

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on February 18, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Office of the Revisor  
Mitch Rice - Office of the Revisor  
Jerry Ann Donaldson - Legislative Research Department  
Martha Dorsey - Legislative Research Department  
Nicoletta Buonasera - Legislative Research Department  
Bev Renner - Committee Secretary

Conferees appearing before the committee:

Representative Frank Miller  
Candace Shively-Deputy Secretary-Integrated Service Delivery, Social and Rehabilitation Services (SRS)  
Marilyn Jacobson-SRS  
Representative Dean Newton  
Paul Morrison, District Attorney-Johnson County  
Lt. Colonel Faddis-Overland Park Police Department  
Chris Biggs, County Attorney-Geary County  
Norman Williams, Chief of Police, Wichita (written testimony)  
Nola Foulston, District Attorney-Sedgwick County (written testimony)  
Frank Denning, Undersheriff-Johnson County (written testimony)  
Bill Kennedy, County Attorney-Riley County  
Barbara Tombs, Executive Director-Kansas Sentencing Commission  
Marlee Carpenter, Kansas Chamber of Commerce-Retail Council  
Representative Peggy Long (written testimony)  
Rose Rozmiarek, Kansas State Fire Marshall's Office

**HB 2015 - Modification of sentence of juvenile offender by the court based on medical condition**

Chairperson Loyd called for final action on **HB 2015**. This bill was requested by Juvenile Justice through the Oversight Committee to modify the statute to permit the Commissioner of Juvenile Justice to request modification of sentences of juveniles in the event of a medical condition. The Commissioner asked for a balloon for clarification.

Representative Janice Pauls made a motion to amend HB 2015 as requested by the Commissioner and recorded in the balloon. Vice-Chairperson Owens seconded the motion. The motion carried.

Vice Chairperson Owens voiced concern that often decisions are made for those in an incarcerated situation, when they get sick the issue becomes the ability of the state or entity in control to make the transfer solely on the basis of cost.

Representative Nile Dillmore made a motion to pass HB 2015 favorably as amended. Representative Dale Swenson seconded the motion. The motion carried.

**HB 2095 - Legislators allowed to review CINC reports if child is placed in foster care and a victim of certain crimes; certain restrictions apply.**

**Chairperson Loyd continued the hearing begun on February 6, 2003 on HB 2095.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 18, 2003, in Room 526-S of the Capitol.

Candace Shively, Deputy Secretary-SRS appeared with concerns about **HB 2095** (Attachment 1) as currently written. Language needs to be developed to ensure compliance with federal law.

Discussion of confidentiality requirements for Legislators and the definition of "official function" of members of standing committees was held. Marilyn Jacobson, SRS offered explanation of current practices regarding decisions of disclosure. Statutes are the only rules or regulations that SRS uses to make decisions regarding the release of records.

**Chairperson Loyd closed the hearing on HB 2095.**

**HB 2104 - Various theft statutes, if theft is over \$100,000, a severity level 5, nonperson felony.**

**Chairperson Loyd opened the hearing on HB 2104.**

Representative Dean Newton was recognized to testify in support of **HB 2104** (Attachment 2). Under current law, a person who steals \$25,000 or \$20 million receives the same penalty; a severity level 7, non-person felony. The practical effect is presumptive probation. With this bill, anyone stealing more than \$100,000 will receive a severity level 5, nonperson felony on the sentencing grid.

Paul Morrison, Johnson County District Attorney spoke in strong support of **HB 2104** (Attachment 3). Kansas is seeing more and more cases involving thefts of greater than \$100,000. Previously, we could depend on the Federal Government to prosecute these cases but they don't have the time in the current climate. Mr. Morrison cited examples of such cases in his county.

Lt. Colonel Faddis, Overland Park Police Department appeared to support **HB 2104** (Attachment 4). Two detectives from his department are dedicated to the investigation of financial crimes and sometimes more are called to assist because of caseload. 25-30% of the cases they investigate involve losses greater than \$100,000.

Chris Biggs, Geary County Attorney rose in support of **HB 2104** (Attachment 5). There is no deterrent under current law for property offenders. They know they will get probation. This bill would put in place a necessary sanction for a specific problem.

Chairperson Loyd brought the attention of the committee to written testimony in support of **HB 2104** from Wichita Chief of Police, Norman Williams (Attachment 6); Nora Foulston, District Attorney-18th Judicial District (Attachment 7); Frank Denning, Johnson County Undersheriff (Attachment 8); and, Ellen Hanson, Lenexa Chief of Police (Attachment 9).

**Chairperson Loyd closed the hearing on HB 2104.**

**HB 2271 - Certain crimes against property, raising \$500 threshold to \$2,000.**

**Chairperson Loyd opened the hearing on HB 2271.**

Representative Sydney Carlin introduced William E. Kennedy, Riley County Attorney to speak in support of **HB 2271** (Attachment 10). The threshold level of \$500 for nonperson felony has been in effect since 1988. Currently a person charged with theft over \$500, requires a panel of thirty-four potential jurors, and a right to preliminary examination which requires the presence of the victim, testimony, court time, preparation time and often police officers on overtime. The current cost of replacement makes almost any damage to a car over \$500.

Barbara Tombs, Executive Director-Kansas Sentencing Commission reported that this bill would cause a bed savings of 58-142 beds.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on February 18, 2003, in Room 526-S of the Capitol.

Ranking Minority Member Jim Ward suggested that the joining of HB 2104 and HB 2271 would be a logical move resulting in a net bed savings.

Chris Biggs, Geary County Attorney was asked to comment on the effectiveness of this change in his community. His feeling was that it would probably make sense to most prosecutors to raise the level, but some prosecutors and merchants would be concerned that \$2000 would be too much; \$1000 would be more agreeable.

Marlee Carpenter, Executive Director of the Kansas Retail Council-Kansas Chamber of Commerce and Industry spoke in opposition to HB 2271 (Attachment 11). This bill would be in direct opposition to the retail council's policy to support additional penalties for retail theft. Surrounding states all have felony theft penalties set at \$500 which would create a problem for Kansas of thieves coming across state borders. If HB 2271 would become law, there would be only one state that has a higher penalty limit than Kansas.

**Chairperson Loyd closed the hearing on HB 2271.**

**HB 2295 - Felony arson; aggravated arson to include great bodily harm or disfigurement to a firefighter or law enforcement officer.**

**Chairperson Loyd opened the hearing on HB 2295.**

Representative Peggy Long submitted written testimony in support of HB 2295 (Attachment 12). This bill would act as a deterrent to arsonists as they put our Firefighters at risk.

Rose M. Rozmiarek, Director of Investigations for the Kansas State Fire Marshal's Office, spoke in support of HB 2295 (Attachment 13). The changes proposed in this bill hold the perpetrator accountable for the actions occurring during the commission of their crimes. Added to the arson statute is the term "felony arson", defined as a fire resulting from the commitment of a felony crime. The definition of "Aggravated Arson will include injuries to the fire fighters fighting a fire and the investigators determining the cause of the fire as grounds to increase the charge. There should not be a significant increase in workload for the courts. Florida, Connecticut and Illinois have similar statutes.

**Chairperson Loyd closed the hearing on HB 2295.**

**HB 2091 - Offender financial responsibility for DNA collection fees.**

Chairperson Loyd explained that this legislation would make the convicted person who is required to provide a biological sample pay for collection costs.

Kyle Smith, Special Agent-KBI offered a balloon to the bill in which the costs were detailed in two formats, one for a \$25 processing fee and the other for \$150. (Attachment 14)

**Ranking Minority Member Jim Ward made a motion to adopt the \$25 processing fee balloon as a new subsection of the bill. Representative Sydney Carlin seconded the motion.**

Representative Carter expressed interest in proposing the \$150 processing fee balloon if the Ranking Minority Member's motion should fail.

Chairperson Loyd suggested that the members look at the testimony from Secretary Werholtz presented at hearing to encourage voluntary sampling by inmates and a measure that sets up a mandatory sampling system.

The meeting was adjourned at 3:26 p.m. The next scheduled meeting is on February 19, 2003.

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE GUEST LIST**

DATE Feb 18, 2003

NAME	REPRESENTING
Rose Raymond	KS State Fire Marshals Office
Keith Farris	Overland Park Police Dept
Chris Biggs	Geary County Attorney
Denise Eberhart	Juvenile Jst. Auth
Malle Carpenter	KCCI
Natalie Budig	<del>Overland</del> W IBA
Marilyn Jacobs	SRS
Carly Alley	SRS
Bria Sumner	Washburn University
Jerry Clements	SRS
Teresa Schwiab	KCSL
Jeff Botkinberg	KSA / KP OA
Trista Corzydlo	KBA
Bella Jones	KSC
Paul Morrison	Jo. Co. D. A.
Bill Kennedy	Riley County Attorney
Kyle Smith	KBI



Kansas Department of

# Social and Rehabilitation Services

Janet Schalansky, Secretary

House Corrections and Juvenile Justice Committee  
February 18, 2003

HB 2095 - Concerning children in need of care;  
records and reports

Integrated Service Delivery  
Candy Shively, Deputy Secretary

For additional information contact:  
Office of Planning and Policy Coordination  
Marianne Deagle, Director

Docking State Office Building  
915 SW Harrison, 6<sup>th</sup> Floor North  
Topeka, Kansas 66612-1570  
phone: 785.296.3271  
fax: 785.296.4685  
[www.srskansas.org](http://www.srskansas.org)

H. Corr & J. J.  
2-18-03  
Attachment 1

**Kansas Department of Social and Rehabilitation Services  
Janet Schalansky, Secretary**

House Corrections and Juvenile Justice Committee  
February 18, 2003

**HB 2095 - Concerning children in need of care; records and reports**

Representative Loyd and members of the Committee, I am Candy Shively, Deputy Secretary of Social and Rehabilitation Services. We appear today regarding concerns with HB 2095 as it is written.

The federal Child Abuse Prevention and Treatment Act (CAPTA) was amended in 1996 to require states to develop a process which allowed disclosure only in cases of child abuse or neglect which resulted in a child fatality or near fatality. In 1997 K.S.A. 38-1507(h) was added to provide, "Nothing in this section shall be interpreted to prohibit a court of competent jurisdiction from making an order disclosing the findings or information pursuant to a report of alleged or suspected child abuse or neglect which has resulted in a child fatality or near fatality if the court determines such disclosure is necessary to a legitimate state purpose. In making such order the court shall give due consideration to the privacy of the child, if living, or the child's siblings, parents or guardians."

SRS is committed to working with Rep. Burroughs to develop language for this bill that ensures compliance with federal law.

Thank you and I will stand for questions.

JEAN NEWTON

REPRESENTATIVE, 21ST DISTRICT  
 4808 WEST 77TH TERRACE  
 PRAIRIE VILLAGE, KS 66208  
 (913) 384-0490  
 dnewton@kc.rr.com



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENT  
 MEMBER: APPROPRIATIONS  
 EDUCATION AND LEGISLATIVE  
 BUDGET  
 JUDICIARY

ROOM 115-S, STATEHOUSE  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7682  
 newton@house.state.ks.us

February 18, 2003

The Honorable Ward Loyd  
 Chair, Corrections and Juvenile Justice Committee  
 State Capitol, Room 427-S  
 Topeka, KS 66612

Representative Loyd and Members of the Corrections and Juvenile Justice Committee:

Thank you for the opportunity to appear before you as a proponent of HB 2104. This legislation is supported by district attorneys, county attorneys, chiefs of police, sheriffs and other members of the law enforcement community, several of whom are testifying today.

There is a glaring inconsistency in the criminal code that this legislation attempts to remedy. The loophole allows criminals who commit major felonies to simply receive a slap on the wrist under the law. Basically, under the current criminal code a person who steals \$25,000 in money from a convenience store and a person who steals \$20 million through fraud or embezzlement are subject to the same penalty under the law: a severity level 7, nonperson felony. The practical effect of this fact is that both individuals receive only presumptive probation.

My legislation changes the law to make it a severity level 5, nonperson felony if a person steals more than \$100,000. The theft of property or services of at least \$25,000 but less than \$100,000 remains a severity level 7, non-person felony offense.

The change in the law makes it much more likely that these major criminals will receive prison time rather than a slap on the wrist. Most importantly, the loophole is eliminated with very little impact on prison beds.

The punishment simply does not fit the crime in these instances and I urge your support for this bill. Criminals who commit these major felonies belong in prison and not on the streets.

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 Attachment 2

# OFFICE OF DISTRICT ATTORNEY

PAUL J. MORRISON, DISTRICT ATTORNEY

## Testimony in Support of House Bill 2104

February 18, 2003

I am here today to show my strong support for this bill, which makes thefts of \$100,000 or more a serious felony. As most of you are aware, felony theft in Kansas is currently either a severity level 7 (\$25,000 or more) or a severity level 9 (under \$25,000). As such, most felony thefts are relegated to the lower rungs on the severity scale. This is usually appropriate. However, we are beginning to see these "big" thefts with increasing frequency. Unfortunately, I've often been amazed at how little consequences there are for individuals who can steal hundreds of thousands of dollars compared to the petty "street criminal" who oftentimes does massive prison time (appropriately I might add) for stealing a few dollars.

Unfortunately, in years past the federal authorities were usually able to prosecute these cases. Due, however, to their limited capacity, these cases are increasingly falling on county and district attorneys to prosecute. Here are a couple of example from our county within the last two years:

1. Several members of a family took advantage of a 77 year old widow and were convicted of stealing over \$700,000 from her.
2. A boat dealer used a fraudulent financing scheme to steal over \$1.3 million dollars from several consumers and banks. He was convicted of felony theft.
3. A "consulting firm" which advertised heavily for consumers to submit ideas for inventions stole more than \$600,000 from Kansas consumers. This firm, which operated nationally, has stolen millions and millions of dollars from individuals throughout the nation. They were convicted of felony theft.
4. Our office is currently preparing to file theft charges against an investment counselor who stole over \$100,000 in retirement funds from various individuals. Some people lost the vast majority of their retirement savings. It will be a felony theft case.

In all the above mentioned cases, the defendants were convicted of low grade felony thefts. As a severity level 7 felony, most faced no more than six to twelve months in state custody. Most were eligible for presumptive probation. Frankly, for thefts of this size these sentences are an outrage. I urge you to put some more teeth in these laws for people who commit large scale thefts. The impact on the state correctional system will be minimal.

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2.18.03  
Attachment 3



W. Jack Sanders Justice Center  
12400 Foster  
Overland Park, Kansas 66213  
913/895-6000 • Emergency 911  
www.opkansas.org

Testimony Before  
The House Committee  
Regarding  
Sentencing Guidelines  
House Bill 2104

February 18, 2003

The Overland Park Police Department supports the changes to sentencing as recommended in House Bill 2104. Overland Park currently has two detectives assigned to investigate financial crimes. Due to the caseload, it is often necessary to call on other detectives to assist. I spoke with those detectives prior to coming here and they provided me with some interesting information. They estimated that 25 to 30 percent of the cases they investigate involve losses greater than \$100,000. The cases vary greatly in how the crime was carried out. One case involved a small business and the bookkeeper. Over a three-year period, the bookkeeper stole \$196,000 from her company. In another case, one individual was responsible for a check scam that netted over \$400,000. The most recent involved a person who was caring for an elderly individual; the caretaker systematically withdrew several hundred thousand dollars from the account.

In the past, cases of this magnitude would be moved to the federal jurisdiction; however, the FBI, IRS, and Secret Service have set thresholds on the dollar loss before they will open a federal case. Even then, it takes a significant amount of time before the case goes to court. Our investigators will spend many hours developing a case and presenting it for prosecution. It is frustrating for the investigators to put effort into a case with such a significant dollar loss and know that the suspect may be facing only probation. It is more frustrating to the victim who has just suffered a tremendous loss to see the suspect only receive probation.

Thank you for your consideration.

Lt. Colonel Faddis  
Overland Park Police

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Attachment 4

February 19, 2003

Testimony  
House Bill 2104  
Chris Biggs  
Geary County Attorney

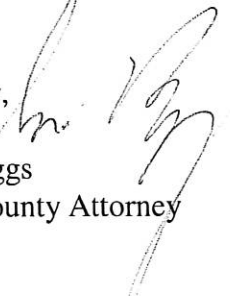
I am here today to testify in favor of House Bill 2104, which proposes a presumptive prison sanction for theft over \$100,000.00. The bill creates a level five non-person felony for this level of theft -- a real sanction for the most serious theft crimes.

Property offenders are a constant frustration for prosecutors and victims. These offenders know there is no risk to them, even for felony crimes. I have heard them laughing on the courthouse steps about the fact that they routinely receive probation under our sentencing guidelines. Right now in Kansas you can steal 10 million dollars, spend it before you get caught, and receive probation for 12 months. Your probation cannot be revoked for failure to pay the money back unless it is shown that nonpayment is willful -- meaning you have a job and can pay it back. See, *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). Once off of probation you can again commit such a crime without risk of punishment.\*

This bill also addresses an inequity in our criminal code. Hypothetical: An unsophisticated criminal snatches an elderly woman's purse and is convicted of robbery and sent to prison for this level five person felony. K.S.A. 21-3426. A forger who obtains her check book and passes five dollar forged checks does face mandatory county jail time for repeat offenses. K.S.A. 21-3710. A sophisticated white-collar criminal steals one million dollars from her account and gets probation. Amazingly, if the elderly woman wrote a back check on her own account, she could theoretically get one year in the county jail without a presumption of probation. (We wonder why are criminal laws are viewed with disbelief by the public!)

This bill would put in place a necessary sanction to serve as a deterrent. It will not cost the state greatly in prison bed costs. I urge passage of this bill.

Sincerely,

  
Chris Biggs  
Geary County Attorney

\* a court can impose a 30 day jail sentence as a condition of probation.

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2.18.03  
Attachment 5

**Statement of Chief of Police Norman D. Williams  
Wichita Police Department**

**In support of House Bill No. 2104**

**To the Honorable Chairperson Ward Loyd and  
Members of the Corrections and Juvenile Justice Committee of the  
Kansas Legislature**

The Wichita Police Department members appreciate the efforts of the Corrections and Juvenile Committee and the work of Representative Dean Newton in drafting and introducing **House Bill 2104**. This bill provides a higher penalty for theft of property with a value of \$100,000 or more to a severity level 5, non-person felony.

In our community, the crime of theft is an offense that is frequently repeated and has minimal consequences or deterrents under the existing severity level system. The impact is felt more by the victims of these crimes than by the offender who may leave the courthouse with little more than a slap on the hand. The victims are your constituents who have suffered losses that are financial and emotional. Most have lost time away from work participating in the judicial process, and have found little consolation that the justice system has worked for them.

It is the hope of the Wichita Police Department that as **House Bill 2104** is increased to a higher severity level, work will continue to improve accountability for repeat offenders who fall within the presumptive probation areas of the sentencing guidelines.

I support **House Bill 2104** and the concept that is engendered within its framework and ask that as legislators you adopt a "good stewardship policy" by affording increased protection to the citizens of the State of Kansas who you represent in a most responsible and laudatory capacity.

Thank you for serving all of Kansas.

H. Corr. & J.J.  
2-18-03  
Attachment 6



*Office of the District Attorney  
Eighteenth Judicial District of Kansas*

*District Attorney Nola Fedesco Foulston  
Chief Deputy Kim T. Parker*

*Wednesday, February 12, 2003*

*Statement of District Attorney Nola Fedesco Foulston  
18<sup>th</sup> Judicial District of Kansas*

*In support of House Bill No. 2104*

*To the Honorable Chairperson Ward Loyd and  
Members of the Corrections and Juvenile Justice Committee of the Kansas Legislature*

*I applaud the efforts of the Corrections and Juvenile Justice Committee and the work of Representative Dean Newton in drafting and introducing HB 2104 providing, in essence, a higher penalty for theft of property of the value of \$100,000 or more to a severity level 5, non person felony.*

*In our urban area, the crime of theft is an offense that is frequently repeated and has little consequences under the existing severity level system. The impact is felt more by the victims of these crimes than by the defendants who may casually walk from the courthouse with little more than a slap on the wrist and who revel in their ability to "beat the system". These victims are your constituents who may live down the street. These are neighbors and friends who have lost property that they valued. People like you and me who have suffered losses that are financial, emotional and have lost time away from work participating in court, yet, have found little consolation that the justice system has worked for them.*

*While HB 2104 recognizes that the severity levels should be moved upwards, there is still room for improvement, particularly for repeat offenders who fall within the presumptive probation areas of the sentencing guidelines. This is not only in the theft area, but also in most other property crimes such as burglary and forgery. Many defendants make a living repeating these crimes because the system is benign in the treatment of offenders and thus in a strange way, continues to encourage the habitual criminality of those who chose to make their living through crimes of this nature.*

*I support HB 2104 and the concept that is engendered within its framework and ask that as legislators you adopt a "good neighbor policy" by affording increased protection to the citizens of the State of Kansas who you serve in a most responsible and laudatory capacity.*

*With all good wishes, I remain*

*District Attorney Nola Fedesco Foulston  
18<sup>th</sup> Judicial District of Kansas*

**H. Corr. & J.J.**

*Sedgewick County Courthouse - 535 North Main - Wichita, Kansas 67203*

*Telephone (316) 383-7281 Facsimile (316) 383-7266*

*1 (800) 432-6878*

**2-18-03**

**Attachment 7**





OFFICE OF THE  
Johnson County Sheriff

Courthouse  
125 N. Cherry  
Olathe, Kansas 66061

**John Foster**  
Sheriff

**Frank Denning**  
Undersheriff

Telephone  
913-791-5800  
Fax  
913-791-5806

February 17<sup>th</sup>, 2003

State of Kansas Capitol Building  
**Attn: Ward Loyd, Chairman of the Corrections and Juvenile Justice Committee**  
Room 115-S  
Topeka, KS 66612-1504

Re: Letter of Support - House Bill No. 2104

Dear Chairman Loyd & Members of the Corrections and Juvenile Justice Committee:

I, Undersheriff Frank Denning, on behalf of John Foster, Sheriff of Johnson County, submit this letter in support of House Bill No. 2104 as we will be unavailable to attend the Corrections and Juvenile Justice Committee Hearing on Tuesday, February 18th.

With the continued increase in value of consumer goods, the proposed changes in this house bill offer the citizens of Johnson County and the Great State of Kansas, the ability to make violators more accountable for their actions when committing acts of the thievery.

The ever present threat of "white collar" crimes being committed has demonstrated a need for stronger penalties for these offenders. These types of crimes usually are committed by persons of above average intelligence and are usually in a position of trust, related to the victim(s).

Offenders that are willing to commit, or contemplate committing, theft crimes that exceed one hundred thousand dollars, will have a higher degree of awareness for the punishment potential, that the state statute prescribes, than the typical law violator would have.

With the knowledge that committing a crime of this magnitude carries, the offender will most likely know that the potential punishment for this behavior will carry a presumptive imprisonment term instead of presumptive probation. This house bill proposes to act as a strong deterrent to this type of criminal activity.

Beside the victim(s) of theft crimes, the taxpayers of Johnson County, and the Great State of Kansas, are the ones who continue to shoulder the burden of societal costs. Whether it is the cost of prosecution, incarceration or assisting the victim(s) of these crimes to reestablish themselves, this house bill provides necessary changes to the current statute. Ultimately it brings about greater accountability from the persons committing these crimes and to all of the citizens of the Great State of Kansas who ultimately bear the financial burden.

As representative of the Johnson County Sheriff's Office, I offer this letter in support of House Bill No. 2104.

Sincerely,

Undersheriff Frank Denning

H. Corr. & J. J.  
2-18-03  
Attachment 8



Testimony of Ellen T. Hanson  
Chief of Police, Lenexa, Kansas Police Department

Before the Kansas House Committee on  
Corrections and Juvenile Justice,  
Honorable Ward Loyd, Chairperson

February 18, 2003

**In Support of HB 2104**

MR. CHAIRMAN, ladies and gentlemen of the committee, I thank you for holding this hearing and for the opportunity to address you regarding **House Bill 2104**. As a Chief of Police, a law enforcement officer and as a citizen of Kansas I feel early passage of this important legislation is critical to the equitable protection of our individual and corporate citizens as well as to the just and proportionate application of our laws on those who would violate them.

House Bill 2104 fills an obvious deficiency in the current Statutes. There are thieves and then there are thieves who go to extraordinary lengths to steal. Today's world offers very sophisticated tools, cyber-tools among them, which equip the dedicated thief with a full toolbox of instrumentalities to operate with

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Attachment 9

near impunity for varying periods of time. Only a short time is typically needed to raid accounts or place lavish and costly orders for goods using an actual identity stolen from someone or by establishing a false identity. False identification, realistic financial instruments, and virtual hideouts are easily fabricated by even marginally talented but motivated thieves. A computer mouse and an inexpensive software program are much more effective than a gun and a getaway car.

The theft statute, as currently written, contemplates no difference in terms of sentencing between *petit* larceny and *grand* larceny. It seems a common sense measure to add a proportionally higher sentence for a significant theft, and HB 2104 does that in a reasonable and effective manner.

It is my request and with my strongest recommendation that I ask you to quickly pass HB 2104 out of committee with a favorable recommendation for early passage. Give law enforcement and the courts the updated tools we need deal more effectively with this evolving attack on the safety and security of our citizens and their property.

Thank you for your kind attention and for your service to the State of Kansas.



COUNTY ATTORNEY'S OFFICE

William E. Ken. , III  
Riley County Attorney  
Carnegie Building, 2nd Floor  
105 Courthouse Plaza  
Manhattan, Kansas 66502-0106  
Phone: 785-537-6390  
Fax: 785-537-6334

*TESTIMONY OF WILLIAM E. KENNEDY III CONCERNING HOUSE BILL 2271*

I suggest that the threshold cost of felonies in various nonperson statutes be increased from the current threshold of \$500.00 to a threshold of \$2,000.00. In the last twenty (20) years, this figure has moved from \$50.00 to \$100.00 to \$150.00 to \$500.00. It has been at the \$500.00 level since 1988.

Prosecutors should prosecute with an eye toward the best interest of the State of Kansas, the victim, and the Defendant in that order. In many cases, there is nothing to be gained for the State of Kansas by convicting someone as a felon. It simply does the rest of us no good.

Changing the threshold to \$2,000.00 will eventually lower the prison population by changing criminal history.

Changing the threshold to \$2,000.00 will enormously lower the costs of prosecution. Currently a person charged with Theft over \$500.00 is entitled to a jury trial with twelve (12) jurors, requiring a panel of thirty-four (34) potential jurors in order to pick twelve. Experience shows you have to summons approximately forty-five (45) in order to get thirty-four (34) actual jurors. On the other hand, a misdemeanor jury of six (6) requires only eighteen (18) potential jurors to report. Further, a person charged with a felony has a right to a preliminary examination. These require the presence of the victim, testimony, court time, preparation time and most often police officers on overtime. It is expensive and time consuming. Victims don't like to come to court.

As the felony grid K.S.A. 21-4704a, and the misdemeanor sentencing statute K.S.A. 21-4502 interrelate, a Court can sentence a first time misdemeanor theft Defendant to a year in jail, while if a person is convicted of theft between \$500.00 and \$25,000.00, that is a Severity Level IX crime and even a person with three or more nonperson felonies in their background can only be sentenced to eleven (11) months on a new conviction for Felony Theft. Conversely a first time Defendant convicted of Felony Theft will generally receive the recommended sentence of six (6) months.

Car windows are currently valued between \$125.00 and \$2,500.00. Newer vans with shaded glass and antennas and heaters in the glass represent the higher end. Recently we had an intoxicated soldier break a car window, and broken glass got down and around the air bag. One stupid act by a drunken soldier caused \$2,000.00 worth of damage. Almost any damage to a car is valued at over \$500.00.

H. Corr. & J.J.  
2-18-03  
Attachment 10  
Karla Hagemeister  
Victim/Witness Coordinator  
785-537-6383

Brenda M. Jordan  
Assistant County Attorney

Valerie L. Peterson  
Assistant County Attorney

Terry D. Holdren  
Assistant County Attorney

Kathryn S. Gonzales  
Assistant County Attorney



# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

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HB 2271

February 18, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Corrections and Juvenile Justice Committee  
By Marlee Carpenter, Executive Director, Kansas Retail Council

Chairman Loyd and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry and the Kansas Retail Council representing over 700 retailers in the state of Kansas. We are here to testify in opposition to HB 2271. The Kansas Retail Council revisited its theft policy last year that states the Kansas Retail Council supports additional penalties for retail thefts. HB 2271 would be in direct opposition to our policy and would weaken retail theft penalties in Kansas.

HB 2271 would increase the threshold for a felony theft from \$500 to \$2,000. Nebraska, Colorado, Oklahoma, Iowa, Missouri and Arkansas all have a felony theft level of \$500, the same as is presently on the books in Kansas. Thieves are very smart. This change would attract thieves from our neighboring states that have lower theft limits. I have attached a list of states and their felony theft levels. If Kansas were to pass HB 2271 there would be only one state that has a higher theft penalty limit.

Increasing the level of a felony theft is of great concern to retailers across the state. KCCI and the KRC oppose HB 2271 and urge the committee to kill the bill. Thank you for your time and I will be happy to answer any questions.

## **About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. 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.

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**FELONY THEFT LEVELS**

11/05/2002

STATES	AMT PER STATE		
Alabama	\$ 250.00		
Alaska	\$ 500.00		
Arizona	\$ 250.00		
Arkansas	\$ 500.00		
California	\$ 400.00		
Colorado	\$ 500.00		
Connecticut	\$ 1,000.00		
Delaware	\$ 1,000.00		
Florida	\$ 300.00		
Georgia	\$ 300.00		
Hawaii	\$ 300.00		
Idaho	\$ 1,000.00		
Illinois	\$ 150.00		
Indiana	theft is a Class D felony, regardless of amt		
Iowa	\$ 500.00		
Kansas	\$ 500.00		
Kentucky	\$ 400.00		
Louisiana	\$ 300.00		
Maine	\$ 1,000.00		
Maryland	\$ 500.00		
Massachusetts	\$ 250.00		
Michigan	\$ 1,000.00		
Minnesota	\$ 250.00		
Mississippi	\$ 250.00		
Missouri	\$ 500.00		
Montana	\$ 1,000.00		
Nebraska	\$ 500.00		
Nevada	\$ 250.00		
New Hampshire	\$ 500.00		
New Jersey	\$ 250.00		
New Mexico	\$ 250.00		
New York	\$ 1,000.00		
North Carolina	\$ 1,000.00		
North Dakota	\$ 500.00		
Ohio	\$ 500.00		
Oklahoma	\$ 500.00		
Oregon	\$ 750.00		
Pennsylvania	\$ 2,000.00		
Rhode Island	\$ 500.00		
South Carolina	\$ 1,000.00	Washington	\$ 250.00
South Dakota	\$ 500.00	Washington, DC	\$ 250.00
Tennessee	\$ 500.00	West Virginia	\$ 1,000.00
Texas	\$ 1,500.00	Wisconsin	\$ 2,500.00
Utah	\$ 1,000.00	Wyoming	\$ 500.00
Vermont	\$ 100.00		
Virginia	\$ 200.00		
Washington	\$ 250.00	average	\$ 614.00

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

**TESTIMONY**  
HOUSE BILL 2295

PEGGY LONG  
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VICE-CHAIR: HEALTH & HUMAN SERVICES  
MEMBER: UTILITIES  
JUDICIARY

Chairman and members of the committee, I appreciate the opportunity to come before you to address this issue. Firefighters risk life and limb on a daily basis. It is only right that we do all we can to deter arsonists from putting these individuals at risk.

I apologize for not being able to appear in person before the committee today, but I urge your passage of House Bill 2295.

Peggy Long  
Representative, 76<sup>th</sup> District

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Rose M. Rozmiarek  
Kansas State Fire Marshal's Office  
Director of Investigations

Dear House Committee for Corrections and Juvenile Justice:

I am here to speak to you as a proponent of House Bill 2295. This bill addresses the Kansas Arson and Aggravated Arson Statutes. The changes being proposed are the addition of actions caused by the perpetrator during the commission of and classifying these as arsons. We need to have the perpetrator accountable for all actions they conduct in the commission of their crimes.

The first issue I will address is the change in the regular arson statute, 21-3718. What is being added is what you could term 'felony arson'. If a perpetrator committed any felony crime and due to their actions a fire results then the perpetrator could be charged for the fire as well. A few examples are as follows:

The Emporia double fatality explosion fire in 2001. Even though the suspects in this case were convicted to life in prison they were not convicted of the arson. The jury members were polled and they all agreed that they could not find the evidence for the intent of the fire/explosion. If this felony arson addition was already on the books the jury would not have had a problem with the deliberations.

In the fall of 2002 a fire resulted from the actions of a burglar who ran-sagged a house in Wichita as he / she looked for valuables. This house was equipped with a floor furnace. Clothes were piled on the furnace, the temperature dropped which kicked the furnace on, and they ignited, causing major damage to the house and contents. The estimated damage about was \$ 70,000. The perpetrator could not be charged with the fire because the intent to set the fire was not there.

In 2002 there were two suspects who broke into a rural fire department in Stafford County with the intent to steal gasoline from the fire trucks. It was dark in the garage area and so one of the suspects flicked his lighter on for light as they were siphoning the gas. The fumes ignited. This severely damaged the fire trucks and the fire department building. It caused over \$ 80,000.00 in damage. Mutual aid from another rural fire department had to be called to fight the fire. The suspects' intent was not to set the fire but only to steal gasoline. They could not be charged with the damage to the fire department or fire trucks.

The last example I have is when someone steals a vehicle. The thieves go 'joy riding' in the vehicle and start driving the vehicle recklessly. Many times we are called to a scene where the vehicle is in a ditch or hay field. As the thieves 'cut donuts' or speed in the

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field the vehicle engine or catalytic converter heats up starting the field on fire. The thieves abandon the vehicle only to let it burn as well as the farmer's hay field. Again the intent for the fire was not there so they can not be charged with the fire and the damages caused.

In 2002, of the 461 fire investigations conducted by the Kansas State Fire Marshal's Office, 23 had to be ruled accidental fires due to lack of intent even though another felony crime was committed at the time. These numbers total only five percent of the cases within the Kansas State Fire Marshal's Office and would be a fair representation of the total number of cases throughout Kansas. Again these perpetrators must be held accountable for all their actions as they commit crimes in Kansas.

Another issue in reference to these fires is in the reporting process. All the State Fire Marshal's Investigators are full-time certified law enforcement officers. They investigate the origin and cause of fires throughout the State of Kansas at the requests of fire or law enforcement agencies. If a fire / explosion are determined to be incendiary in nature the investigators will continue with the criminal investigation and the fire report is confidential. If the fire / explosion are determined to be accidental as in these cases, the investigator's report is available to anyone under the Open Records Act, even the suspects of the other crimes. The availability of these reports can hamper the criminal investigation for the other law enforcement agencies that are investigating the other crimes such as burglary and theft. We need to protect this information for further criminal investigations.

The next change I will address pertains to Aggravated Arson, 21-3719. What is being added is the inclusion of injuries to the fire fighters fighting a fire and the investigators determining the cause of the fire as grounds to increase the charge from Arson to Aggravated Arson. Fire fighters and investigators take great risks in the work they do and they take those risks gracefully when there is an accidental fire. Those fires are going to happen but when a person sets an arson fire they put these public servants at risk due to their actions. The fire fighters and investigators must enter the structures to fight and investigate the fires. Statistics will show that set fires can be a more intense fire because the arsonist wants to make sure the building burns down. They want to intensify the fire. With the increase in intensity there is more likelihood of more structural damage and more danger to anyone who is in or near the fire. There is no way for the fire fighters or investigators to know if the fire was arson or not until it is over. They will actively attack the fire and investigations through to the end. We must make the arsonist accountable for all damages and injuries that result from his / her actions. There are statutes in place to increase the crime when a law enforcement officer is attacked in the line of duty, those who set fires should also be accountable to those who respond to the fires he / she creates.

Over the last five years there has been an average of 1987 arson fires per year in the State of Kansas which resulted in an average of 46 fire fighters injured per year. Of those it is estimated only half are injuries that would qualify for an increase in crime to the



aggravated arson. That is only a small fraction of the number of fires fire fighters fight per year.

One question I am sure will be of concern is the additional workload for the courts. Overall there should not be a significant increase in cases in the courts. Being realistic, of the five percent increase in cases that maybe generated due to the 'felony arson' addition, only a fraction of those will there actually be a suspect identified and charged. At best we can hope for at total of two percent. As for the aggravated arson statute change, those suspects identified and charged would have been charged already in arson. The only change would be the type of charge against the suspect in court. So there would not actually be an increase in the number of cases in court for the upgrade to the aggravated arson charge.

The state of Florida, Connecticut, and Illinois all have similar statutes and we should follow suit in making the criminals accountable for ALL their actions when they commit crimes in the State of Kansas.

I request your support of this bill and the amendment of the Arson and Aggravated Arson statutes. People who commence to illegal activity must be held for their disregard of life and property. The fire investigators need to be allowed to fully investigate these fires / explosions without hampering other criminal investigations. We must also protect the land / property owners and innocent victims in these cases.



## Kansas Bureau of Investigation

Larry Welch  
*Director*

### MEMO

Phill Kline  
*Attorney General*

Date: February 17, 2003  
To: House Corrections and Juvenile Justice Committee  
From: Kyle Smith, KBI  
Re: HB 2091 – DNA collection reimbursement

I understand that you will be working HB 2091 later this week. As you will remember, this legislation would make the convicted person who is required to provide a biological sample pay for the collection costs. The original language was fairly brief and lacked details and guidance on how this would actually be done. Attached is a balloon with proposed alternative language for your consideration that would clarify the procedures and how the funds would be handled.

While the KBI did provide some charts on the actual costs involved and what other states were charging, the actual amount would be a policy decision was not determined at hearing. I provided 2 versions based on either a \$25 or a \$125 fee, differing only in the cost of collection to be retained by the collecting agency is increased to more adequately cover actual costs if the fee is on the higher end

Please advise if you have any questions.

Kyle Smith  
Director of Public and Governmental Affairs  
Kansas Bureau of Investigation  
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## KBI Balloon for HB 2091

To replace italicized new language on page 2, lines 31 and 32.

\$150 version:

*"The court shall order any person who is required to provide DNA under this Act to pay \$150.00 processing fee which shall be in addition to and not in substitution for any and all fines, penalties or other costs. If the person is incarcerated, the fee must be paid before the person is paroled or released from confinement and may be garnished from the wages the person earns while incarcerated. If the person is not sentenced to a term of confinement, payment of the fee must be a condition of the person's sentence and may be paid in installments if so ordered by the court. All fees shall be collected and forwarded to the KBI by the court clerk on a monthly basis, except that local agencies collecting the DNA may retain \$15.00 for the costs of collection. The court clerk may retain \$5.00 to offset administrative costs. All fees forwarded to the KBI shall be deposited in the KBI DNA Technology Fund, which shall be used only for the collection and analysis of DNA as required under this Act."*

OR

\$25 Version:

*"The court shall order any person who is required to provide DNA under this Act to pay \$25.00 processing fee which shall be in addition to and not in substitution for any and all fines, penalties or other costs. If the person is incarcerated, the fee must be paid before the person is paroled or released from confinement and may be garnished from the wages the person earns while incarcerated. If the person is not sentenced to a term of confinement, payment of the fee must be a condition of the person's sentence and may be paid in installments if so ordered by the court. All fees shall be collected and forwarded to the KBI by the court clerk on a monthly basis, except that local agencies collecting the DNA may retain \$10.00 for the costs of collection. The court clerk may retain \$5.00 to offset administrative costs. All fees forwarded to the KBI shall be deposited in the KBI DNA Technology Fund, which shall be used only for the collection and analysis of DNA as required under this Act."*

## Cost to Collect & Analyze DNA Samples

<b>Collection of Offender sample</b>	\$15
collection kit, and cost for phlebotomist or qualified medical technician	
<b>Processing of DNA sample for storage</b>	\$25
cost for laboratory technician, and robotic supplies to process DNA samples	
<b>DNA profiling</b>	\$50
cost for DNA profiling kit, and reagents for 310 Genetic Analyzer	
<b>Compliance with Quality Assurance standards</b>	\$15
costs related to reviewing data, re-analysis of samples required by DNA Advisory Board national standards	
<b>Participate in CODIS program</b>	\$20
software upgrades to maintain continual compatibility with CODIS	
<b>Replace &amp; upgrade DNA technology</b>	\$25
costs to continue compatibility with CODIS	
<b>TOTAL COST</b>	<b>\$150</b>

### Note:

By K.S.A. 21-2511, the KBI is mandated to establish, implement, and maintain a statewide automated DNA databank capable of searching, matching, and storing DNA records for the criminal justice system.

- currently all KBI employees involved in the collection and processing of DNA samples for CODIS are special project employees who are not funded through the State General Fund.
- approximately 3,300 DNA samples are collected yearly from inmates at Kansas DOC;
- approximately 6,000 DNA samples are collected yearly from convicted felons who are not sentenced to Kansas DOC;
- currently, 27 states require a fee payment from offenders for the collection, processing, and storage of DNA samples for CODIS;
- the amount collected by these states ranges upwards to \$500, with the most common fee being \$250 per DNA collection;
- presently, there are 13,000 DNA samples awaiting profiling.