

MEMORANDUM

To: Cheri Froetschner, Division of the Budget
From: Scott M. Schultz, Executive Director
Date: February 6, 2024
Re: Prison Bed Impact Assessment, **SB 415 - Creating the crime of organized retail crime, providing criminal penalties for violation thereof, increasing the criminal penalties for theft of certain property, including organized retail crime in the definition of racketeering activity under the Kansas racketeer influenced and corrupt organization act and authorizing the attorney general to prosecute crimes that are part of an alleged course of criminal conduct that occurred in two or more counties.**

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** This bill **will increase** prison admissions by **3, 5, or 7 in FY 2025, and 3, 6, or 8 in FY 2034**, depending on the scenario.
- **Impact on Prison Beds:** This bill **will increase** prison beds by **3, 5, or 7 in FY 2025, and 9, 17, or 23 in FY 2034**, depending on the scenario.
- **Impact on the Commission Workload:** This bill **may increase** the workload of the Commission, but the total cannot be determined.

SUMMARY OF THE BILL

New Section 1. Organized retail crime is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services; taking merchandise with an aggregate retail market value of \$3,000 or more from one or more retailers within a 12-month period, with intent to provide, transfer or sell such merchandise to another person; acting in concert with one or more other persons to receive, purchase, sell or possess merchandise with an aggregate retail market value of \$3,000 or more within a 12-month period, knowing or believing such merchandise to have been stolen; acting as an agent of one or more other persons to take merchandise with an aggregate retail market value of \$3,000 or more from one or more retailers within a 12-month period, as part of an organized plan to commit theft; or recruiting, coordinating, organizing, supervising, directing, managing or financing one or more other persons to undertake any of the above acts.

The penalty for organized retail crime is a **severity level 5, nonperson felony**.

Section 2. K.S.A. 21-5801 is amended to include that theft of property, by deception, that is refunds, money, or merchandise from a retailer with an aggregate retail market value of \$3,000 or more is a severity level 5, nonperson felony.

Section 3. K.S.A. 21-6328 is amended to include organized retail crime in the Kansas racketeer influenced and corrupt organization act as a pattern of racketeering activity.

Section 4. K.S.A. 75-702 is amended to include language that the attorney general shall have concurrent authority with any county or district attorney to prosecute crimes that are part of an alleged course of criminal conduct that occurred in two or more counties.

FINDINGS

- In **FY 2023**, there were **677** felony convictions for violation of K.S.A. 21-5801. The following is a breakdown by severity level:
 - **Severity Level 5 – 6**
 - Prison – 2 (33.3%)
 - Probation – 4 (66.7%)
 - **Severity Level 7 – 50**
 - Prison – 15 (30.0%)
 - Probation – 35 (70.0%)
 - **Severity Level 9 – 608**
 - Prison – 129 (21.2%)
 - Probation – 479 (78.8%)
 - **Severity Level 10 – 13**
 - Prison – 6 (46.2%)
 - Probation – 7 (53.8%)

- In **FY 2023**, of those theft convictions, there were **22** felony convictions specifically for **theft by deception** under K.S.A. 21-5801(a)(2). The following is a breakdown by severity level:
 - **Severity Level 5 – 1**
 - Probation – (100%)
 - **Severity Level 7 – 3**
 - Prison – 2 (66.7%)
 - Probation – 1 (33.3%)
 - **Severity Level 9 – 16**
 - Prison – 4 (25.0%)
 - Probation – 12 (75.0%)
 - **Severity Level 10 – 2**
 - Probation – 2 (100%)

KEY ASSUMPTIONS

- This impact will use the growth rate used in the KSSC FY 2024 Prison Projections.
- This bill creates a severity level 5, nonperson felony penalty for organized retail crime, as defined in the bill.
- A severity level 5, nonperson felony has a sentencing range of 31-136 months (11.3 years).
- The **average prison sentence**, for those sentenced to prison, for all severity level 5, nonperson felony offenses, after good time, jail credit, and program credit was **34 months**.
- **Scenario 1:** It is assumed that **10** offenders will be convicted for organized retail crime or theft of property, by deception, that is refunds, money, or merchandise from a retailer with

an aggregate retail market value of \$3,000, instead of being convicted of another form of theft that currently exists in the statute.

- **Scenario 2:** It is assumed that **15** offenders will be convicted for organized retail crime or theft of property, by deception, that is refunds, money, or merchandise from a retailer with an aggregate retail market value of \$3,000, instead of being convicted of another form of theft that currently exists in the statute.
- **Scenario 3:** It is assumed that **20** offenders will be convicted for organized retail crime or theft of property, by deception, that is refunds, money, or merchandise from a retailer with an aggregate retail market value of \$3,000, instead of being convicted of another form of theft that currently exists in the statute.
- It is assumed, based on final sentencing data from the KSSC, that only **one-third** of those convicted of a severity level 5, nonperson felony will be sentenced to prison.

Prison Admissions FY 2025-2034

Fiscal Year	Scenario 1	Scenario 2	Scenario 3
2025	3	5	7
2026	3	5	7
2027	4	5	7
2028	3	5	7
2029	3	5	8
2030	3	5	8
2031	3	5	8
2032	4	6	8
2033	3	6	8
2034	3	6	8

Prison Beds FY 2025-2034

Fiscal Year	Scenario 1	Scenario 2	Scenario 3
2025	3	5	7
2026	6	10	14
2027	9	14	20
2028	9	14	20
2029	9	14	21
2030	9	14	22
2031	9	14	23
2032	9	15	23
2033	9	16	23
2034	9	17	23

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** This bill **will increase** prison admissions by **3, 5, or 7** in **FY 2025**, and **3, 6, or 8** in **FY 2034**, depending on the scenario.
- **Impact on Prison Beds:** This bill **will increase** prison beds by **3, 5, or 7** in **FY 2025**, and **9, 17, or 23** in **FY 2034**, depending on the scenario.
- **Impact on the Commission Workload:** This bill **may increase** the workload of the Commission, but the total cannot be determined.

PROPORTIONALITY COMPARISON (PROPOSED BILL LANGUAGE WITH PENALTIES ARE BOLDED)

Statute Number Violated	Statutory Penalty Section	Registration Required "R"	Statute Description	Severity Level / Class	Attempt, Conspiracy & Solicitation			Person Nonperson/ Select
					A	C	S	
21-5405(a)(4)	(b)(1)	R	Involuntary Manslaughter; In commission of lawful act in unlawful manner	5	7	7	8	Person
21-5413(b)(2)(A)	(g)(2)(C)		Aggravated Battery; Recklessly causing great bodily harm or disfigurement	5	7	7	8	Person
21-5801(a)(2)	(b)(4)		Theft of Property or Services; By deception; value less than \$1,500	A	B	C	~	Nonperson
21-5801(a)(1)	(b)(1)		Theft of Property or Services; Obtain or exert unauthorized control; \$100,000 or more	5	7	7	8	Nonperson
New Section(a)(1-4)	(b)		Organized Retail Crime; with intent to permanently deprive owner taking merchandise with an aggregate retail market value of \$3,000, alone or working in concert with another, or acting as an agent of other persons or recruiting or organizing others to do the taking	5	7	7	8	Nonperson
21-5807(a)(1)	(c)(1)(B)(i)		Burglary; Without authority, enter into or remain within a dwelling with intent to commit the theft of a firearm	5	7	7	8	Person

21-5801(a)(1)	(b)(2)		Theft of Property or Services; Obtain or exert unauthorized control; at least \$25,000 but less than \$100,000	7	9	9	10	Nonperson
21-5801(a)(1)	(b)(3)		Theft of Property or Services; Obtain or exert unauthorized control; at least \$1,500 but less than \$25,000	9	10	10	10	Nonperson
21-5801(a)(1)	(b)(5)		Theft of Property or Services; Obtain or exert unauthorized control; value less than \$1,500, from 3 establishments within 72 hours as part of the same act or transaction or, in 2 or more acts or transactions, constituting a common scheme or course of conduct	9	10	10	10	Nonperson