning HB 2751
February 18, 2002

To the Honorable Members of the Committee.

I am Michael Pfannenstiel and I have been employed by the Johnson County Sheriff's Office for 15 years. I am currently assigned to the Investigation Division and my primary responsibilities are the investigation on financial crimes.

During the last four years I have the opportunity to investigate several incidents of Identity Theft. During the course of the investigations I have found that people commit an Identity Theft for several reasons: economic benefit, revenge or to conceal their identity during the commission of other crimes.

I have participated in investigations where the suspects had presented themselves as other people; both real and fictitious. In one particular case the suspect had acquired at least five Kansas Driver's License or Identification cards and several New York Identification cards. When arrested the suspect had numerous Passports, which he used to acquire the fraudulent identifications. During the course of the investigation it was discovered that the suspect had used twelve aliases. I found it difficult, if not impossible, to prove each of the aliases were real people due to the fact that the suspect was highly mobile and traveled across multiple regions of the United States. Also adding to the difficulty was that the suspect was not an United States Citizen.

I believe that the proposed changes of making it be "any" benefit "including but not limited to economic benefit" and the identification of "either real or fictitious" persons would only strengthen the Identity Theft Statute.



Gaches, Braden, Barbee & Associates

Governmental Affairs & Association Management

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House Judiciary Committee
Testimony of Consumer Data Information Association
Regarding HB 2751: Identify Theft
Presented by Ron Gaches
Monday, February 18, 2002

Thank you Chairman O'Neal for this opportunity to appear before your committee in support of HB 2751 regarding the definition of the crime of Identity Theft.

The Consumer Data Information Association is a new name for the former Associated Credit Bureaus, the national trade group for the credit reporting industry. The ACB membership changed the name of their organization at the beginning of this year to reflect the growing diversity of services provided by their members.

CDIA members have been at the forefront of combating identity theft. One step to effectively prosecuting this crime is to properly describe it. CDIA members support the broader definition of Identity Theft as proposed in HB 2751 and urge your support of the bill.

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2078

February 18, 2002

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by

Marlee Carpenter
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am here on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. We are here today in support of HB 2078, which would make civilly liable the parents of a minor who shoplifts.

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.

Last session, this Committee heard HB 2078. A sub-committee was assigned and recommended amendments to the full Committee. The full Committee adopted the amendments and the bill passed out of the Judiciary Committee. Because the bill was not worked on the floor of the House, it was referred back to Committee. We are here again this session to ask for your support of HB 2078.

The Kansas Retail Council Board of Directors believe that this is an important issue. Forty-nine states have civil recovery statutes, and all but 12 of those states have civil recovery provisions for juvenile shoplifters.

Retail theft is a large problem in Kansas, as it is everywhere in the United States. Here with me today is Mike Davis, Store Manager for JC Penney's at Oak Park Mall and President of the Kansas Retail Council. He will explain the bill and how retail theft, especially theft by juvenile's impact his store and JC Penney stores across the state.

Thank you for the opportunity to address the committee and I urge you to support of HB 2078.



KANSAS RETAIL COUNCIL

A DIVISION OF THE *Kansas Chamber of Commerce and Industry*

835 SW Topeka Blvd
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Testimony for H.B. 2078

Mr. Chairman and members of the Committee, my name is Mike Davis. I am here today on behalf of the Kansas Retail Council, and the JCPenney Company and its 4,300 associates in the state of Kansas. JCPenney has 30 stores and other units in Kansas, including district offices. One of the Company's five catalog fulfillment centers is located in Lenexa. JCPenney pays \$2.9 million in taxes to the state of Kansas.

What I'd like to talk to you about today is a problem that is also worth millions of dollars to Kansas retailers, and that is juvenile shoplifting. Forty-nine states plus the District of Columbia now have statutes authorizing the victims of shoplifters to recover civil damages from them.¹ The laws of all but twelve of those states include provisions allowing for recovery from the parents of unemancipated minor shoplifters.

Unfortunately, Kansas is one of those twelve. H.B. 2078 will fix this problem.

First, let me give you some facts about our Kansas JCPenney apprehension figures for last year, along with national figures.

	<u>Kansas JCPenney Apprehensions</u>	<u>%</u>	<u>US National %</u>
Juveniles	391	53.8%	38%
Adults	336	46.2%	62%
Total	727	100%	100%

Please note the times and months of apprehension for Kansas JCPenney Stores:

<u>Rank</u>	<u>Time</u>		<u>Month</u>
#1	4-5 p.m.	(school is out)	#1 November
#2	6-7 p.m.		#2 October
#3	3-4 p.m.	(school is out)	#3 December

We in the business sector desperately need your help! Here is how shrinkage affected some of our metropolitan stores in Kansas. Our geographic, or smaller stores, are not listed.

<u>Location</u>	<u>Dollars</u>	<u>Percent of Sales</u>
Wichita / Towne East	\$ 447,000	2.05%
Wichita / Towne West	218,277	1.36%
Topeka	188,596	2.23%
Manhattan	214,400	3.23%
Lawrence	242,857	2.47%
Overland Park / Oak Park	1,165,629	2.81%
Overland Park	661,615	2.40%
Total from these stores	\$3,138,374	2.50%

Total shrinkage includes shoplifting, internal theft, vendor theft, and auditing errors. Shoplifting is conservatively estimated to account for 35% - 40% of total retail shrink / losses.² Thus, our total shoplifting losses based on the above total would be approximately \$1.1 - \$1.2 million. Since we also know that juvenile shoplifters account for 53.7% of our total apprehensions, our 2001 losses attributable to juveniles, based on the above figures, would be between \$589,857 and \$674,123. Please keep in mind, these amounts are only from our seven largest stores, and we are only one company! What about Wal-Mart, Sears, Dillards, May Company, Anthony's, and many more?

Juvenile shoplifting, as all shoplifting, is a cost of doing business that is passed on to the consumer. Unfortunately, this figure is greater than the cost of heat and lights.

Shoplifting losses cost the company sales and they cost our employees in benefits and salary increases. If we do not sell our goods, we do not make money, and we cannot offer what we would like to offer our employees in terms of salaries and benefits. I represent employers and employees just as you represent your constituents. We as managers must react to the needs and wants of our employees. Why should their salaries and benefits be affected by juvenile shoplifting? Shoplifting affects the Manager's salary directly. We even have Managers who have been demoted due to inability to account for inventory when audits show shoplifting is the major cause.

Our juvenile apprehensions in Kansas are higher than in other states company-wide – 1.81% compared to 1.12%. Shoplifting is "NO BIG DEAL" in today's society. Shoplifting is a joke to kids. They laugh at police. They laugh at sales associates. They know nothing is going to happen to them. Once juveniles are successful stealing their first package of gum at the 7-11 store, bigger items will follow.

What do we know about why and how kids steal?

- "GANG" initiation. Older gang members have the juveniles do it because they suffer little, if any, punishment. Therefore, the older gang members stay out of trouble. This is a good fund-raiser for the gang.
- Because they want an item but cannot pay for due to lack of money.
- Peer pressure influences them. Can they get away with it?
- Clothes or items are hidden on their person.
- Magnets are carried in pockets to disconnect ink tags and J tags.
- Some juveniles have access to a sensor tag remover.
- Groups of juveniles enter businesses and cause a disturbance so one or more can shoplift -- attention of associates is diverted to the disturbance. This can be gang related.

- "Gangs" have had weapons on their person. Some Loss Prevention Officers are wearing bulletproof vests in some states and not far from Kansas. (Pueblo, CO., 259 miles from Dodge City.)
- Torn clothing due to sensor tags or ink-stained clothing from ink tags is a status symbol. It shouts, "I stole this garment".

We spend thousands on security devices, cameras, meetings, and loss prevention hours, and still cannot catch everyone. Loss prevention personnel average 32.35 hours per shoplifter.³ Several store managers have told me they could not afford to remodel their stores due to shoplifting losses. This is not only a loss to the store, but also a loss to the consumer. The consumer loses the store ambiance of new paint, new carpet, new fixtures, wider aisles, and new visual presentation displays. Instead, the criminal element wins again.

We need to ask ourselves, when is enough, enough? We believe it is now! Now is the time to fix the problem with H.B. 2078. We believe, based on parents' response to calls when juveniles are caught, that some parents just do not care what their kids have done. Others are in denial. They say, "You are wrong, my kid would not shoplift." H.B. 2078 will make them believers. They will look at problem juveniles differently. Parents need to be accountable for their children. We need to get teenagers' attention. HB 2078 does both. Teenagers will realize that their parents are accountable and responsible. They know their parents will have to pay for their crime of shoplifting. This problem is as much about personal responsibility as it is dollars. It's a moral issue as well as a financial one. Shoplifting is a crime. It is stealing!

There are some parents who try hard to raise their children right, but because of outside peer pressure and influences, the kids steal their first item and then bigger

ones. Again, H.B. 2078 gives parents another tool. We think it is time that we help our children. The penalty provision of HB 2078 may change juveniles' habits before they become more serious. Most teens are good kids. Knowing that his or her parents will have to pay for one lapse of judgment might make a good kid think twice about shoplifting. Make this happen -- vote "YES" to H.B. 2078!

I have discussed with you the JCPenney Company apprehensions, which were greater in 2001 than in 2000 – every year the numbers increase. We must think about what juvenile shoplifting costs all retailers, whether national chains, regional businesses or local businesses in the state of Kansas.

Let's make it happen by working together to pass H.B. 2078. We need this bill. Remember, currently, Kansas is one of twelve states without this law. New Jersey and California addressed this topic back in the 1970's. We are asking Kansas to react now.

Thank you so much for your time. I will be glad to answer any questions.

¹ Only Delaware has no civil recovery law.

² Jack Hayes International, a leading loss prevention/inventory shrinkage control consulting firm.

³ Ibid.



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DIRECTOR OF
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FRANCES KASTNER

HOUSE JUDICIARY COMMITTEE

February 18, 2002

SUPPORTING HB 2078

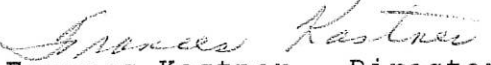
I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes retailers, distributors and manufacturers of food products throughout Kansas.

As we testified January 24, 2001, we support any legislation you can pass which benefits the honest customers who shop in Kansas grocery stores.

There are numerous items that are easily concealed by those who prefer to not pay for the goods they think they want or need. Some items have to be locked up to prevent shoplifting.

I don't need to tell you that anything that goes out the grocer's doors without being paid for is a direct loss that ends up adding to the grocer's cost.

We encourage you to again recommend HB 2078 for passage.


Frances Kastner, Director
Governmental Affairs, KFDA



TOPEKA

HOUSE OF
REPRESENTATIVES

Testimony in favor of HB 2789
Clark Shultz
February 18, 2002

Thank you Mr. Chairman and members of the Judiciary Committee,

The intent of HB 2789 is to excuse a parent from jury service at their request if they are not employed full-time and are responsible for the daily care of a child under six years of age. Current law allows automatic exclusion from jury service to certain persons as listed in K.S.A. 43-158, and gives judges authority to grant additional exclusions for certain persons as listed in K.S.A. 43-159. A parent caring for a child currently does not qualify for an automatic exclusion from jury service leaving this decision to the discretion of the judge.

It is not the intent of HB 2789 to avoid the civic duty of jury service, but rather to postpone jury service to a future time when it does not interfere with the rights of the child. This change in law will insure that a child is not separated unnecessarily from a parent and a breastfed baby will not be unnecessarily separated from his or her mother.

Each year the legislature appropriates millions of dollars and devotes hundreds of hours of debate and discussion in regards to the safety, health, and wellbeing of the children of Kansas. This proposed change in law follows that worthwhile concern and tradition of Kansas.

I urge your support in allowing Kansas to join the many other states across this nation such as Florida to the East, which allows an exclusion for a parent caring for a child under six, and California to the West, which excludes mothers from jury duty who are breastfeeding.

February 18, 2002

Testimony in support of HB 2789

Theresa J. Weigel, IBCLC

International Board Certified Lactation Consultant, Certified Parent Educator

Thank you Mr. Chairman and members of the Judiciary Committee for your consideration of the passage of HB 2789.

As a parent educator, I have been delivering early childhood curriculum to families since 1992. Part of my job is to help parents realize that they are their children's first and most influential teachers. I help parents gain confidence in their parenting role and respect their strengths which include being the expert of their child.

In sharing information about the normal course of child development, the subject of autonomy and the separation process is described often as it evolves in those first three years. There are key stages in child development when separation can be stressful for young children. When the need for close proximity is challenged too soon, children tend to act insecure and either demand more of their parents time than before, or they shut down and appear to be oblivious. An increase in attention getting behavior is a common response. When the needs of the child are reassured and met, trust is built and strengthened. These experiences give children a sense of security. This can pay great dividends in teaching cooperation and compliance.

A sense of trust requires a feeling of physical comfort and a minimal amount of fear and apprehension about the future. Responsive, sensitive care giving contributes to a child's sense of trust. Brain development has shown the deleterious effects of cortisol, a stress hormone, when children are subjected to stressful situations. This has a direct influence on the activity of the brain. When children are relaxed and secure, brain cells work efficiently. When children are stressed, cortisol washes over the brain. This "stress" hormone causes death of brain cells.

I have found parents to be accurate barometers for understanding when and how long separation can be tolerated and more importantly, enjoyed, by their children. There indeed is a wide variation. The parents are the experts on this issue. Leaving this to the discretion of a judge who may not understand early childhood development or who may not appreciate the expertise of a parent regarding their own children, displaces the point of decision-making in this regard.

As a personal experience, I was called to jury duty in 1982 when my not quite two year old was not ready for lengthy separation, and was in fact, ill. I was required to appear in court or be in contempt. As primary care taker of my son and knowing it was going to be impossible for me to serve at that time with a nursing, ill toddler, it was sincerely appreciated when the county attorney dismissed me from the jury selection pool. I wish that the court clerk would have had the instructions to trust my judgment of my child's situation and avoided the court appearance all together. The anxiety was overwhelming.

It was 15 years later that I was called to jury duty again. This was a time I could easily accept this responsibility. It is my perspective that to everything there is a season. My season for serving jury duty can easily span forty years. The early parenting years are very short in comparison and is a time to put children's needs first.

Passing HB 2789 will place things in a natural order. Families will benefit by the timely accommodation for their children. The court will have a more available and willing jury pool. I look forward to my next opportunity to serve.

Thank You!

House Judiciary
Attachment 9
2-18-02

Testimony Regarding HB 2789

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Thank you Mr. Chairman and members of the Judiciary Committee.

In my work with young families, I have often encountered parents who have made significant economic sacrifices to permit mothers to be with their children full-time. Landmark studies in child development support this approach to parenting as optimal, yet society does little to accommodate these families.

A breastfeeding mother called for jury duty faces several problems. Separation from her infant can lead to decreased milk production, even with frequent use of a quality breast pump. Breast pumps are not available in every community in Kansas. Where good pumps are available, a mother can expect to pay \$80 - \$100 for a rental pump with milk collection kit, and more than \$200 to purchase a pump.

Many breastfed infants do not accept milk from a bottle, or the use of bottles can result in "nipple confusion" and subsequent rejection of the breast. A breastfeeding mother of a young infant would need to express milk approximately every two hours while separated from her infant, as well as a private, clean place to pump. A restroom is not satisfactory. Another problem involves care for the infant. There is a current shortage of daycare for infants and toddlers. Most care providers do not accept children on an "as needed" basis with the open-ended time frame that jury duty involves. If child care could be arranged, the cost would be \$125-\$200 for 5 days. Today's families seldom have grandparents or other extended family available to care for a child. I am told by my clients that grandparents may live across the country rather than across town, and are usually working outside the home.

The mother who can surmount these obstacles and serve on a jury should be encouraged to do so. At the same time, I would encourage the committee to support the breastfeeding mother who can bear neither the expense nor the impact of separation on her infant. The proposed legislation can accomplish this goal.

I would be glad to answer any questions.

Testimony in support of HB 2789

Thank you Mr. Chairman and Members of the Judiciary Committee.

In November 1999 I received a summons for jury service in the Saline County District Court for the month of December 1999. I returned the jury questionnaire and requested to be excused because I was breastfeeding my baby and was the full time care provider to my five children aged 5 weeks, 22 months, 5, 7, and 10 years. A few days later I followed up with a telephone call to the office of the Clerk of the District Court expecting to verify I had been excused. I was shocked to learn neither breastfeeding nor caring for young children was considered a reason to be excused.

I became increasingly concerned that I was going to be forced to leave my young children with a baby sitter. Thinking this must be a matter of miscommunication I called back and spoke with 3 court employees. I explained I do not leave my babies with baby sitters, my toddler had never been left with a sitter for more than a couple of hours at a time, and I did not have any family nearby who could help care for them. I also explained my baby did not take a bottle, nursed very frequently, and I did not have a breast pump. I offered to have our physician write a letter verifying my baby was breastfed and we needed to be together. I was told a lot of women pump, give their babies bottles, leave their babies with a sitter, and I could too. I was told I could call our county's child-care referral service at the YWCA and find a baby sitter.

I persisted with my request to be excused to care for my children but was told I must serve or be in contempt. I explained I would need to bring my young children with me and was told that could also be considered contempt. I was so frustrated with the court's unwillingness to recognize the needs of my children that I responded, "Citing me for contempt for refusing to leave my children with a baby sitter would make an interesting headline!"

It was finally decided I would not be excused but would be given a one-time only one-year deferral. The deferral did not solve the problem. It just postponed it.

Around September 2000 I answered our telephone, and it was an employee of the District Court. My husband had been summoned to serve and had returned his jury questionnaire. The employee stated my husband was excused because he is a physician. I responded that did not matter; he could indeed serve. She said they excuse all physicians. I again stated he could serve, and his partners could cover for him. I explained that I had read the state statutes regarding jury duty, and there was no law automatically excusing physicians. Just as they refused to excuse me even though it was a hardship for my family they did not have to excuse my husband.

The court employee and I had a lengthy discussion about my situation. She said there was nothing they could do; I must serve in December 2000. When I mentioned bringing my children she said that could cause me to be cited for contempt. I responded that was something I would have to risk. I hung up the phone in disbelief that my husband had been excused simply because his name is followed by the initials M.D. and I could not be excused to care for our children. Later the same day the court employee called back to say they had decided to change my first deferral to a medical deferral and would give me a one-year personal deferral until December 2001.

While researching this subject I talked with 2 attorneys at the Office of the Judicial Administrator in Topeka. I learned that K.S.A. 43-159 is interpreted differently in every county and a child does not have any rights if his parent is called for jury duty. The only way to guarantee a parent providing full-time care to a young child could be excused from jury duty is to pass legislation.

If, when my children are less dependent on me, I am chosen to serve on a jury I will consider it a great honor. Right now I consider my greatest duty to be to my children who are completely dependent on me. As a mother who is seeking to protect my children's right to have me present to care for them I would appreciate your support of HB 2789.

Margaret DeVoss



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February 18, 2002

Testimony on HB 2789 House Judiciary Committee

Kathy Porter

Office of Judicial Administration

Thank you for the opportunity to explain some concerns regarding HB 2789. The decision as to whether to exclude from jury service parents who are not employed full-time and are responsible for the daily care of a child under six years of age is a policy decision for the Legislature to make. The concern, however, is that providing an automatic exclusion from jury service for an additional group of persons will, in all likelihood, necessitate selecting additional persons for the initial jury list so that the court can eventually empanel the required number of jurors. Even with experience, it will be difficult to determine how many additional jurors will need to be selected, because it will be impossible to determine, from each randomly selected pool, how many of those selected will be parents who are not employed full-time and are responsible for the daily care of a child under six years of age. That number could vary greatly from jury pool to jury pool.

In addition to the persons who **shall** be excluded from jury service under the statute before you, K.S.A. 43-158, K.S.A. 43-159 provides that the court **may** excuse from jury service, among others, persons whose presence elsewhere is required for the public welfare, health, or safety, or persons for whom jury service would cause extraordinary or compelling personal hardship. It would seem that parents providing full-time care for young children could be excused from jury service at the judge's discretion under current law; however, that exclusion would not be automatic without the amendment before you.

The general public policy of jury service has been committed to statute. K.S.A. 43-155 provides as follows:

The public policy of this state is declared to be that jury service is the solemn obligation of all qualified citizens, and that excused from the discharge of this responsibility should be granted by the judges of the courts of this state only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health or

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safety; that all litigants entitled to trial by jury shall have the right to juries selected at random from a fair cross section of the community in the district wherein the court convenes; and that all citizens shall have the opportunity to be considered for service on juries in the district courts of Kansas.

An automatic excuse from jury service is an important policy decision in that it does exclude from jury service a particular cross section of the community.

KP:mr