

SESSION OF 2024

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2144**

As Recommended by Senate Committee on  
Judiciary

**Brief\***

Senate Sub. for HB 2144 would establish the crime of organized retail crime and establish penalties for certain types of theft from retailers 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 the Attorney General (AG)’s authority to prosecute crimes concurrently with county or district attorneys.

***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:

- 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;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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 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:

- Value of at least \$,3000 but less than \$15,000 would be a severity level 5, nonperson felony; and
- Value of \$15,000 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” would 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” would mean chattels of any type or description regardless of the value offered for sale in or about a store;
- “Retailer” would mean a person or business selling, leasing, or facilitating the sale or lease of merchandise to the public or a business; and
- “Store” would 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.

#### ***Penalties for Retail Theft***

The bill would also establish penalties for theft of property, by deception, that includes refunds, money, or merchandise from a retailer with an aggregate retail market value of:

- \$3,000 but less than \$15,000, would be a severity level 5, nonperson felony; and
- \$15,000 or more would be a severity level 4, nonperson felony.

The bill would specify the penalties provided for theft based on value in continuing law would not apply when this type of theft is committed.

#### ***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 provide this concurrent authority would extend to certain specified crimes (or attempt, conspiracy, or criminal solicitation for such crimes) when they are part of an alleged course of criminal conduct that occurred in two more counties. The specified crimes for which the AG may have concurrent authority to prosecute include:

- Uniform Act Regulating Traffic:
  - KSA 8-1568, fleeing or attempting to elude a police officer;
- Crimes Against Persons:
  - KSA 21-5402(a)(2), murder in the first degree committed in the commission of, attempt to commit, or flight from certain inherently dangerous felonies;
  - KSA 21-5403, murder in the second degree;
  - KSA 21-5405, involuntary manslaughter;
  - KSA 21-5406, vehicular homicide;
  - KSA 21-5411, criminal restraint;
  - KSA 21-5412, assault or aggravated assault; assault or aggravated assault of a law enforcement officer;
  - KSA 21-5413, battery or aggravated battery; battery or aggravated battery against certain persons;
  - KSA 21-5415, criminal threat or aggravated criminal threat;

- KSA 21-5420, robbery or aggravated robbery; and
- KSA 21-5429, endangerment;
- Crimes Involving Controlled Substances:
  - KSA 21-5706, unlawful possession of controlled substances; and
  - KSA 21-5708, unlawfully obtaining or selling a prescription-only drug;
- Crimes Involving Property:
  - KSA 21-5801, theft;
  - KSA 21-5803, criminal deprivation of property;
  - KSA 21-5805, unlawful acts involving theft detection shielding devices;
  - KSA 21-5807, burglary or aggravated burglary;
  - KSA 21-5808, criminal trespass;
  - KSA 21-5813, criminal damage or aggravated criminal damage to property;
  - KSA 21-5814, criminal use of an explosive;
  - KSA 21-5821, giving a worthless check;
  - KSA 21-5823, forgery;
  - KSA 21-5828, criminal use of a financial card;
  - KSA 21-5831, warehouse receipt fraud;
  - KSA 21-5832, unauthorized delivery of stored goods;
  - KSA 21-5839, unlawful acts concerning computers; and
  - KSA 21-5840, counterfeiting currency;
- Crimes Affecting Government Functions:
  - KSA 21-5904, interference with law enforcement; and

- KSA 21-5918, dealing in false identification documents or vital records identity fraud;
- Crimes Involving Violations of Personal Rights:
  - KSA 21-6107, identity theft or identity fraud; and
  - KSA 21-6108, unlawful possession of a scanning device or reencoder [Note: A “reencoder” is an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.];
- Crimes Against the Public Peace:
  - KSA 21-6201, riot or incitement to riot;
  - KSA 21-6203, disorderly conduct; and
  - KSA 21-6207, making an unlawful request for emergency service assistance;
- Crimes Against the Public Safety:
  - All crimes against the public safety as listed in Article 63 of Chapter 21, KSA 21-6301 through KSA 21-6326;
- Crimes Against the Public Morals:
  - KSA 21-6416, harming or killing certain dogs; and
- Crimes Affecting Business:
  - KSA 21-6503, deceptive commercial practice.

## **Background**

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 original contents of HB 2144 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 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 last session and 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 and to specify what crimes the AG would have concurrent authority to prosecute with county or district attorneys.

## **Fiscal Information**

According to the fiscal note prepared by the Division of 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 three inmates, \$19,132 for five inmates, and \$26,785 for seven inmates in FY 2025. For FY 2026, it would cost the SGF \$23,418 for six inmates, \$39,030 for ten 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 creates a new crime, which would increase the time spent by district court judicial and non-judicial 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.

Attorney General; crimes; organized retail crime