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EIGHTEENTH JUDICIAL DISTRICT**

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**Testimony Regarding SB 418
Submitted by Marc Bennett, District Attorney and
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Honorable Chairman King and Members of the Senate Judiciary Committee, thank you for the opportunity to address SB 11 and explain my support for this measure. I would like to bring to your attention the issue of metal theft in Kansas and the efforts made over the past two years to enhance the investigation and prosecution of metal theft in our State.

Metal theft is an issue that effects urban and rural areas. What I wrote last year in support of the 2014 version of this bill, SB 418, remains true today. The problem of metal theft and – specifically, the damage caused by the thieves – is truly a statewide issue. Thefts from utility transfer stations lead to lost electric power & tens of thousands of dollars in damage; churches and social service organizations like the Boys and Girls Club have their air conditioning units rendered useless for \$50.00 worth of copper; farmers with central pivot irrigation systems lose tens of thousands of dollars in lost production and lower yields while saddling the owner with roughly \$10,000 per unit to replace \$300.00 worth of copper; copper urns from head stones stolen from cemeteries; rental homes rendered uninhabitable due to stripped plumbing and wiring; even recycle scrap yards have been stolen from, including a Sedgwick County yard that suffered two separate \$100,000.00 copper theft incidents in 2013-2014. Victim of multiple thefts are finding their insurance company is either unwilling to continue to insure after several payouts or have had to raise premiums to the point the business is effectively uninsured. In 2014, one person was electrocuted to death while attempting to strip a utility pole. Finally, an estimated \$1 million dollar loss occurred over the course of several weeks in Cowley County.

These and countless other examples brought this issue to the legislature in 2014 in then-SB 418. The measure, introduced fairly late in the session, did not pass but was referred to the Judicial Council to be worked in anticipation of the 2015 session.

In several meetings this fall, members of the legislature joined representatives of the scrap industry, law enforcement, county and municipal government, utilities, state government and other stakeholders to refine and improve upon SB 418. The product of this effort is 2015 SB 11.

While there is no silver bullet, no easy guaranteed approach to solving the issue of scrap metal theft, much thought and countless hours went into SB 11 to give Kansas a solid approach to effectively address the issue. The highlights are as follows:

First, similar to the roofer registry, §(1) authorizes the Kansas Attorney General to identify and subsequently sign up regulated scrap yards across the state. A fee structure applied to each yard then goes into effect which will pay for a database detailing all transactions that take place in these scrap yards across the state. The best estimate is that 300-500 businesses currently operate in the state that would qualify as regulated scrap yards. By building a database akin to the one used by law enforcement to regulate the pawn industry, we can enhance the ability of law enforcement to track the thieves, analyze crime trends, recover stolen goods and hold the thieves criminally responsible.

The simplified fee structure in SB 11 also explicitly eliminates the myriad of municipal and county fees (see § 6, page 5, lines 7-10), which should not only pay for the database and enforcement but will simplify the administrative bureaucracy to whom these businesses would otherwise be responsible.

The staggered approach to the initiation of the criminal consequences (July 1, 2015), followed then by the fee structure, then fines associated with non-compliance (January 1, 2016), and finally then the kick-off of the database (July 1, 2016), create the best opportunity for the success of the venture.

Second, while you will notice certain rebuttable presumptions in §8, which are designed to enhance prosecution efforts against the thieves, the real impact on criminal tracking, investigation/arrests and prosecution should come from §9 and the creation of the crime of Aggravated Criminal Damage to Property. The goal of this effort was to address the crux of the concerns raised by Kansans calling for an invigorated and aggressive response to the scourge of metal theft: the damage caused by the thieves to businesses and equipment during the commission of the thefts of a comparatively small value of metal. This new crime represents the first time metal-motivated thefts would be explicitly identified in Kansas incident reports. The designation of a severity level 5 person crime will have a bed space impact – but ask any of your fellow legislators who attended a community discussion I hosted in Wichita in the fall of 2014 what they saw and heard from the roughly 100 folks in attendance. Concern and irritation have turned to anger and demands for action. This is a serious problem that deserves a serious response and if bed space is going to be impacted, I am convinced Kansans are in support.

Third, §12 specifies the information sellers must provide to the scrap yards at the time of sale which is subsequently added to the database. While some of these requirements existed in prior state law, others existed only in a patch work of county and municipal ordinances.

To conclude, while no state has found the perfect combination of prohibitions to put a complete stop to metal theft, states that have applied a rational, comprehensive approach have seen the most success. SB 11 offers a sensible, tempered approach designed to give law enforcement the tools necessary to start effective investigations statewide. Further, it explicitly simplifies regulatory oversight into the hands of the Office of the Attorney General.

The old argument that we don't need new laws we simply need to enforce the ones we have is misplaced in the context of metal theft. In order to enforce the laws we have – law enforcement needs a consistent place to start. SB 11 provides them the first, best opportunity by providing the uniform collection of information while adding an increased penalty for the thieves.

At the community meeting I sponsored last fall, one scrap yard owner offered that he wanted to be a good corporate citizen, but he didn't want more regulation that put business out of business. Ed Klumpp, the long-time legislative committee chair for the Kansas Sheriff's Association, the Association of Chiefs of Police, and the Legislative Liaison for the Kansas peace Officers' Association, then made a point that resonated through the crowd. He responded, "*we are putting businesses out of business right now by not doing anything to stop metal theft.*"

I can't promise that this bill will put the final nail in the coffin that ends metal theft in Kansas. But SB 11 constitutes the first comprehensive effort to tip the playing field away from the thieves and back toward our law enforcement agents and the Kansans who look to them for protection. I am confident SB 11 provides us the tools we need.

Thank you for your time, attention and consideration in this matter.

Respectfully submitted,

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