

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2144**

As Agreed to April 5, 2024

**Brief\***

Senate Substitute for HB 2144 would establish the crime of organized retail crime in the Kansas Criminal Code, make organized retail crime a type of “racketeering activity” under the Kansas Racketeer Influenced and Corrupt Organization (RICO) Act, and amend law concerning Attorney General (AG) authority to prosecute crimes concurrently with county or district attorneys.

The bill would also create the crime of encouraging suicide and establish penalties for it under the Kansas Criminal Code.

***Organized Retail Crime***

The crime of organized retail crime would be committing one of the following acts with the intent to permanently deprive the owner of the possession, use, or benefit of the owner’s property or services:

- Acting in concert with one or more other persons to receive, purchase, sell, or possess merchandise with an aggregate retail market value of \$5,000 or more within a 12-month period, knowing or believing such merchandise to have been stolen;
- Taking merchandise with an aggregate retail market value of \$5,000 or more from 1 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 1 or more other persons to undertake any of the above-mentioned actions.

***Tiered Penalty***

The bill would establish that the penalty for organized retail crime would be based upon the aggregate retail market value of the involved merchandise, as follows:

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

- Value of at least \$5,000 but less than \$25,000 would be a severity level 6 nonperson felony;
- Value of at least \$25,000 but less than \$100,000 would be a severity level 5 nonperson felony; and
- Value of \$100,000 or more would be a severity level 4 nonperson felony.

### *Venue*

The bill would allow for the venue for prosecution to be any venue currently available under any other provision of law or any county where at least \$1 in aggregate retail market value of merchandise is taken, received, stolen, or purchased.

### *Definitions*

The bill would define terms used in the crime of organized retail crime, including:

- “Aggregate retail market value,” to mean the total combined value of merchandise taken, at the price at which the merchandise would ordinarily be sold by the retailer through legitimate sale or distribution;
- “Merchandise,” to mean chattels of any type or description regardless of the value offered for sale in or about a store;
- “Retailer,” to mean a person or business selling, leasing, or facilitating the sale or lease of merchandise to the public or a business; and
- “Store,” to mean a place where merchandise is sold or offered to the public for sale at retail or leased or offered to the public for lease.

### ***Kansas Racketeer Influenced Corrupt Organization Act***

The bill would amend the definition of “racketeering activity” in the Kansas RICO Act to include the crime of organized retail crime.

### ***Attorney General Concurrent Authority to Prosecute***

The bill would amend the AG’s authority to prosecute certain crimes concurrently with any county or district attorney. Current law provides the AG may concurrently prosecute:

- Theft;
- A violation of the Kansas RICO Act; or
- Any attempt, conspiracy, or criminal solicitation of such crimes that is part of an alleged course of criminal conduct that occurred in two or more counties.

The bill would modify this authority to specify the AG may concurrently prosecute:

- Organized retail crime and any other crime that is part of such alleged course of criminal conduct;
- Theft;
- A violation of the Kansas RICO Act; or
- Any attempt, conspiracy, or criminal solicitation of the above crimes.

### ***Encouraging Suicide***

The bill would define “encouraging suicide” as knowingly encouraging a person to commit or attempt to commit suicide when:

- Such person knows the other person has communicated a desire to commit suicide;
- Encouragement of suicide is made proximate in time to the other person committing or attempting to commit suicide; and
- Such encouragement substantially influences the other person’s decision or methods used to commit or attempt to commit suicide.

### ***Definitions***

The bill would define “attempt to commit suicide” as any physical action done by a person with the intent to commit suicide.

For purposes of the new crime, the bill would define “encouraging a person to commit or attempt to commit suicide” as oral, written, or visual communication that is persuasive or intended to be persuasive and that gives advice to commit suicide, attempt to commit suicide, or develop a plan to commit suicide.

### ***Penalties***

Encouraging suicide would be a severity level 5 person felony if the other person attempts to commit suicide, and a severity level 4 person felony if the other person commits suicide.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of Senate Sub. for HB 2144, as passed by the Senate, and further agreed to amend the bill to update the elements of the crime of organized retail theft, including the monetary limits and severity levels in the tiered penalty, and remove the penalties for retail theft. The Conference Committee also agreed to add the contents of Sub. for HB 2676, as passed by the House.

## Background

The Conference Committee added the contents of Sub. for HB 2676, as passed by the House, to Senate Sub. for HB 2144, as passed by the Senate and further amended by the Conference Committee.

### ***Senate Sub. for HB 2144 (Organized Retail Crime)***

The Senate Committee on Judiciary removed the original contents of HB 2144, concerning amendments to the statutory rule against perpetuities, and recommended a substitute bill incorporating the provisions of SB 415, as amended by the Senate Committee. The background of SB 415 follows below.

[*Note:* The contents of HB 2144 as introduced were inserted in HB 2172 and enacted into law during the 2023 Legislative Session.]

### ***SB 415***

SB 415 was introduced by the Senate Committee on Judiciary at the request of a representative of the Office of the AG (OAG).

#### *Senate Committee on Judiciary*

In the Senate Committee hearing on March 12, 2024, the AG and a representative of the Kansas Chamber provided **proponent** testimony, stating generally the bill is needed to effectively prosecute rising cases of organized retail theft.

Written-only proponent testimony was provided by representatives of Walmart and the Wichita Regional Chamber of Commerce.

A representative of the Board of Indigents' Defense Services (BIDS) provided **opponent** testimony, stating the bill is unnecessary because related legislation was enacted in 2023 and the bill would target vulnerable people rather than ringleaders of crime.

No other testimony was provided.

The Senate Committee amended the bill to:

- Establish a tiered penalty based upon the aggregate retail market value of the retail theft [*Note:* The Conference Committee retained this amendment with modifications.]; and
- Specify what crimes the AG would have concurrent authority to prosecute with county or district attorneys. [*Note:* The Conference Committee did not retain this amendment.]

## *Senate Committee of the Whole*

The Senate Committee of the Whole amended the bill to modify the concurrent authority of the AG to prosecute certain crimes to include the crime of organized retail theft and any other crime that is part of the alleged course of criminal conduct. [Note: The Conference Committee retained this amendment.]

## **HB2676 (Crime of Encouraging Suicide)**

The bill was introduced by the House Committee on Judiciary at the request of Representative Landwehr.

As introduced, the bill would have amended Kansas Criminal Code provisions concerning the crime of assisting suicide.

## *House Committee on Judiciary*

In the House Committee hearing, **proponent** testimony was provided by seven private citizens. The proponents generally stated the bill would help reduce suicide deaths by limiting the dissemination of harmful information and deter the encouragement of suicide.

Written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association and representatives of the Kansas Bureau of Investigation, Kansas Catholic Conference, and Kansas Mental Health Coalition.

Neutral testimony was provided by a private citizen. The testimony addressed a website that provides information to help facilitate suicide.

**Opponent** testimony was provided by a representative of the State Board of Indigents' Defense Services. The opponent generally stated the bill would raise constitutional concerns and limit free speech.

The House Committee replaced the original provisions of the bill, which would have amended the crime of assisted suicide, with language that would create a new crime and would specifically:

- Make knowingly encouraging suicide a crime under the Kansas Criminal Code [Note: The Conference Committee retained this amendment.];
- Define “attempt to commit suicide” and “encouraging a person to commit or attempt to commit suicide” [Note: The Conference Committee retained this amendment.];
- Establish the criteria for knowingly encouraging suicide [Note: The Conference Committee retained this amendment.]; and
- Establish penalties for encouraging suicide [Note: The Conference Committee retained this amendment.].

The House Committee recommended a substitute bill incorporating the above provisions.

## **Fiscal Information**

### ***Senate Sub. for HB 2144 (Organized Retail Crime)***

According to the fiscal note prepared by the Division of the Budget on SB 415, as introduced, the Kansas Sentencing Commission estimates enactment of the bill would result in an increase of three, five, or seven adult prison beds needed by the end of FY 2025. By the end of FY 2034, 9, 17, or 23 additional beds would be needed. The current estimated available bed capacity is 9,668 for males and 932 for females. Based upon the Commission's most recent 10-year projection contained in its *FY 2024 Adult Inmate Prison Population Projections* report, it is estimated the year-end population will total 8,556 male and 828 female inmates in FY 2024 and 8,847 male and 870 female inmates in FY 2025.

The Department of Corrections indicates the cost to house the additional inmates would cost the State General Fund (SGF) \$11,479 for 3 inmates, \$19,132 for 5 inmates, and \$26,785 for 7 inmates in FY 2025. For FY 2026, it would cost the SGF \$23,418 for 6 inmates, \$39,030 for 10 inmates, and \$54,641 for 14 inmates.

The OAG states that it would require 2.5 FTE positions at a cost of \$240,000 from the SGF for FY 2025 and \$252,000 for FY 2026. The OAG would need 1.0 legal assistant position and 1.5 attorney FTE positions to prosecute crimes as required by the bill.

The Office of Judicial Administration states the bill could increase the number of cases filed in district courts because the bill would create a new crime, which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Enactment of the bill could also increase the collection of docket fees deposited into the SGF. However, a precise fiscal effect cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties states the bill could have a fiscal effect on counties if cases are initiated at the local level; however, a fiscal effect cannot be estimated.

The League of Kansas Municipalities indicates the bill would increase expenditures for cities because it would require law enforcement agencies to provide training and enforcement of the Kansas RICO Act, but states the additional expenditures would be negligible.

### ***HB2676 (Crime of Encouraging Suicide)***

A fiscal note for the substitute bill was not available when the Conference Committee agreed to the Conference Committee Report.

Attorney General; crimes; organized retail crime; suicide; Kansas RICO Act

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