



**Senate Judiciary Committee
March 12, 2024**

**Senate Bill 415
Testimony of the BIDS Legislative Committee
Presented by Josh Harsin and Jennifer Roth
Opponent**

Chairperson Warren and Members of the Committee:

We oppose SB 415 because it is unnecessary and targets vulnerable people, not ringleaders. The merits of the bill are wanting and the proposed thresholds and penalties are out of step.

SB 415 is unnecessary

The problem isn't organized.

SB 415 would create the crime of organized retail crime. To come to our position on this bill, we read several articles about how Kansas, particularly Wichita, is affected by theft. Notably, here is how a Wichita Police Sergeant in the larceny and property crimes unit characterized the problem three months ago:

While some shoplifters work in groups, McDonald said he wouldn't call them "organized."

"No, I don't think so at all," he said.

The sergeant said **most thieves aren't moving stolen items around networks or other criminals**, they're getting rid of what they take as fast as they can.

"Some of it is sold to their friends, (and) some of it is traded for drugs. There's a myriad of ways of getting hold of it," McDonald said. "The idea is, 'I have product and how do I get cash for that?'"¹

The Legislature passed a solution last year.

On June 13, 2023, Attorney General Kobach testified to the United States House Subcommittee on Crime and Federal Government Surveillance, Committee on the Judiciary Hearing on Organized Retail Crime and the Threat to Public Safety. He included policy recommendations in his written testimony, which did not include creating a new crime. He wrote:

1

<https://www.kwch.com/2023/12/18/small-crime-big-problem-wichita-retailers-ranked-among-nations-worst-thefts/> (Emphasis added.)

In Kansas, we have addressed the lack of prosecutorial capacity by stepping in at the state level. In the 2023 legislative session, I asked the state legislature for original prosecutorial authority in all cases where a course of criminal conduct occurs in two or more counties. This allows my prosecutors to prosecute cases with state resources where a county or district attorney does not have the capacity to prosecute. That bill (Kansas S.B. 174) was signed into law on May 11, 2023. Kansas is the first state in the country to adopt this measure.²

The ink is barely dry on SB 174. Give it a chance to work before creating a new crime or expanding the Attorney General’s concurrent authority—both of which SB 415 would do.

Additional tools already exist.

Our existing theft statute (K.S.A. 21-5801) has tiers that are more proportionate to the harm caused yet still address recidivist conduct. Below is a comparison of the severity levels in SB 415 and K.S.A. 21-5801. We also have special sentencing rules that increase the punishment for people who repeatedly commit theft and burglary. See K.S.A. 21-6804(l), (p), (x).

Proposed SB 415	Existing K.S.A. 21-5801 (theft)
<p>Severity level 5 felony: all violations, <i>i.e.</i> acts involving merchandise with a retail value of \$3,000 or more in a 12-month period</p>	<p>Severity level 5 felony: theft of property valued at \$100,000 or more Severity level 7 felony: theft of property valued at \$25,000 to \$99,999 Severity level 9 felony: *theft of property valued at \$1,500 to \$24,999 *theft of a firearm valued at under \$25,000 *theft of property valued at under \$1,500 if taken from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct *theft of property valued at \$50 to \$1,499 if committed by a person who has been convicted of theft two or more times in the five years preceding the current offense *theft of mail valued at under \$1,500 from three separate locations with a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct</p>

Keep in mind that all severity level 5 offenses are presumptive prison:

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanor	1 Misdemeanor No Record
V	136 190 122	128 120 114	60 57 58	55 52 50	51 49 46	47 44 41	48 41 38	38 36 34	34 32 31

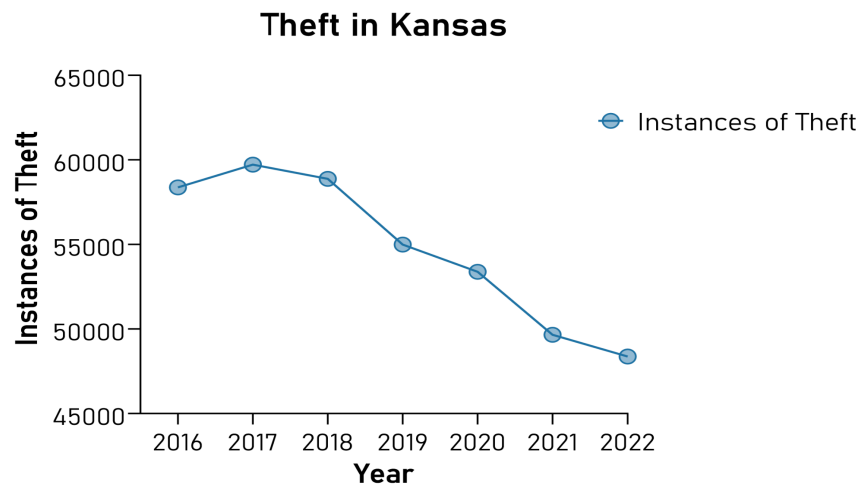
²

https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/kobach-testimony.pdf?_gl=1*t1b0cw*_ga*MTA4MjYxNjY5OS4xNzEwMTI4NTY3*_ga_1818ZEQW81*MTcxMDEyODU2Ni4xLjAuMTcxMDEyODU2Ni4wLjAuMA..

The extent of organized retail crime has been called into question.

Many of the articles we read—which were from May–July 2023—cited statistics that were revealed in December 2023 to be wrong.

- In April of 2023, the National Retail Federation (NRF) claimed that nearly half of the \$94.5 billion in merchandise that went missing in 2021 was due to “retail rings”. Later, they were forced to walk back this claim and admitted that retail theft was responsible for closer to 5% of retail store losses, or 45% less than their initial claim. One commentator noted that this discrepancy “would be a bit like the census claiming that nearly half of the U.S. population lives in the state of Rhode Island.”³
- Target claimed it shut down nine stores due to theft and violence, yet these stores had lower crime rates than nearby stores which remained open. Turns out the real reason they closed these stores is that they weren’t profitable and retail theft was used as an excuse so Target executives wouldn’t have to tell shareholders that they had stores which were failing.⁴
- Walgreens appears to have been in a situation similar to Target.⁵
- In 2021—the year the NRF claimed retail theft was on the rise and was responsible for half of their lost merchandise—theft in Kansas was **7% lower than in 2020**, according to data from the Kansas Bureau of Investigation. Instances of theft have been on a continual decline in Kansas since at least 2017, **dropping 12% from 2017 (59,725) to 2022 (48,737)**.



Source: https://www.kansas.gov/kbi/stats/stats_crime.shtml

³ <https://www.nytimes.com/2023/12/08/business/organized-shoplifting-retail-crime-theft-retraction.html>; <https://kansareflector.com/2023/12/31/smash-and-grab-robberies-fuel-new-laws-but-critics-question-the-need/>

⁴ <https://www.cnbc.com/2023/12/19/target-store-closures-theft-and-crime-higher-nearby.html>.

⁵ <https://www.nytimes.com/2023/12/08/business/organized-shoplifting-retail-crime-theft-retraction.html>

SB 415 targets vulnerable people, not ringleaders

In the articles we read about Wichita, there was almost no mention of actual ringleaders or how often they are caught, etc. Instead, the focus was on people who are battling drug addiction, mental illness, and/or poverty.

- According to Marc Bennett, the Sedgwick County District Attorney, “[t]here’s also a vulnerable population in and around Wichita that is unhoused or struggling with mental illness. There’s an opportunity when people are desperate to be pulled into these criminal enterprises.”⁶
- According to Captain Slaughter, who is in charge of the Wichita Police Department’s property crimes unit, theft persists because in his view the root causes are equally difficult to quash. “Drug addiction has gotten worse in the city. Almost every time a suspect is caught, we find drug paraphernalia on the person. It’s shocking to us when we don’t find it.”⁷
- A Wichita defense attorney talked about one client he had who lost her children and was addicted to fentanyl. When she came to court one time, she had a black eye. His clients “are going after items they can turn around quickly for some good money, like at pawn shops. If it’s not drugs, then they need money to pay rent.”⁸

By all accounts, the people who will get caught up in this new high severity level offense are people who are desperate, unwell, and struggling.

Additional evidence of this outcome is in the bill language. First, the threshold is \$3,000 in a 12-month period. This is very low compared to, for example, Indiana—where the threshold is \$50,000. (We did not have time to research other states; we learned about Indiana through one of the articles we read.) Second, the bill is not tailored to the conduct the proponent seeks to address. For example, in New Section 1(a)(1), a person is guilty of organized retail crime even if they do not act in concert with anyone and “provide” merchandise to another person even if there is no monetary gain or financial benefit.

For all of the reasons set out above, we urge this Committee to not advance SB 415. Thank you.

Josh Harsin
BIDS Legislative Committee member
Data & Statistical Evaluation Analyst
BIDS Administrative Office
jdharsin@sbids.org
(785) 296-6631

Jennifer Roth
BIDS Legislative Committee member
Deputy Appellate Defender
Appellate Defender Office
jroth@sbids.org
(785) 296-5484

⁶ <https://www.cnn.com/2023/07/02/business/organized-retail-crime-wichita-kansas/index.html>

⁷ *Id.*

⁸ *Id.*