



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

**Proponent Testimony on SB 415
Senate Committee on the Judiciary
March 12, 2024**

Dear Chairwoman Warren and the Members of the Committee,

Thank you for the opportunity to submit testimony in support of SB 415.

Organized retail crime cost U.S. retailers more than \$41 billion in 2022, the last year for which numbers are available. That same year, retailers saw an 81.2% increase in violence associated with retail theft. Both represent growing problems. And Kansas has an important role to play in catching, investigating and prosecuting these crimes. According to Buy Safe America, the Sunflower State is one of the top 10 states where organized retail crime hits the hardest.

SB 415 approaches the problem of organized retail crime through three compatible actions: first, creating the new specific criminal offense of “organized retail crime”; second, amending the theft statute to address significant retail crime that might not qualify as “organized” yet still presents unique criminal conduct; and third, amending the Kansas Racketeer Influenced and Corrupt Organization act (Kansas RICO) to include organized retail crime.

Organized retail crime is *not* mere theft, and it is *not* mere shoplifting. These crimes typically involve stealing for personal use. It is large-scale theft of retail merchandise that represents a concerted effort to victimize a business — often with the intention of reselling the items for financial gain, and often using those financial proceeds to fund additional criminal activity. Put plainly, it’s not a teenager stealing a lipstick to use at the prom; it’s a ringleader coordinating a 21-county operation to steal \$8 million in beauty products for resale.¹

¹ Compl., *People v. Mack*, No. CD302211 (San Diego Cty. Superior Ct. Feb. 16, 2024). Note: charges are merely accusations and defendants are presumed innocent unless and until proven guilty.

Organized retail crime is thus different from garden-variety theft not only in motive, but in scale. To take significant quantities of merchandise and regularly convert it to cash is usually not a solo operation: it often involves “boosters,” who take the merchandise, often in groups; and one or multiple “fences,” to receive and store and transfer and sell the merchandise. With expanded scale of criminal activity comes the likelihood of related crimes: using stolen or cloned credit cards; obtaining consumer financial information by popping a skimming machine over a point-of-sale system² and, unfortunately, violent acts against store security officers and customers.³

At present, in Kansas most retail theft – if it is prosecuted at all – will be prosecuted as simply “theft.” Kansas does not have a shoplifting statute, which appears to be by design: our theft statute is flexible, and meant to cover a broad range of conduct. But it is not flexible enough to properly address the unique conduct and harm that organized retail crime presents.

Section 1 of the bill creates the offense of organized retail crime, and details the four different ways the offense can be committed. The essence of each of these means is the *organized* aspect of the crime: taking merchandise to sell to another; working with others to possess stolen merchandise; acting for others as part of an organized plan to commit theft; and/or assisting others to commit organized retail crime.

Section 1 also contains an important provision that gives further shape to its purpose: expanded venue. Venue refers to the appropriate forum, or county, in which to file a criminal case – *i.e.*, where the crime occurred. But “where the crime occurred,” in an organized retail crime case, is frequently going to involve merchandise taken from multiple counties: the same group of wrongdoers hit multiple establishments, and not necessarily in the same Kansas county.

Section 2 amends the theft statute by elevating the criminal penalty for an offender who commits a certain kind of theft, against a certain kind of victim, for a certain amount of money. Specifically: theft by deception, from a retailer, for \$3,000 in refunds, money, or merchandise. Section 2 thus addresses situations where the merchandise is not taken for resale, but rather to “return” for gift cards

² A recent six-month investigation by the Arizona Attorney General resulted in the seizure of skimming devices and 1200 cloned Supplemental Nutrition Assistance (SNAP) electronic benefit cards; 2700 individual victims lost \$1.2 million in stolen SNAP benefits. Ariz. Att’y Gen., “Attorney General Kris Mayes Announces Results of Organized Retail Theft Task Force Investigation,” Mar. 2, 2023, available at <https://www.azag.gov/press-release/attorney-general-kris-mayes-announces-results-organized-retail-theft-task-force> (last visited Mar. 8, 2024).

or other monetary refund. This conduct is a distinct and growing issue for businesses nationwide.⁴

Section 3 amends the Kansas RICO statute to include organized retail crime to the list of criminal violations that count as possible “racketeering activity.” As you can see from the text of Kansas RICO, most criminal offenses – including theft – already qualify. The organized nature of professional theft from retailers is precisely what give rise to the magnitude of harm, and it is thus appropriate to include organized retail crime as a predicate Kansas RICO offense.

Section 4 amends the prosecution authority of the Office of the Kansas Attorney General to include concurrent jurisdiction to prosecute crimes that are part of an alleged course of criminal conduct that occurred in two or more counties. This component of the bill is meant to address resource shortfalls that sometimes come into play in multi-county crimes. Even relatively simple investigations of this nature create a significant workload: a relatively simple multi-county investigation the KBI handled recently still involved sixteen subpoenas and fifty agent reports. Allowing the Office of the Attorney General to pursue these crimes promotes efficiency and wise use of resources, since one prosecutorial authority can handle a single investigation and prosecution across ordinary jurisdictional lines. It is also important that all aspects of the crime can be wrapped into a single prosecution in a single county – including the organized retail theft itself, any assault or battery of store employees, any fraud against consumers, and any related racketeering offenses. It also provides additional resources for investigations and prosecutions that in other circumstances could put a heavy load on local law enforcement and prosecutors. This is not taking away anything from county and district attorneys. Rather, it’s adding resources to combat a unique problem that is seen both in organized retail crime and in other multi-county crime sprees.

SB 415 represents Kansas’s efforts to join the more than thirty states that have enacted legislation to help combat organized retail theft. The bill’s flexibility will allow Kansas prosecutors to tackle retail theft in its many forms. The bill’s enhanced penalties reflect the serious effect retail theft has on Kansas businesses and consumers.

⁴ The National Retail Federation estimates return fraud cost retailers \$100 billion in 2023, and notes that this type of fraud is an issue on an individual as well as an organized scale. Daniella Genovese, FOX BUSINESS, *Return Fraud Plagues Retailers, Costs Industry Over \$100B in 2023*, Jan. 3, 2024, <https://www.foxbusiness.com/lifestyle/return-fraud-plagues-retailers-costs-industry-over-100-billion-2023>.

I urge the Committee to support SB 415. Thank you for your consideration of this testimony.

Respectfully,

Kris W. Kobach
Attorney General